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

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
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CSA	MSPB*/OPM*		CSA	MSPB*/OPM*
	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 January 1, 1979, the Merit Systems Protection Board (MSPB) and the Office of Personnel Management (OPM) will publish on the Tuesday/Friday schedule. (MSPB and OPM are successor agencies to the Civil Service Commission.)

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rules and regulations

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

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

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—OFFICE OF PERSONNEL MANAGEMENT

TITLE CHANGE

AGENCY: Office of Personnel Management.

ACTION: Editorial change.

SUMMARY: This document changes the title of Chapter I from Civil Service Commission to Office of Personnel Management to implement Reorganization Plan No. 2 of 1978 and Pub. L. 95-454.

EFFECTIVE DATE: January 1, 1979.

FOR FURTHER INFORMATION CONTACT:

James C. Spry, Special Assistant to the Director, 202-632-5556. Accordingly, chapter I of 5 CFR is renamed Office of Personnel Management.

(5 U.S.C. 1105)

OFFICE OF PERSONNEL
MANAGEMENT,

JAMES C. SPRY,

Special Assistant to the Director.

[FR Doc. 79-2081 Filed 1-18-79; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Department of Health, Education, and Welfare

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: Pharmacy Resident positions at grade GS-7 in the National Institutes of Health's Clinical Center, Pharmacy Department, are excepted under Schedule A because it is impracticable to examine for them. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3116(b)(11) is added as set out below:

§ 213.3116 Department of Health, Education, and Welfare.

(b) *Public Health Service.* * * *

(11) Pharmacy Resident positions at GS-7 in the National Institutes of Health's Clinical Center, Pharmacy Department. Employment in these positions is confined to graduates of approved schools of pharmacy and is limited to a period not to exceed 12 months pending licensure.

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

JAMES C. SPRY,

Special Assistant to the Director,
Office of Personnel Management.

[FR Doc. 79-2082 Filed 1-18-79; 8:45 am]

[6325-01-M]

PART 213—EXCEPTED SERVICE

Temporary Boards and Commissions

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: This authority excepts from the competitive service under Schedule A one GS-15 Deputy Executive Director position, one GS-10 Staff Assistant position, and one GS-7 Secretary position with the President's Commission on the Holocaust, with the provision that employment under this authority may not exceed February 1, 1980. This exception was granted because it is impracticable to examine for these positions.

EFFECTIVE DATE: January 9, 1979.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3199(y) is added as set out below:

§ 213.3199 Temporary boards and commissions.

(y) *President's Commission on the Holocaust.*

(1) One GS-15 Deputy Executive Director position, one GS-10 Staff As-

sistant position, and one GS-7 Secretary position with the President's Commission on the Holocaust. Employment under this authority may not exceed February 1, 1980.

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

JAMES C. SPRY,

Special Assistant to the Director,
Office of Personnel Management.

[FR Doc. 79-2078 Filed 1-18-79; 8:45 am]

[6325-01-M]

PART 307—VETERANS READJUSTMENT APPOINTMENTS

PART 316—TEMPORARY AND TERM EMPLOYMENT

Disabled and Vietnam Era Veterans

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is amending the regulations to implement certain provisions of the Veterans Administration Programs Extension Act of 1978 (Pub. L. 95-520), which liberalizes eligibility requirements for Veterans Readjustment Appointments and other kinds of employment for VRA eligibles. These regulations are amended to combat continuing unemployment problems of disabled and Vietnam era veterans.

EFFECTIVE DATE: January 10, 1979.

FOR FURTHER INFORMATION CONTACT:

Oliver J. Thomsen, Chief, Veterans Employment Programs, Office of Affirmative Employment Programs, Office of Personnel Management, 1900 E Street, N.W., Washington, DC 20415, 202-254-3058.

SUPPLEMENTAL INFORMATION: The Director finds that good cause exists for making these regulations effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of Pub. L. 95-520 enacted October 26, 1978.

Accordingly, 5 CFR Parts 307 and 316 are amended as set forth below:

(1) By revising § 307.101 (a) and (b) as follows:

§ 307.101 Definitions.

In this part: (a) "Veteran" has the meaning given in section 2011(2)(A) of title 38, United States Code.

(b) "Vietnam era" is the period beginning August 5, 1964 and ending May 7, 1975.

(2) By revising § 307.102 (a) and (b) as follows:

§ 307.102 Basic eligibility.

(a) A veteran may receive a veterans readjustment appointment if s/he:

(1) Has served on active duty in the armed forces of the United States during the Vietnam era;

(2) Has completed not more than 14 years of education unless compensably disabled or discharged because of service-connected disabilities, in which case the 14-year educational requirement does not apply; and

(3) Agrees in writing that during employment under the appointment, veteran will pursue a training or educational program developed under § 307.104.

(b) A Vietnam era veteran may be given a veterans readjustment appointment at any time following separation from the service, except that no veterans readjustment appointment may be made under current statutory authority after September 30, 1981.

(3) By revising § 307.103 (a) and (c) as follows:

§ 307.103 Appointment authority.

(a) An agency may appoint any veteran eligible under section 307.102 who meets the qualification standards of the Office of Personnel Management for the position, to a position at GS-7 or below, or the equivalent in another pay system. On the basis of military and civilian experience, any veteran eligible under § 307.102 is deemed to meet the qualification standards for positions at GS-3 and below, and equivalent levels: *Provided*, The agency considers the veteran capable of performing the duties of the specific position.

(c) An appointment under this section is subject to investigation by the Office. A law, Executive Order, or regulation which disqualifies a person for appointment in the competitive service also disqualifies a person for a veterans readjustment appointment.

(4) By revising § 307.104(a) and (b) as follows:

§ 307.104 Training or educational programs.

(a) Each agency shall develop a training or educational program for

each employee given a veterans readjustment appointment.

(b) The Office shall establish and publish guidelines for developing training or education programs under this section.

(5) By revising § 307.105 as follows:

§ 307.105 Conditions of employment.

An employee holding a veterans readjustment appointment serves subject to satisfactory performance of assigned duties and satisfactory participation in the required training or educational program. The agency shall separate an employee who does not meet these conditions, following the procedures in Part 43 of this chapter if the employee has completed one year of current continuous employment.

(6) By revising § 307.106(a), by deleting section 307.106(b) and by changing § 307.106(c) to read 307.106(b), as follows:

§ 307.106 Noncompetitive movement.

(a) Subject to § 335.103 of this chapter an agency may reassign, promote, or transfer an employee serving under veterans readjustment appointment to any position for which the employee meets the qualifications standards of the Office.

(b) Noncompetitive movements under this section are subject to completion of applicable training or educational programs.

(7) By adding § 307.107 to bring into regulation a reporting requirement contained in § 2014(d) of title 38, United States Code as follows:

§ 307.107 Reporting requirement.

(a) Agencies shall submit reports on efforts to promote maximum employment, placement, and job advancement opportunities for disabled and Vietnam era veterans to the Office on a 6-month basis.

(b) The Office shall establish and issue guidelines for the preparation and submission of these reports.

(8) By revising § 316.302(c)(2) as follows:

§ 316.302 Selection of term employees.

(c) ***

(2) A veteran, as defined in section 2011(2)(A) of title 38, United States Code, who:

(i) Served on active duty in the Armed Forces of the United States beginning August 5, 1964 and ending May 7, 1975;

(ii) Completed not more than 14 years of education, unless compensably disabled or discharged because of

service-connected disabilities, in which case the 14-year educational requirement does not apply; and

(iii) Is qualified to perform the duties of the position.

An appointment under this subparagraph may be made only to a position at GS-7 or below, or equivalent in another pay system, without time limitation after separation from the military service, but not after September 30, 1981. A veteran who is an applicant for a position at GS-3 or equivalent, and below under this subparagraph is deemed qualified to perform the duties of the position on the basis of the veteran's civilian and military service.

(9) By revising § 316.402(b)(4) as follows:

§ 316.402 Authorities for temporary appointments.

(b) *Noncompetitive temporary limited appointments.* ***

(4) A veteran, as defined in section 2011(2)(A) of title 38, United States Code, who:

(i) Served on active duty in the Armed Forces of the United States beginning August 5, 1964 and ending May 7, 1975;

(ii) Completed not more than 14 years of education, unless compensably disabled or discharged because of service-connected disabilities, in which case the 14-year educational requirement does not apply; and

(iii) Is qualified to perform the duties of the position.

An appointment under this subparagraph may be made only to a position at GS-7 or below, or equivalent in another pay system, without time limitation after separation from the military service, but not after September 30, 1981. A veteran who is an applicant for a position at GS-3 or below, or equivalent, under this subparagraph is deemed qualified to perform the duties of the position on the basis of the veteran's civilian and military service.

(75 A Stat. 18; 2 C.Z.C. 149 (c)(2); E.O. 9830, 3 CFR 1943-1948 Comp., p. 606; E.O. 11103, 3 CFR, 1959-1963 Comp., p. 762)

OFFICE OF PERSONNEL
MANAGEMENT,
JAMES C. SPRY,

Special Assistant to the Director.

[FR Doc. 79-2079 Filed 1-18-79; 8:45 am]

[6325-01-M]

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is issuing interim regulation which requires Federal agencies to notify State Job Service Offices and the Office of Personnel Management of vacancies in the competitive service which they intend to fill from outside the Federal service other than through competitive examinations or rehiring of former Federal employees. This requirement is specifically included in the Civil Service Reform Act of 1978, section 309 (5 U.S.C. 3327).

DATE: Effective Date: January 11, 1979, and until final regulations are issued. Comment Date: Written comments will be considered if received no later than March 20, 1979.

ADDRESS: Send written comments to Arch S. Ramsay, Deputy Associate Director for Staffing, Room 6F08, Office of Personnel Management, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Patricia Esslinger, Staffing Services, 202-632-6013.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

Accordingly, § 330.102 is added to 5 CFR Part 330 as set out below:

§ 330.102 Notification of vacancies to State Job Service and Office of Personnel Management.

Federal agencies (as defined in 5 USC 5102(a)(1)) must notify State Job Service offices and the Office of Personnel Management of vacant positions in the competitive service which they intend to fill from outside the Federal service, other than through competitive examinations or rehiring of former Federal employees. Such notification must indicate the period

during which applications will be accepted.

(5 U.S.C. 3327)

JAMES C. SPRY,
Special Assistant to the Director,
Office of Personnel Management.

[FR Doc. 79-2083 Filed 1-18-79; 8:45 am]

[6325-01-M]

PART 550—PAY ADMINISTRATION (GENERAL)

Allotments to Labor Organizations and Other Associations

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The following amendments revise Subpart C of Part 550 which governs allotments to labor organizations and other associations. With the enactment of the Civil Service Reform Act of 1978, effective January 11, 1979, allotments for union dues will generally be made under section 7115 of title 5, United States Code. Therefore, in order to reflect this change in the legal basis for most allotments for union dues, §§ 550.321-2 and 550.324 of Title 5, Code of Federal Regulations, governing allotments to labor organizations are being deleted effective January 11, 1979. In addition, the enactment into law of the Federal service labor-management relations program has rendered obsolete certain references to Executive Order 11491 which previously provided the legal basis for the program. Therefore, such references are being deleted from subsections (e) and (m) of § 550.301. Since these changes are required by statute and are not discretionary, they are being published as a final rule.

It is important to note, however, that not all references to labor organizations or to Executive Order 11491 have been eliminated. This results from the need to retain both the savings provision in § 550.323 which incorporates such references and sufficient definitional and other explanatory material to make that section understandable.

EFFECTIVE DATE: January 11, 1979.

FOR FURTHER INFORMATION CONTACT:

Harry A. Wolf, Office of Personnel Management, Room 3351, 1900 E Street NW., Washington, D.C. 20415, 202-632-6553.

SUPPLEMENTARY INFORMATION: Section 7115 of title 5, United States Code, under which allotments for union dues will generally be made beginning January 11, 1979, reads as follows:

§ 7115. Allotments to representatives.

(a) If an agency has received from an employee in an appropriate unit a written assignment which authorizes the agency to deduct from the pay of the employee amounts for the payment of regular and periodic dues of the exclusive representative of the unit, the agency shall honor the assignment and make an appropriate allotment pursuant to the assignment. Any such allotment shall be made at no cost to the exclusive representative or the employee. Except as provided under subsection (b) of this section, any such assignment may not be revoked for a period of 1 year.

(b) An allotment under subsection (a) of this section for the deduction of dues with respect to any employee shall terminate when—

(1) the agreement between the agency and the exclusive representative involved ceases to be applicable to the employee; or

(2) the employee is suspended or expelled from membership in the exclusive representative.

(c)(1) Subject to paragraph (2) of this subsection, if a petition has been filed with the Authority by a labor organization alleging that 10 percent of the employees in an appropriate unit in an agency have membership in the labor organization, the Authority shall investigate the petition to determine its validity. Upon certification by the Authority of the validity of the petition, the agency shall have a duty to negotiate with the labor organization solely concerning the deduction of dues of the labor organization from the pay of the members of the labor organization who are employees in the unit and who make a voluntary allotment for such purpose.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply in the case of any appropriate unit for which there is an exclusive representative.

(B) Any agreement under paragraph (1) of this subsection between a labor organization and an agency with respect to an appropriate unit shall be null and void upon the certification of an exclusive representative of the unit.

All of Subpart C, "Allotments and Assignments from Federal Employees" will be amended to conform with the Civil Service Reform Act of 1978. However, at the present time only the portions affected by section 7115 of title 5, United States Code, are amended.

Accordingly, paragraphs (e) and (m) of § 550.301 of Title 5, Code of Federal Regulations, are amended and §§ 550.321, 550.322, and 550.324 are revoked as set out below:

§ 550.301 Definitions.

(e) "Association of management officials or supervisors" means an association composed of management officials or of supervisors with which the agency has established official relationships.

(m) "Professional or other associations" means an organization with which the agency has established official relationships.

§ 550.321 [Revoked]

§ 550.322 [Revoked]

§ 550.324 [Revoked]

(5 U.S.C.; EO 10982, 3 CFR 1959-1963 Comp., p. 502)

JAMES C. SPRY,

*Special Assistant to the Director,
Office of Personnel Management.*

[FR Doc. 79-2077 Filed 1-18-79; 8:45 am]

[6325-01-M]

CHAPTER II—MERIT SYSTEMS PROTECTION BOARD

Organization and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Publication of interim regulations.

SUMMARY: These regulations establish interim procedures for the operations of the Merit Systems Protection Board under the Civil Service Reform Act of 1978. These regulations expire no later than June 30, 1979. Proposed regulations for public comment will be published as soon as possible.

EFFECTIVE DATE: January 11, 1979.
FOR FURTHER INFORMATION CONTACT:

Alan Greenwald or Deborah House,
Office of the Chair of the Merit Systems Protection Board, Washington, D.C. 20419 (202-653-7101).

SUPPLEMENTARY INFORMATION: These regulations are published under the authority conferred on the Board by 5 U.S.C. § 1101 et seq., the Civil Service Reform Act of 1978 (Pub. L. 95-454) signed into law by President Carter on October 13, 1978 ("the Act").

Under the findings and statement of purpose of that enactment, the Congress stated ten underlying policy considerations, including among others the desire that:

Federal personnel management be implemented consistent with merit system principles and free from prohibited personnel practices; that those principles be expressly stated to furnish guidance to federal agencies in carrying out their responsibilities in administering the public business; that prohibited personnel practices be statutorily defined to enable federal employees to avoid conduct which undermines the merit system principles and the integrity of the merit system; and that federal employees receive appropriate protection through increasing the authority and powers of the Merit Systems Protection Board.

These regulations supersede all regulations adopted at any time by the Civil Service Commission relating to the functions imposed on the Merit Systems Protection Board by the Act and Reorganization Plans 1 and 2 of 1978. However, it should be emphasized that these regulations are issued in compliance with the Savings Provision of Pub. L. No. 94-454 (§ 902(b)) which states:

No provision of this Act shall affect any administrative proceeding pending at the time such provision takes effect. Orders shall be issued in such proceedings and appeals shall be taken therefrom as if this Act had not been enacted.

Accordingly, these interim regulations are not applicable to any administrative proceeding instituted prior to the effective date of the Act. Such proceedings will be conducted in accordance with all regulations applicable prior to the effective date of this Act which are incorporated herein by reference, except that all actions previously delegated to the Federal Employee Appeals Authority or the Appeals Review Board are vested in the Merit Systems Protection Board.

The Merit Systems Protection Board has determined that the January 11, 1979 effective date of the Act establishes good cause for immediately publishing regulations under the Act.

Accordingly, 5 CFR is amended as follows:

Chapter II, entitled, "Merit Systems Protection Board" is established and new Parts 1200-1206 are added to read as follows:

SUBCHAPTER A—ORGANIZATION AND PROCEDURES

PART 1200—BOARD ORGANIZATION

Subpart A—General

Sec.

1200.1 The Board.

1200.2 The Chair; Vice Chair.

Subpart B—Offices of the Board [Reserved]

Authority: 5 U.S.C. 1101 et seq.

Subpart A—General

§ 1200.1 The Board.

The Merit Systems Protection Board ("the Board") is composed of three members who are appointed by the President with the advice and consent of the Senate, and whose terms are for a period of seven years.

§ 1200.2 The Chair; Vice Chair.

One of the members of the Board shall be designated from time to time by the President, with the advice and consent of the Senate, to serve as the Chair and chief executive and administrative officer of the Board. From time to time the President shall also designate one of the members of the Board to serve as Vice Chair. In the absence or disability of both the Chair and Vice Chair or when their offices are vacant, the remaining Board member shall perform the functions vested in the Chair.

Subpart B—Offices of the Board [Reserved]

PART 1201—PRACTICES AND PROCEDURES

Subpart A—Jurisdiction and Definitions

Sec.

1201.1 General.

1201.2 Original jurisdiction: definition and application.

1201.3 Appellate jurisdiction: definition and application.

1201.4 General definitions.

Subpart B—Hearing Procedures for Appellate Cases

GENERAL

1201.11 Scope.

1201.12 Suspension, revocation, amendment or waiver of rules.

PETITIONS FOR REVIEW OF AGENCY ACTION, PLEADINGS

1201.21 Filing of petition for appeal.

1201.22 Computation of time.

1201.23 Length, form and content of pleadings.

1201.24 Petitions, pleadings and briefs to be filed: form and proof of service.

PARTIES, PRACTITIONERS, WITNESSES

1201.31 Parties, representation.

1201.32 Witnesses, right to representation.

1201.33 Federal witnesses.

1201.34 Intervenor.

1201.35 Substitution.

1201.36 Consolidation or joinder.

1201.37 Fees.

PRESIDING OFFICIALS

1201.41 Authority of presiding officials.

1201.42 Disqualification of presiding official.

1201.43 Sanctions.

HEARINGS

- 1201.51 Scheduling the hearing.
- 1201.52 Public hearings.
- 1201.53 Transcript.
- 1201.54 Official record.
- 1201.55 Motions.
- 1201.56 Burden and degree of proof.
- 1201.57 Closing the record.

EVIDENCE

- 1201.61 Service of documents.
- 1201.62 Admissibility.
- 1201.63 Production of evidence by order of presiding official.
- 1201.64 Production of statements.
- 1201.65 Admission of facts and genuineness of documents.
- 1201.66 Stipulations.
- 1201.67 Official notice.

DISCOVERY

- 1201.71 Statement of purpose.
- 1201.72 Motions for discovery.
- 1201.73 Scope.
- 1201.74 Orders for discovery.
- 1201.75 Taking of depositions.
- 1201.76 Rules governing discovery procedures.

SUBPENAS

- 1201.81 Who may sign and issue.
- 1201.82 Requests for issuance of subpoenas.
- 1201.83 Motions to quash.
- 1201.84 Rulings.
- 1201.85 Service.
- 1201.86 Return of service.
- 1201.87 Enforcement.

INTERLOCUTORY APPEALS

- 1201.91 [Reserved]

EX PARTE COMMUNICATIONS

- 1201.101 Definitions.
- 1201.102 Prohibition against ex parte communications.
- 1201.103 Permissible ex parte communications.
- 1201.104 Sanctions for prohibited ex parte communications.

FINAL DECISIONS

- 1201.111 Initial decisions by presiding officials other than the Board.
- 1201.112 Jurisdiction of the presiding official.
- 1201.113 Petition for review: contents.
- 1201.114 Filing of petition.
- 1201.115 Board action upon petition for review of initial decision.
- 1201.116 Board reopening and reconsideration of case.
- 1201.117 Review or reopening of initial decision by Board.

Subpart C—Hearing Procedures for Original Jurisdiction Cases

ACTIONS BROUGHT BY THE SPECIAL COUNSEL

- 1201.121 Compliance with hearing procedures under Subpart B.
- 1201.122 Rights of employees or agencies.
- 1201.123 Complaint.
- 1201.124 Answer.
- 1201.125 Final order of the Board.
- 1201.126 Administrative appeal.
- 1201.127 State and local officers or employees.

ACTIONS AGAINST ADMINISTRATIVE LAW JUDGES

- 1201.131 Procedures of this Part.
- 1201.132 Presiding official.
- 1201.133 Board jurisdiction.
- 1201.134 Filing of complaint.
- 1201.135 Procedure.
- 1201.136 Showing required.

REMOVAL FROM THE SENIOR EXECUTIVE SERVICE

- 1201.141 Entitlement to hearing.
- 1201.142 Hearing procedures.
- 1201.143 Right to appeal.

Subpart D—Procedures for Cases Alleging Discrimination

- 1201.151 Compliance with hearing procedures under Subpart B.
- 1201.152 Statutory basis.
- 1201.153 Acceptance of appeal by Board.
- 1201.154 Basis of allegation of discrimination.
- 1201.155 Right to review by the Equal Employment Opportunity Commission.
- 1201.156 Action by the Commission.
- 1201.157 Board action on the Commission decision.
- 1201.158 Referral of case to Special Panel.
- 1201.159 Action by Special Panel.

Subpart E—Compliance Enforcement

- 1201.161 Enforcement of Board orders.

AUTHORITY: 5 U.S.C. 1101 et seq.

Subpart A—Jurisdiction and Definitions

§ 1201.1 General.

The Board exercises two types of jurisdiction: original jurisdiction and appellate jurisdiction.

§ 1201.2 Original jurisdiction: Definition and application.

The Act confers upon the Board original jurisdiction over: actions brought by the Special Counsel (5 U.S.C. §§ 1206(c)(1)(B)(g)(1), (h) and 1207(d)); requests for stays of certain personnel actions (5 U.S.C. § 1208) actions against administrative law judges (5 U.S.C. § 7521); and requests for informal hearings in cases of removal from the Senior Executive Service (5 U.S.C. § 3592).

§ 1201.3 Appellate jurisdiction: Definition and application.

(a) Appellate jurisdiction lies in the Board in cases specified in the Act where there have been prior actions or proceedings within an agency except to the extent that the Board has original jurisdiction as described in § 1201.2. The Act confers appellate jurisdiction over: actions based upon removal, suspension for more than 14 days, reduction in grade or pay, or furlough for 30 days or less (5 U.S.C. § 7513(d)); actions otherwise appealable to the Board and involving an allegation of discrimination (5 U.S.C. § 7702); certain actions relating to the Senior Executive Service (5 U.S.C.

§ 7543(d)); of the Act and § 413(j) of Public Law 95-454; actions involving reinstatement of preference eligibles (38 U.S.C. § 2023); removal or reduction in grade of competitive or preference eligible employees. (5 U.S.C. § 4303(e)); and denial of grade step increases (5 U.S.C. § 5335(c)); and such actions for which jurisdiction may be granted by regulations of the Office of Personnel Management (OPM).

(b) The Board may not hear matters under §§ 4303 and 7512 where the aggrieved employee has elected to utilize a negotiated grievance procedure rather than the appellate procedures of § 7701. This election does not, however, prejudice the right of the employee to request review pursuant to § 7702 of any final decision otherwise appealable to the Board involving discrimination. (5 U.S.C. § 7121(d) and (e)).

§ 1201.4 General definitions.

(a) *Presiding Official*: This term means any person designated by the Board to preside over any hearing under this Chapter including: a hearing officer, administrative law judge, the Board or any of the Members of the Board when so sitting;

(b) *The Act*: This term means the Civil Service Reform Act of 1978 (Public Law 95-454).

Subpart B—Hearing Procedures for Appellate Cases

GENERAL

§ 1201.11 Scope.

The rules in this subpart govern proceedings pursuant to the appellate jurisdiction of the Board. These rules are also applicable to proceedings pursuant to the original jurisdiction of the Board except as otherwise provided. It is the policy of the Board that these rules shall be applied in order to process each case expeditiously with due regard to the rights of all parties.

§ 1201.12 Suspension, revocation, amendment, or waiver of rules.

These rules may be suspended, revoked, amended or waived in whole or in part by the Board on petition or on its own motion. *Provided, however*, That a presiding official may waive a rule, such as the time limit for filing, for the purpose of an individual case for good cause shown.

PETITIONS FOR REVIEW OF AGENCY ACTION, PLEADINGS

§ 1201.21 Filing of petition for appeal.

(a) *Place of filing*: Petitions for appeal to the Board shall be filed at the appropriate Board field office.

(b) *Time of filing*: The petition shall be filed in the designated place no

later than twenty calendar days after the effective date of the agency action complained of, or the appellant's receipt of notice of the appealable action, whichever is later. Petitions received from outside of the contiguous 48 states, however, shall be deemed timely filed if received within thirty days after appellant's receipt of notice of an appealable action or the effective date of the action, whichever is later. Such responsive pleadings, briefs, and other documentation as may be required to adjudicate the case fairly and completely shall be filed in accordance with the time limits set by the presiding official. For purposes of this regulation, filing shall be interpreted to mean receipt of the document by the presiding official.

§ 1201.22 Computation of time.

In computing the time for filing any pleadings prescribed by or allowed under these regulations, the day of the event, action, or failure to act, from which the designated time period begins to run shall not be counted. The last day of the period so computed shall be counted unless it is a Saturday, Sunday, or federal legal holiday, in which case the time period shall include the next day which is not a Saturday, Sunday, or federal legal holiday. When the time period prescribed or allowed under these regulations or by order of the presiding official is less than seven (7) days, the time computation shall exclude intervening Saturdays, Sundays and federal legal holidays. When these regulations require the filing of any petition for appeal or review, such petition must be received at the office of the presiding official before the close of business of the last day of the original time limit for such filing, or the last day of any extension of time which may have been granted.

§ 1201.23 Length, form, and content of pleadings.

(a) All petitions shall clearly set forth: the names of the parties; the agency involved; the date of the agency's decision and its effective date; and the nature of the action (e.g., suspension for more than fourteen days, removal, et cetera). All petitions and other pleadings or briefs must bear the signature of the party filing the document or his/her representative.

(b) An appellant under 5 U.S.C. § 7701 is entitled to a hearing before a qualified presiding official. Appellant may waive his/her right to a hearing and in such an event the decision of the presiding official will be made on the written record.

(c) All pleadings, including petitions, responsive pleadings, and briefs, shall be neat and legible and shall be rea-

sonable in length and contain certificates of service where required.

§ 1201.24 Petitions, pleadings, and briefs to be filed: Form and proof of service.

(a) Two copies of all petitions, responsive pleadings, motions and briefs must be filed at the office of the presiding official. Except where otherwise provided in these regulations or by order of the presiding official, a copy of each such document must be served on all parties, including, whenever relevant, intervenors.

(b) Service may be made either upon the party or parties, or, where represented, upon the representative(s) of the party or parties. Such service may be made either by mail or in person. In cases where service is made by mail, the document served must be deposited in an official depository of the United States Postal Service, addressed to the party or his/her representative at the last known address thereof, or, if no address is known, addressed to the office of the presiding official. Service by mail is complete upon mailing. Whenever service is made in person, service is accomplished by handing a copy to the party or representative or by leaving it at the home or office of the party or representative with a person of suitable age and discretion.

(c) Proof of service consists of a certificate affixed to the original of the document being served and filed, showing the name and residence or business address of the person who deposited the document in the mail; the name and residence or business address of the person to whom the document was addressed; and the date, city and state where the document was deposited in the mail. In the case of personal service, the same certificate shall be appended to the document being served and filed, but shall show the name and address of the person making service, the date and place of such service, and the name and address of the person being served.

PARTIES, PRACTITIONERS, WITNESSES

§ 1201.31 Parties, representation.

(a) All parties to an appeal may be represented. The parties shall immediately designate their representatives, if any, in writing to the presiding official, and shall serve a copy of such designation upon all other parties to the appeal. Any subsequent changes in representatives shall also be in writing and served on all other parties.

(b) There are no limitations as to what person may be chosen by a party to represent him/her before the presiding official; however, the other party or parties may challenge the choice on the grounds of conflict of position or conflict of interest. Such a

challenge must be made within seven (7) calendar days after receipt of the notice of designation, and must be decided by the presiding official prior to consideration of the case on the merits. These procedures apply equally to original and subsequent designations of representatives.

(c) The presiding official, on his/her own motion, may disqualify a party's representative on the same grounds as described above.

§ 1201.32 Witnesses, right to representation.

Witnesses shall have the right to representation when testifying.

§ 1201.33 Federal witnesses.

Every federal agency shall make its employees available to furnish sworn statements or to appear as witnesses at the hearing when requested by the presiding official.

§ 1201.34 Intervenors.

(a) *Intervention by OPM:* The Director of OPM ("the Director") pursuant to 5 U.S.C. § 7701(d)(1) may intervene as a matter of right if:

(1) the interpretation or application of any Civil Service law, rule or regulation, under the jurisdiction of OPM is at issue; and

(2) the Director is of the opinion that an erroneous decision would have a substantial impact on any Civil Service law, rule, or regulation under the jurisdiction of the Office.

Such intervention shall be made at the earliest practicable time so as not to prejudice the parties or unduly delay the proceeding.

(b) *Intervention of the Special Counsel:* Pursuant to 5 U.S.C. § 1206(i), the Special Counsel may intervene as a matter of right in any proceeding before the Board. Such intervention must be made at the earliest practicable time in the proceeding so as not to prejudice the parties or unduly delay the proceedings.

(c) *Permissive intervention:* Any person whose interests may be directly affected by the outcome of a proceeding before the Board may petition the presiding official for permission to intervene. Such petition shall be served upon all parties of record to the proceeding. It shall be solely within the discretion of the presiding official to grant or deny the petition, based upon his/her determination that the intervention will not prejudice the rights of the parties or unduly delay the proceedings. Such determination shall specify the issues regarding which the intervenor may participate. Under these regulations, a permissive intervenor has the same rights and obligations as a party, except that: 1) the intervenor's scope of participation may be limited by the presiding official to

issues affecting the intervenor; 2) the intervenor shall not have an independent right to a hearing.

§ 1201.35 Substitution.

If a party to an appeal dies or is otherwise unable to pursue the action, the appeal will be processed to completion upon substitution as the party of record of the successor-in-interest to the rights of the party.

§ 1201.36 Consolidation or joinder.

If the presiding official believes that consolidation or joinder of cases would result in more expeditious processing of the appeals and would not adversely affect any party, he/she may, after giving the parties opportunity to object, consolidate the cases and hear and decide them concurrently. In so doing the presiding official may:

- (a) consolidate appeals filed by two or more appellants; or
- (b) join two or more appeals filed by the same appellant.

§ 1201.37 Fees.

(a) *Attorney fees:* Except as provided in subparagraph (1) of this section, the presiding official may require payment by the agency involved of reasonable attorney fees incurred by an appellant if he/she is the prevailing party and payment by the agency is warranted in the interest of justice, including any cases in which a prohibited personnel practice was engaged in by the agency or any case in which the agency's action was clearly without merit.

(1) If an appellant is the prevailing party and the decision is based on a finding of discrimination prohibited under 5 U.S.C. § 2302(b)(1), the payment of attorney fees shall be in accordance with the standards prescribed under § 706(k) of the Civil Rights Act of 1964 (42 U.S.C. 2000e-5(k)).

(2) If, after a presiding official determines that fees are properly payable, the agency involved agrees to the amount of the fees requested, the presiding official shall order payment of such fees. If the agency does not agree to the amount requested, the presiding official may require the attorney requesting the fees and the agency involved to submit any information or argument concerning the application for fees. The presiding official shall then determine the proper amount of fees to be awarded.

(b) *Witness fees:* (1) Federal employees: Employees of any federal agency who testify in any proceeding before the Board shall not receive witness fees if they are in official duty status. Payment of travel and per diem expenses shall be governed by applicable regulations of OPM and the Federal

Travel Regulations of the General Services Administration.

(2) Other witnesses: Witnesses who are not covered by subsection (1) of this section are entitled to the same witness fees as those paid subpoenaed witnesses under 28 U.S.C. § 1821.

(3) Payment of witness fees: Witness fees shall be paid by the party requesting the presence of the witness and shall be tendered to the witness at the time the subpoena is served, or, where the witness appears voluntarily, at the time of appearance.

PRESIDING OFFICIALS

§ 1201.41 Authority of presiding officials.

Presiding officials shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by statute or regulation, including the authority to:

- (a) Administer oaths and affirmations;
- (b) Issue subpoenas in accordance with § 1201.81 of this Part;
- (c) Rule upon offers of proof and receive relevant evidence;
- (d) Rule upon the institution of discovery procedures as appropriate in accordance with § 1201.74;
- (e) Regulate the course of the hearing, maintain decorum, and exclude from the hearing any person engaged in contemptuous conduct or otherwise disrupting the proceeding, any witness whose presence may adversely affect the testimony of any other witness, or any witness who may testify in the future;
- (f) Consider and rule upon all procedural and other appropriate motions;
- (g) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;
- (h) Order the production of evidence relevant to the issues to be resolved in the hearing;
- (i) Impose sanctions as provided under § 1201.43 of this Part;
- (j) File initial decisions; and
- (k) To take any other action authorized by these rules.

§ 1201.42 Disqualification of presiding official.

(a) In the event that a presiding official deems him/herself disqualified he/she shall withdraw from the case and immediately notify the Board of the withdrawal.

(b) Any party may make a motion for disqualification of the presiding official not later than 5 days before the commencement of the hearing. The basis for the motion for disqualification shall be stated with specificity.

(c) The presiding official may rule on the motion for disqualification. If the ruling is against the moving party, exception must be taken to the ruling or the right to request disqualification will be deemed to have been waived.

(d) In the event that an exception is taken to the ruling of the presiding official he/she shall certify the motion to the Board and the proceeding shall be stayed pending its determination.

§ 1201.43 Sanctions.

The presiding official may impose any necessary sanctions upon the parties as will serve the ends of justice including:

(a) *Failure to comply with an order:* In the absence of good cause shown, if a party fails to comply with an order including an order for: the taking of a deposition; the production of evidence within the party's control; compliance with a subpoena; a request for admission; and production of a witness; the presiding official may:

- (1) Draw an inference in favor of the requesting party with regard to the information sought; or
- (2) Prohibit the party failing to comply with such request from introducing evidence of, or otherwise relying upon testimony relating to, the information sought; or
- (3) Permit the requesting party to introduce secondary evidence of the information sought, and prohibit the party failing to comply with the request from objecting thereto; or
- (4) Strike that part of the pleadings or other submission of the party failing to comply with such request pertaining thereto.

(b) *Failure to prosecute:* If a party fails to prosecute his/her case or defend an appeal the presiding official may dismiss the action with prejudice or rule for the appellant.

(c) *Failure to make timely filing:* The presiding official may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this Part.

(d) *Failure to make service:* The presiding official may refuse to consider any motion or other action which is not properly served on all parties. A failure to meet technical requirements of service under this Part will not affect the rights of any parties if service was actually completed and the rights of the party being served was not prejudiced.

HEARINGS

§ 1201.51 Scheduling the hearing.

The notice of hearing shall fix the date, time and place of the hearing. The hearing shall be scheduled not earlier than ten calendar days after the date of the notice. The agency, upon request of the presiding official,

shall provide adequate hearing facilities. Requests for postponement by either party shall be made in writing and shall be granted only upon good cause shown.

§ 1201.52 Public hearings.

A public hearing shall be held unless the appellant requests a closed hearing. The presiding official may close one or more sessions of a hearing in the best interests of the appellant, a witness, the public or other affected persons. The reasons for the hearing officer's decision to close one or more sessions of a hearing, and any objections thereto, shall be made a part of the record.

§ 1201.53 Transcript.

(a) *Preparation:* Every hearing shall be recorded verbatim under the supervision of the presiding official and shall be the sole official transcript of the proceeding. A copy of the transcript shall be made available to each party; intervenors shall be furnished a copy at their own cost.

(b) *Corrections:* Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the presiding official.

§ 1201.54 Official record.

The transcript of testimony and exhibits, together with all papers and requests filed in the proceeding shall constitute the exclusive and official record.

Where any decision rests on official notice of a material fact not appearing in the record, the presiding official shall so state in his/her decision.

§ 1201.55 Motions.

(a) All motions shall be filed with and decided by the presiding official— if within his/her authority to do so.

(b) All motions shall be in writing, stating the particular order, ruling or action desired and the basis therefor and shall be served on all parties. The presiding official may waive the requirement for a written submission if it is made during the course of the hearing.

(c) Motions for extension of time will be granted only for good cause shown.

§ 1201.56 Burden and degree of proof.

(a) *Burden of proof:*

(1) Pursuant to § 7701(c)(2) of the Act the agency's decision may not be sustained by the presiding official if the employee can demonstrate that the decision of the agency:

- (i) was based upon harmful error in the application of its own procedures;
- (ii) was based upon a prohibited personnel practice as set forth in § 2302(b) of the Act; or

(iii) was not otherwise in accordance with law.

(b) *Degree of proof:* In the absence of the appellant's ability to demonstrate the above, the decision of the agency must be sustained by the Board pursuant to § 7701(b)(1) of the Act if:

(1) it is brought under § 4303 of the Act and can be supported by substantial evidence, or

(2) it is any other type of case and is supported by a preponderance of the evidence.

(c) *Moving forward:* The agency shall present its case first. The appellant may then present rebuttal evidence. Provided however, that the appellant shall have the burden of proof as to issues of jurisdiction.

§ 1201.57 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing except that, when the presiding official allows the parties to submit written argument or briefs or documents previously identified for introduction into evidence, the record shall be left open for such time as the presiding official grants for that purpose.

(b) In cases in which the appellant waives a hearing, the record will be closed on the date set by the hearing officer as the final date for the receipt of representations of the parties to the matter.

(c) Once the record is closed, no additional evidence or argument shall be accepted into the record except upon a showing that new and material evidence which was not readily available prior to the closing of the record is now available and is offered into evidence.

EVIDENCE

§ 1201.61 Service of documents.

All evidentiary documents shall be served upon all parties to the proceeding in the same manner as pleadings, to the extent practicable. Exception to this rule shall be made for medical evidence which a prudent physician would hesitate to release to a patient. Such evidence shall be made available only to a duly licensed physician designated by the appellant or his/her representative.

§ 1201.62 Admissibility.

All evidence and testimony offered in the hearing, or where appropriate, a description thereof, shall be made a part of the record even though excluded by the presiding official from consideration as being irrelevant, immaterial, or unduly repetitious.

§ 1201.63 Production of evidence by order of presiding official.

At any stage of a hearing, the presiding official may request further evidence upon an issue and require its submission.

§ 1201.64 Production of statements.

After a witness is called and has given direct testimony in a hearing, but before he/she is excused, any party may move for production of a statement of such witness, or part thereof relevant to his/her direct testimony, which has been reduced to writing and signed by the witness and is in the possession of the party calling the witness. If the party declines to furnish the statement, the testimony of the witness pertaining to the requested statement may be stricken.

§ 1201.65 Admission of facts and genuineness of documents.

(a) Upon leave of the presiding official, a party may serve upon any other party a request for the admission by the latter of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact as set forth in the request.

(b) Within the time period prescribed by the presiding official, the party on whom the request is served must serve upon the requesting party:

(1) a sworn statement specifically denying or admitting or expressing a lack of knowledge regarding the specific matters on which an admission is requested; or

(2) an objection to the request in whole or in part on the ground that the matters contained therein are privileged or irrelevant or otherwise improper.

§ 1201.66 Stipulations.

The parties may stipulate to the truth of any alleged fact. Such a stipulation will satisfy a party's burden of proving the alleged fact.

§ 1201.67 Official notice.

The presiding official may take official notice of matters of common knowledge or certain verification and the taking thereof will be noted in the record. Notice will not be taken unless the parties are advised and given the opportunity to oppose the propriety of taking such notice. Official notice satisfies a party's burden of proving the fact which is noticed.

DISCOVERY

§ 1201.71 Statement of purpose.

It is the intent of the Board that all proceedings will be conducted as expeditiously as possible with due regard to the rights of the parties. With regard to discovery, these two considerations

require that a careful balance be established between avoiding unproductive delay in adjudication and obtaining that information essential to perfect the record. Accordingly, the discretion of the presiding official must be carefully exercised in determining the necessity for discovery in the appellate jurisdiction of the Board.

§ 1201.72 Motions for discovery.

Any party to the proceeding may file a motion with the presiding official for approval of the taking of depositions and interrogatories; the production of documents or other evidence or information. Such motions shall be filed prior to hearing.

§ 1201.73 Scope.

Persons and parties may be examined regarding any matter, not privileged, which is relevant to the hearing issues, including the existence, description, nature, custody, condition and location of documents or other tangible things and the identity and location of persons having knowledge of relevant facts.

§ 1201.74 Orders for discovery.

(a) Request for order: Requests for orders to take deposition or respond to written interrogatories where the presiding official is an administrative law judge or the Board may be submitted directly to the presiding official.

(b) Rulings: Presiding officials may approve or deny motions for discovery in whole or in part when authorized to do so. Approval in whole or in part of any motion for discovery shall be made by written order and shall include the following where appropriate:

(1) provision for notice to the party to be orally deposed as to the time and place of such deposition;

(2) any limitations on the conduct of the proceeding or the subject matter so as to protect any party or deponent from expense, embarrassment or oppression;

(3) any limitations upon the time for: deposition; submission of or answer to written interrogatories; or production of evidence; and

(4) any other restrictions upon the discovery procedures as determined by the presiding official.

§ 1201.75 Taking of depositions.

Depositions may be taken before a presiding official, or a notary public not interested in the outcome of the proceeding.

§ 1201.76 Rules governing discovery procedures.

Because discovery pursuant to the appellate jurisdiction of the Board is intended to be of a simplified nature, procedures are not set forth in great detail. To the extent, however, that

the nature of discovery in a case requires further detail, the presiding official and parties may seek guidance in the Federal Rules of Civil Procedure on this subject. However, such rules should be interpreted as being instructive rather than controlling.

SUBPENAS

§ 1201.81 Who may sign and issue.

Pursuant to 5 U.S.C. § 1205(b)(2) of the Act any Member of the board or an administrative law judge appointed under 5 U.S.C. § 3105, may issue subpoenas requiring the attendance and testimony of witnesses and the production of documents or other evidence.

§ 1201.82 Requests for issuance of subpoenas.

(a) Requests for a subpoena in a proceeding where the presiding official is the Board, a Member of the Board, or an administrative law judge, may be submitted directly to the presiding official;

(b) Unless submitted on the record while a hearing is in progress, requests for a subpoena for testimony and documents shall be submitted in writing, and in the case of the latter shall specify with particularity the books, papers and documents desired and the facts expected to be proven thereby.

(c) All requests for subpoenas shall be supported by a showing of the general relevance and reasonable scope of the evidence sought.

§ 1201.83 Motions to quash.

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope.

§ 1201.84 Rulings.

In denying a request for a subpoena or motion to quash, in whole or in part, presiding officials shall render prompt rulings including a statement of the reasons for such denial.

§ 1201.85 Service.

Service of subpoena may be made by a United States Marshal or Deputy Marshal, by Board personnel or any person who is not a party to the hearing and is over 18 years of age.

§ 1201.86 Return of service.

The service of a subpoena by a person other than a United States Marshal or Deputy Marshal shall be attested to by the person making such service. The attesting affidavit should state the date, time and method of making service.

§ 1201.87 Enforcement.

In the case of contumacy or failure to obey a subpoena issued, the Board may request the United States District Court to enforce the subpoena pursuant to 5 U.S.C. § 1205(c). Application for enforcement of the subpoena shall be made by the General Counsel of the Board.

INTERLOCUTORY APPEALS

§ 1201.91 [Reserved]

EX PARTE COMMUNICATIONS

§ 1201.101 Definitions.

(a) *Ex parte communication*:

(1) Any written presentation made to decision-making personnel of the Board during the course of a restricted proceeding by any other person which is not served on the parties to the proceeding.

(2) Any oral presentation made to decision-making personnel by any other person during the course of a restricted proceeding without advance notice to the parties to the proceeding.

(b) *Restricted proceeding*: All adjudicative proceedings, from the time they are assigned for decision until the time they are no longer subject to review or reconsideration by the Board.

(c) *Interested persons*: Any person having a direct or indirect interest in the outcome of a restricted proceeding, including the following:

(1) Parties to the restricted proceeding.

(2) Any other person who might be aggrieved or adversely affected by the outcome of the restricted proceeding.

(3) Agents for persons who might be aggrieved or adversely affected by the outcome of the restricted proceeding, including attorneys and other representatives.

(d) *Decision-making Board personnel*: The term "Decision-making personnel" includes any presiding official and his/her immediate staff or other Board employee who participates, or can reasonably be expected to participate, in the initial decision-making process or the decision-making process on review or reconsideration.

§ 1201.102 Prohibition against ex parte communications.

(a) No interested person shall, in a restricted proceeding, make or knowingly cause to be made, any ex parte communications to decision-making personnel.

(b) No person shall solicit or encourage others to make any presentation which is otherwise prohibited under this section.

(c) Except as provided in § 1202.102, decision-making personnel shall not make or cause to be made, solicit or encourage ex parte presentations from

any person and shall not entertain prohibited ex parte communications.

§ 1201.103 Permissible ex parte communications.

The following ex parte communications shall not be considered to be ex parte communications prohibited by the provisions of this subpart.

(a) Ex parte communications authorized by statute or by the Board's rules. However, pleadings which are required to be served but which may be ruled on ex parte do not fall within this category.

(b) Any communication made by or to the General Counsel or his/her staff.

(c) Any communication from an agency of the Federal Government involving classified security information.

(d) Any request for information solely with respect to the status of a restricted proceeding.

§ 1201.104 Sanctions for prohibited ex parte communications.

(a) Parties:

(1) Upon notice and hearing, any party to a restricted proceeding who directly or indirectly makes any unauthorized ex parte presentation or who encourages or solicits others to make any such presentation, may be disqualified by the presiding official from further participation in that proceeding. Such alternative or additional sanctions as may be appropriate may be imposed.

(2) To the extent consistent with the interests of justice and the public, a party who has made an ex parte presentation may be required to show cause why his/her claim or interest in the proceeding should not be dismissed, denied, disregarded or otherwise adversely affected.

(b) **Board personnel:** Violations of the provisions of this subpart by Board personnel will be treated in accordance with established disciplinary procedures.

(c) **Other persons:** Such sanctions as may be appropriate under the circumstances will be imposed upon other persons who violate the provisions of this subpart.

FINAL DECISIONS

§ 1201.111 Initial decisions by presiding officials other than the Board.

(a) Except as otherwise provided in this section, the presiding official shall prepare an initial (or recommended) decision within 25 days of the closing of the record, such initial decision shall be immediately transmitted to the Secretary of the Board, to the Director of OPM and to all parties to the hearing.

(b) Each initial decision shall contain:

(1) Findings of fact and conclusions, as well as the reasons or basis therefore, upon all the material issues of fact, law or discretion presented on the record.

(2) The appropriate rule or order and the sanction, relief or denial thereof.

(3) Recommendations as to the final disposition of the case; and

(4) The date upon which the decision will become effective in accordance with the provisions of this section and in the absence of appeal or reopening.

§ 1201.112 Jurisdiction of the presiding official.

The jurisdiction of the presiding official other than the Board shall cease after he/she has filed the initial decision, *Provided, however*, that he/she shall retain limited jurisdiction over the proceeding for the purpose of correcting the transcript.

§ 1201.113 Petition for review: Contents.

The petition for review shall contain exceptions to the decision of the presiding official. The basis for each exception shall be clearly set forth and shall include the laws relied upon in support of the petition with specific reference to the record. The Board may grant a petition for review when the party requesting submits written review argument and supporting documentation tending to establish that:

(a) New and material evidence is available that despite due diligence was not available when the decision of the presiding official was issued; or

(b) The decision of the presiding official is based upon an erroneous interpretation of law, rule, or regulation, or a misapplication of established policy; or

(c) The decision of the presiding official is of a precedential nature involving new or unreviewed policy considerations that may have substantial impact on a civil service law, rule, regulation or a more Government-wide policy directive.

§ 1201.114 Filing of petition.

(a) **Who may file:** Any party to the proceeding or the Director of the Office of Personnel Management. The Director may request review of a case when he/she is of the opinion that the decision is erroneous and will have a substantial impact on any civil service law, rule, or regulation under the jurisdiction of the Office.

(b) **Time limit for filing:** A petition for review of the initial or final decision must be filed within 30 days of receipt of the decision.

(c) **Place of filing:** Petitions for review shall be filed with the Secretary to the Merit Systems Protection Board, Washington, D.C. (20419).

§ 1201.115 Board action upon petition for review of initial decision.

Any member of the Board may grant a petition for review. In the event that a petition for review is granted shall suspend the running of the 30 day period before which the initial decision will become final. A failure to grant review within the 30 day period shall be deemed to be a denial and the initial decision shall become final.

§ 1201.116 Board reopening and reconsideration of case.

The Board may reopen and reconsider an initial decision of a presiding official on its own motion.

§ 1201.117 Review or reopening of initial decision by Board.

(a) In any case where the Board determines to reopen on its own motion, it shall inform the parties, the Director of OPM and the Special Counsel, in writing, of its decision to reopen, and state the issues which it will consider.

(b) In any case where the Board has determined to grant a petition for review or to reopen a case on its own motion it may take one or more of the following actions:

(1) hear oral argument;

(2) require the filing of briefs; and

(3) reopen the record and remand the proceedings to the presiding official to take further testimony or evidence or to make further findings or conclusions. The Board may deny a petition to review issues not raised before the presiding official.

(c) The Board may affirm or reject, in whole or in part, the initial decision of the presiding official and shall issue a final decision and order a date for compliance where appropriate.

Subpart C—Hearing Procedures for Original Jurisdiction Cases

ACTIONS BROUGHT BY THE SPECIAL COUNSEL

§ 1201.121 Compliance with hearing procedures under subpart B.

In cases where the Special Counsel, under §§ 1206(c), (g)(1) and (h), files a complaint with the Board, he/she shall comply in all regards with the regulations set forth in subpart B, regarding hearing procedures, except as otherwise provided in this subpart. The presiding official in such actions shall be an administrative law judge appointed under 5 U.S.C. § 3105, or the Board.

§ 1201.122 Rights of employees or agencies.

Pursuant to 5 U.S.C. § 1207(a), an employee or agency against whom a complaint has been presented by the

Special Counsel shall have the right to:

- (a) file an answer to the complaint;
- (b) be represented by an attorney;
- (c) a hearing upon the record before the Board or an administrative law judge appointed under 5 U.S.C. § 3105; and
- (d) a decision by the Board and the basis therefore at the earliest possible date.

§ 1201.123 Complaint.

(a) If the Special Counsel determines that action should be taken against any employee or agency under 5 U.S.C. §§ 1206(g) or (h), a written complaint setting forth with particularity the supporting facts shall be filed with the Board.

(b) If the Special Counsel determines that an agency has not taken corrective action recommended under 5 U.S.C. § 1206(c)(1)(B) or has engaged in a pattern of prohibited personnel practices not otherwise appealable to the Board under 5 U.S.C. § 7701, a written complaint setting forth with particularity the supporting facts may be filed with the Board.

§ 1201.124 Answer.

(a) *Filing and Default.* The answer shall be filed with the Secretary of the Board within 30 days of receipt of the complaint made by the Special Counsel to the Board. Failure to file an answer without good cause shall be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint. This failure shall authorize the administrative law judge to find the facts alleged in the complaint to be true and to enter an initial decision.

(b) *Content.* An answer shall conform to the following:

(1) *Allegations of the complaint which are contested.* An answer shall contain, for those allegations of a complaint which are contested:

(i) A concise statement of the facts constituting each ground of defense and any documentary evidence in support thereof.

(ii) Specific admission, denial, or explanation of each fact alleged in the complaint or, if the respondent is without knowledge thereof, a statement to that effect. Allegations of a complaint not thus answered shall be deemed to have been admitted.

(2) *Allegations of the complaint which are admitted.* For those allegations which the respondent elects not to contest, his/her answer shall consist of statements of admissions to the truth of such allegations. Such portions of an answer shall constitute a waiver of hearings as to those facts alleged in the complaint, and together with the complaint will provide a record basis on which the administra-

tive law judge or the Board may file an initial decision with respect to such allegations, containing appropriate finding and conclusions and an appropriate order disposing of the proceeding with respect to them.

§ 1201.125 Final order of the Board.

(a) A final order of the Board under 5 U.S.C. § 1207 may impose disciplinary action consisting of removal, reduction in grade, debarment from federal employment for a period not to exceed five years, suspension, reprimand, or the assessment of a civil penalty not to exceed \$1,000.

(b) A final order of the Board under 5 U.S.C. 1206(c)(1)(B) may not be imposed without granting to OPM the opportunity to comment on the charges filed by the Special Counsel. The Board may order such corrective actions as are necessary.

(c) The Board may order an agency under 5 U.S.C. § 1206(h) to take such corrective actions as the Board determines necessary.

§ 1201.126 Administrative appeal.

No administrative appeal lies from an order of the Board. In the case of employee disciplinary actions under § 1207, the employee may seek judicial review in the United States Court of Appeals for the circuit in which the employee resides or is employed at the time of such action. An initial decision of an administrative law judge may be appealed to the Board for review under § 1201.113 of this Part.

§ 1201.127 State and local officers or employees.

Cases involving state and local officers and employees shall be considered in accordance with the provisions of Chapter 15 of 5 U.S.C.

ACTIONS AGAINST ADMINISTRATIVE LAW JUDGES

§ 1201.131 Procedures of this part.

Where, pursuant to 5 U.S.C. § 7521, an agency proposes to take action against an administrative law judge appointed under 5 U.S.C. § 3105, the hearing shall comply with the procedures established under subpart B, except as otherwise provided.

§ 1201.132 Presiding official.

The presiding official in all cases brought under this section shall be the Board.

§ 1201.133 Board jurisdiction.

The proposed agency actions which may be heard before the Board under this provision are limited to:

- (a) a removal;
- (b) a suspension;
- (c) a reduction in grade;
- (d) a reduction in pay; and

(e) a furlough of 30 days or less.

§ 1201.134 Filing of complaint.

Any action against an administrative law judge shall be initiated by the filing of a complaint setting forth with particularity the facts in support of the action proposed by the moving agency.

§ 1201.135 Procedure.

The administrative law judge against whom the complaint is filed shall file an answer to the complaint in compliance with § 1201.124 of this Subpart.

§ 1201.136 Showing required.

Proposed agency actions under this section are sustainable only for good cause shown.

REMOVAL FROM THE SENIOR EXECUTIVE SERVICE

§ 1201.141 Entitlement to hearing.

In the case of removal of a career appointee from the Senior Executive Service to a civil service position outside the Senior Executive Service pursuant to 5 U.S.C. § 3592, when such action is based on less than fully successful performance as determined under subchapter II of Chapter 43 of title 5, United States Code, the career appointee shall, at least 15 days before the effective date of the removal, be entitled, upon request, to an informal hearing before an official appointed by the Board.

§ 1201.142 Hearing procedures.

In an informal hearing before the Board or its designee as provided for in this section, the appointee may appear and present arguments on the record but shall not be entitled to any other procedural rights.

§ 1201.143 Right to appeal.

No right to appeal from this action shall be available under 5 U.S.C. § 7701, nor shall the removal action be delayed as a result of this hearing.

Subpart D—Procedures for Cases Alleging Discrimination

§ 1201.151 Compliance with hearing procedures under Subpart B.

In cases brought under 5 U.S.C. § 7702, the hearing shall comply with the procedures established under Subpart B except as otherwise provided.

§ 1201.152 Statutory basis.

This subpart applies to appeals in which an appellant alleges that an action otherwise appealable to the Board was based in whole or in part upon discrimination prohibited by—

- (a) section 717 of the Civil Rights Act of 1964 (42 U.S.C. § 2000e-16c),

(b) section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. § 206(d)),

(c) section 501 of the Rehabilitation Act of 1973 (29 U.S.C. § 791),

(d) sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. §§ 631, 633a), or

(e) any rule, regulation, or policy directive prescribed under any provision of law described in paragraphs (a) through (d) of this section.

§ 1201.153 Acceptance of appeal by Board.

The Board shall accept cases involving discrimination where:

(a) The appellant first raised the issue of discrimination before the agency whose action is being appealed, the Board shall accept the appeal only if—

(1) the agency has issued its final decision in the matter pursuant to 5 U.S.C. § 7702(a)(2); or

(2) the agency has failed to issue its decision in the matter within 120 days following the appellant's initial allegation of discrimination to the agency pursuant to 5 U.S.C. § 7702(e)(2).

(b) The appellant initially pursued a grievance otherwise appealable to the Board under this subpart through a negotiated grievance procedure established pursuant to the provisions of 5 U.S.C. § 7121, the Board shall accept the appeal only if—

(1) A final decision has been issued in the matter pursuant to the negotiated grievance procedure and such decision constitutes the agency decision pursuant to 5 U.S.C. § 7702(a)(2); or

(2) the agency has failed to issue its decision in the matter within 120 days following the employee's initial allegation of discrimination to the agency.

§ 1201.154 Basis of allegation of discrimination.

Where a party alleges discrimination by an agency and brings an action before the Board it may require the party to submit a written statement under oath setting forth the basis for the allegation of discrimination.

§ 1201.155 Right to review by the Equal Employment Opportunity Commission.

The Board shall notify an appellant under this subpart of his/her right to petition the Equal Employment Opportunity Commission (the "Commission") to consider the Board's decision on the discrimination issue within 30 days after notice of the decision by the Board, or to file a civil action in an appropriate U.S. District Court.

§ 1201.156 Action by the Commission.

(a) *Time Limit:* In cases where an employee or applicant decides to petition the Commission for reconsideration, the Commission, under 5 U.S.C. § 7702(b)(2) shall determine within 30

days after receipt of the petition whether to consider the Board's decision. In those instances where the Commission determines to consider, within 60 days after reaching such determination, it shall complete its reconsideration and either concur or write a contrary decision.

(b) *Transmittal of record:* The Board shall transmit a copy of its record to the Commission.

(c) *Development of additional evidence:* When requested by the Commission the Board shall develop additional evidence necessary to supplement the record.

§ 1201.157 Board action on the Commission decision.

Within 30 days after receipt of the decision of the Commission, the Board shall:

(a) concur and adopt in whole the decision of the Commission; or

(b) reject the decision of the Commission to the extent that it finds it erroneous and:

(1) reaffirm the initial decision of the Board; or

(2) reaffirm the initial decision of the Board with such revisions as it determines appropriate.

§ 1201.158 Referral of case to special panel.

If the Board reaffirms the Board's initial decision, with or without modification, the matter shall be immediately certified to the special panel established pursuant to 5 U.S.C. § 7702. Upon certification, the Board shall within 5 days (excluding Saturdays, Sundays, and federal holidays), transmit to the special panel the administrative record in the proceeding, including—

(a) the factual record compiled under this section,

(b) the decisions issued by the Board and the Commission under this section, and

(c) any transcript of oral arguments made, or legal briefs filed, before the Board or the Commission.

§ 1201.159 Action by special panel.

The special panel, convened pursuant to 5 U.S.C. § 7702(d)(2)(A), shall review the administrative record transmitted to it, and, on the basis of the record, issue a final decision which shall be judicially reviewable. The Board shall, upon receipt of the decision of the special panel, order the agency concerned to take any action appropriate to carry out the decision of the panel.

Subpart E—Compliance Enforcement

§ 1201.161 Enforcement of Board orders.

The Board may, upon an adverse decision after a hearing on a complaint

filed by the Special Counsel under subchapter B of this Chapter or after giving the employee an opportunity to be heard by the Board or its designee, order that any employee, other than an employee appointed by the President by and with the consent of the Senate, charged with complying with an order of the Board, shall not be entitled to receive payment for service as an employee during any period that the Board's order has not been complied with. The Board shall certify to the Comptroller General of the United States that such an order has been issued and no payment shall be made out of the Treasury of the United States for any service specified in the Board's order.

PART 1202—STATUTORY REVIEW BOARDS

§ 1202.1 Designation of Chair of Statutory Review Boards.

Upon written request by the agency—

(a) The Chair of the Board shall designate a hearing officer of the Board to serve as Chair of the Boards of Review, established by the Secretary of Transportation pursuant to 5 U.S.C. § 3383(b) for review of certain actions to remove air traffic controllers.

(b) The Board shall designate qualified employees of the Board to serve as chairs of performance rating review boards which may be required to be established pursuant to 5 U.S.C. § 4305(b) of the Act as in effect immediately before the effective date of the Act until such time that all reviews of performance ratings pending on the effective date of the Act have been disposed of. (5 U.S.C. 1101 et seq.)

PART 1203—REVIEW OF OFFICE OF PERSONNEL MANAGEMENT RULES AND REGULATIONS [RESERVED]

PART 1204—FREEDOM OF INFORMATION ACT [RESERVED]

PART 1205—PRIVACY ACT [RESERVED]

PART 1206—OPEN MEETINGS OF THE BOARD [RESERVED]

PART 1203—REVIEW OF OFFICE OF PERSONNEL MANAGEMENT RULES AND REGULATIONS [RESERVED]

PART 1204—FREEDOM OF INFORMATION ACT [RESERVED]

PART 1205—PRIVACY ACT [RESERVED]

PART 1206—OPEN MEETINGS OF THE BOARD [RESERVED]

Issued on January 16, 1979, at Washington, D.C.

RUTH T. PROKOP,
Chair, Merit Systems
Protection Board.

[FR Doc. 79-2111 Filed 1-18-79; 8:45 am]

[1505-01-M]

Title 7—Agriculture

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

PART 225—SUMMER FOOD SERVICE PROGRAM FOR CHILDREN

Final rule

Correction

In FR Doc. 78-36365 appearing at page 8 in the issue of Tuesday, January 2, 1979, make the following changes:

1. On page 10, first column, first complete paragraph, forty-fifth line, "Stat" should be corrected to read "State".
2. On page 10, first column, first complete paragraph, forty-eighth line, "recognize" should be corrected to read "recognizes".
3. On page 10, second column, first line, "export" should be corrected "expect".
4. On page 12, first column, ninth line, "for" should be corrected to read "from".
5. On page 24, second column, in 225.12(c), second line, "descretion" should be corrected to read "discretion".

[3410-30-M]

CHAPTER II—FOOD AND NUTRITION SERVICE, DEPARTMENT OF AGRICULTURE

SUBCHAPTER A—CHILD NUTRITION PROGRAMS

PART 227—NUTRITION EDUCATION AND TRAINING PROGRAM

Assessment of State Nutrition Education Needs, Development of State Plans, and Operational Requirements; Authority Citation

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notification of Authority Citation.

SUMMARY: At 43 FR 25132, June 9, 1978, the Food and Nutrition Service adopted amendments to the interim regulations relating to the Nutrition Education and Training Program. Those amendments added new sections governing the assessment of State nutrition education needs, the development of State plans, and additional operational requirements. This document adds the authority citation under which those amendments were issued.

EFFECTIVE DATE: June 9, 1978.

FOR FURTHER INFORMATION CONTACT:

Henry Rodriguez, Acting Director, Nutrition and Technical Services Division, Food and Nutrition Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-8286.

SUPPLEMENTARY INFORMATION: The proper authority citation for the rule document 78-16251 which amended §§ 227.5, 227.30 and added §§ 227.31, 227.36, 227.37, 227.41-227.44, published at 43 FR 25132 is as follows:

(Section 15, Pub. L. 95-166, 91 Stat. 1340 (42 U.S.C. 1788))

Dated: January 12, 1979.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 79-1642 Filed 1-18-79; 8:45 am]

[3410-30-M]

SUBCHAPTER B—GENERAL REGULATIONS AND POLICIES—FOOD DISTRIBUTION

PART 250—DONATION OF FOODS FOR USE IN UNITED STATES, ITS TERRITORIES AND POSSESSIONS AND AREAS UNDER ITS JURISDICTION

Notification of Authority Citations

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notification of authority citations.

SUMMARY: At 43 FR 9782-9783, the Food and Nutrition Service (FNS) adopted a final rule (Amdt. 39) deleting provisions for the Commodity Supplemental Food Program since new regulations for that program had been published under 7 CFR Part 247 at 43 FR 8777. Also, at 43 FR 20954-20955, FNS adopted a final rule (Amdt. 40) pertaining to food donations to non-profit summer camps for children. Finally, at 43 FR 39070-39074, FNS adopted a final rule (Amdt. 41) making miscellaneous changes related to food donations to programs authorized under the National School Lunch Act and the Child Nutrition Act of 1966. This document adds the authority citations under which these amendments were issued.

DATES: Amdts. 39, 40 and 41 appeared on March 10, 1978, May 16, 1978, and September 1, 1978, respectively.

FOR FURTHER INFORMATION CONTACT:

Darrell E. Gray, Director, Food Distribution Division, Food and Nutrition Services, U.S. Department of Agriculture, Washington, D.C. 20250 (202) 447-8371.

SUPPLEMENTARY INFORMATION: The proper authority citation for the rule document published at 43 FR 9782-9783 is as follows:

(7 U.S.C. 612c note)

The proper authority citation for the rule document published at 43 FR 20954-20955 is as follows:

(7 U.S.C. 613 note)

The proper authority citations for the rule document published at 43 FR 39070-39074 are as follows:

(43 U.S.C. 1755; 42 U.S.C. 1762a; 42 U.S.C. 1760)

(Catalog of Federal Domestic Assistance Program No. 10.550)

Dated: January 11, 1979.

CAROL TUCKER FOREMAN,
Assistant Secretary.

[FR Doc. 79-1799 Filed 1-18-79; 8:45 am]

[3410-02-M]

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

[Lemon Reg. 182]

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market during the period January 21-27, 1979. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: January 21, 1979.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, (202) 447-6393.

SUPPLEMENTARY INFORMATION: Findings. Pursuant to the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on January 16, 1979, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is easier.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Inter-

ested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.482 Lemon Regulation 182.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period January 21, 1979, through January 27, 1979, is established at 200,000 cartons.

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

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

Dated: January 18, 1979.

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

[FR Doc. 79-2274 Filed 1-18-79; 11:28 am]

[3410-34-M]

Title 9—Animals and Animal Products

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

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

PART 73—SCABIES IN CATTLE

Areas Quarantined

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of these amendments is to quarantine additional portions of San Luis Obispo County in California and a portion of Bureau County in Illinois because of the existence of cattle scabies. Psoroptic cattle scabies was confirmed from specimens collected from cattle in these areas by the Veterinary Services Laboratories in Ames, Iowa. Therefore, in order to prevent the dissemination of cattle scabies it is necessary to quarantine the infested areas.

EFFECTIVE DATE: January 12, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. Glen O. Schubert, Chief Staff Veterinarian, Sheep, Goat, Equine, and Ectoparasites Staff, USDA, APHIS, VS, Federal Building, Room 737, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8322.

SUPPLEMENTARY INFORMATION: These amendments quarantine additional portions of San Luis Obispo County in California and a portion of Bureau County in Illinois because of the existence of cattle scabies. The restrictions pertaining to the interstate movement of cattle from quarantined areas as contained in 9 CFR Part 73, as amended, will apply to the areas quarantined.

Accordingly, Part 73, Title 9, Code of Federal Regulations, as amended, restricting the interstate movement of cattle because of scabies, is hereby amended as follows:

1. In § 73.1a, in paragraph (c) relating to the State of California, new paragraphs (c)(4) and (c)(5) are added to read:

§ 73.1a Notice of quarantine.

• • • • •
(c) • • •
• • • • •

(4) The premises of the Davis Brothers (Happy Valley Ranch), Atascadero, San Luis Obispo County, California, R. 13 E., T. 28 S., S. ½ sec. 30, and N. ½ sec. 31.

(5) The premises of the Edwin Borcherdt Ranch, Paso Robles, San Luis Obispo County, California, R. 13 E., T. 25 S., secs. 1, 2, 11, 12, 27, 28, 33, and 34, T. 24 S., secs. 25, 35, and 36.

2. In § 73.1a, a new paragraph (f) relating to the State of Illinois is added to read:

§ 73.1a Notice of quarantine.

• • • • •
(f) Notice is hereby given that cattle in a certain portion of the State of Illinois are affected with scabies, a contagious, infectious, and communicable disease; and, therefore, the following area in such State is hereby quarantined because of said disease:

The premises of the Prime Rib Feedlot, Walnut, Bureau County, Illinois, Sec. 24, T. 18 N., R. 8 E., Bureau County, Illinois.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132; (21 U.S.C. 111-113, 115, 117, 120, 121, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141.)

These amendments impose certain further restrictions necessary to prevent the interstate spread of cattle scabies and must be made effective immediately to accomplish their purpose in the public interest. 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 in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to the amendments are impracticable and contrary to the public interest, and good cause is found for making the amendments effective less than 30 days after publication in the *FEDERAL REGISTER*.

Done at Washington, D.C., this 12th day of January 1979.

NOTE.—This final rulemaking is being published under emergency procedures as authorized by E.O. 12044 and Secretary's Memorandum 1955. It has been determined by J. K. Atwell, Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the possibility of the spread of cattle scabies into other States or Territories of the United States is severe enough to constitute an emergency which warrants the publication of this quarantine without waiting for public comment. These amendments to the regulations covering cattle scabies will be scheduled for review under provisions of E.O. 12044 and Secretary's Memorandum 1955. The review will include preparation of an Impact Analysis Statement which will be available from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, Maryland 20782. 301-436-8695.

M. T. GOFF,
Acting Deputy Administrator,
Veterinary Services.

[FR Doc. 79-1643 Filed 1-18-79 8:45 am]

[6210-01-M]

Title 12—Banks and Banking

CHAPTER II—FEDERAL RESERVE SYSTEM

SUPCHAPTER A—BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Docket No. R-0196]

PART 262—RULES OF PROCEDURE

Statement of Policy

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Statement of policy regarding expanded rulemaking procedures.

SUMMARY: The Board of Governors of the Federal Reserve System desires to improve the quality of its regulations through greater public participation in the development of its regulations and early involvement by Board members in the process to assure that regulations are not unduly burdensome and complex. The Board also wishes to improve public understanding of the considerations underlying the regulations it adopts. To accomplish these objectives, the Board is adopting a general policy of following

rulemaking procedures that will be more elaborate than those prescribed in the Board's Rules of Procedure for Rulemaking (12 CFR 262.2). When the Board has good cause to follow more expedited procedures, such as those set forth in its regulations, it will state the reasons in the *FEDERAL REGISTER* notice accompanying the action. The new procedures do not apply to the formulation of monetary policy or to amendments of regulations required to implement monetary policy decisions.

The Board believes that this approach fully complies with the spirit of Executive Order No. 12044 ("Improving Government Regulations") and contributes significantly to furthering the President's goals of reducing regulatory burdens and improving regulations.

The Board is implementing this policy immediately and welcomes suggestions for improving the policy.

DATES: Comments should be submitted in writing on or before March 20, 1979. The new policy is effective January 10, 1979.

ADDRESS: Submit comments to the Secretary to the Board, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The comments received will be available for inspection and copying.

FOR FURTHER INFORMATION CONTACT:

Jerauld C. Kluckman, Associate Director, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Telephone: (202) 452-3401.

SUPPLEMENTARY INFORMATION: The Board, with participation by the Federal Reserve Banks, is engaged in a Regulatory Improvement Project involving a zero-base review of all Federal Reserve regulations that affect the public. Each regulation is being analyzed to determine: the fundamental objectives of the regulation; whether the regulation is obsolete or a different approach would be appropriate; the costs and benefits of the regulation; whether it can be made less burdensome or nonregulatory alternatives adopted without reducing its effectiveness to achieve present-day goals; and whether the regulation is as simple as possible and understandable to those who must comply. To date, this review has been completed for two regulations (Regulations C and E; see 43 FR 53708 and Board release of Nov. 9, 1978), and substantial staff work has been done on others. Deadlines have been set to assure that the review of remaining regulations will be completed as soon as possible.

The Board also has decided to improve access to all Federal Reserve regulatory materials by authorizing is-

suance of a new, publicly distributed regulatory service that will include regulations, published and previously unpublished Board interpretations, previously uncirculated Board and staff rulings and opinions, relevant policy statements and other materials that affect the public. The Board plans to introduce this service in early 1980 and will update it periodically. The Board believes that ready access to the full range of regulatory materials will enable those regulated to operate with a far greater degree of certainty, and understanding of and compliance with Board rules will be enhanced.

As a further effort to improve its regulations and the regulatory process, the Board as a matter of policy also will apply expanded procedures to the development of new regulations. These procedures are more elaborate than those prescribed in the Board's Rules of Procedure for Rulemaking (12 CFR 262.2).

At the same time, the Board is aware that a lengthier, more involved rule-making procedure may result in delays detrimental to those making plans or seeking immediate relief from undue burdens. Therefore, when the Board believes that more expedited procedures are fair, necessary, or desirable, it will follow such procedures and inform the public of the reasons for its decision. Ordinarily, consideration of a regulation in a new area of the law will involve greater time and public participation than an amendment to an existing regulation in an established area of the law.

Examples of regulatory actions for which expedited procedures may be appropriate are the following:

(1) The regulation is a technical amendment (e.g., reflecting a name change) or a clarifying change;

(2) The regulation requires prompt action in the public interest (e.g., changes in reserve requirements, stock market margin requirements, or the discount rate, or actions designed to eliminate a loophole);

(3) The regulation reduces a burden where further delay would cause unnecessary harm;

(4) The regulation is a reformulation of a proposal previously issued for public comment; and

(5) The regulation must be adopted within a statutory deadline.

The Board believes its policy will result in improved Board regulations and fully complies with the spirit of Executive Order No. 12044, dated March 23, 1978 ("Improving Government Regulations") (43 FR 12661). In several ways, it goes beyond that Order. For example, the policy generally will be followed for all new proposals, whether or not they are re-

garded as "significant," and a regulatory analysis will be made in all cases.

To implement this approach the Board has adopted the following policy statement:

STATEMENT OF POLICY REGARDING EXPANDED RULEMAKING PROCEDURES

SECTION 1

Policy. It is the policy of the Board of Governors of the Federal Reserve System to improve the quality and minimize the burdens of its regulations by carefully considering an analysis of proposed regulations before they are published for comment, encouraging maximum public participation in the development of the regulations, and informing the public of the reasons for the Board's regulatory actions.

To achieve these objectives and to comply with the spirit of Executive Order 12044, the Board is setting forth in this statement expanded rulemaking procedures that it intends to follow in developing regulations. If the Board finds it necessary or beneficial in the public interest to avoid delay by following more expedited procedures, such as those set forth in the Board's Rules of Procedure for Rulemaking (12 CFR 262.2), the Board will state its reasons in a notice accompanying its actions. The new procedures do not apply to the formulation of monetary policy or to amendments of regulations required to implement monetary policy decisions.

Examples of regulatory actions for which expedited procedures may be appropriate are the following:

- (1) The regulation is a technical amendment (e.g., reflecting a name change) or a clarifying change;
- (2) The regulation requires prompt action in the public interest (e.g., changes in reserve requirements, stock market margin requirements, or the discount rate, or actions designed to eliminate a loophole);
- (3) The regulation reduces a burden where further delay would cause unnecessary harm;
- (4) The regulation is a reformulation of a proposal previously issued for public comment; and
- (5) The regulation must be adopted within a statutory deadline.

SECTION 2

Development of regulatory plan. Designated members of the Board will become involved at an early stage in the development of regulations and will meet with staff to review the issues to be considered, the alternative approaches to be explored, a tentative plan to obtain public comment, and target dates for completion of steps in the development of the regulation.

SECTION 3

Public involvement in the development of proposals. The Board believes that the public can make valuable contributions in identifying issues that should be addressed in its regulations. With respect to regulations implementing new areas of law or major revisions of existing regulations, the Board will endeavor to obtain preliminary views of interested persons prior to the development of a proposed regulation. For this purpose, the Board will utilize such procedures as it deems appropriate, including publication of an advance notice of proposed rulemaking, which may suggest specific issues on which comments should be focused; scheduling of an open conference or informal public hearing; and direct solicitation of views from interested persons or groups, selected so as to assure that conflicting interests and appropriate public bodies are fairly represented.

SECTION 4

Initial analysis of proposals. Before presenting any proposals regarding a regulation to the Board for formal action, the staff will prepare a regulatory analysis of the proposal. The extent of the regulatory analysis at this stage will vary, depending upon the nature of the regulation. In every case, at a minimum, the regulatory analysis will discuss the need for and purposes of the regulation, set forth the various options available, discuss, where appropriate, their possible economic implications, evaluate their compliance, recordkeeping and reporting burdens, and recommend the best course of action based on an evaluation of the alternatives. If the regulation concerns an area where considerable information is available, a correspondingly more exhaustive regulatory analysis will be expected.

When the designated Board members involved are satisfied that the issues have been adequately treated by the staff, that the proposals are as simple as possible and understandable to those who must comply and that no unnecessary burdens would be imposed, the staff will present the proposals to the Board for action.

SECTION 5

Preliminary action by the Board. Consideration of the proposals by the Board ordinarily will take place at a meeting open to public observation. The Board ordinarily will authorize publication of a proposed regulation for comment. At that time, the regulatory analysis of the proposals will be made available to the public.

SECTION 6

General public participation. The Board generally will allow at least 60 days for public comment on a proposed regulation. The notice accompanying the proposal will contain a summary analysis of the regulation and inform the public that copies of the regulatory analysis are available through the Freedom of Information Office. When deemed appropriate, the Board may also schedule an informal public hearing.

SECTION 7

Staff analysis following public comments. The staff will prepare a summary of comments received, and this document, as well as the written comments, will be made available to the public. After taking account of the public comments, the staff will prepare recommendations for consideration by the designated Board members. When these members are satisfied that the public comments have received full and appropriate attention, the staff's analysis and recommendations will be presented to the Board for action.

SECTION 8

Final action by the Board and announcement of its decision. Final action on the proposals by the Board ordinarily will take place at a meeting open to public observation. The Board will announce the reasons for whatever action it takes regarding a proposed regulation. The announcement will discuss the Board's rationale for accepting or rejecting arguments regarding the significant issues raised by the public. If the earlier regulatory analysis made available to the public is changed materially, a revised regulatory analysis will be made available.

SECTION 9

Semiannual agenda of regulations. On the first Monday in October, the Board will publish in the FEDERAL REGISTER a schedule showing the times during the next twelve months when it will publish a semiannual agenda of regulations under development or review. The agenda shall describe the regulations that the Board anticipates will be considered, the need and legal basis for the action being taken, and the status of regulations previously listed on the agenda. Each item on the agenda will include the name and telephone number of a knowledgeable member of the Board's staff. Supplements to the agenda may be published at other times during the year as appropriate.

SECTION 10

Periodic review of regulations. The Board will review each of its existing

regulations at least once every five years. Each regulation is to be re-examined with a view toward eliminating or simplifying it and easing burdens imposed by it. In selecting regulations to be reviewed, the Board will consider such factors as the length of time since the last evaluation of the regulation, the continued need for it, the type and number of complaints and suggestions received, the direct and indirect burdens imposed by the regulation, and the need to simplify or clarify the regulation and eliminate duplication. Essentially the same procedures described in this policy statement will be followed in the periodic review of regulations.

Board of Governors of the Federal Reserve System, January 15, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-1910 Filed 1-18-79; 8:45 am]

[3510-24-M]

Title 13—Business Credit and Assistance

CHAPTER III—ECONOMIC DEVELOPMENT ADMINISTRATION, DEPARTMENT OF COMMERCE

PART 305—PUBLIC WORKS AND DEVELOPMENT FACILITIES PROGRAM

Amendment of Grant Rate Policy for Public Works Projects Experiencing Underruns

AGENCY: Economic Development Administration (EDA), Department of Commerce.

ACTION: Final rule.

SUMMARY: The Economic Development Administration is amending regulations affecting the grant rates for certain public works projects. These amendments will allow an increase in grant rates, within legal maximum, to qualified public works projects which have experienced cost underruns. EDA has discovered that, because of its previous grant rate policy, certain grantees which had experienced underruns were prevented from receiving the full dollar amount of funding committed to their projects. The intended effect of these amendments is to correct that situation and to allow qualified under-run projects to obtain their full commitment of EDA funding.

EFFECTIVE DATE: January 19, 1979.

FOR FURTHER INFORMATION ON THESE RULES CONTACT:

James F. Marten, U.S. Department of Commerce, Room 7009, Washington, D.C. 20230, (202) 377-5441.

SUPPLEMENTARY INFORMATION: During the years 1972 to 1974, some EDA public works grant offers were written offering a stated sum of money (e.g., \$100,000) not to exceed a certain percentage of total project cost (e.g., 40%), which percentage was below the maximum grant rate then allowable for the area in which the project was to be located. If the project costs ultimately fell below those estimated at the time of approval, 13 CFR 305.89(b), as it previously read, prevented the grantee from receiving the stated sum of Federal funds because the percentage that the stated sum represented would have exceeded the percentage of total project cost written into the grant agreement. Although total project costs were less, this diminution of the Federal share worked hardships on grantees in meeting their project financing budgets.

On page 47980 of the October 18, 1978, FEDERAL REGISTER, EDA published proposed amendments to 13 CFR 305.8 and 305.89 to correct this unintended effect. 13 CFR 305.89(b) previously stated that in the event the total cost of the project is less than the amount stated in the "Offer of Grant," the grant rate will be unchanged. As amended, § 305.89(b) allows EDA the discretion to increase the percentage of the Federal share of a project's cost, within the legal maximum, above that percentage originally provided for in the "Offer of Grant" if (1) the total cost of the project will be less than the amount stated in the "Offer of Grant," and (2) the percentage of the Federal share originally provided for in the "Offer of Grant" was less than that percentage allowed by law at the time the "Offer of Grant" was made. Where these two circumstances coincide (an underrun and a grant rate less than the maximum allowed by law), EDA may increase a project's rate to the maximum allowable at the time the project was approved.

13 CFR 305.8(b) was prefaced by a general statement that "the percentage of the Federal share of a project's cost shall not exceed that percentage originally provided for in the grant agreement, * * *". This restriction applied only to projects receiving construction cost increase grants under the authority of section 107 of PWEDA, as implemented in 13 CFR 305.8. However, the amendment to 13 CFR 305.89(b) appears to create a conflict with this statement. Therefore, in order to avoid confusion, EDA has revised § 305.8 (b) and (c) to clarify the limited scope of application of their restriction on grant rate increases. This modification in language does not change EDA's administration of the construction cost increase grant program.

Interested persons were given thirty days to submit comments on the proposed amendments. Three comments were received from the public. Two commentators complimented EDA on the proposed changes. The third misunderstood the nature and effect of the proposed changes, confusing the amendment of the grant rate policy for underrun projects with EDA's program of assistance for overruns caused by increased construction costs. As no substantive comments on the proposed amendments were received, they are hereby adopted without change as set forth below.

1. 13 CFR 305.8 (b) and (c) are revised to read as follows:

§ 305.8 Grants for construction cost increases.

(b) The Assistant Secretary may increase the amount of any grant made under the authority of Title I of the Act to a project which meets all the following conditions:

(1) The project is being or will be constructed according to original designs and specifications;

(2) The project's total cost has increased because of increases in costs based on the original designs and specifications; and

(3) The project has incurred construction cost increases after the grant was made but prior to completion of the project.

(c) *Limitations on amount of grants.*

(1) The amount of a grant made under paragraph (b) of this section may be equal to an amount based on the percentage increase in the costs referred to in paragraph (b)(2) of the section, as determined by the Assistant Secretary.

(2) A construction cost increase grant may not be in an amount which would cause the Federal share of the project's costs to exceed the percentage originally provided for in the grant agreement.

2. 13 CFR 305.89(b) is revised to read as follows:

§ 305.89 Variance in cost of grant and loan projects.

(b) In the event the total cost of the project shall be less than the amount stated in the "Offer of Grant," the grant rate may be increased up to the maximum amount allowed by law at the time the grant was accepted.

Dated: January 12, 1979.

ROBERT T. HALL,
Assistant Secretary
for Economic Development.

[FR Doc. 79-2000 Filed 1-18-79; 8:45 am]

[6320-01-M]

Title 14—Aeronautics and Space
CHAPTER II—CIVIL AERONAUTICS
BOARD

SUBCHAPTER A—ECONOMIC REGULATIONS

[Regulation ER-1093; Amendment No. 1]

PART 291—GENERAL RULES FOR
ALL-CARGO CARRIERS

Approval by Comptroller General

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. January 15, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: This final rule gives notice of approval by the Comptroller General of the application filing requirements, recordkeeping requirements, and certain notification requirements contained in a regulation governing the operating rules for all-cargo carriers and domestic cargo transportation by section 401 and section 418 carriers. This approval is required by the Federal Reports Act and was transmitted to the Civil Aeronautics Board by letter dated December 27, 1978.

DATES: Effective: January 15, 1979.
 Adopted: January 15, 1979.

FOR FURTHER INFORMATION
CONTACT:

Raymond Kurlander, Director,
 Bureau of Accounts and Statistics,
 Civil Aeronautics Board, 1825 Con-
 necticut Avenue NW., Washington,
 D.C. 20428, 202-673-5270.

Accordingly, the Civil Aeronautics Board amends Part 291 of its Economic Regulations (14 CFR 291) by adding the following note at the end of Part 291:

NOTE.—The requirement to file an application in section 291.11, the recordkeeping requirement in section 291.23, and the reporting requirement in section 291.33 have been approved by the U.S. General Accounting Office under Number B-180226 (R0574).

This amendment is issued under authority delegated from the Board to the Secretary in 14 CFR section 385.24(b). (Sec. 204 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; U.S.C. 1324.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
 Secretary.

[FR Doc. 79-2039 Filed 1-18-79; 8:45 am]

[8010-01-M]

Title 17—Commodity and Securities
Exchanges

CHAPTER II—SECURITIES AND
EXCHANGE COMMISSION

[Release Nos. 33-5973A, 34-15135A, 35-
 20699A, IC-10389A, AS-254A]

PART 210—FORM AND CONTENT OF
FINANCIAL STATEMENTS, SECURI-
TIES ACT OF 1933, SECURITIES EX-
CHANGE ACT OF 1934, PUBLIC
UTILITY HOLDING COMPANY ACT
OF 1940, AND ENERGY POLICY
AND CONSERVATION ACT OF
1975

Requirements for Form and Content
of Financial Statements of Bank
Holding Companies and Banks

AGENCY: Securities and Exchange Commission.

ACTION: Correction.

SUMMARY: This document corrects FR Doc. 78-25887 appearing on pages 41022 through 41028 in the FEDERAL REGISTER of September 14, 1978. In § 210.9-02-5(c)(4) in the middle column on page 41025 the reference at the end of the sentence to § 210.9-04(c)(1) should be § 210.9-04(c).

DATE: January 15, 1979.

FOR FURTHER INFORMATION
CONTACT:

Lawrence J. Bloch, Office of the
 Chief Accountant, Securities and Ex-
 change Commission, 500 North Cap-
 itol Street, Washington, D.C. 20549,
 (202) 472-3782.

GEORGE A. FITZSIMMONS,
 Secretary.

JANUARY 15, 1979.

[FR Doc. 79-2041 Filed 1-18-79; 8:45 am]

[4110-03-M]

Title 21—Food and Drugs

CHAPTER I—FOOD AND DRUG AD-
MINISTRATION, DEPARTMENT OF
HEALTH, EDUCATION, AND WEL-
FARE

SUBCHAPTER A—GENERAL

[Docket No. 76N-0460]

PART 2—GENERAL ADMINISTRATIVE
RULINGS AND DECISIONS

Drug Products Containing Chlorofluoro-
carbons as Propellants in Self-Pres-
surized Containers for Essential
Uses; Clarification of NDA Require-
ments

AGENCY: Food and Drug Administra-
 tion.

ACTION: Final rule.

SUMMARY: This document clarifies the regulation permitting the essential use of chlorofluorocarbons in certain human drug products. It amends the regulation to specifically identify those essential drug products for which the Food and Drug Administration (FDA) has made a finding that an abbreviated new drug application is acceptable.

DATES: Effective January 19, 1979;
 comments by February 20, 1979.

ADDRESSES: Written comments to
 the Hearing Clerk (HFA-305), Food
 and Drug Administration, Rm. 4-65,
 5600 Fishers Lane, Rockville, MD
 20857.

FOR FURTHER INFORMATION
CONTACT:

Paul O. Fehnel, Jr., Bureau of Drugs
 (HFD-30), Food and Drug Adminis-
 tration, Department of Health, Edu-
 cation, and Welfare, 5600 Fishers
 Lane, Rockville, MD 20857, 301-433-
 6490.

SUPPLEMENTARY INFORMATION:
 In the FEDERAL REGISTER of March 17,
 1978 (43 FR 11301), the Commissioner
 of Food and Drugs issued a final regu-
 lation (21 CFR 2.125) that prohibited,
 in general, the use of chlorofluoro-
 carbons as propellants in self-pressurized
 containers in products subject to the
 Federal Food, Drug, and Cosmetic Act.
 Five drug classes in which the use of
 chlorofluorocarbon propellants was be-
 lieved essential were exempt from the
 ban. These five drug classes, set forth
 in § 2.125(e) (21 CFR 2.125(e)), are: (1)
 Metered-dose steroid human drugs for
 nasal inhalation, (2) metered-dose
 steroid human drugs for oral inhala-
 tion, (3) metered-dose adrenergic bron-
 chodilator human drugs for oral inhala-
 tion, (4) contraceptive vaginal foams
 for human use, and (5) metered-dose
 ergotamine tartrate human drugs for
 oral inhalation.

Section 2.125(c) of this regulation
 (21 CFR 2.125(c)) provides that any
 drug product in a self-pressurized con-
 tainer that contains a chlorofluorocar-
 bon propellant is a new drug; this in-
 cludes the five classes in which the use

of chlorofluorocarbons is deemed essential.

The chlorofluorocarbon ban was proposed in the FEDERAL REGISTER of May 13, 1977 (42 FR 24535). At that time, FDA recognized that some specific products included in the drugs generally described in the proposal as containing a chlorofluorocarbon for an essential use had not previously been the subject of new drug applications (NDA's). Specifically, of three over-the-counter (OTC) contraceptive vaginal foam products containing nonoxonyl 9 as the active ingredient, one product was not then the subject of an approved NDA. Similarly, some OTC metered-dose epinephrine products for oral inhalation were not the subject of approved NDA's. Accordingly, a provision was included in the May 13, 1977 proposal that would require a firm to submit an NDA for any drug product that is not currently the subject of an approved NDA and is listed in the regulation as using a chlorofluorocarbon propellant for an essential use. The proposal recommended that each firm required to submit such an NDA discuss with FDA the type of information needed before submitting the application. This provision was included because the Commissioner of Food and Drugs had tentatively determined that no additional clinical data to establish efficacy and safety would be needed for the OTC epinephrine inhalation products and the OTC contraceptive vaginal foam products containing nonoxonyl 9.

One comment on the proposal recommended that the regulations be revised to specify that an abbreviated new drug application (ANDA) would be acceptable for these drugs. The comment stated that this course would conform to the FEDERAL REGISTER announcement of September 8, 1976 (41 FR 37836), pertaining to isoproterenol hydrochloride for inhalation. This announcement permitted ANDA's to be submitted for isoproterenol hydrochloride inhalation products that were not then the subject of approved NDA's.

In response to this comment, the Commissioner agreed (see paragraph 29 of the March 17, 1978 final order (43 FR 11312)) to allow manufacturers to submit an ANDA in these cases. However, the ANDA provision was intended to apply only to OTC epinephrine products for oral inhalation, OTC contraceptive vaginal foams containing at least 8 percent of the active ingredient nonoxonyl 9, and any other essential product for which FDA has made a finding that an ANDA is acceptable. Such a finding was made for ergotamine tartrate aerosol for oral inhalation in a notice published in the FEDERAL REGISTER of July 27, 1972 (37 FR 15032). A similar notice was published

in the FEDERAL REGISTER of September 8, 1976 (41 FR 37836) indicating that ANDA's may be submitted for isoproterenol hydrochloride products for oral inhalation. Because § 2.125(h) of the March 17, 1978 final regulation did not specifically limit the use of ANDA's to these few products, it is the purpose of this rule to clarify the intent of this section.

Although a specific notice has not been published finding that an ANDA would be acceptable for epinephrine products for oral inhalation or for OTC contraceptive vaginal foam products containing nonoxonyl 9, the Commissioner concludes that ANDA's will be acceptable for these two types of products when they contain a chlorofluorocarbon. This conclusion is based on the tentative findings of the OTC advisory review panels that reviewed the drug classes to which these products belong. As a result of that review, epinephrine for OTC use as a bronchodilator has been placed in Category I (generally recognized as safe and effective and not misbranded) in the proposed monograph for cold, cough, allergy, bronchodilator, and antiasthmatic products published in the FEDERAL REGISTER of September 9, 1976 (41 FR 38312). There has not been any question concerning the safety and effectiveness of epinephrine for oral inhalation. Although the proposed monograph recommended by the Advisory Review Panel on Contraceptive Products has not yet been published, the status of contraceptive vaginal products containing nonoxonyl 9 has been discussed at open meetings of this Panel, and this ingredient has tentatively been placed in Category I. The agency expects that this ingredient will remain in Category I following publication of a final monograph. Pending any change in the status of epinephrine products for oral inhalation or OTC contraceptive vaginal foams containing nonoxonyl 9, an ANDA may be submitted for these products when packaged to contain a chlorofluorocarbon propellant provided the product complies with the conditions of any proposed, tentative final, or final monograph as applicable.

Currently, all the classes of drug products listed in § 2.125(e) are drug products for human use. Thus, the requirement in § 2.125(h) that the manufacturer of any drug product listed in § 2.125(e) that is not covered by an approved new animal drug application shall submit such an application in accord with § 514.1 Applications (21 CFR 514.1) serves no useful purpose and may tend to confuse the reader. Therefore, the Commissioner concludes that § 2.125(h) should be revised to remove these references to new animal drug applications. If, at

some time in the future, the Commissioner proposes to amend § 2.125(e) to include a drug product for animal use, these references can be reinserted into § 2.125(h).

Because this amendment simply clarifies the intent of § 2.125(h), the Commissioner finds that notice and public procedure are unnecessary and contrary to the public interest. Interested persons may, however, on or before February 20, 1979, file with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, four copies of written comments on this amendment identified with the docket number found in brackets in the heading of this document. Comments received may be seen in the office of the Hearing Clerk between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by the comments will be the subject of a further amendment.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 505, 701(a), 52 Stat. 1052-1053 as amended, 1055 (21 U.S.C. 355, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Part 2 is amended by revising § 2.125(h) to read as follows:

§ 2.125 Use of chlorofluorocarbon propellants in self-pressurized containers.

(h)(1) Each manufacturer of a drug product listed in paragraph (e) of this section that is not covered by an approved new drug application shall submit a new drug application in accord with § 314.1 of this chapter on or before June 15, 1978.

(2) The Food and Drug Administration may find that an abbreviated new drug application conforming to § 314.1(f) of this chapter is acceptable in lieu of a full new drug application for any product included in the classes of products in paragraph (e) of this section. An ANDA for any of these products shall also contain full information with respect to items 6 (components), 7 (composition), 8 (methods, facilities, and controls), and 9 (samples) of new drug application form FD-356H. A finding has been made that an ANDA may be submitted for the following products included in the classes of products listed in paragraph (e) of this section:

(i) Ergotamine tartrate supplied in a metered-dose aerosol form suitable for oral inhalation for the treatment of migraine headaches. Each measured dose must deliver a dose of the active ingredient equivalent to that contained in the product that has been the subject of a separate finding that an abbreviated new drug application is suitable.

(ii) Isoproterenol hydrochloride supplied in a metered-dose aerosol form suitable for oral inhalation for use as an adrenergic bronchodilator. Each measured dose must deliver a dose of the active ingredient equivalent to that contained in the products that have been the subject of a separate finding that an abbreviated new drug application is suitable.

(iii) Epinephrine, epinephrine bitartrate, or epinephrine hydrochloride (racemic) in a metered-dose aerosol form suitable for oral inhalation for use as an adrenergic bronchodilator. Each measured dose must deliver a dose of the active ingredient equivalent to that specified in an OTC proposed or final monograph issued under the provisions of 21 CFR Part 330.

(iv) Nonoxynol 9 in an aerosol foam suitable for vaginal administration as a contraceptive foam. The aerosol foam must contain 8 to 12.5 percent of nonoxynol 9.

Effective date. This regulation is effective January 19, 1979.

(Secs. 505, 701(a), 52 Stat. 1052-1053 as amended, 1055 (21 U.S.C. 355, 371(a)))

Dated: January 11, 1979.

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

[FR Doc. 79-1559 Filed 1-18-79; 8:45 am]

[4110-03-M]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77N-0040]

FOOD SUBSTANCES GENERALLY RECOGNIZED AS SAFE

Clove and its Derivatives

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is affirming clove and its derivatives as generally recognized as safe (GRAS) as direct human food ingredients. The safety of these ingredients has been evaluated under the comprehensive safety review being conducted by this agency.

EFFECTIVE DATE: February 20, 1979.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF-335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-472-4750.

SUPPLEMENTARY INFORMATION:

In the FEDERAL REGISTER of July 29, 1977 (42 FR 38613), the agency proposed to affirm that clove and its derivatives are generally recognized as safe (GRAS) for use as direct human food ingredients. The proposal was made on the initiative of the Commissioner of Food and Drugs as part of the announced FDA review of the safety of GRAS and prior-sanctioned food ingredients.

Under § 170.35 (21 CFR 170.35), relating to the affirmation of GRAS food ingredients, copies of the Scientific Literature Review on oil of cloves and the report of the Select Committee on GRAS Substances on oil of cloves have been made available for public review in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

In addition to proposing to affirm the GRAS status of clove and its derivatives, the Commissioner gave public notice that he was unaware of any prior-sanctioned food ingredient use for these ingredients other than for the proposed conditions of use. Persons asserting additional or extended uses under approvals granted by the U.S. Department of Agriculture or FDA before September 6, 1958, were given notice to submit proof of those sanctions so that the safety of the prior-sanctioned uses could be determined at this time. That notice was also an opportunity to have prior-sanctioned uses of clove and its derivatives approved by issuance of an appropriate regulation under Part 181—Prior-Sanctioned Food Ingredients (21 CFR Part 181), provided the prior-sanctioned uses could be affirmed as safe on the basis of information and data now available to the Commissioner. Notice was also given that failure to submit proof of an applicable prior sanction in response to the proposal would constitute a waiver of the right to assert that sanction at any future time.

No reports of prior-sanctioned uses for clove or its derivatives were submitted in response to the proposal, and any right to assert a prior sanction for uses of clove and its derivatives under conditions different from those set forth in the final regulation has therefore been waived.

Eight respondents submitted comments on the Commissioner's proposal and supporting data and information on clove and its derivatives. A summary of the comments and the Commissioner's conclusions on them follows:

1. Five comments objected to placing good manufacturing practice (GMP) use limitations on clove and its derivatives.

The Commissioner has reexamined the National Academy of Sciences/National Research Council (NAS/NRC) survey data, the available safety data, and the range of anticipated consumption for clove and its derivatives, and agrees that certain inconsistencies do exist. For example, there are inconsistencies in the maximum levels of use for the different parts of the clove plant (e.g., stems, buds, leaves) based on estimated eugenol content, and for pure eugenol when compared to the amounts of plant parts used. The inconsistencies in the data do not, however, affect the safety evaluation of clove and its derivatives, which was based on total dietary consumption of these ingredients in food. The Commissioner finds that a relaxation of conditions of use will not significantly change total consumption and that adequate margins of safety exist for use of these food ingredients. Therefore, the Commissioner concludes that clove, its essential oils, oleoresins, and natural extractives may be affirmed as GRAS without designating specific good manufacturing practice guidelines.

Although this regulation specifies that clove and its derivatives need be used only in accordance with good manufacturing practice and without indicated levels of GMP use, the Commissioner is not abandoning the practice of designating maximum GMP levels of use for other ingredients affirmed as GRAS. Maximum GMP levels establish conditions of use upon which the GRAS status of the substance was affirmed and serve as important food-processing guidelines in providing information on the concentration of ingredients required to produce intended effects in food. Therefore, although several natural spices may be affirmed as GRAS without GMP guidelines, this practice will only be adopted when it can be determined that the food-processing use information available to FDA is totally inadequate for this purpose and that safety margins for consumption of the ingredient are very high.

2. One comment specifically reported that clove oleoresin is currently used in chewing gum and requested that acceptable flavors made with whole cloves, oleoresins, or extracts also be permitted.

As indicated above, the Commissioner has reexamined the NAS/NRC survey data reported by the food industries and has concluded that clove and its derivatives may be used in food in accordance with good manufacturing practice.

3. Three comments indicated that the specifications for solvent-free clove bud extract and clove bud oleoresin were either inappropriate or did not conform with usual industry specifications. One comment specifically objected to the proposed angular rotation, refractive index, and specific gravity specifications for clove bud oleoresin, indicating that these specifications are difficult to perform on the oleoresin and are usually performed on volatile oils extracted from this product. In addition, the comments objected to the term "residual solvent free" because this term conflicts with the provisions of Part 173 (21 CFR Part 173), Subpart C, which permits certain solvent residues in spice extracts and oleoresins. The comments also recommended that the proposed specifications for clove bud oleoresin and clove bud extract be expanded to define the products more accurately (e.g., by requiring designation of the volatile oil content). Another comment suggested that the Food Chemicals Codex specifications for clove bud oil, clove leaf oil, or clove stem oil be adopted, by reference, for the volatile oil of clove oleoresin and of other natural clove extracts.

The Commissioner has found the comments helpful in formulating specifications for clove and its derivatives. The Commissioner agrees that the specifications for clove bud oil, with some modifications, can be used to characterize the volatile oil of the oleoresin and other extractives of clove, and further agrees that specific gravity, refractive index, and angular rotation specifications for oleoresin should be eliminated and that these specifications are most appropriately applied to the volatile oil of oleoresin. Accordingly, angular rotation, refractive index, and specific gravity specifications have been adopted for the volatile oil of oleoresin in the final regulation. The Commissioner also acknowledges that the term "residual solvent free" conflicts with solvents that are permitted for food use because of their GRAS status or included in Part 173, Subpart C, and the final regulation has been modified to permit residual solvents as specified in these regulations.

4. Three comments noted an error in proposed § 184.1257(a) in the terminology describing cloves as "dried unopened 'flavor' buds and twig tips." The correct description should read "flower" buds. Another comment indicated that the description uses the

term "twig tips" to describe the hypanthium of the clove bud structure. The comment indicated that the term "calyx" or "calyx tube" would be more precise than "twig tip" and would avoid the implication of nonfloral twigs in the definition of clove.

The Commissioner agrees with these comments and has amended the final regulation accordingly.

5. One comment noted that deleting clove from §§ 182.10 and 182.20 (21 CFR 182.10 and 182.20) and reaffirming it as GRAS in Part 184 (21 CFR Part 184) creates a problem of interpretation in § 101.22(a) (2) and (3) (21 CFR 101.22(a) (2) and (3)) because the spices listed in Part 184 would not be included in these sections.

The Commissioner acknowledges this oversight during the promulgation of the affirmed GRAS list. Dill, garlic, and rue, previously affirmed as GRAS, were not cross-referenced with the food labeling provisions in § 101.22. However, it was always FDA's intent to cross-reference the affirmed GRAS list (Part 184) with the food labeling provisions just as the GRAS list (Part 182) had been cross-referenced with these provisions. Therefore, the Commissioner is amending § 101.22(a) (2) and (3) to include the spices and natural essences or extractives obtained from plants that are also listed in Part 184. Inasmuch as this action merely cross-references § 101.22(a) (2) and (3) with Part 184, formal rulemaking procedures are unnecessary and the amendment of § 101.22(a) (2) and (3) is included in the final regulation.

6. One comment was concerned that the affirmation of clove and its derivatives as GRAS substances would increase the usage of these ingredients and result in an increase in reactions by hyperkinetic children. The comment suggested that the term "cloves" or "clove derivative," rather than the lesser known term "eugenol," be required on the label of any product containing these substances.

The Commissioner emphasizes that cloves, clove buds, clove leaves, and clove stems, as well as the synthetic flavoring substance eugenol, have appeared on the GRAS list since 1960 and 1961, respectively. Reaffirming these substances as generally recognized as safe is not expected to cause an increase in usage of these ingredients.

The Commissioner also advises that under section 403(i)(2) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(i)(2)), the common or usual name of each ingredient of a food fabricated from two or more ingredients must appear on the label. However, spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each specifically.

The Commissioner recognizes that some consumers may experience adverse effects from some food ingredients and welcomes comments and suggestions from knowledgeable individuals on this subject. However, in the absence of clear evidence that the public health would be jeopardized if clove or its derivatives were not stated on the product label, it is premature to single out these ingredients from other food additives for special attention.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1), Parts 101, 182, and 184 are amended as follows:

PART 101—FOOD LABELING

1. In Part 101, § 101.22 is amended by revising the second sentence of paragraph (a)(2) and the last sentence of paragraph (a)(3) to read as follows:

§ 101.22 Foods; labeling of spices, flavorings, colorings, and chemical preservatives.

(a) * * *

(2) * * * Spices include the spices listed in § 182.10 and Part 184 of this chapter, such as the following: * * *

(3) * * * Natural flavors include the natural essence or extractives obtained from plants listed in §§ 182.10, 182.20, 182.30, 182.40, and 182.50 and Part 184 of this chapter, and the substances listed in § 172.510 of this chapter.

PART 182—SUBSTANCES GENERALLY RECOGNIZED AS SAFE

§ 182.10 [Amended]

3. In § 182.10 *Spices and other natural seasonings and flavorings* by deleting the entry for "Cloves."

§ 182.20 [Amended]

4. In § 182.20 *Essential oils, oleoresins (solvent-free), and natural extractives (including distillates)* by deleting the entries for "Clove bud," "Clove leaf," and "Clove stem."

§ 182.60 [Amended]

5. In § 182.60 *Synthetic flavoring substances and adjuvants* by deleting the entry for "Eugenol."

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

6. By adding new § 184.1257 to read as follows:

§ 184.1257 Clove and its derivatives.

(a) Cloves are the dried unopened flower buds and calyx tubes, harvested before the flowers have opened, of the clove tree *Eugenia caryophyllata* Thunberg, native to tropical Asia. Their derivatives include essential oils (cloves, CAS Reg. No. 8000-34-8; buds; leaves, CAS Reg. No. 8015-97-2; stems, CAS Reg. No. 8015-98-3; and eugenol, CAS Reg. No. 97-53-0), oleoresins, and natural extractives obtained from clove buds, leaves, and stems.

(b) Clove bud oil, clove leaf oil, clove stem oil, and eugenol meet the specifications of the Food Chemicals Codex (FCC), 2d Ed. (1972),¹ which is incorporated by reference. As determined by analytical methods in FCC, clove oleoresin or other natural extractives (other than clove oils) meet FCC specifications for clove (clove bud) oil and the following modifications:

(1) The assay for phenols, as eugenol, by the FCC test (p. 898) or the volatile oils content by the FCC test (p. 901) should conform to the representation of the vendor;

(2) Optical rotation of the volatile oil between -2° and 0°;

(3) Refractive index of the volatile oil between 1.527 and 1.538 at 20° C;

(4) Specific gravity of the volatile oil between 1.036 and 1.060; and

(5) Residual solvent free, except those solvents that are GRAS or within tolerance levels as specified in Part 173, Subpart C, of this chapter.

(c) Clove and its derivatives are used as flavoring agents and adjuvants as defined in § 170.3(0)(12) of this chapter.

(d) The ingredients are used in food at levels not to exceed good manufacturing practice in accordance with § 184.1(b)(1).

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

Effective date. This regulation is effective February 20, 1979.

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

NOTE.—Incorporation by reference was approved by the Director of the Office of the Federal Register on July 10, 1973 and is on file in the FEDERAL REGISTER library.

Dated: January 15, 1979.

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

(FR Doc. 79-1904 Filed 1-18-79; 8:45 am)

[4110-03-M]

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 77N-0119]

PART 131—MILK AND CREAM

Nonfat Dry Milk, Lowfat Dry Milk, Dry Whole Milk, and Dry Cream; Standards of Identity; Confirmation of Effective Date and a Further Amendment

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document confirms the effective date of the final regulation of May 9, 1978 that amended the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D and established standards of identity for lowfat dry milk, dry whole milk, and dry cream based on consideration of the international standards developed by the Codex Alimentarius Commission for these foods. This document also amends the description for dry cream to make it consistent with the descriptions for dry whole milk and lowfat dry milk.

DATES: Voluntary compliance may have begun July 10, 1978. Mandatory compliance for all products initially introduced into interstate commerce begins July 1, 1979. Objections to the amendment by February 20, 1979.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued a final regulation in the FEDERAL REGISTER of May 9, 1978 (43 FR 19834) that established standards of identity for low fat dry milk, dry whole milk, and dry cream (21 CFR 131.123, 131.147, and 131.149, respectively) and amended the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D (21 CFR 131.125 and 131.127, respectively). The new standards of identity were based on the recommended international standards for whole milk powder, partly skimmed milk powder, and skimmed milk powder (Codex Standard No. A-5 (1971)) and the recommended international standards for cream powder, half cream powder, and high-fat milk powder (Codex Standard No. A-10 (1971)) which were submitted to the

United States for consideration of acceptance by the Joint Food and Agriculture Organization/World Health Organization's Committee of Government Experts on the Code of Principles Concerning Milk and Milk Products, and auxiliary body of the Codex Alimentarius Commission. The new standards of identity for lowfat dry milk, dry whole milk, and dry cream establish (1) requirements for mandatory ingredients, (2) provisions for optional ingredients such as stabilizers, emulsifiers, anticaking agents, antioxidants, and characterizing flavoring ingredients, with or without coloring, and (3) requirements for label declaration of optional ingredients. In addition, the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D were amended to provide for the use of nutritive carbohydrate sweeteners in the optional characterizing flavoring ingredients.

The final regulation provided that any person who would be adversely affected could at any time, on or before June 8, 1978, file written objections to the final regulation and request a hearing on the specific provisions to which there were objections.

OBJECTIONS AND REQUESTS FOR A HEARING

Two objections and requests for a hearing and one letter suggesting a minor change were received in response to the final regulation. The Commissioner has considered these responses and his conclusions are as follows:

1. **Description of dry cream.** The American Dry Milk Institute (ADMI) suggested that the standard of identity for dry cream provide for the manufacture of dry cream by dry blending dry cream with other dry milk products even though this method is not currently common practice in the United States. The ADMI is of the opinion that this would (1) make the description of dry cream in § 131.149(a) uniform with the descriptions of lowfat dry milk in § 131.123(a) and dry whole milk in § 131.147(a); and (2) allow flexibility without restricting future manufacturing processes for dry cream.

The Commissioner agrees with ADMI's suggestions and is revising the standard of identity for dry cream accordingly.

2. **Lactose-reduced dry milk products.** Two firms marketing the enzyme lactase objected to the establishment of the standards of identity for lowfat dry milk, dry whole milk, and dry cream, and the amendment of the standard of identity for nonfat dry milk. They maintained that the final regulations, as published, will adversely affect them and will not be in the

¹Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20037.

best interest of consumers. They stated that the standards of identity establish the level of lactose contained in the foods, thereby eliminating lactose-reduced dry milk products as foods that can be made and sold under the standard nomenclature. The firms said that alternate nomenclature such as "lactose reduced skim milk solids" would have to be substituted for the preferred "lactose reduced nonfat dry milk." Further, they stated that this exclusion from standard product nomenclature obscures the product's identity and causes unnecessary confusion for the consumer. Further, they said that the conversion of lactose to the more readily digestible galactose and glucose, resulting from the treatment of milk with lactase, is beneficial to that segment of the population, estimated at about 30 million in the United States, that cannot readily tolerate lactose in its naturally occurring form. The firms suggested that consideration be given to other foods that may be produced with lactase in the hydrolyzed form for which standards of identity not exist or will be developed in the future.

The Commissioner recognizes the benefits to be derived from lactose-reduced milk products by lactose-intolerant individuals but does not believe that there is a need to delay issuing the standards of identity for dry milk products in order to establish appropriate names for lactose-reduced milk products. Lactose-reduced milk products differ in composition from dry milk products. As the objectors recognize, the lactose-reduced foods cannot bear the same name as dry milk products but must instead be named to indicate their distinctive feature. However, they do not have to be labeled with obscure names as suggested by the objectors. Furthermore, as the Commissioner has previously advised in the *FEDERAL REGISTER* of August 2, 1973 (38 FR 20703), the existence of a standard of identity for a particular food does not necessarily preclude the use of the standardized name in connection with the name of a nonstandardized food, and "in some cases it may be necessary to include a standardized name in the name of a substitute food in order to provide the consumer with accurate, descriptive, and fully informative labeling." In other words, the standards of identity to which objections are made do not by themselves, affect the objecting parties' ability to market accurately labeled lactose-reduced milk products using the standardized nomenclature, to the extent appropriate, as part of the name of the new foods.

Accordingly, the Commissioner is denying a hearing on the points made in the objections because they do not raise factual issues concerning the va-

lidity of the standards of identity in question. Rather, the objections seek to avoid an effect that the standards do not have by seeking to establish new names for distinct foods that are not subject to the standards; the promulgation of these standards for dry milk products will not preclude the development of appropriate names for the new product. Under 21 CFR 12.24(b)(4), a hearing will not be granted when a food standard does not have the effect of excluding or otherwise affecting the products. The lactose-reduced foods may be sold as non-standardized foods named in accordance with the general principles in 21 CFR 102.5. Alternatively, the objectors may file a petition to establish a new standard of identity for these products. Since the lactose-reduced foods are special dietary foods, the foods should also comply with the applicable labeling requirements in Part 105.

A GRAS affirmation petition for lactase enzyme derived from *Kluyveromyces (Saccharomyces) lactis*, submitted by one of the objectors, is being considered by the agency. No decision has been made regarding its safety. In view of the undetermined status of this source of lactase enzyme and the option for production of lactose-reduced milk products as special dietary foods, the Commissioner concludes that a hearing on the above objections is not warranted.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner (21 CFR 5.1), notice is given that the objections filed to the final regulation establishing standards of identity for lowfat dry milk, dry whole milk, and dry cream under §§ 131.123, 131.147, and 131.149 and amending the standards of identity for nonfat dry milk and nonfat dry milk fortified with vitamins A and D under §§ 131.125 and 131.127 are not accepted as valid, except that, in accordance with the foregoing: *It is ordered*, That § 131.149 as promulgated in the *FEDERAL REGISTER* of May 9, 1978, be amended by revising paragraph (a) to read as follows:

§ 131.149 Dry cream.

(a) *Description.* Dry cream is the product obtained by removal of water only from pasteurized milk or cream or a mixture thereof, which may have been homogenized. Alternatively, dry cream may be obtained by blending dry milks as defined in §§ 131.123(a), 131.125(a), and 131.147(a) with dry cream as appropriate: *Provided*, That the resulting product is equivalent in composition to that obtained by the method described in the first sentence

of this paragraph. It contains not less than 40 percent but less than 75 percent by weight of milkfat on an as is basis. It contains not more than 5 percent by weight of moisture on a milk solids not fat basis.

Any person who will be adversely affected by the foregoing amendment to the final regulation may at any time on or before February 20, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date: Except as to the amendment that may be stayed by the filing of proper objections, compliance with this amendment to the final regulation may begin February 20, 1979. Notice of the filing of objections or lack thereof will be published in the *FEDERAL REGISTER*. Compliance with all other provisions of the final regulation may have begun on July 10, 1978, and all products initially introduced into interstate commerce on or after July 1, 1979, shall fully comply.

Dated: January 11, 1979.

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

[FR Doc. 79-1560 Filed 1-18-79; 8:45 am]

[4110-03-M]

SUBCHAPTER E—ANIMAL DRUGS, FEEDS, AND RELATED PRODUCTS

PART 510—NEW ANIMAL DRUGS

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

Selenium Disulfide Suspension

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations to reflect approval of a new animal drug application (NADA) filed by Farnam Companies, Inc., providing for use of a selenium disulfide suspension on dogs as a shampoo and agent for removing skin debris, and to indicate the sponsor's current corporate address.

EFFECTIVE DATE: January 19, 1979.
FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Farnam Companies, Inc., 2230 E. Magnolia St., Phoenix, AZ 85036, filed an NADA (115-579V) providing for use of a selenium disulfide suspension on dogs as a cleansing shampoo and as an agent for removing skin debris associated with dry eczema and nonspecific dermatoses.

This application concerns a product similar to one reviewed by the National Academy of Sciences/National Research Council (NAS/NRC), approval of which is reflected in the regulations in § 524.2101 (21 CFR 524.2101). This application is approved on the basis of generic equivalence to the NAS/NRC reviewed product. It conforms to the NAS/NRC panel recommendations published in the *FEDERAL REGISTER* of September 5, 1970 (35 FR 14168).

In addition, the regulations do not reflect the current address of the firm in the list of approved sponsors in § 510.600(c) (21 CFR 510.600(c)). The address is revised appropriately.

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 approval of this application 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), Parts 510 and 524 are amended as follows:

1. In Part 510, § 510.600 is amended by revising the entries for Farnam Companies, Inc., in paragraph (c) (1) and (2) to read as follows:

§ 510.600 Names, addresses, and code number of sponsors of approved applications.

(c) * * *	* * *
(1) * * *	* * *
Firm name and address and Drug listing No.	* * *
Farnam Companies, Inc., 2230 E. Magnolia St., Phoenix, AZ 85036; 017135.	* * *

(2) * * *	* * *
Drug listing No. and Firm name and address	* * *
017135; Farnam Companies, Inc., 2230 E. Magnolia St., Phoenix, AZ 85036.	* * *

2. In Part 524, § 524.2101 is amended by revising paragraph (b)(2) to read as follows:

§ 524.2101 Selenium disulfide suspension.

(b) * * *	* * *
(2) See Nos. 011536, 015563, and 017135 in § 510.600(c) of this chapter for use as in paragraph (c)(2)(ii) of this section.	* * *

Effective date. This regulation is effective January 19, 1979.
 (Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)).)

Dated: January 10, 1979.

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

[FR Doc. 79-1903 Filed 1-18-79; 8:45 am]

[4110-03-M]

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

Diethylcarbamazine Citrate Syrup

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The animal drug regulations are amended to reflect approval of a new animal drug application (NADA) providing for safe and effective use of an anthelmintic syrup for prevention of heartworm disease in dogs and as an aid in treatment of ascarid infections in dogs and cats. The application was filed by Evsco Pharmaceutical Corp.

EFFECTIVE DATE: January 19, 1979.
FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION: Evsco Pharmaceutical Corp., P.O. Box 209, Harding Highway, Buena, NJ 08310, filed an NADA (100-689V) providing for use of diethylcarbamazine citrate syrup for prevention of heartworm disease (*Dirofilaria immitis*) in dogs and as an aid in treatment of ascarid infections in dogs (*Toxocara canis*) and cats (*Toxascaris leonina*). The regulations are amended to add Evsco as a sponsor and revise the existing text in accordance with the current format.

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 approval of this application is released publicly. The summary is available for public examination at the office of the Hearing Clerk (HFA-305), Food and Drug Administration, 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)

Part 520 is amended in § 520.622b by revising paragraph (b) to read as follows:

§ 520.622b Diethylcarbamazine citrate syrup.

(b) (1) *Specifications.* Each milliliter of syrup contains 60 milligrams of diethylcarbamazine citrate.

(2) *Sponsors.* (i) See No. 010042 in § 510.600(c) of this chapter for use as in paragraphs (3)(ii) (a) and (b) of this section.

(ii) See No. 017030 for use as in paragraphs (3)(ii) (a) and (c) of this section.

(3) *Conditions of use—(i) Amount.* 3 milligrams per pound of body weight per day for prevention of heartworm disease and as an aid in control of large roundworms; 25 to 50 milligrams per pound of body weight as an aid in treatment of ascarid infections.

(ii) *Indications for use.* (a) For prevention of heartworm disease (*Dirofilaria immitis*) in dogs.

(b) As an aid in control of large roundworms (*T. canis*) in dogs.

(c) As an aid in treatment of ascarid infections in dogs (*T. canis*) and cats (*T. canis* and *T. leonina*).

(iii) *Limitations.* The drug may be placed on the daily ration or given directly by mouth. For treatment of ascarid infections, a repeat dose should be given in 10 to 20 days to remove immature worms which may enter the intestine from the lungs after the first dose. Older dogs should be proven negative for presence of *Dirofilaria immitis* infections before administering the drug. Dogs with established heartworm infections should not receive the drug until they have been converted to a negative status by the use of adulticidal and microfilaricidal drugs. Inadvertent administration to heartworm-infected dogs may cause adverse reactions due to pulmonary occlusion. Overdosage may cause emesis. For prevention of heartworm disease in heartworm-endemic areas, administration of the drug should start 1 month before the mosquito season and be continued daily throughout the mosquito season and for 2 months thereafter. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Effective date. This regulation is effective January 19, 1979.

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

Dated: January 10, 1979.

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

[FR Doc. 79-1811 Filed 1-18-79; 8:45 am]

[7600-01-M]

Title 29—Labor

CHAPTER XX—OCCUPATIONAL
SAFETY AND HEALTH REVIEW
COMMISSION

PART 2400—REGULATIONS
IMPLEMENTING THE PRIVACY ACT

Adoption of Regulations

AGENCY: Occupational Safety and Health Review Commission.

ACTION: Final regulations.

SUMMARY: The Occupational Safety and Health Review Commission has adopted rules to govern the manner in which it will implement the requirements of the Privacy Act of 1974. The regulations set forth the procedures under which the public may determine the systems of records maintained by the Commission and procedures on how to access may be gained for purposes of review, amendment and/or correction of those records.

EFFECTIVE DATE: These regulations are effective January 15, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gombar, General Counsel,
Occupational Safety and Health
Review Commission, 1825 K Street
NW., Washington, D.C. 20006, (202)
634-4015.

SUPPLEMENTARY INFORMATION: On August 29, 1975, the Occupational Safety and Health Review Commission published, pursuant to Section 3(f) of the Privacy Act of 1974, proposed regulations which, if adopted, would be used to govern the manner in which the requirements of the Act would be carried out by the Occupational Safety and Health Review Commission. The public was invited to participate in the rulemaking proceeding by submitting written data, views and arguments on the proposed regulations. No comments were received. Several amendments have been incorporated in the final regulations, however, either at the suggestion of the Office of Management and Budget or for the purpose of clarifying the regulations or changing the agency official responsible for taking certain actions under the regulations.

One area of concern raised by a Member of Congress and the Office of Management and Budget dealt with

the lack of a provision for supplying personal information to individual congressional offices in connection with constituent case work inquiries. Section 2400.4(b)(2)(ix) provided for dissemination of personal information to either House of Congress or its committees or subcommittees, but not to Members of Congress. Accordingly, § 2400.4(b)(2)(xi) of the final regulations provides for such dissemination, if there has been a written request from the individual constituent to the Member of Congress. The consent of the individual shall be inferred from his letter to the Member of Congress.

Section 2400.6(a)(3) of the proposed regulations provided for access to records in person. Upon the recommendation of the Office of Management and Budget, the final regulations also provide for access by mail. Because of this expansion, several subsections of § 2400.6 required amendments, and the entire section was renumbered to accommodate the changes and substantially rewritten to clarify the procedures for requesting access. Paragraph (a)(1) specifically provides for a written request to be made either in person or by mail, and paragraphs (f)(1) and (2) provide for the record to be either mailed, if possible, or made available for personal inspection in OSHRC offices, depending on the expressed wishes of the individual. Paragraph (f)(1) also furnishes a means for notifying the requester of the cost of copying the record if the responsible OSHRC official has reason to believe the cost may be considerably more than anticipated by the requester. Paragraph (f)(2) specifies the information that shall be supplied in the notice of the availability of the record to those who intend to review it in person.

Sections 2400.6(b)(1)-(3), in addition to establishing a procedure for verification of identity when requests are mailed, also provide for a means by which a person not having identification papers can establish his identity, and further specify the documents of identification that shall be accepted when an individual makes the request for a record in person. One amendment incorporated into the final regulation at § 2400.6(d) deals with the verification of guardianship where the parent or guardian of a minor or a person judicially determined to be incompetent seeks access on behalf of such minor or incompetent. This provision inadvertently was omitted from the OSHRC proposed regulations on Privacy.

Another addition to the final regulations is a provision for access to OSHRC records maintained in the National Archives and Records Service Centers. This clause was unintentionally left out of the proposed regula-

tions, and accordingly, is included in the final regulation at § 2400.6(a)(1).

Also new is a provision, added at the suggestion of the Office of Management and Budget, to allow for an accounting to a requester of any disclosures made from the individual's record.

The final regulation includes this requirement at Section 2400.6(a)(2).

Section 2400.6(a)(1) of the proposed regulation specified that a person making an inquiry provide OSHRC with the name of the system and category of individual making the request. The final regulation, at § 2400.6(a)(2), deletes the requirement that the category of individual be identified, but asks that additional information be supplied, namely the nature of the record sought and the approximate dates covered by the record. This modification was made because it was thought that the new information requested would facilitate the search for a record.

Other revisions incorporated throughout the final regulations change the official to whom all Privacy Act requests should be made from the Chief Administrative Law Judge to the Executive Director. In addition, the agency is abbreviated as OSHRC rather than OSAHRC to maintain consistency with the abbreviation used by the agency in other matters. Finally, several technical perfecting amendments are made in the language of the regulations so that it more closely corresponds with that of the Privacy Act itself.

Therefore, pursuant to Section 3(f) of the Privacy Act of 1974 (5 U.S.C. 552a(f), 88 Stat. 1896, 1900), and 5 U.S.C. 553, Title 29 Code of Federal Regulations, is amended by adding a new part, Part 2400, to read as follows:

Sec.

2400.1 Purpose and scope.

2400.2 Description of agency.

2400.3 Delegation of authority.

2400.4 Collection and disclosure of personal information.

2400.5 Notification.

2400.6 Procedures for requesting records.

2400.7 Procedures for requesting amendment.

2400.8 Schedule of fees.

2400.9 Exemptions.

AUTHORITY: Sec. 3(f), Privacy Act of 1974 (5 U.S.C. 552a(f), 88 Stat. 1896, 1900), and 5 U.S.C. 553.

§ 2400.1 Purpose and scope.

The purpose of the provisions of this Part is to provide procedures to implement the Privacy Act of 1974 (5 U.S.C. 552a). The following provisions are applicable only to such items of information as relate to the agency or are within its custody. The Commission's custody encompasses all information which is kept by an agent by contract

with the agency. They are not applicable to the rights of parties appearing in adversary proceedings before the Commission to obtain discovery from an adverse party. Such matters are governed by the Commission's Rules of Procedure which are published at 29 CFR 2200.1 *et seq.* This part is intended to protect individual privacy, and affects all personal information collection and usage activity of the agency.

§ 2400.2 Description of agency.

The Occupational Safety and Health Review Commission (OSHRC) adjudicates contested enforcement actions under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651-677). Decisions of the Commission on such actions are issued only after the parties to the case are afforded an opportunity for a hearing in accordance with Section 554 of Title 5, United States Code. All such hearings are conducted by an OSHRC Administrative Law Judge at a place convenient to the parties and are open to the public. Each Commission member has the authority to direct that a decision of a Judge be reviewed by the full Commission before becoming a final order.

§ 2400.3 Delegation of authority.

(a) The Executive Director shall insure agency-wide compliance with this policy.

(b) Custodians are responsible for adherence to this part within their respective units and in particular for their collection, use and disclosure of personal information, and for affording individuals the right to inspect, obtain copies of and correct records concerning them. They are responsible for reporting the existence of personal records systems, changes to the contents of those systems and changes of routine use to the Executive Director, and also for establishing the relevancy of information within those systems.

§ 2400.4 Collection and disclosure of personal information.

(a) The following rules govern the collection of personal information throughout OSHRC operations:

(1) The OSHRC shall: (i) Solicit, collect and maintain only such personal information as is relevant and necessary to accomplish a purpose required by statute or Executive Order.

(ii) Collect information, to the greatest extent practicable, directly from the subject individual when such information may result in adverse determinations about an individual's rights, benefits or privileges.

(iii) Inform any individual requested to disclose personal information whether that disclosure is mandatory or voluntary, by what authority it is

solicited, the principal purposes for which it is intended to be used, the routine uses which may be made of it, and any penalties or consequences known to the OSHRC which shall result to the individual from such non-disclosure.

(2) OSHRC shall not discriminate against any individual who fails to provide personal information unless that information is required or necessary for the conduct of the system or program in which the individual desires to participate. See § 2400.4(a)(1)(i).

(3) No information shall be collected or maintained which describes how individuals exercise rights guaranteed by the First Amendment unless the Commission specifically determines that such information is relevant and necessary to carry out a statutory purpose of the OSHRC, and the collection is expressly authorized by statute or by the individual about whom the record is maintained.

(4) OSHRC shall not require disclosure of any individual's Social Security account number or deny a right, privilege or benefit because of the individual's refusal to disclose the number unless disclosure is required by Federal law.

(b) Disclosures. (1) Limitations. OSHRC shall not disseminate personal information unless reasonable efforts have been made to assure that the information is accurate, complete, timely and relevant and

(i) The individual to whom the record pertains has requested in writing that the information be disseminated, or

(ii) It has obtained the prior written consent of the individual to whom the record pertains, or

(iii) The dissemination is in accordance with paragraph (b)(2) of this section.

(2) Dissemination of personal information may be made:

(i) To a person pursuant to a requirement of the Freedom of Information Act (5 U.S.C. 552);

(ii) To those officers and employees of OSHRC who have a need for such information in the performance of their duties;

(iii) For a routine use as contained in the system notices published in the **FEDERAL REGISTER**;

(iv) To a recipient who has provided adequate advance written assurance that the information shall be used solely as a statistical reporting or research record, and to whom the information is transferred in a form that is not individually identifiable;

(v) To the Bureau of the Census for purposes of planning or carrying out a census or survey or related activity pursuant to the provisions of Title 13, U.S. Code;

(vi) To the National Archives of the United States as a record which has sufficient historical or other value to warrant its continued preservation by the United States Government, or for evaluation by the Administrator of General Services or his designee to determine whether the record has such value;

(vii) To a person pursuant to a showing of compelling circumstances affecting the health or safety of an individual, if upon such disclosure notification is transmitted to the last known address of such individual;

(viii) To a federal agency or an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity, if such activity is authorized by law and if the head of the agency or instrumentality has made a written request to the OSHRC specifying the particular portion of the record desired and the law enforcement activity for which the record is sought;

(ix) To either House of Congress or its committees or subcommittees to the extent of matter within their jurisdiction;

(x) To the Comptroller General or any of his authorized representatives in the course of the performance of the duties of the General Accounting Office;

(xi) Pursuant to the order of a court of competent jurisdiction;

(xii) To a congressional office from the record of an individual in response to an inquiry from the congressional office made at the written request of that individual. The consent implied from such a written request applies only to congressional inquiries.

(3) Employee credit references. The Personnel Office shall verify the following information provided by an employee to a credit bureau or commercial firm from which an employee is seeking credit: length of service, job title, grade, salary, tenure of employment, and Civil Service status.

(4) Employee job references. Prospective employers of an OSHRC employee or a former OSHRC employee may be furnished with the information in § 2400.4(b)(3) above, in addition to the date and reason for separation if applicable, upon the request of the employee or former employee.

(c) Correction disclosure. Any person or other agency to which a personal record has been or is to be disclosed shall be informed of any corrections or be provided copies of statements of dispute, and notifications specifying the portions of the record relating thereto affecting the accuracy, timeliness or relevance of that personal record.

(d) Record of disclosure. (1) An accurate accounting of each disclosure

shall be kept in all instances except those in which disclosure is made to OSHRC employees in the performance of their duties or is required by the Freedom of Information Act (5 U.S.C. 552), in conformance with Section 552a(c) of the Privacy Act.

(2) The accounting shall be maintained for at least five (5) years or the life of the record, whichever is longer.

(3) The accounting shall be made available to the individual named in the record upon inquiry, except for disclosures made pursuant to provision (b)(2)(viii) of this section relating to law enforcement activities.

§ 2400.5 Notification.

(a) Notification of systems. The following procedures permit individuals to determine the types of personal records systems maintained by OSHRC.

(1) Upon written request, OSHRC shall notify any individual whether a specific system named by him contains a record pertaining to him. See § 2400.6 for suggested form of request.

(2) OSHRC shall publish annually in the FEDERAL REGISTER a notice of existence and character of all personal systems of records. This notice shall contain the following information:

(i) Name and location of the system,
(ii) Nature and purposes of the system,

(iii) Categories of individuals on whom records are maintained and categories of records generally maintained in the system,

(iv) Confidentiality requirements and the extent to which access controls apply to such information,

(v) OSHRC policies and standards regarding the safeguarding and disclosure of information, retrievability of information, information storage, duration of retention of information, and disposal of such information from the system,

(vi) Each routine use made by OSHRC of the personal information contained in the system, including the categories of users and the purpose of the use,

(vii) Title and official address of the custodian,

(viii) Procedures by which an individual can be informed if a system contains personal information pertaining to himself, gain access to such information, and contest the content, accuracy, completeness, timeliness, relevance and necessity for retention of the information.

(ix) Categories of sources of such personal information.

(x) System status—either developmental or operational.

(b) Notification of disclosure. OSHRC shall make reasonable efforts to serve notice on an individual before any personal information is made available to any person under compul-

sory legal process when such process becomes a matter of public record.

(Also see § 2400.4(b) (1)(ii) and (2)(vii).)

(c) Notification of amendment. (See § 2400.7 relating to amendment of records upon request.)

(d) Notification of new use. Any new or revised use of personal information maintained by OSHRC shall be published in the FEDERAL REGISTER thirty (30) days before such use becomes operational. Public views may then be submitted to the Executive Director.

(e) Notification of exemptions. OSHRC shall publish in the FEDERAL REGISTER its intent to exempt any system of records and shall specify the nature and purpose of that system.

§ 2400.6 Procedures for requesting records.

The purpose of this section is to provide procedures by which an individual may have access to personal information within a comprehensive format.

(a) Submission of requests for access—(1) Manner. An individual seeking information regarding the contents of records systems or access to records about himself in a system of records should present a written request to that effect either in person or by mail to the Executive Director, OSHRC, 1825 K Street, NW., Washington, D.C. 20006. Access to OSHRC records maintained in National Archives and Records Service Centers may be obtained in accordance with the regulations issued by the General Services Administration.

(2) Specification of records sought. Requests for access to records shall describe the nature of the record sought, the approximate dates covered by the record, and the system in which the record is thought to be included as described in the "Notification" for that system as published in the FEDERAL REGISTER. The requester should also indicate whether he wishes to review the record in person or obtain a copy by mail. If the information supplied is insufficient to locate or identify the record, the requester shall be notified promptly and, if necessary, informed of additional information required. Upon request, OSHRC also shall disclose to the individual an accounting of any disclosures made from the individual's record.

(3) Period for response. Upon receipt of an inquiry the Executive Director shall respond promptly to the request and no later than 10 days from receipt of such inquiry.

(b) Verification of identity. The following standards are applicable to any individual who requests records concerning himself.

(1) An individual seeking access to records about himself in person may establish his identity by the presenta-

tion of a single document bearing a photograph (such as a passport, employee identification card, or valid driver's license) or by the presentation of two items of identification which do not bear a photograph but do bear both a name and address (such as a valid driver's license, or credit card).

(2) An individual seeking access to records about himself by mail shall establish his identity by a signature, address, date of birth, place of birth, employee identification number, if any, and one other identifier such as a photocopy of an identifying document.

(3) An individual seeking access to records about himself by mail or in person who cannot provide the necessary documentation of identification may provide a notarized statement swearing or affirming to his identity and to the fact that he understands the penalties for false statements pursuant to 18 U.S.C. § 1001. Forms for such notarized statements may be obtained on request from the Executive Director.

(c) Verification of guardianship. The parent or guardian of a minor or a person judicially determined to be incompetent and seeking to act on behalf of such minor or incompetent shall, in addition to establishing his own identity, establish the identity of the minor or other person he represents as required in paragraph (b) of this section and establish his own parentage or guardianship of the subject of the record by furnishing either a copy of a birth certificate showing parentage or a court order establishing the guardianship.

(d) Accompanying persons. An individual seeking to review records about himself may be accompanied by another individual of his own choosing. Both the individual seeking access and the individual accompanying him shall be required to sign the required form indicating that OSHRC is authorized to discuss the contents of the subject record in the presence of both individuals.

(e) Special rules for medical records. Medical records shall be disclosed to the requester to whom they pertain unless the Executive Director, in consultation with a medical doctor named by the requesting individual, determines that access to such record could have an adverse effect upon such individual. In such a case, the Executive Director shall transmit such information to the named medical doctor.

(f) When compliance is possible. (1) The Executive Director shall inform the requester of the determination to grant the request and shall make the record available to the individual in the manner requested, that is, either by forwarding a copy of the information to him or by making it available for review, unless:

(i) It is impracticable to provide the requester with a copy of a record, in which case the requester shall be so notified, and, in addition, be informed of the procedures set forth in paragraph (b)(2) of this section, or (ii) the responsible official has reason to believe that the cost of a copy of a record is considerably more expensive than anticipated by the requester, in which case he shall notify the requester of the estimated cost, and ascertain whether the requester still wishes to be provided with a copy of the information.

(2) Where a record is to be reviewed by the requester in person, the disclosure officer shall inform the requester in writing of: (i) The date on which the record shall become available for review, the location at which it may be reviewed, and the hours for inspection; (ii) the type of identification that shall be required in order for him to review the record; (iii) such person's right to have a person of his own choosing accompany him to review the record; and (iv) such person's right to have a person other than himself review the record.

(3) If the requester seeks to inspect the record without receiving a copy, he shall not leave OSHRC premises with the record and shall sign a statement indicating he has reviewed a specific record or category of record.

(g) Response when compliance is not possible. A reply denying a written request to review a record shall be in writing signed by the Executive Director or other appropriate official and shall be made only if such a record does not exist or does not contain personal information relating to the requester, or is exempt. This reply shall include a statement regarding the determining factors of denial, and the right to obtain judicial review in a district court of the United States.

§ 2400.7 Procedures for requesting amendment.

(a) Submission of requests for amendment. Upon review of an individual's personal record, that individual may submit a request to amend such record. This request shall be submitted in writing to the Executive Director and shall include a statement of the amendment requested and the reasons therefor, e.g., relevance, accuracy, timeliness or completeness of the record.

(b) Action to be taken by the Executive Director. Upon receiving an amendment request, he or she shall promptly:

(1) Acknowledge in writing within ten (10) working days the receipt of the request.

(2) Make such inquiry as is necessary to determine whether the amendment is appropriate, and

(3) Correct or eliminate any information that is found to be incomplete, inaccurate, not relevant to a statutory purpose of OSHRC, or not timely and notify the requester when this action is complete, or

(4) Notify the requester of a determination not to amend and of the individual's right to appeal not later than thirty (30) working days after receipt of a request to amend.

(c) Appeal procedure. (1) If a request to inspect, copy or amend a record is denied, in whole or in part, or if no determination is made within the period prescribed by this part, the requester may appeal to the Chairman, OSHRC, 1825 K Street, N.W., Washington, D.C. 20006.

(2) The requester shall submit his appeal in writing within thirty (30) days of the date of denial, or within ninety (90) days of such request if the appeal is from a failure of the Executive Director to make a determination. The letter of appeal should include, as applicable:

(i) Reasonable identification of the record to which access was sought or the amendment of which was requested.

(ii) A statement of the OSHRC action or failure to act being appealed and the relief sought.

(iii) A copy of the request, the notification of denial and of any other related correspondence.

(3) The Chairman shall make his final determination not later than thirty (30) days from the date of the request, unless he extends the time for good cause to be shown by him but not to exceed ninety (90) days from the date of the request. Any record found on appeal to be not complete, accurate, relevant, or timely, shall within thirty (30) working days of the date of such findings be appropriately amended.

(4) The decision of the Chairman constitutes the final decision of OSHRC on the right of the requester to inspect, copy, change or update a record. The decision on the appeal shall be in writing and, in the event of a denial, shall set forth the reasons for such denial and state the individual's right to obtain judicial review in a district court. An indexed file of the agency decisions on appeal shall be maintained by the Executive Director.

(d) Submission of statement of disagreement. If the final decision does not satisfy the requester, any statement of reasonable length, provided by that individual, setting forth a position regarding the disputed information, shall be accepted and included in the relevant personal record.

(e) Availability of assistance in exercising rights. The Executive Director is available to provide an individual

with assistance in exercising rights pursuant this Part.

§ 2400.8 Schedule of fees.

(a) Policy. The purpose of this section is to establish fair and equitable fees to permit reproduction of records for concerned individuals.

(b) Reproduction. (1) For reproducing any paper or micrographic record or publication, the fee is \$.10 per page. No charge shall be made if the total fee authorized by this Part in compliance with a request or series of related requests is less than \$3.00.

(2) OSHRC shall not normally furnish more than one copy of any record.

(c) Limitations. No fee shall be charged to any individual for the process of retrieving, or amending records.

§ 2400.9 Exemptions.

(a) Subsections 552a (j) and (k) of Title 5, United States Code, empower the Chairman to exempt systems of records meeting certain criteria from various other subsections of Section 552a. With respect to systems of records so exempted, nothing in this Part shall require compliance with any provisions hereof implementing any subsections of Section 552a from which those systems may properly be and have been exempted.

(b) [Reserved for specific exemptions.]

Signed this 15th day of January, 1979.

RAY H. DARLING, JR.,
Executive Secretary.

[FR Doc. 79-2071 Filed 1-18-79; 8:45 am]

[7708-01-M]

CHAPTER XXVI—PENSION BENEFIT
GUARANTY CORPORATION

PART 2610—INTERIM REGULATION
ON VALUATION OF PLAN BENEFITS

Amendment Adopting Additional
PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Amendment to the interim regulation.

SUMMARY: This amendment to the interim regulation on Valuation of Plan Benefits prescribes the rates and factors the Pension Benefit Guaranty Corporation (the "PBGC") will use to value benefits provided under terminating pension plans covered by Title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). This valuation is neces-

sary because under section 4041 of ERISA, the PBGC must determine whether a terminating pension plan has sufficient assets to pay all guaranteed benefits provided under the plan. If the assets are insufficient, the PBGC will pay the unfunded guaranteed benefits under the plan termination insurance program established under Title IV.

The interest rates and factors set forth in the regulation must be adjusted periodically to reflect changes in investment markets. This amendment adopts the rates and factors applicable to plans that terminated on or after June 1, 1978, but before September 1, 1978, and will enable the PBGC to value the benefits provided under those plans.

EFFECTIVE DATE: January 19, 1979.

FOR FURTHER INFORMATION
CONTACT:

William E. Seals, Staff Attorney,
Office of the General Counsel, Pension Benefit Guaranty Corporation,
2020 K Street, N.W., Washington,
D.C. 20006, 202-254-4895.

SUPPLEMENTARY INFORMATION: On November 3, 1976, the Pension Benefit Guaranty Corporation (the "PBGC") issued an interim regulation establishing the methods for valuing plan benefits of terminating plans covered under Title IV of the Employee Retirement Income Security Act of 1974 (the "Act") (41 FR 48484 *et seq.*). Specifically, the regulation contains a number of formulae for valuing different types of benefits. In addition, Appendix B of the regulation sets forth the various rates and factors that are to be used in the formulae. Because these rates and factors must be reflective of investment experience, it is necessary to update the rates and factors periodically. When first published, Appendix B contained rates and factors to be used to value benefits in plans that terminated on or after September 2, 1974, but before October 1, 1975. Subsequently, the PBGC adopted additional rates and factors for valuing benefits in plans that terminated on or after October 1, 1975, but before June 1, 1978. (42 FR 2678 *et seq.*, 42 FR 32777 *et seq.*, 42 FR 41858 *et seq.*, 42 FR 59753 *et seq.*, 43 FR 10559 *et seq.*, 43 FR 25337 *et seq.*, 43 FR 55240 *et seq.*)

On October 11, 1978, the PBGC published for comment in the FEDERAL REGISTER rates and factors for valuing benefits in plans that terminated on or after June 1, 1978, but before September 1, 1978 (43 FR 46868 *et seq.*).

No comments were received regarding that proposed amendment to the interim regulation, and accordingly the PBGC hereby adopts the proposed interest rates and factors without change.

The PBGC has determined that this proposed amendment to the Valuation of Benefits regulation is not "significant" under the criteria prescribed by Executive Order 12044, "Improving Government Regulations," 43 FR 12661 (March 24, 1978), and the PBGC's Statement of Policy and Procedures implementing the Order, 43 FR 58237 (December 13, 1978). The reasons for this determination are that this proposal is not likely to engender substantial public interest or controversy, does not affect another Federal agency, and will not have a major economic impact.

Because of the need to provide immediate guidance for the valuation of benefits in plans that terminated on or after June 1, 1978, but before September 1, 1978, and because no adjustment by ongoing plans is required by this amendment, the PBGC finds that good cause exists for making this amendment to the interim regulation effective immediately.

In consideration of the foregoing, Part 2610 of Chapter XXVI, Code of Federal Regulations, is amended by adding a new Table XII to Appendix B to read as follows:

APPENDIX B—INTEREST RATES AND
QUANTITIES USED TO VALUE DEFERRED ANNUITIES

XII. The following interest rates and quantities used to value benefits shall be effective for plans that terminate on or after June 1, 1978, but before September 1, 1978.

I. Interest rate for valuing immediate annuities. An interest rate of 7¼ percent shall be used to value immediate annuities, to compute the quantity "Gy" in § 2610.6 and for valuing both portions of a cash refund annuity.

II. Interest rate for valuing death benefits. An interest rate of 5 percent shall be used to value death benefits other than the decreasing term insurance portion of a cash refund annuity pursuant to § 2610.8.

III. Interest rates and quantities used for valuing deferred annuities. The following factors shall be used to value deferred annuities pursuant to § 2610.6:

- (1) $k_1 = 1.0675$
- (2) $k_2 = 1.0475$
- (3) $k_3 = 1.035$
- (4) $n_1 = 7$
- (5) $n_2 = 10$

(Secs. 4002(b)(3), 4041(b), 4044, 4062(b)(1)(A), Pub. L. 93-406, 88 Stat. 1004, 1020, 1025-27, 1029 (29 U.S.C. 1302(b)(3), 1341(b), 1344, 1362(b)(1)(A)).)

Issued at Washington, D.C., on this 27th day of December 1978.

RAY MARSHALL,
Chairman, Board of Directors,
Pension Benefit Guaranty
Corporation.

Issued on the date set forth above, pursuant to a resolution of the Board of Directors authorizing its chairman to issue same.

HENRY ROSE,
Secretary, Pension Benefit
Guaranty Corporation.

[FR Doc. 79-1891 Filed 1-18-79; 8:45 am]

[3810-70-M]

Title 32—National Defense

CHAPTER I—OFFICE OF THE SECRETARY OF DEFENSE

[DoD Instruction 1336.1]¹

PART 45—CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY (DD FORM 214/5 SERIES)

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule prescribes new procedures for the issuance of DD Form 214, Certificate of Release or Discharge from Active Duty, and DD Form 215, Correction to Certificate of Release or Discharge from Active Duty. The revised forms update the reporting requirements of the military services and other Government agencies. The rule will also provide the separating member with a more suitable document for use as a summary of military service when seeking most types of civilian employment, and will provide the military services with a consolidated report of the significant aspects of the member's service. Moreover, it will provide the Veterans Administration, the Department of Labor, and the State Directors of Veterans Affairs, when requested by the member, with selected information that will be used in adjudicating an individual's claim for various veterans' benefits.

EFFECTIVE DATE: July 1, 1979.

FOR FURTHER INFORMATION
CONTACT:

LTC G. A. Johnson, USAF, Office of the Deputy Assistant Secretary of Defense (MPP), The Pentagon, Room 3C980, Washington, D.C. 20301 (202) 697-9525.

SUPPLEMENTARY INFORMATION:
In FR 78-19707 appearing in the Fed-

ERAL REGISTER on July 18, 1978 (43 FR 30828), the Department of Defense published a notice of proposed rulemaking concerning the reissuance of revised DD Forms 214 and 215. The revision of the DD Form 214 eliminates the need for issuing the certificates entitled "General Discharge" (DD Form 257), or "Discharge Under Other Than Honorable Conditions" (DD Form 794), when an individual is discharged from active duty status. DD Forms 257 or 794, as appropriate, will continue to be issued when a member is discharged from a reserve status until other appropriate instructions are issued. The "Honorable Discharge Certificate" (DD Form 256), will continue to be issued under appropriate circumstances upon completion of a member's reserve obligation. The separating member will receive copy No. 1 of the DD Form 214 containing items 1 through 22. It will be a shortened version of the form, eliminating the Special Additional Information section that may contain potentially adverse information. The member will also have the option of receiving copy No. 4 which will contain the Special Additional Information section. The copies sent to the Veterans Administration, the Department of Labor, and the State Directors of Veterans Affairs, will not contain items 25 through 27, which are intended for internal DoD use only.

The member will also have the option of requesting that a copy of this form be sent to his/her designated State Director of Veterans Affairs. Shading of the form in certain areas, spot carbon, security ink, and improved storage requirements will serve to deter its use from unintended purposes, and to preclude unauthorized alterations. In order to avoid unnecessary duplication of the various pages of the DD Form 214, the sample forms below are limited to an image of copy No. 2 of the eight page carbon set, a DD Form 214 worksheet and a sample DD Form 215.

COMMENTS RECEIVED

In response to the proposed notice of rulemaking, the Department received comments from over 30 organizations and individuals, many of which were from offices of State Directors of Veterans Affairs. Full and careful consideration was given to all written comments received. To accommodate substantive recommendations, the rule and DD Form 214 were modified in some instances. Major changes from the proposed rulemaking are discussed below. In addition, some alterations were made to promote consistency and clarity in grammar, vocabulary and style.

1. Applicability and scope. § 45.2 was extended to include the U.S. Coast Guard.

2. Policy and Procedures. Section 45.3(b) was revised to include a provision whereby the Military Services may also prescribe other circumstances when a DD Form 214 may be issued. It also prescribes the format for continuation sheets, if necessary. Section 45.3(c) has added a provision that limits the issuance of DD Forms 214 to only those other circumstances which may dictate the reissuance of the form for some other reason. Section 45.3(d) provides for the recording of disability pay and non-pay/excess leave days in appropriate cases, as well as annotating actions relating to discharge upgrade. Section 45.3(e) clarifies the issuance of DD Forms 214 issued prior to July 1, 1979.

3. Responsibilities. Section 45.4(a) prescribes surprinting on DD Form 214 and DD Form 215.

One area of comments that reflects some misunderstanding is the use of separation program designator (SPD) codes. These are generally a three to five position code that indicates a specific reason for separation for ease of computer input. They are intended for internal use by the Department of Defense in collecting data to analyze statistical reporting trends that may influence changes in separation policy. Trend analysis studies of cohort year groups require matchup of individuals and SPD's between computer tapes. This analysis would not be possible if the linkage were broken. In addition, the individual identifier-SPD linkage is key to managing the Services' prior service enlistment programs.

If either the individual identifier or SPD were deleted from the data system after a certain period of time, we would be required to establish and maintain two separate data files. One file would contain the SPD and other-than-individual identifier information; the other would contain individual identifiers, other information, but no SPD. Establishment of two files to replace one would unnecessarily increase costs, particularly when multiplied by the number of user files.

Additionally, they may be used to identify individuals separated for a specific reason if some subsequent policy decision may affect them as a group.

Without full knowledge of the circumstances associated with an individual's separation, especially when mitigating factors may be involved, individuals or organizations who attempt to use these codes as a bar to prospective employment commit a disservice to former servicemembers.

The unique requirement associated with military service and a particular individual's inability to cope in such

¹Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120. Attention: Code 301.

an environment are not necessarily indicative of his/her potential within the civilian sector. By not placing these codes on the original copy of the DD Form 214 given to the member, the Department is attempting to preclude their use for unintended purposes. These codes have not been placed on the original copy since 1974; however, a cumbersome administrative procedure has been used to accomplish this while using the 1 November 1972 edition of the form.

Accordingly, 32 CFR Chapter I is amended by adding a new Part 45, reading as follows:

- Sec.
- 45.1 Purpose.
- 45.2 Applicability and scope.
- 45.3 Policy and procedures.
- 45.4 Responsibilities.
- 45.5 State Directors of Veterans Affairs.

AUTHORITY: Title 10, U.S.C. 1168 and 972.

§ 45.1 Purpose.

This Part prescribes procedures concerning the preparation and distribution of revised DD Form 214 to comport with the requirements of 10 U.S.C. 1168, 972, and DoD Directive 1332.14, "Enlisted Administrative Separations," December 29, 1976, and the control and publication of separation program designators (SPDs).

§ 45.2 Applicability and scope.

(a) The provisions of this Part apply to the Office of the Secretary of Defense, the Military Services, the Organization of the Joint Chiefs of Staff, and the Defense Agencies (hereafter referred to as "DoD Components"). The term "Military Services," as used here, refers to the Army, the Navy, the Air Force, the Marine Corps and, by agreement with the Department of Transportation, to the Coast Guard.

(b) Its provisions include procedures on the preparation and distribution of DD Forms 214, 214-ws, and 215 (enclosures 1, 2 and 3) which record and report the transfer of or separation of military personnel from a period of active duty.

NOTE.—Computer generated formats are acceptable substitutes provided Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) approval is obtained.

DD Forms 214 and 215 (or their substitutes) will provide:

(1) *The Military Services* with a source of information relating to military personnel for administrative purposes, and for making determinations of eligibility for enlistment or reenlistment.

(2) *The servicemember* with a brief, clear-cut record of the member's active service with the Armed Forces at the time of transfer, release, or discharge, or when the member changes status or component while on active duty.

(3) *Appropriate governmental agencies* with an authoritative source of information which they require in the administration of Federal and State laws applying to personnel who have been discharged, otherwise released, or transferred to a Reserve component of the Military Services.

(c) Its provisions include procedures on the control and distribution of all lists of SPDs.

§ 45.3 Policy and procedures.

(a) Administrative Issuance or Reissuance of DD Forms 214 and 215.

(1) The DD Form 214 will normally be issued by the command from which the member was separated. In those instances where a DD 214 was not issued, the Services concerned may establish procedures for administrative issuance.

(2) The DD Form 214, once issued, will not be reissued except:

(i) When directed by appropriate appellate authority, Executive Order or by the Secretary concerned.

(ii) When it is determined by the Service concerned that the original DD Form 214 cannot be properly corrected by issuance of a DD Form 215 or if the correction would require issuance of more than two DD Forms 215.

(iii) When two DD Forms 215 have been issued and an additional correction is required.

(3) Whenever a DD Form 214 is administratively issued or reissued, an appropriate entry stating that fact and the date of such action will be made in Block 18, Remarks, of the DD Form 214 unless the appellate authority, Executive Order, or Secretarial directive specifies otherwise.

(b) The Military Services will ensure that every member (except as limited in § 45.3(b)(2), and excluding those listed in § 45.3(c)) being separated from the Military Services is given a completed DD Form 214 describing relevant data regarding the member's service, and the circumstances of termination. DD Form 214 may also be issued under other circumstances prescribed by the Military Service concerned. A continuation sheet, if required, will be bond paper, and will reference: the DD Form 214 being continued, information from blocks 1 through 4; the appropriate block(s) being continued; the member's signature, date; and the authorizing official's signature. DD Forms 214 are not intended to have any legal effect on termination of the member's service.

(1) *Release or Discharge from Active Service.* (i) The original of DD Form 214 showing separation from a period of active service with a Military Service, including release from a status that is legally determined to be void, will be physically delivered to the separatee prior to departure from the sep-

aration activity (a) on the effective date of separation; or (b) on the date authorized travel time commences.

(A) Copy No. 4, containing the statutory or regulatory authority, reenlistment eligibility code, SPD code, and narrative reason for separation also will be physically delivered to the separatee prior to departure, if he/she so requests by initialing Block 30, Member Requests Copy 4.

(B) Remaining copies of DD Form 214 will be distributed on the day following the effective date of separation (see § 45.3(e)).

(ii) When separation is effected under emergency conditions which preclude physical delivery, or when the recipient departs in advance of normal departure time (e.g., on leave in conjunction with retirement; or at home awaiting separation for disability), the original DD Form 214 will be mailed to the recipient on the effective date of separation.

(iii) If the separation activity is unable to complete all items on the DD Form 214, the form will be prepared as completely as possible and delivered to the separatee. The separatee will be advised (a) that a DD Form 215 will be issued by the Military Service concerned when the missing information becomes available; and (b) that it will not be necessary for the separatee to request a DD Form 215 for such information (see § 45.3 (e)(3)).

(iv) If an optical character recognition format is utilized by a Military Service, the first carbon copy of the document will be physically delivered or mailed to the separatee as prescribed in subparagraphs (1) (i), (ii) and (iii) of this paragraph.

(2) *Release from Active Duty for Training or Full Time Training Duty.* Personnel being separated from a period of active duty for training or full-time training duty will be furnished a DD Form 214 only when they have served 90 days or more. However, personnel being separated for physical disability, and those serving under special active duty for training programs of the National Guard or Reserve will be furnished a DD Form 214, regardless of the length of time served on active duty.

(3) *Continuing on Active Duty.* Members who change their status or component as outlined below, while they are serving on active duty will be provided a completed DD Form 214 upon:

(i) Discharge for immediate enlistment or reenlistment (optional—at the discretion of the Military Services). However, Military Services not providing the DD Form 214 will issue instructions requiring those military offices which maintain a member's records to provide necessary Service data to the member for application to

appropriate civilian individuals, groups, and governmental agencies. Such data will include Service component, entry date and grade.

(ii) Termination of enlisted status to accept an appointment to warrant or commissioned officer grade.

(iii) Termination of a temporary appointment to accept a permanent warrant or commission in the Regular or Reserve components of the Armed Forces.

(iv) Termination of an officer appointment in one of the Military Services to accept appointment in another Service.

(c) *DD Form 214 need not be prepared for.* (1) Personnel found disqualified upon reporting for active duty and who do not enter actively upon duties in accordance with orders.

(2) Personnel whose active duty, active duty for training, or full-time training duty is terminated by death.

(3) Personnel being removed from the Temporary Disability Retired List.

(4) Enlisted personnel receiving temporary appointments to warrant or commissioned officer grades.

(5) Personnel whose temporary warrant or commissioned officer status is terminated and who remain on active duty to complete an enlistment.

(6) Personnel who terminate their Reserve component status to integrate into a Regular component.

(7) Personnel separated or discharged who have been furnished a prior edition of this form, unless that form is in need of reissuance for some other reason.

(d) *Preparation.* The Military Departments will issue instructions governing the preparation of DD Form 214, consistent with the following:

(1) DD Form 214 is an important record of service which must be prepared accurately and completely. Any unavoidable corrections and changes made in the unshaded areas of the form during preparation shall be neat, legible and initialed on all copies by the authenticating official. The recipient will be informed that making any unauthorized change or alteration of the form will render it void.

(2) Since DD Form 214 is often used by civilian personnel, abbreviations should be avoided.

(3) Copies of DD Form 214 transmitted to various governmental agencies shall be legible, especially those provided to the Veterans Administration and the Department of Labor.

(4) The authority for a member's transfer or discharge will be cited by reference to the appropriate Military Service regulation, instruction, or manual, followed by the appropriate separation program designator on copies 2, 4, 7 and 8 only. A narrative description to identify the reason for

transfer or separation will not be used on copy 1.

(5) To assist the former service-member in employment placement and job counseling, formal inservice training courses successfully completed during the period covered by the form will be listed in Block 14, Military Education; e.g., medical, dental, electronics, supply, administration, personnel or heavy equipment operations. Training courses for combat skills will not be listed. See 1978 Guide to the Evaluation of Educational Experiences in the Armed Services, published by the American Council on Education, for commonly accepted course titles and abbreviations.

(6) For the purpose of reemployment rights (DoD Directive 1205.12 "Assistance to be Provided members of the Armed Forces in Exercising Reemployment Rights for Obtaining Employment or Training," January 15, 1969), all extensions of service, except those under 10 U.S.C. 972, are considered to be at the request and for the convenience of the Government. In these cases, Block 18 of DD Form 214 will be annotated to indicate "Extension of Service was at the request and for the convenience of the Government."

(7) When one or more of the data items on the DD Form 214 are not available and the document is issued to the separatee, the applicable block(s) will be annotated "See Remarks." In such cases, Block 18 will contain the entry "DD Form 215 will be issued to provide missing information." When appropriate, Block 18 will also reflect the amount of disability pay, and the inclusive dates of any non-pay/excess leave days.

(8) Authorizing official (E-7, GS-7 or above) will sign the original in ink ensuring that the signature is legible on all carbon copies. If not, a second signature may be necessary on a subsequent carbon copy.

(9) The following are the only authorized entries in Block 24, Character of Service, as appropriate: "Honorable, Under Honorable Conditions (General), Under Other Than Honorable Conditions, Bad Conduct, or Dishonorable." When a discharge has been upgraded, the DD Form 214 will be annotated on copies 2 through 8 in Block 18 to indicate the character of service has been upgraded; the date the application for upgrade was made; and the effective date of the corrective action.

(e) *Distribution.* The Military Services will prescribe procedures governing the distribution of copies of the DD Forms 214 and 215, consistent with their internal requirements, and the following:

(1) *DD Form 214—(i) Copy No. 1 (original).* To the member.

(ii) *Copy No. 2.* To be used as the Military Services' record copy.

(iii) *Copy No. 3.* To the Veterans Administration, Data Processing Center (214), 1614 E. Woodward Street, Austin, Texas 78772. A reproduced copy will also be provided to the hospital with the medical records if the individual is transferred to a VA hospital. If the individual completes VA Form 21-526e, "Veterans Application for Compensation or Pension at Separation from Service," include a copy of the DD Form 214 with medical records forwarded to the VA regional office having jurisdiction over the member's permanent address. When an individual is in Service and enlisting or reenlisting in an active duty status or otherwise continuing on active duty in another status, copy No. 3 will not be forwarded to the VA.

(iv) *Copy No. 4.* To the member, if the member so requested by having initialed Block 30. If the member does not request this copy, it may be retained in the master military personnel record, to be available in case the member requests a copy later.

(v) *Copy No. 5.* To the U.S. Department of Labor, Unemployment Insurance Systems Design Center, P.O. Box 44246, Capitol Station, Baton Rouge, Louisiana 70804.

(vi) *Copy No. 6.* To the appropriate State Director of Veterans Affairs (see § 45.5), if the member so requested by having checked "Yes" in Block 20, "Member Requests Copy Be Sent to Director of Veterans Affairs." The member must specify the State. If the member does not request the copy be mailed, it may be utilized as prescribed by the Military Service concerned.

(vii) *Copies No. 7 and 8.* To be distributed in accordance with regulations issued by the Military Service concerned.

(viii) *Additional Copy Requirements.* Discharged Alien Deserters. Provide one reproduced copy of Copy No. 1 to the U.S. Department of State, Visa Office—SCA/VO, State Annex No. 2, Washington, D.C. 20520 to assist the Visa Office in precluding the unwarranted issuance of visas to discharged and alien deserters in accordance with DoD Directive 1325.2, "Desertion and Unauthorized Absenteeism," February 10, 1977. Place of birth will be entered in Block 18.

(2) *DD Form 214-ns.* Utilized to facilitate the preparation of DD Form 214. The document will be used and disposed of in accordance with regulations issued by the Military Service concerned.

(3) *DD Form 215.* Utilized to correct errors in DD Form 214 discovered after the original has been delivered and/or distribution of copies of the form has been made, and to furnish to separatee information not available

when the DD Form 214 was prepared. The distribution of DD Form 215 will be identical to the distribution of DD Form 214.

(4) *Requests for Copies of DD Form 214 Subsequent to Separation.* Agencies maintaining a separate's DD Form 214 will provide a copy only upon written request by the member. Agencies will provide the member with 1 copy with the Special Additional Information section, and 1 copy with that information deleted. In the case of DD Forms 214 issued prior to 1 July 1979, agencies will provide the member with 1 copy containing all items of information completed, and 1 copy with the following items deleted from the form: Specific authority and narrative reason for separation, reenlistment eligibility code, and separation program designator/number.

(i) In those cases where the member has supplied an authorization to provide a copy of the DD Form 214 to another individual or group, the copy furnished will not contain the Special Additional Information section or, in the case of DD Forms issued prior to 1 July 1979, those items listed in d., above.

(ii) A copy will be provided to authorized personnel for official purposes only.

(f) *Procurement.* Arrangements for procurement of DD Forms 214, 214-ws, and 215 will be made by the Military Services.

(g) *Modification of Forms.* The modification of the content of format of DD Forms 214, 214-ws, and 215 may not be accomplished without prior authorization of the Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics) (ASD(MRA&L)). Requests to add or delete information will be coordinated with the other Military Services in writing, prior to submission to the ASD(MRA&L). If a Military Service uses computer capability to generate forms, the items of information may be rearranged.

§ 45.4 Responsibilities.

(a) The DD Forms 214 and 215 are a source of significant and authoritative information used by civilian and governmental agencies to validate veteran eligibility for benefits. As such, they are valuable forms, and therefore, vulnerable for fraudulent use. Since they are sensitive, the forms must be safeguarded at all times. They will be transmitted, stored, and destroyed in a manner which will prevent unauthorized use. The Military Services will issue instructions consistent with the following:

(1) All DD Forms 214 will be surprinted with a reproducible screen tint using appropriate security ink on blocks 1, 3, 4, 12 and 18 through 30. In addition blocks 1, 3, 5 and 7 of the DD

Form 215 will be similarly surprinted to make alterations readily discernible. No corrections will be permitted in the screened areas.

(2) All forms will be secured after duty hours.

(3) All obsolete forms will be destroyed.

(4) All forms to be discarded, including those which are blank or partially completed, and reproduced copies of DD Form 214, will be destroyed. No forms will be discarded intact.

(5) Blank forms given to personnel for educational or instructional purposes, and forms maintained for such use, are to be clearly voided in an unalterable manner.

(6) The commander or commanding officer of each unit or activity authorized to issue DD Form 214 will appoint, in writing, a commissioned officer, warrant officer, enlisted member (grade E-7 or above), or DoD civilian (GS-7 or above) who will requisition, control, and issue blank DD Forms 214 and 215.

(7) The Military services will monitor the use of DD Form 214 and review periodically its issuance to insure compliance with procedures for safeguarding.

(b) The DD Form 214-ws will contain the word "WORKSHEET" on the body of the Form. This DD Form 214-ws will be treated in the same manner as the DD Form 214.

(c) The Military Services will issue appropriate instructions to separation activities stressing the importance of the DD Forms 214 and 215 in obtaining veterans benefits, reemployment rights and unemployment insurance.

(d) Standard separation program designator (SPD) codes for officer and enlisted personnel developed under the provisions of DoD Instruction 5000.12,¹ "Data Elements and Data Codes Standardization Procedures," April 27, 1965 are published in DoD Manual 5000.12-M,² "Manual for Standard Data Elements," March 1, 1970.

(1) Requests to add, change, or delete an SPD code shall be forwarded by the DoD Component concerned with appropriate justification to the Assigned Responsible Agency accountable for evaluating, recommending approval of, and maintaining such codes:

Department of the Navy, Bureau of Naval Personnel, (PERS 3), Washington, D.C. 20370

(2) Requests to add, change, or delete an SPD code will be submitted in accordance with section V., DoD Instruction 5000.12,¹ with prior written approval by the ASD(MRA&L), or his/her designee.

(e) All lists of SPD codes, including supplemental lists, published by the

¹Copies may be obtained, if needed, through normal military publication channels.

DoD Components will be stamped "For Official Use Only" and will not be furnished to any agency or individual outside the Department of Defense.

(1) Appropriate provisions of the Freedom of Information Act, 5 U.S.C. 522, as amended by Pub. L. 93-502 will be used to deny the release of the lists to the public. An individual being separated or discharged is entitled access only to his/her SPD code. It is not intended that these codes stigmatize an individual in any manner. They are intended for internal use by the Department of Defense in collecting data to analyze statistical reporting trends that may, in turn, influence changes in separation policy.

(2) Agencies or individuals who come into the possession of these lists are cautioned on their use because a particular list may be outdated and not reveal correctly the full circumstances relating to an individual's separation or discharge.

§ 45.5 State Directors of Veterans Affairs.

ALABAMA

Director, Department of Veterans Affairs, P.O. Box 1509, Montgomery, AL 36106.

ALASKA

Director, Division of Veterans Affairs, Pouch DA, Juneau, AK 99801.

ARIZONA

Director, Department of Economic Security, P.O. Box 6123, Phoenix, AZ 85005.

ARKANSAS

Director, Veterans Service Office, 1200 West 3rd, Little Rock, AR 72201.

CALIFORNIA

Director, Department of Veterans Affairs, P.O. Box 1559, Sacramento, CA 95807.

COLORADO

Director, Veterans Affairs Section, Department of Social Services, 1575 Sherman Street—Rm 103, Denver, CO 80203.

CONNECTICUT

Commandant, Veterans Home and Hospital, 287 West Street, Rocky Hill, CT 06067.

DELAWARE

Director, Veterans Services Division, Department of Finance, Emily P. Bissell Hospital, 3000 Newport Gap Pike Bldg., Wilmington, DE 19808.

DISTRICT OF COLUMBIA

Chief, Office of Veterans Affairs, 941 N. Capitol St., N.E., Room 1211 F, Washington, D.C. 20421.

FLORIDA

Director, Division of Veterans Affairs, P.O. Box 1437, St. Petersburg, FL 33731.

GEORGIA

Director, Department of Veterans Service, Veterans Bldg., State Capitol, Atlanta, GA 30334.

RULES AND REGULATIONS

HAWAII

Director, Department of Social Services, Veterans Affairs Section, P.O. Box 339, Honolulu, HI 96809.

IDAHO

Director, Division of Veterans Services, P.O. Box 7765, Boise, ID 83707.

ILLINOIS

Director, Department of Veterans Affairs, P.O. Box 5054, 126 W. Jefferson Street, Springfield, IL 62705.

INDIANA

Director, Department of Veterans Affairs, 707 State Office Building, 100 N. Senate Bldg., Indianapolis, IN 46204.

IOWA

Executive Secretary, Bonus Board, State Capitol, Des Moines, IA 50319.

KANSAS

Executive Director, Veterans Commission Division, Department of Human Resources, 701 Jackson Street, Topeka, KS 66603.

KENTUCKY

Manager, Kentucky Center for Veterans Affairs, 600 Federal Place—Rm 136J, Louisville, KY 40202.

LOUISIANA

Director, Department of Veterans Affairs, 4th Floor, Old State Capitol, Baton Rouge, LA 70801.

MAINE

Commissioner, Bureau of Veterans Services, Camp Keys, Augusta, ME 04333.

MARYLAND

Director, Veterans Commission, 113 Federal Bldg.—Rm G-07, 31 Hopkins Plaza, Baltimore, MD 21201.

MASSACHUSETTS

Commissioner of Veterans Services, 100 Cambridge St., Rm 1002, Leverett Saltonstall Bldg., Boston, MA 02202.

MICHIGAN

Executive Secretary, Veterans Trust Fund, 3500 N. Logan St., Rm 379, Lansing, MI 48913.

MINNESOTA

Commissioner, Department of Veterans Affairs, Veterans Service Building, St. Paul, MN 55155.

MISSISSIPPI

Commissioner, Veterans Affairs Commission, 637 North President St., Jackson, MS 39202.

MISSOURI

Director, Division of Veterans Affairs, P.O. Drawer 147, Jefferson City, MO 65101.

MONTANA

Administrator, Veterans Welfare Commission, P.O. Box 1702, Helena, MT 59601.

NEBRASKA

Director, Department of Veterans Affairs, First Floor, State Capitol, Lincoln, NE 68509.

NEVADA

Commissioner, Veterans Affairs, 1201 Terminal Way, Reno, NV 89502.

NEW HAMPSHIRE

Director, State Veterans Council, 100 State House Annex, Concord, NH 03301.

NEW JERSEY

Director, Division of Veterans Programs & Special Services, 143 E. State Street, P.O. Box 1237, Trenton, NJ 08608.

NEW MEXICO

Director, Veterans Service Commission, P.O. Box 2324, Santa Fe, NM 87503.

NEW YORK

Director, Division of Veterans Affairs, 13th Floor, Empire State Plaza, Agency Building, No. 4, Albany, NY 12223.

NORTH CAROLINA

Director, Department of Veterans Affairs, 227 E. Edenton Street, Raleigh, NC 27601.

NORTH DAKOTA

Commissioner, Department of Veterans Affairs, P.O. Box 1287, Fargo, ND 58102.

OHIO

Chief, Division of Soldiers Claims & Veterans Affairs, 11 State House Annex, Columbus, OH 43215.

OKLAHOMA

Director, Department of Veterans Affairs, P.O. Box 53067, Capitol Station, Oklahoma City, OK 73105.

OREGON

Director, Department of Veterans Affairs, 1225 Ferry Street, S.E., Salem, OR 97310.

PENNSYLVANIA

Deputy Adjutant General, of Veterans Affairs & Assistance, Fort Indiantown Gap, Annville, PA 17003.

PUERTO RICO

Director, Veterans Office, 1332 Jesue T. Pinero Avenue, Puerto Nuevo, PR 00921.

RHODE ISLAND

Chief, Soldier's Welfare Services, 46 Aborn Street, Providence, RI 02903.

SOUTH CAROLINA

Director, Department of Veterans Affairs, 227 Brown Building, 1205 Pendleton Street, Columbia, SC 29201.

SOUTH DAKOTA

Director, Division of Veterans Affairs, P.O. Box 298, State Capitol Building, Pierre, SD 57501.

TENNESSEE

Commissioner, Department of Veterans Affairs, 215 8th Avenue, North, Nashville, TN 37203.

TEXAS

Director, Veterans Affairs Commission, Box 12277, Capitol Station, Austin, TX 78711.

UTAH

Director, Department of Social Services, Office of Veterans Affairs, 150 West North Temple, P.O. Box 2500, Salt Lake City, UT 84110.

VERMONT

Director, State Veterans Affairs Section, City Hall, Main Street, Montpelier, VT 05602.

VIRGINIA

Director, Division of War Veteran Claims, 210 Franklin Road, S.W., Roanoke, VA 24011.

VIRGIN ISLANDS

Director, Department of Veterans Affairs, P.O. Box 708, Christiansted, St. Croix, VI 00820.

WASHINGTON

Director, Department of Veterans Affairs, P.O. Box 9778 Olympia, WA 98504.

WEST VIRGINIA

Director, Department of Veterans Affairs, 612 Atlas Building, Charleston, WV 25301.

WISCONSIN

Secretary, Department of Veterans Affairs, 77 North Dickinson Street, Madison, WI 53702.

WYOMING

No DVA.
JANUARY 16, 1979.

MAURICE W. ROCHE,
Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

RULES AND REGULATIONS

3977

[3810-70-C]

Enclosure 1

CAUTION: NOT TO BE USED FOR
IDENTIFICATION PURPOSES

THIS IS AN IMPORTANT RECORD
SAFEGUARD IT

ANY ALTERATIONS IN SHADED
AREAS RENDER FORM VOID

DD FORM 214		PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE		CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY				
1. NAME (Last, first, middle)			2. DEPARTMENT, COMPONENT AND BRANCH		3. SOCIAL SECURITY NO.			
4a. GRADE, RATE OR RANK	4b. PAY GRADE	5. DATE OF BIRTH	6. PLACE OF ENTRY INTO ACTIVE DUTY					
7. LAST DUTY ASSIGNMENT AND MAJOR COMMAND			8. STATION WHERE SEPARATED					
9. COMMAND TO WHICH TRANSFERRED				10. SGLI COVERAGE AMOUNT \$ 000 ☐ NONE				
11. PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY (Additional specialty numbers and titles involving periods of one or more years)			12. RECORD OF SERVICE					
			a. Date Entered AD This Period			YEAR(s)	MON(s)	DAY(s)
			b. Separation Date This Period					
			c. Net Active Service This Period					
			d. Total Prior Active Service					
			e. Total Prior Inactive Service					
			f. Foreign Service					
			g. Sea Service					
			h. Effective Date of Pay Grade					
i. Reserve Oblig. Term. Date								
13. DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)								
14. MILITARY EDUCATION (Course Title, number weeks, and month and year completed)								
15. MEMBER CONTRIBUTED TO POST-VIETNAM ERA VEAP ☐ YES ☐ NO			16. HIGH SCHOOL GRADUATE OR EQUIVALENT ☐ YES ☐ NO		17. DAYS ACCRUED LEAVE PAID			
18. REMARKS								
19. MAILING ADDRESS AFTER SEPARATION				20. MEMBER REQUESTS COPY 6 BE SENT TO _____ DIR OF VET AFFAIRS ☐ YES ☐ NO				
21. SIGNATURE OF MEMBER BEING SEPARATED			22. TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICIAL AUTHORIZED TO SIGN					

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23. TYPE OF SEPARATION		24. CHARACTER OF SERVICE (Includes upgrades)	
25. SEPARATION AUTHORITY	26. SEPARATION CODE	27. REENLISTMENT CODE	
28. NARRATIVE REASON FOR SEPARATION			
29. DATES OF TIME LOST DURING THIS PERIOD		30. MEMBER REQUESTS COPY 4 INITIALS _____	

RULES AND REGULATIONS

Enclosure 2

DATA REQUIRED BY THE PRIVACY ACT: Authority: 10 U.S.C. 1168. Principal Purpose: Record and report the release or discharge of military personnel from active duty and to facilitate verification of eligibility for veterans benefits. Routine Uses: To provide authorized government agencies data required in performing functions required by law. Disclosure: Voluntary. Failure to disclose data could delay receipt of benefits.

DD FORM 214ws		PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE		CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY	
1 NAME (Last, first, middle)		2 DEPARTMENT COMPONENT AND BRANCH		3 SOCIAL SECURITY NO	
4a. GRADE RATE OR RANK	4b. PAY GRADE	5 DATE OF BIRTH	6 PLACE OF ENTRY INTO ACTIVE DUTY		
7 LAST DUTY ASSIGNMENT AND MAJOR COMMAND			8 STATION WHERE SEPARATED		
9 COMMAND TO WHICH TRANSFERRED				10 SGLI COVERAGE AMOUNT \$ 000 ☐ NONE	
11 PRIMARY SPECIALTY NUMBER, TITLE AND YEARS AND MONTHS IN SPECIALTY (Additional specialty numbers and titles involving periods of one or more years)		12 RECORD OF SERVICE			
		a. Date Entered AD This Period			
		b. Separation Date This Period			
		c. Net Active Service This Period			
		d. Total Prior Active Service			
		e. Total Prior Inactive Service			
		f. Foreign Service			
		g. Sea Service			
		h. Effective Date of Pay Grade			
13 DECORATIONS, MEDALS, BADGES, CITATIONS AND CAMPAIGN RIBBONS AWARDED OR AUTHORIZED (All periods of service)		i. Reserve Oblig. Term Date			
14 MILITARY EDUCATION (Course, title, number, level, and month and year completed)					
15 MEMBER CONTRIBUTED TO POST VIETNAM ERA VEA ☐ YES ☐ NO		16 HIGH SCHOOL GRADUATE OR EQUIVALENT ☐ YES ☐ NO		17 DAYS ACCRUED LEAVE PAID	
18 REMARKS					
19 MAILING ADDRESS AFTER SEPARATION				20 MEMBER REQUESTS COPY 6 BE SENT TO AFFAIRS ☐ YES ☐ NO	
21 SIGNATURE OF MEMBER BEING SEPARATED		22 TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICIAL AUTHORIZED TO SIGN			

SPECIAL ADDITIONAL INFORMATION (For use by authorized agencies only)

23 TYPE OF SEPARATION		24 CHARACTER OF SERVICE (Includes upgrades)	
25 SEPARATION AUTHORITY		26 SEPARATION CODE	27 REENLISTMENT CODE
28 NARRATIVE REASON FOR SEPARATION			
29 DATES OF TIME LOST DURING THIS PERIOD			30 MEMBER REQUESTS COPY 4 INITIALS

Enclosure 3

CAUTION: NOT TO BE USED FOR IDENTIFICATION PURPOSES		ANY ALTERATIONS IN SHADED AREAS RENDER FORM VOID	
1. NAME (Last, first, middle)		2. DEPARTMENT, COMPONENT AND BRANCH	
4. MAILING ADDRESS (Include ZIP Code)		3. SOCIAL SECURITY NO. (Also, Service Number if applicable)	
5. ORIGINAL DD FORM 214 IS CORRECTED AS INDICATED BELOW			
ITEM NO.	CORRECTED TO READ		
SEPARATION DATE ON DD FORM 214 BEING CORRECTED _____			
6. DATE		7. TYPED NAME, GRADE, TITLE AND SIGNATURE OF OFFICIAL AUTHORIZED TO SIGN	
DD FORM 215		PREVIOUS EDITIONS OF THIS FORM ARE OBSOLETE.	
		CORRECTION TO DD FORM 214, CERTIFICATE OF RELEASE OR DISCHARGE FROM ACTIVE DUTY	

MEMBER . 1
SERVICE . 2
VETERANS ADMINISTRATION . 3
MEMBER . 4

DEPARTMENT OF LABOR . 5
STATE DIRECTOR OF VETERANS AFFAIRS . 6
SERVICE . 7 AND 8

[FR Doc. 79-1999 Filed 1-18-79; 8:45 am]

[4110-08-M]

Title 42—Public Health

CHAPTER I—PUBLIC HEALTH SERVICE, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

PART 52h—SCIENTIFIC PEER REVIEW OF RESEARCH GRANT APPLICATIONS AND RESEARCH AND DEVELOPMENT CONTRACT PROJECTS

Correction

AGENCY: Public Health Service, HEW.

ACTION: Correction of Rules and Regulations.

SUMMARY: HEW corrects the Regulation published in the FEDERAL REGISTER February 24, 1978 (43 FR 7861, FR Doc. 78-4441). In that publication, the effective date was erroneously listed as October 1, 1977. The effective date should have read February 24, 1978, the date of publication in the FEDERAL REGISTER.

EFFECTIVE DATE: This correction is effective January 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Dr. William H. Goldwater, Collaborative Programs Policy Officer, National Institutes of Health, OCR, Building 1, Room 113, 9000 Rockville Pike, Bethesda, Md. 20014, (301) 496-2241.

Dated: January 12, 1979.

L. DAVID TAYLOR,
Deputy Assistant Secretary for
Management Analysis and Systems.
(FR Doc. 79-2070 filed 1-18-79; 8:45 am)

[4110-35-M]

CHAPTER IV—HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER B—MEDICARE PROGRAM

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Provider Costs and for Services by Hospital-based Physicians

DEPRECIATION: ALLOWANCE FOR DEPRECIATION BASED ON ASSET COSTS

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final rule.

SUMMARY: Current regulations dealing with the computation of gains and losses on disposal of depreciable assets are being amended. These amendments specify the Medicare cost accounting treatment of gains and losses arising from both voluntary and involuntary disposal of assets. The amendments preclude immediate reimbursement for substantial losses resulting from the premature and voluntary demolition or abandonment of depreciable assets. These amendments also include rules for determining the useful lives of depreciable assets and provide that estimated useful lives may not be shortened for such reasons as anticipated early disposal of assets or termination from the Medicare program. The new provisions are intended to assure that depreciation allowed under Medicare accurately reflects providers' costs of using assets for patient care.

EFFECTIVE DATE: These amendments become effective March 20, 1979 in order to allow providers and intermediaries sufficient time to make any necessary changes in recordkeeping or procedures.

FOR FURTHER INFORMATION CONTACT:

Mr. Hugh McConville, Medicare Bureau, Health Care Financing Administration, 412 East Building, 6401 Security Boulevard, Baltimore, Maryland 21235, 301-594-9430.

SUPPLEMENTARY INFORMATION:

SUMMARY OF AMENDMENTS

Medicare reimburses providers for the direct and indirect costs necessary to the provision of patient care, including the cost of using assets in patient care. Thus, depreciation of these assets has always been an allowable cost under Medicare. The allowance is computed on the depreciable basis and estimated useful life of the assets. When an asset is disposed of, no further depreciation may be taken on it. However, if a gain or loss is realized from the disposition, reimbursement for depreciation must be adjusted so that Medicare pays the actual cost the provider incurred in using the asset for patient care.

Existing regulations contain a requirement that any gain or loss realized on the disposal of a depreciable asset must be included in Medicare allowable cost computation. (See 42

CFR 405.415(f).) The regulations, however, specify neither the procedures for computations of the gain or loss nor the methods for making adjustments to depreciation. These amendments provide rules for the treatment of gain or loss depending on the manner of disposition of the asset.

Depreciable assets may be disposed of in various ways: voluntarily through sale, scrapping, trade-in, exchange, demolition and abandonment, or involuntarily through casualty. These amendments provide that, if a provider sells or scraps depreciable assets, a gain or loss will be included as an adjustment to depreciation allowed in the year of disposal. (§ 405.415(f)(2).) The amendments retain the present requirement that gain or loss on a sale of assets within one year after a provider terminates Medicare participation is included in computing allowable cost. (§ 405.415(f)(3).) If several assets are sold for a lump sum, the amendments provide that the sales price will be allocated to each asset according to its fair market value for purposes of computing gain or loss. The regulation encourages the buyer and seller to agree on an allocation of the sales price, but if the parties fail to agree, or if they do agree but there is not sufficient documentation of current fair market value of each asset, the intermediary of the selling provider will determine the fair market value of each asset by an independent appraisal.

If a provider trades in or exchanges an asset, no gain or loss is included in computation of allowable cost. Instead, consistent with principles of the Internal Revenue Service (IRS), the undepreciated value of the traded asset, plus any additional assets transferred to acquire the new asset, are used as the basis for depreciation of the new asset under Medicare. Any gain or loss upon disposition of the new asset will be computed in accordance with the applicable provisions of this section.

These amendments preclude immediate reimbursement of a loss resulting from a voluntary and premature demolition or abandonment of assets, since the loss is not related to patient care furnished in the year of disposal. In order to obtain reimbursement, a provider must ordinarily replace the asset and capitalize the loss as a deferred charge, to be amortized over the useful life of the replacement asset. (§ 405.415(f)(5)(iv).) There are several exceptions to this general principle. If the loss is less than \$5,000 or the asset disposed of is virtually exhausted, a depreciation adjustment will be allowed in the year of disposi-

tion. (§ 405.415(f)(5)(ii).) We have decided that the recordkeeping costs that would result from requiring deferral and amortization of these losses are not warranted by the amounts involved.

Moreover, if demolition or abandonment of patient care assets is approved by the State Health Planning and Development Agency (SHPDA) responsible under P.L. 93-641 for developing standards, criteria, and plans to meet the health care needs in the area, the regulation allows a loss to be recovered over the remaining life of the demolished asset. (§ 405.415(f)(5)(iv).)

We have added a similar provision modifying section 405.415(f)(6) of the proposed regulation. The change liberalizes the proposed regulation which required that a provider replace involuntarily-converted assets in order to include involuntary losses in costs reimbursed under Medicare. The final regulation provides that if a provider intends to replace the assets, but a State Health Planning and Development Agency finds that replacement is inconsistent with the health systems plan of the health service area, the loss will be included in computing allowable cost. This provision and section 405.415(f)(5)(iv) are consistent with our commitment to effective health planning and development and to cost containment; their purpose is to encourage voluntary compliance with SHPDA recommendations and to eliminate Medicare costs that would be associated with unnecessary replacement of assets.

These amendments also expand current provisions with respect to estimating useful lives of assets. They specify the factors to be used in determining useful lives. They also require that in computing depreciation providers use useful life guidelines published by the Secretary, or, if none exist, the guidelines published by IRS or the American Hospital Association. Any changes in estimated useful lives must be properly documented by the provider and approved by the intermediary. This procedure is intended to assure that providers do not inappropriately shorten the estimated useful lives of assets to increase Medicare reimbursement.

The proposed regulation did not specify how costs should be assigned between depreciable and nondepreciable assets disposed of through demolition. To rectify this omission, we have added § 405.415(f)(5)(vi) and (vii), describing the items of cost to be included in the computation of a loss arising from a demolition or abandonment and those items that are treated under generally accepted accounting principles as adjustments to the basis of the assets. Similarly, § 405.415(f)(6)(ii) was added to define the net loss allowable

with respect to involuntary conversion of assets; this term was not defined in the NPRM.

We have made a number of editorial changes for clarity, including amending paragraph (a) of § 405.415 by adding the phrase "used in the provision of patient care" after the words "buildings and equipment." This phrase previously appeared in paragraph (f)(2), but it more properly belongs in paragraph (a) as a general principle.

DISCUSSION OF MAJOR COMMENTS

A notice of proposed rulemaking for these regulations was published on August 20, 1976 in the *FEDERAL REGISTER* (41 FR 35197). Comments and suggestions were received from a number of organizations, hospitals, and individuals. Responses to the most significant ones and changes in the proposed regulations are described below.

1. DEFERRAL OF LOSSES WHERE ASSETS ARE DISPOSED OF THROUGH ABANDONMENT OR DEMOLITION

Several comments received regarding § 405.415(f) concerned the deferral of losses where assets are disposed of through abandonment or demolition. Commenters criticized the procedure, stating that it is not consistent with generally accepted accounting principles, is arbitrary and capricious, and is contrary to the law because it would result in costs associated with Medicare patients being borne by non-Medicare patients. Further, comments contended that deferral of such losses is not justified because there is no future economic value to the demolished or abandoned asset and that such treatment adversely affects the provider's cash flow. We think it would be inconsistent with the reimbursement of reasonable cost to include the entire loss in the year of disposal, since the loss is not related to the cost of services rendered in that year. Also, full recognition of such losses in the year of disposal tends to encourage the demolition or abandonment of patient care assets at the expense of the Medicare program. We have, however, modified the proposed regulation to allow reimbursement in the year of disposal for demolition or abandonment losses incurred on assets which are at least 80 percent depreciated (as computed under the straight-line method) at the time of demolition or abandonment. Since assets held for 80 percent of their estimated useful life are substantially exhausted, we have decided not to treat their disposal as a premature disposition. If an asset is not 80 percent depreciated under the straight-line method, the loss, if in excess of \$5,000, must still be capitalized and amortized, but the amount to be amortized each year will

be the greater of the annual amortized amount or \$5,000. This will insure the rapid amortization of small losses.

2. USE OF STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES

The second major objection concerned the requirement that providers secure State Health Planning and Development Agencies' approval of demolitions or abandonments. Such agencies do not exist in all States and some agencies are not authorized to approve proposed demolitions or abandonments. The proposed regulation has, therefore, been changed to provide that where such agencies cannot perform this function, a provider must seek approval from the Medicare Bureau Regional Office.

3. GAINS OR LOSSES ON EXCHANGE OR TRADE-IN NOT INCLUDED IN ALLOWABLE COST

Some commenters objected that the regulation does not permit inclusion of gains or losses on exchange or trade-in in determining allowable cost. Although gains or losses are not immediately allowable, the historical cost of the new asset is based upon the book value of the traded asset plus other assets included in the exchange. Thus, gain or loss on the exchange or trade-in would be indirectly reflected in any gain or loss realized when the new asset is disposed of. This policy is consistent with IRS treatment of these gains and losses and is currently widely employed in accounting for exchange or trade-in of assets by all industries in order to comply with IRS requirements. Therefore, we have retained this provision as published in the NPRM, with a minor addition: the regulation now provides that historical cost of the new asset is limited to the lower of its list price or fair market value. The addition of the phrase "fair market value" is intended to clarify how the provision will be applied to assets that have no list price or both list price and fair market value.

4. USE OF APPRAISALS TO ALLOCATE A LUMP SUM SALES PRICE

The proposed regulation required that allocation of a lump sum sales price among the assets sold be based on an independent appraisal. Some commenters objected that this requirement would unnecessarily increase costs. We have amended the provision to allow the seller and buyer to agree upon an allocation of a lump sum sales price, and we encourage them to do so. If the parties do not agree on an allocation, or if they do agree but there is insufficient documentation of the current fair market value of each asset, the regulation provides that the intermediary of the selling provider will require an independ-

ent appraisal to establish the fair market value of each asset. We believe that these changes in the regulation will avoid unnecessary costs, while assuring accurate allocations of lump sum sales prices.

5. EXCLUSION OF DEFERRED CHARGES FROM EQUITY CAPITAL COMPUTATION

Other commenters disagreed with our excluding from equity capital computation the deferred charges arising from demolition or abandonment losses. (See discussion in Paragraph 1 above.) Pursuant to § 405.429, proprietary providers may include as an allowable cost a return on equity capital invested and used in the provision of patient care. In our view, however, since assets demolished or abandoned are no longer used in the provision of patient care as required by § 405.429, the deferred unrecovered cost should be excluded from the equity capital computation.

6. \$5,000 LIMITATION

Numerous requests were received to increase the limit of \$5,000 for current allowance of losses from demolition or abandonment of depreciable assets. Rather than raising the \$5,000 limit, we have liberalized the proposed regulation by allowing inclusion of losses in the year of disposal if the asset disposed of is at least 80 percent depreciated. As amended, the provision will limit deferral of losses to extraordinary disposals.

7. DETERMINING AND CHANGING USEFUL LIVES OF ASSETS

A few comments received opposed the use of useful life guidelines set by the American Hospital Association or the Internal Revenue Service. These guidelines have been used since the inception of the program and have proved to be equitable to the providers and the program. Therefore, we have decided to require their use where the Secretary does not publish applicable useful life guidelines. The regulation, however, does allow providers to establish estimated useful lives different from the guidelines under specified conditions.

Other commenters objected to the requirement for advance approval of changes in useful life, arguing that this new procedure is impractical, will increase administrative cost, and will cause undue hardship to providers. However, since this policy allows changes in useful life where justified by supportable documentation and merely assures proper review of such modifications, we have retained the requirement for advanced written approval.

Many comments expressed concern about the requirement that any change in useful life would be effective

in the reporting period following the period the request is approved. Some stated that this provision could delay by an additional year the proper recording of depreciation. Accordingly, we have made such changes in useful life effective in the reporting year immediately following the year in which the provider's request is submitted for approval provided that the request to change is approved.

EFFECTIVE DATE

Some of these amendments may require providers and intermediaries to revise their recordkeeping and review procedures in order to assure proper implementation. These include § 405.415 (b)(7)(ii), (f)(2)(iv), (f)(5), and (f)(8). For this reason, we have deferred the effective date of these amendments for 60 days.

However, some of these amendments are merely a clarification or codification of existing Medicare policies. This is true for paragraphs (a), (b)(7)(i), (c), (f)(1), (f)(2) (i) through (iii), (f)(3), (f)(4), and (f)(7). (See § 405.415 (a), (c), and (f) and § 405.429 of the current regulations and Chapter I of the Medicare Provider Reimbursement Manual (HIM-15-1).) With respect to these provisions, we will continue to implement the current policies, in the manner specified in these amendments.

42 CFR Part 405 is amended as follows:

1. Section 405.415 is amended by revising paragraphs (a), (c), and (f), and adding a new paragraph (b)(7) to read as follows:

§ 405.415 Depreciation: Allowance for depreciation based on asset costs.

(a) *Principle.* An appropriate allowance for depreciation on buildings and equipment used in the provision of patient care is an allowable cost. The depreciation must be:

(b) *Definitions.*

(7) *Useful life.* The estimated useful life of a depreciable asset is its normal operating or service life to the provider, subject to the provisions in paragraph (b)(7)(i) of this section. Factors to be considered in determining useful life include normal wear and tear; obsolescence due to normal economic and technological changes; climatic and other local conditions; and the provider's policy for repairs and replacement.

(i) *Initial selection of useful life.* In selecting a proper useful life for computing depreciation under the Medicare program, providers must use the useful life guidelines published by the

Secretary. If the Secretary has not published applicable useful life guidelines, the useful life guidelines published by the American Hospital Association in its 1973 edition of *Chart of Accounts for Hospitals* or by the Internal Revenue Service shall be used. A different useful life may be approved by the intermediary if the provider's request is properly supported by acceptable factors which affect the determination of useful life. However, such factors as an expected early sale, retirement, demolition or abandonment of an asset, or termination from the Medicare program may not enter into a determination of the expected useful life of an asset.

(ii) *Changing useful life.* A change in the estimated useful life may be made when clear and convincing evidence justifies a redetermination of the useful life used by the provider. Such a change must be approved by the intermediary in writing, and the factors cited in paragraphs (b)(7) and (b)(7)(i) of this section are applicable in making such redeterminations of useful life. If the request is approved, the change is effective with the reporting period immediately following the period in which the provider's request is submitted for approval.

(c) *Recording of depreciation.* Appropriate recording of depreciation includes the identification of the depreciable assets in use, the assets' historical costs, the assets' dates of acquisition, the method of depreciation, estimated useful lives, and the assets' accumulated depreciation.

(f) *Gains and losses on disposal of assets.*

(1) *General.* Depreciable assets may be disposed of through sale, scrapping, trade-in, exchange, demolition, abandonment, condemnation, fire, theft, or other casualty. If disposal of a depreciable asset results in a gain or loss, an adjustment is necessary in the provider's allowable cost. The amount of a gain included in the determination of allowable cost shall be limited to the amount of depreciation previously included in Medicare allowable costs. The amount of a loss to be included shall be limited to the undepreciated basis of the asset permitted under the program. The treatment of the gain or loss depends upon the manner of disposition of the asset, as specified in paragraphs (f)(2) through (f)(6) of this section.

(2) *Bona fide sale or scrapping.* (i) Except as specified in paragraph (f)(3) of this section, gains and losses realized from the bona fide sale or scrapping of depreciable assets are included in the determination of allowable cost only if the sale or scrapping occurs while the provider is participating in

Medicare. The extent to which such gains and losses are included is calculated by prorating the basis for depreciation of the asset in accordance with the proportion of the assets' useful life for which the provider participated in Medicare. For purposes of this paragraph (f)(2)(i), scrapping refers to the physical removal from the provider's premises of tangible personal properties which are no longer useful for their intended purpose and are only salable for their scrap or junk value.

(ii) If the total amount of gains or losses realized from bona fide sales or scrapping does not exceed \$5,000 within the cost reporting period or if the provider's cumulative utilization under the Medicare program is less than 5 percent, the net amount of gains or losses realized from sale or scrapping shall be allowed as a depreciation adjustment in the period of disposal. For purposes of this paragraph (f)(2)(ii), the provider's cumulative Medicare utilization percentage is determined by comparing the cumulative total of the Medicare inpatient days for all reporting periods in which depreciation on the asset disposed of was claimed under the Medicare program to the cumulative total of inpatient days of the participating provider for the same reporting periods.

(iii) If the conditions specified in paragraph (f)(2)(ii) of this section are not met, the adjustment to reimbursable cost in the reporting period of asset disposition shall be calculated as follows:

The total amount of gains or losses shall be allocated to all reporting periods under the Medicare program, based on the ratio of the depreciation allowed on the assets in each reporting period to the total depreciation allowed under the Medicare program. The results of this allocation are multiplied by the ratio of Medicare reimbursable cost to total allowable cost for each reporting period. The results of this multiplication are then added.

(iv) If a provider sells more than one asset for a lump sum sales price, the gain or loss on the sale of each depreciable asset must be determined by allocating the lump sum sales price among all the assets sold, in accordance with the fair market value of each asset as it was used by the provider at the time of sale. If the buyer and seller cannot agree on an allocation of the sales price, or if they do agree but there is insufficient documentation of the current fair market value of each asset, the intermediary for the selling provider shall require an appraisal by an independent appraisal expert to establish the fair market value of each asset and shall make an allocation of the sales price in accordance with the appraisal.

(3) *Sale within 1 year after termination.* Gains and losses realized from a bona fide sale of depreciable assets within 1 year immediately following the date on which the provider terminates participation in the Medicare program are also included in the determination of allowable cost, in accordance with the procedure specified in paragraph (f)(2) of this section. However, if several assets are sold for a lump sum sales price, the determination of fair market value must be based on the appraised value of the assets as they were last used by the provider while participating in the Medicare program.

(4) *Exchange or trade-in.* Gains or losses realized from the exchange or trade-in of depreciable assets are not included in the determination of allowable cost. When the disposition of an asset is by means of exchange or trade-in, the historical cost of the new asset is the sum of the undepreciated cost of the asset disposed of and the additional cash or other assets transferred or to be transferred to acquire the new asset. However, if the asset disposed of was acquired by the provider before its participation in the Medicare program and the sum of the undepreciated cost and the cash or other assets transferred or to be transferred exceed the list price or fair market value of the new asset, the historical cost of the new asset is limited to the lower of its list price or fair market value.

(5) *Demolition or abandonment.* (i) For purposes of this section, the term "abandonment" means the permanent retirement of an asset for any future purpose, not merely the provider's ceasing to use the asset for patient care purposes. To claim an abandonment under the Medicare program, the provider must have relinquished all rights, title, claim, and possession of the asset with the intention of never reclaiming it or resuming its ownership, possession, or enjoyment.

(ii) If losses resulting from the demolition or abandonment of depreciable assets do not exceed \$5,000 within the cost-reporting period, the losses shall be allowed in the period of disposal.

(iii) If losses exceed \$5,000 and, at the date of disposition, the demolished or abandoned assets are at least 80 percent depreciated as computed under the straight-line method, such losses are includible in the determination of allowable cost under the Medicare program in the period of disposal and the procedure provided in paragraph (f)(2)(iii) of this section shall be used in determining the adjustment to reimbursable cost.

(iv) Losses in excess of \$5,000 resulting from the demolition or abandonment of assets, which at the date of disposition are not 80 percent depreci-

ated as computed under the straight-line method, must be capitalized as a deferred charge and amortized as follows:

(A) If the State Health Planning and Development Agency (SHPDA) designated under Section 1521 of the Public Health Service Act approves the demolition or abandonment of a depreciable asset as being consistent with the health systems plan of the health service area in which the provider is located, the net loss realized shall be capitalized as a deferred charge and amortized over the remaining life of the demolished or abandoned asset, or at the rate of \$5,000 per year, whichever is greater. If no State Health Planning and Development Agency exists or if such agency is unable or unwilling to perform this function, the provider shall submit a request for approval to the intermediary. The intermediary, after reviewing this request and before issuing the approval, shall submit the request along with its recommendation to the appropriate Medicare Bureau Regional Office for its approval.

(B) If a provider fails to obtain approval as specified in paragraph (f)(5)(iv)(A) of this section, a loss is not allowable unless the demolished or abandoned asset is replaced. If the asset is replaced, the loss resulting from the unapproved demolition or abandonment must be capitalized as a deferred charge and amortized over the estimated useful life of the replacement asset or at the rate of \$5,000 per year, whichever is greater.

(v) If a loss resulting from the demolition or abandonment is deferred and amortized and the provider terminates its participation in the Medicare program or ceases to use a replacement asset in the provision of patient care services, the unamortized deferred charge remaining at that time shall not be included in determining allowable cost under the Medicare program.

(vi) Losses on demolition shall include the demolition cost incurred by the provider for razing and removal of the asset, less any salvage value recovered by the provider. However, where a provider demolishes a depreciable asset for the purpose of preparing land for future sale, the net demolition cost incurred by the provider (razing and removal costs less salvage recovered) shall be considered a capital expenditure and added to the historical basis of the land.

(vii) If a provider purchases land on which there is a building, no depreciation shall be allowed under the Medicare program unless the building is used in providing patient care. If the building is demolished, the entire purchase price and demolition cost shall be considered the historical cost of the land. If the building is used for patient

care, but demolished within 5 years of purchase, the entire purchase price, less allowed depreciation, plus demolition cost shall be considered the historical cost of the land.

(6) *Involuntary conversion.* (i) Losses resulting from the involuntary conversion of depreciable assets, such as condemnation, fire, theft, or other casualty, are generally included in the determination of allowable cost on a deferred basis if the asset is restored or replaced. However, losses resulting from a provider's imprudent management of its depreciable assets, such as the failure to obtain proper insurance coverage, are not included in the determination of allowable cost.

(ii) The net allowable loss from involuntary conversion shall consist of the undepreciated cost or unrecovered book value of the asset, less amounts received from insurance proceeds, gifts and grants received from local, State, or Federal government, or any other source as a result of the involuntary conversion.

(iii) If the asset is replaced and the net allowable loss in any cost-reporting period does not exceed \$5,000, the entire amount shall be included in allowable cost in the period in which the loss is incurred. If the asset is replaced and the net allowable loss in any cost-reporting period exceeds \$5,000, the loss must be capitalized as a deferred charge and amortized over the useful life of the replacement or restored asset. If a replaced or restored asset ceases to be used in the provision of patient care services or the provider terminates its participation in the Medicare program, the unamortized deferred charge remaining at that time shall not be included in determining allowable cost under the Medicare program.

(iv) If the provider fails to replace or restore an involuntarily-converted asset, the loss is not included in determining allowable cost. However, if the provider intends to replace or restore the asset but is unable to do so because the designated State Health Planning and Development Agency finds such replacement or restoration to be inconsistent with the health systems plan of the provider's health service area, the loss is allowable so long as the provider continues to participate in Medicare. In this case, the loss shall be capitalized as a deferred charge and amortized over the remaining life of the involuntarily converted asset, or at the rate of \$5,000 per year, whichever is greater.

(v) If a gain is realized from an involuntary conversion of depreciable assets, the net amount realized shall reduce the basis of the restored or replacement asset. If the asset is not restored or replaced, the gain shall be

treated in accordance with paragraph (f)(2) of this section.

(7) *Effect on equity capital.* The unrecovered loss entered on the books of the provider as a deferred charge, in accordance with paragraphs (f)(5) and (f)(6) of this section, is not includable in the computation of equity capital under § 405.429.

(8) *Sale of replacement or restored assets.* If a provider sells a replacement or restored asset while participating in the Medicare program or within 1 year immediately following the date on which it terminates its participation in the Medicare program, the unrecovered loss entered on the books of the provider as a deferred charge in accordance with paragraphs (f)(5) and (6) of this section will not be included in determining the gain or loss realized from the sale of the replacement or restored asset. However, if the sale of such asset is made to a related organization, as defined in § 405.427, and the purchasing organization continues as a provider in the Medicare program, the remaining deferred charge representing the unrecovered depreciable basis of the demolished, abandoned or destroyed asset shall continue to be amortized over the remaining expected useful life of the replacement or restored asset. If the sale is made to an unrelated organization, further amortization of the deferred charge is not allowed.

(Sections 1102, 1814(b), 1815, 1861(v)(1), and 1871 of the Social Security Act, 42 U.S.C. 1302, 1395f(b), 1395g, 1395x(v)(1) and 1395hh.)

(Catalog of Federal Domestic Assistance Program No. 13.773, Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: December 1, 1978.

LEONARD D. SCHAEFFER,
Administrator, Health Care
Financing Administration.

Approved: January 10, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-2038 Filed 1-18-79; 8:45 am]

[4110-35-M]

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart D—Principles of Reimbursement for Provider Costs and for Services by Hospital-Based Physicians

ELIMINATION OF THE COMBINATION METHOD OF APPORTIONMENT AND MODIFIED COST FINDING FOR PROVIDERS

AGENCY: Health Care Financing Administration (HCFA), HEW.

ACTION: Final rule.

SUMMARY: The amendments eliminate the Combination Method of apportionment and modified cost finding used to determine a provider's allowable costs for health care services provided to Medicare beneficiaries. The elimination of the Combination Method is effective for cost reporting periods starting on or after July 1, 1979. The amendments also allow providers presently required to use the Combination Method to switch to the Departmental Method of apportionment for current cost reporting periods beginning on or after January 1, 1978, but before July 1, 1979. The purpose is to achieve greater uniformity with respect to cost reporting, cost finding, and apportionment methodology under the Medicare program.

EFFECTIVE DATE: These amendments shall be effective on February 20, 1979.

FOR FURTHER INFORMATION CONTACT:

Mr. Hugh McConville, Medicare Bureau, Room 412, East Building, Baltimore, Maryland 21235. Telephone: (301) 594-9430.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The purpose of a method of apportionment is to determine what portion of a provider's costs is properly attributable to furnishing services to Medicare beneficiaries. The purpose of a method of cost finding is to determine the full cost of routine revenue-producing departments, ancillary revenue-producing departments, and activities for which reimbursement is not allowed under Medicare. For this purpose, "full-cost" means the direct cost incurred by these departments and activities, as well as their share of the cost of overhead.

The current Medicare regulations provide for two different methods of apportionment and cost finding. (See 42 CFR 405.404.) Under the simpler method of modified cost finding, the costs of groups of nonrevenue-producing departments are allocated to the benefiting departments using a common allocation basis for each group. This method of cost finding re-

quires a division of the provider's costs among the general routine revenue-producing department, the aggregate of special care routine revenue-producing departments, the aggregate of most ancillary revenue-producing departments, and nonallowable activities. The Combination Method of apportionment, used with this method of cost finding to determine the cost attributable to services furnished to Medicare beneficiaries, requires the use of an aggregate determination of the cost of most ancillary services.

Step-down cost finding is a more precise methodology for allocating the costs of nonrevenue-producing departments, in that costs of each nonrevenue-producing department are allocated separately to each revenue-producing department and nonallowable activity. This method of cost finding requires a division of the provider's costs among the general routine revenue-producing department, each special care routine revenue-producing department, each ancillary revenue-producing department, and each nonallowable activity. The Departmental Method of apportionment, which is used with this method of cost finding to determine the cost attributable to services furnished to Medicare beneficiaries, requires a separate determination of the cost of services furnished to Medicare beneficiaries in each ancillary revenue-producing department.

The requirement that certain providers use the simpler Combination Method of apportionment and modified cost finding and that other providers use the Departmental Method of apportionment and step-down or a more sophisticated method of cost finding was established in accordance with the report of the Senate Finance Committee (S. Rep. No. 91-1431, 91st Cong. 2d sess. 178(1970)). However, after requiring the use of these two different methods, we received a significant amount of correspondence from providers, and from Congressmen on behalf of providers required to use the simpler method, expressing the desire and ability to use the more precise step-down cost finding and the Departmental Method of apportionment. A subsequent survey revealed that all but a few of the providers using the Combination Method had the ability to develop the necessary statistics which would enable them to use the Departmental Method. A majority of the providers surveyed stated their preference to use the Departmental Method. In addition, although the Combination Method of apportionment originally offered some simplicity in the manner in which the health insurance program determines its share of the smaller and less complex providers' allowable costs, legislative amendments affecting the Medi-

care program since 1972 no longer permit this simplicity. For cost reporting periods ending after June 30, 1973, allowable costs must be identified separately for renal dialysis services and delivery room and labor room services. Moreover, additional information and computations are now required on cost reports as a result of Section 223, Limitations on Coverage of Costs and Section 233, Payments of Lower of Costs or Charges, of the Social Security Amendments of 1972 (P.L. 92-603).

Consequently, we have decided to eliminate the simpler Combination Method of apportionment and modified cost finding.

DISCUSSION OF MAJOR COMMENTS

A Notice of Proposed Rulemaking was published on November 26, 1976 (41 FR 52067). Interested persons were given 45 days from the date of publication of the Notice of Proposed Rulemaking in which to submit data, views, or arguments. Comments and suggestions relative to the proposed regulations were received from a number of organizations, hospitals, and individuals. Responses to the most significant ones and changes in the proposed regulations are described below.

1. Should Providers be Given an Option to Convert to the Departmental Method of Apportionment?

Several commenters were concerned that small hospitals and small free-standing skilled nursing facilities may experience financial hardships in trying to perform the Departmental Method of apportionment and step-down cost finding. Moreover, they thought that a number of these providers have a very limited capability to perform the cost finding and apportionment requirements of the Departmental Method. They suggested that the solution to the problem would be to retain the Combination Method of apportionment and modified cost finding and to allow providers currently using this method a one-time irrevocable option to convert to the Departmental Method of apportionment and step-down cost finding.

Although we are also concerned with the small provider who may find difficulty in using the Departmental Method of apportionment and step-down cost finding, we did not accept this suggestion because we believe that optional methods of computing program reimbursement would not be consistent with our objective not to reimburse providers an amount exceeding the reasonable cost of covered services furnished to Medicare beneficiaries. The Senate Finance Committee, in its original recommendation to require the use of Combination and Departmental Methods, recognized that reimbursement options should be

eliminated because the Committee believed that providers would not necessarily choose the reimbursement method that produces the most precise results. Rather, they could be expected to choose the method that yields them the greatest financial benefit. (Senate Report No. 91-1431, 91st Cong. 2d sess. 180(1970).) Moreover, the use of one reimbursement method would permit better cost analyses for making program payment determinations, because all providers would use the same method of cost finding, cost apportionment, and cost reporting.

These amendments continue the current procedure of permitting providers to file less than a full cost report if they have a low utilization of covered services by Medicare beneficiaries and receive correspondingly low interim reimbursement payments. In these cases, intermediaries may permit providers to submit only a minimum amount of cost report information in order to determine Medicare's share of the providers' allowable costs. Moreover, even where low utilization does not exist, providers are required to complete only those cost reporting forms which are applicable to their operations. For example, providers that do not have provider-based physicians may ignore the forms for reporting provider-based physician compensation.

2. Should the Regulations be Applied Retroactively?

Several of those who commented suggested that providers required to use the Combination Method since 1972 be permitted to use the Departmental Method retroactively to 1972. We do not believe that the results obtained by reopening prior cost determinations on such a large scale would be sufficient to justify the administrative effort. Moreover, as presently interpreted, the existing rules permit certain cost allocations on a provider's accounting records prior to allocation on the Medicare cost report and therefore provide some degree of the flexibility sought by these providers. Under these rules, a provider may make certain cost allocations on its accounting records prior to completion of the Medicare cost report if it can demonstrate that such allocations produce a more accurate determination of program reimbursement. These rules can be applied retroactively, since they are applicable to all cost reporting periods that can be reopened under § 405.1885 of the regulations.

3. Should Providers be Permitted to Use Modified Cost Finding With the Departmental Method of Apportionment?

One commenter suggested that if the Departmental Method is mandated as proposed, the intermediary

should be permitted to authorize the use of modified cost finding in lieu of step-down cost finding for a provider that makes a request to do so and has never used step-down or a more sophisticated method of cost finding. We believe that the use of modified cost finding with the Departmental Method would not be consistent with our intent to establish uniformity with respect to provider cost reporting, cost finding, and apportionment methodology. Such uniformity is desirable in order to simplify the administration of the Medicare program and provide a data base for the uniform reporting requirements under section 19 of the Medicare-Medicaid Anti-Fraud and Abuse Act of 1977 (P.L. 95-142). Uniformity will also provide a common language upon which problems in individual providers and in the health care field can be discussed and resolved more easily.

4. Should Small Providers be Permitted to Use the Combination Method for Outpatients?

One commenter suggested that we permit small providers with a small volume of outpatient business to use the Combination Method of apportionment for outpatient reimbursement. This comment was not accepted because we believe that any use of the Combination Method of Apportionment would not be consistent with the program's intent to establish uniformity, as explained in our response to comment number 3. Moreover, small providers would generally not be required to furnish the amount of cost report information required from large providers because some of the cost report information for large providers would not be applicable.

5. Should a More Simplified Method Than the Combination Method be Used?

One commenter suggested that a more simplified method than the Combination Method be made available to the small providers. This suggestion was not accepted because we believe that the use of any method of apportionment other than the Departmental Method would not be consistent with the program's intent to establish uniformity, as explained in our response to comment number 3.

RECODIFICATION AND EDITORIAL REVISIONS

The Notice of Proposed Rulemaking proposed to codify the regulation under 20 CFR Part 405. Recodification of HCFA regulations, effective October 1, 1977, moved all Medicare regulations to Title 42 of the Code of Federal Regulations. Accordingly, the final regulation is codified under Part 405 of 42 CFR Chapter IV.

In keeping with the Department's "Operation Common Sense," extensive

editorial revisions have been made to clarify the regulation. No substantive changes, other than those discussed above, have been made in the final regulation.

42 CFR Part 405 is amended as follows:

1. Section 405.404(b) is revised to read as follows:

§ 405.404 Methods of apportionment under title XVIII.

(b) For cost reporting periods starting after December 31, 1971, the rules governing the use of the Departmental Method and the Combination Method of apportionment are set forth in §§ 405.452 and 405.453 of this part.

2. Section 405.452 is amended by revising paragraph (c) and adding a new paragraph (e)(3)(iv) to read as follows:

§ 405.452 Determination of cost of services to beneficiaries.

(c) *Availability of apportionment methods for cost reporting periods starting after December 31, 1971.* (1) *Hospitals and hospital complexes having less than 100 beds.* Any hospital or hospital complex having less than 100 beds on the first day of its cost reporting period must use the applicable apportionment method specified in this paragraph. (A hospital complex contains inpatient areas in which patients receive a level of care other than hospital care.) For this purpose, the number of beds includes both those certified for use by Medicare beneficiaries and those not certified, but does not include newborn beds. (A newborn bed is a bed set aside for regular use by an infant newly born in the hospital.)

(i) For cost reporting periods starting after December 31, 1971, but before January 1, 1978. These providers must use the Combination Method of apportionment.

(ii) For cost reporting periods starting on or after January 1, 1978, but before July 1, 1979, these providers may use either the Departmental Method or the Combination Method of apportionment. If the Departmental Method is used for any cost reporting period, the Combination Method may not be used for any subsequent cost reporting period.

(iii) For cost reporting periods starting on or after July 1, 1979, these providers must use the Departmental Method of apportionment.

(2) *Hospitals and hospital complexes having 100 or more beds.* For cost reporting periods starting after December 31, 1971, any hospital or hospital complex having 100 or more beds on

the first day of its cost reporting period must use the Departmental Method of apportionment.

(3) *Skilled nursing facilities.* All skilled nursing facility providers that are not part of a hospital complex must use the applicable apportionment method as follows:

(i) For cost reporting periods starting after December 31, 1971, but before January 1, 1978, these providers must use the Combination Method of apportionment.

(ii) For cost reporting periods starting on or after January 1, 1978, but before July 1, 1979, these providers may use either the Departmental Method or the Combination Method of apportionment. If the Departmental Method is used for any cost reporting period, the Combination Method may not be used for any subsequent cost reporting period.

(iii) For cost reporting periods starting on or after July 1, 1979, these providers must use the Departmental Method of apportionment.

(4) *New providers.* All providers entering the program on or after January 1, 1979, must use the Departmental Method of apportionment starting with their first cost reporting period.

(e) ***

(3) ***

(iv) *Using cost finding for cost reporting periods ending after June 30, 1973.* Use of the Combination Method of apportionment for cost reporting periods ending after June 30, 1973, and starting before July 1, 1979, necessitates cost finding as specified in § 405.453(d)(3) to determine the division of the provider's total costs among general routine care, routine care in special care units, renal dialysis, delivery room and labor room, the aggregate of all other ancillary services, and nonallowable activities.

3. In § 405.453, new paragraphs (g) and (h) are added to read as follows:

§ 405.453 Adequate cost data and cost finding.

(g) *Exception from full cost reporting for lack of program utilization.* If a provider does not furnish any covered services to Medicare beneficiaries during a cost reporting period, it is not required to submit a full cost report. It must, however, submit an abbreviated cost report, as prescribed by the Health Care Financing Administration.

(h) *Waiver of full cost reporting for low program utilization.* (1) If the provider has had low utilization of covered services by Medicare beneficiaries (as determined by the interme-

diary) and has received corresponding low interim reimbursement payments for the cost reporting period, the intermediary may waive a full cost report if it decides that it can determine, without a full report, the reasonable cost of covered services provided during that period.

(2) If a full cost report is waived, the provider must submit within the same time period required for full cost reports:

- (i) The cost reporting forms prescribed by the Health Care Financing Administration for this situation; and
- (ii) Any other financial and statistical data the intermediary requires.

(Secs. 1102, 1814(b), 1815, 1833(a), 1861(v) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395(g), 1395l(a), 1395x(v) and 1395hh).)

(Catalog of Federal Domestic Assistance Program No. 13.773 Medicare—Hospital Insurance; No. 13.774, Medicare—Supplementary Medical Insurance.)

Dated: September 29, 1978.

ROBERT A DERZON,
Administrator, Health Care
Financing Administration.

Approved: January 15, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

[FR Doc. 79-2046 Filed 1-18-79; 8:45 am]

[7035-01-M]

Title 49—Transportation

CHAPTER X—INTERSTATE COMMERCE COMMISSION

SUBCHAPTER B—PRACTICE AND PROCEDURE PART 1100—RULES OF PRACTICE

JANUARY 16, 1979.

AGENCY: Interstate Commerce Commission.

ACTION: Corrections to rules.

SUMMARY: These corrections to rules 97(c) and 97(g) of the Commission's Rules of Practice, effective July 19, 1977, are being made to remove a draftsmanship error. As corrected the rules will provide that the filing of administrative appeals will not automatically stay the effectiveness of a decision of the entire Commission in the first instance or a decision of the Commission on appeal.

EFFECTIVE DATE: January 19, 1979.
FOR FURTHER INFORMATION
CONTACT:

Janice M. Rosenak or Harvey Gobetz, Section of Rates, Office of Proceedings, Washington, D.C. 20423 (202-275-7693).

SUPPLEMENTARY INFORMATION:
During the pendency of Investigation

and Suspension Docket No. M-29772, *General Increase, S.M.C.R.C., April 1978*, significant questions have come to our attention concerning the proper interpretation of rules 97(c) and 97(g) of the Commission's General Rules of Practice, 49 CFR 1100.97(c) and 97(g).

Our review indicates that a literal reading of Rules 97(c) and 97(g) appears to provide for an automatic stay of all nonrail decisions, including those made by the entire Commission, upon the filing of an administrative appeal. With respect to entire Commission decisions, the applicability of the automatic stay provision results from a draftsmanship error made during the revision of our Rules of Practice subsequent to the enactment of Pub. L. 94-210, the Railroad Revitalization and Regulatory Reform Act of 1976 (the 4R Act). The revised Rules of Practice became effective on July 19, 1977.

Prior to the revision of our Rules of Practice, it was clearly not Commission procedure to provide for automatic stays of entire Commission decisions. In those instances where an entire Commission decision was issued in the first instance or on appeal, that decision was administratively final. Administrative appeals (petitions for reconsideration) were permitted. However, the filing of such petitions did not stay the decision or interfere with its administrative finality. When we revised our Rules of Practice, we did not intend to depart from this procedure. See the original notice in Ex Parte No. 55 (Sub-No. 24), *Revised Rules of Practice*, published November 8, 1976, at 41 FR 49282. Moreover, this distinction between the "staying" effect of an appeal of an entire Commission decision and an appeal of a decision by a lesser panel has its basis in former Section 17(8) of the Interstate Commerce Act.¹ That section provided that:

[w]here application for rehearing, reargument, or reconsideration of a decision . . . of a division, an individual Commissioner, or board, is made . . . the decision . . . shall be stayed or postponed pending disposition

¹The Interstate Commerce Act was recently revised, codified, and enacted without substantive change as subtitle IV of title 49, United States Code. Act of October 17, 1978, Pub. L. 95-473, 92 Stat. 1337. Former Section 17(8) is recodified at 49 U.S.C. 10324. While the distinction between stays of entire Commission decisions and stays of decisions by lesser panels is not clearly delineated in the recodified Act, Congress did not intend any substantive change from prior laws when enacting the recodification. Section 3(a) of the Revised Act declares: Sections 1 and 2 of this Act restate, without substantive change, laws enacted before May 16, 1978, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Pub. L. 95-473, 92 Stat. 1466.

of the matter by the Commission or appellate division . . . (emphasis added)

Significantly, this language does not refer to entire Commission decisions. Nothing in the Act provided for an automatic stay of a decision made by the entire Commission. Indeed, Section 17(8) went on to state that "otherwise the making of such an application [the filing of an administrative appeal] shall not . . . operate to stay [the decision], without the special order of the Commission."

Furthermore, it would be contrary to sound regulatory practice for a party to be able to stay a decision made by the entire Commission, even in an urgent case, by merely filing a pleading which is, or purports to be, an administrative appeal. It is essential that the Commission have the ability to make its decisions effective expeditiously, especially when confronted with cases of urgency or compelling public interest. This point was recognized in Ex Parte No. 55 (Sub-No. 24A), *Rail Appellate Procedures—Revision of Rule 98 of the Rules of Practice 49 CFR 1100.98* (notice of proposed rulemaking.)² Because of certain errors contained in rule 98, including a similar implication that entire Commission decisions are stayed by the filing of administrative appeals, the Commission recently proposed a revision of that rule. An administratively final decision concerning rule 98 will be served shortly.

The error in draftsmanship in rule 97 may be corrected without an entire revision at this time. Accordingly, the inappropriate references to entire Commission decisions in rules 97(c) and 97(g) will be deleted, so that our present rules will now be consistent with our prior practice of not automatically staying decisions of the Entire Commission upon the filing of an administrative appeal. We will retain, of course, the discretion to stay the effectiveness of an entire Commission decision when we believe that action to be appropriate.

Part 1100 of Title 49 of the Code of Federal Regulations is amended in the following respects by correcting rules 97(c) and 97(g) of § 1100.97 as follows:

§ 1100.97 Administrative appeals—nonrail proceedings. (Rule 97)

(c) *Conclusiveness.* Unless the division reverses, changes or modifies the prior decision, order, or requirement or unless the decision, order, or requirement is issued by the division in the first instance, or unless the decision, order, or requirement is issued by

²43 FR 17006 April 21, 1978.

RULES AND REGULATIONS

an employee board, no further administrative appeal shall lie.

* * * * *

(g) *Administrative finality.* The timely filing of exceptions and petitions for administrative review shall, and the Commission on its own motion may, stay the effect of the decision, order, or requirement until thirty days after the date of service of the order of the division or review board acting thereon, unless otherwise provided. Decisions of an employee board whether original or on review, are not administratively final.

* * * * *

These rules were promulgated and are being corrected under the authority of 49 U.S.C. 10321-10324 and 5 U.S.C. 553(b).

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp, and Christian. Commissioner Gresham dissenting.

Dated January 15, 1979, at Washington, D.C.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2086 Filed 1-18-79; 8:45 am]

proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02-M]

DEPARTMENT OF AGRICULTURE

AGRICULTURAL MARKETING SERVICE

[7 CFR Part 1065]

[Docket No. AO-86-A39]

MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

Extension of Time for Filing Briefs

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Extension of time for filing briefs.

SUMMARY: This notice extends the date for filing briefs on the hearing held October 24-27, 1978, at Omaha, Nebraska, concerning proposals to amend the Nebraska-Western Iowa order. Interested parties requested the additional time to complete their analysis of the record.

DATE: Briefs now are due on or before January 31, 1979.

ADDRESS: Briefs (4 copies) should be filed with the Hearing Clerk, Room 1077 South Building, U.S. Department of Agriculture, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT:

Maurice M. Martin, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-7183.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of hearing: Issued September 29, 1978, published October 4, 1978 (43 FR 45881).

Notice is hereby given that the time for filing briefs, proposed findings, and conclusions on the record of the public hearing held October 24-27, 1978, at Omaha, Nebraska, with respect to proposed amendments to the tentative marketing agreement and to the order regulating the handling of milk in the Nebraska-Western Iowa marketing area pursuant to the above listed notice is hereby extended to January 31, 1979.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the appli-

cable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR PART 900).

Signed at Washington, D.C., on January 15, 1979.

JAMES E. SPRINGFIELD,
*Acting Deputy Administrator,
Marketing Program Operations.*

[FR Doc. 79-1998 Filed 1-18-79; 8:45 am]

[1505-01-M]

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 781 0040]

CRANE CO., ET AL.

Consent Agreement With Analysis to Aid Public Comment

Correction

In FR Doc. 79-889, appearing at page 2182 in the issue of Wednesday, January 10, 1979, make the following changes:

1. On page 2184, second column, sixth paragraph, "wholly owned by Medusa shareholders." should be corrected to read "wholly owned by Medusa and then shall cause Medusa to distribute the stock to Medusa shareholders."

2. On page 2184, second column, seventh paragraph, "Paragraph II" should be corrected to read "Paragraph III".

[6355-01-M]

CONSUMER PRODUCT SAFETY COMMISSION

[16 CFR Part 1209]

CELLULOSE INSULATION

Extension of Time to Propose An Amendment to the Interim Standard

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of extension of time for proposing an amendment to the interim standard.

SUMMARY: In this notice, the Commission extends for 45 days, from January 22, until March 8, 1979, the time in which it must publish the flame resistance and corrosiveness provisions of a revised General Services Adminis-

tration (GSA) specification as a proposed amendment to the interim safety standard for cellulose insulation. The Commission is extending the time in order to further study the technical and scientific basis and safety and economic consequences of the revised GSA specification.

DATES: Comments by March 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Philip Bechtel, Office of the General Counsel, Consumer Product Safety Commission, Washington, D.C. 20207, (202) 634-7770.

SUPPLEMENTARY INFORMATION:

As required by the "Emergency Interim Consumer Product Safety Standard Act of 1978" (Pub. L. 95-319), the Commission has published an interim standard for cellulose insulation, based on the flame resistance and corrosiveness provisions of General Services Administration (GSA) Specification HH-1-515C (43 FR 35240, August 8, 1978). Section 35(c)(2) of the Consumer Product Safety Act, as amended by Pub. L. 95-319, requires the Commission to publish as a proposed amendment to the Commission's interim standard for cellulose insulation each revision GSA issues that supersedes the requirements for flame resistance and corrosiveness in GSA Specification HH-1-515C. The Commission must publish the revision as a proposed amendment within 45 days after having received notice from the Administrator of the General Services Administration, or, if a revision becomes effective between February 1, 1978 and the effective date of the act, within 45 days of the effective date of the act.

Pub. L. 95-319 provides that the Commission may extend the 45 day period for publishing the proposed amendment by 150 days if the Commission determines that an extension is necessary to study the technical and scientific basis for the revision, or to study the safety and economic consequences of the revision. Pub. L. 95-319 also provides that the Commission may take additional 45 day extensions of this time period if the Commission makes the same determination. If the Commission takes one additional 45 day extension, the Commission may take further 45 day extensions if it makes the appropriate findings, unless both the Committee on Commerce,

Science, and Transportation of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives disapprove any further extensions, by committee resolution.

On June 15, 1978, GSA specification HH-I-515D became effective. This specification contains requirements for the flame resistance and corrosiveness of cellulose insulation that supersede the flame resistance and corrosiveness provisions of HH-I-515C. Therefore, the Commission would have been required to publish the proposed amendment to the interim standard by August 24, 1978, unless the Commission extended this period. On August 8, 1978, the Commission extended this period for 150 days, until January 22, 1979 (43 FR 35238).

The Commission believes that it is necessary to further extend the period of time for proposing the flame resistance and corrosiveness requirements of HH-I-515D as an amendment to the interim standard in order to study the technical and scientific basis and the safety and economic consequences of these requirements. This further extension is for 45 days, from January 22, 1979 until March 8, 1979.

Pub. L. 95-319 provides that the Commission shall issue an amendment to the interim standard unless the Commission determines, after considering public comments, that the amendment is not necessary to protect consumers from the unreasonable risk of injury associated with flammable or corrosive cellulose insulation, or unless the Commission determines that implementation of the amendment will create an undue burden on persons subject to the interim standard. Therefore, the Commission is required to consider these issues.

The additional time is necessary for the Commission to evaluate comments from interested persons that raise technical and economic issues concerning the proposed amendment. The Commission received these comments in response to a notice of intent to propose an amendment, which the Commission published in the *FEDERAL REGISTER* on September 6, 1978 (43 FR 39720). The additional time is also necessary for the Commission to consider technical and economic evaluations of the proposed amendment that the National Bureau of Standards and a contractor prepared for the Commission and made available to the Commission staff in December 1978. The Commission will also use the additional time to review the proposed amendment for technical accuracy and make editorial and other changes necessary to insure that the document is suitable for publication in the *FEDERAL REGISTER*.

The Commission does not anticipate that any further extension will be necessary for preparing the proposed amendment. If the Commission is able to complete its work before March 8, 1979, the Commission will publish the proposal at an earlier date.

Therefore, in accordance with section 35(c)(2)(D)(i) of the act, as amended by Pub. L. 95-319, the Commission extends by 45 days, from January 22, 1979 until March 8, 1979, the time in which it must publish the flame resistance and corrosiveness requirements of GSA Specification HH-I-515D as a proposed amendment to the interim standard for cellulose insulation at 16 CFR Part 1209. In accordance with Pub. L. 95-319, this period may be further extended.

Dated: January 16, 1979.

SADYE E. DUNN,
Secretary, Consumer
Product Safety Commission.

[FR Doc. 2040 Filed 1-18-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 109]

[Docket No. 77N-01661]

ACTION LEVEL FOR MERCURY IN FISH, SHELLFISH, CRUSTACEANS, AND OTHER AQUATIC ANIMALS

Withdrawal of Proposed Rulemaking and Termination of Rulemaking Proceeding

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposal.

SUMMARY: This document withdraws a proposed rulemaking and terminates a rulemaking proceeding to codify the existing action level limiting the amount of unavoidable mercury residues permitted in fish and shellfish. Instead of establishing the action levels by a formal regulation, the Food and Drug Administration (FDA) will continue to use an administrative action level to regulate those mercury residues. Elsewhere in this issue of the *FEDERAL REGISTER* is a notice announcing the availability of that action level.

FOR FURTHER INFORMATION CONTACT:

Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: In the *FEDERAL REGISTER* of December 6, 1974 (39 FR 42738), the Commissioner of Food and Drugs proposed to

adopt, in former Part 122 (21 CFR Part 122) (recodified as Part 109 (21 CFR Part 109) in the *FEDERAL REGISTER* of March 15, 1977 (42 FR 14032)), an action level of 0.5 part per million for unavoidable residues of mercury in the edible portion of fish and shellfish.

In the same issue of the *FEDERAL REGISTER*, the Commissioner proposed to establish procedural regulations regarding poisonous and deleterious substances in food (39 FR 42743). That proposal included procedures and criteria for establishing tolerances under section 406 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346) for unavoidable poisonous or deleterious substances in food. It also included provisions for establishing "action levels," through informal, i.e., notice and comment, rulemaking.

The procedural regulations that were finally promulgated, however, differed from those proposed. As discussed in the preamble to the final order published in the *FEDERAL REGISTER* of September 30, 1977 (42 FR 52814), the Commissioner decided that a simpler procedure than that proposed for establishing action levels is appropriate. This simplified procedure, set forth in § 109.4(b) (21 CFR 109.4(b)), provides for FDA to set an action level administratively and to publish a notice of availability of the action level and the information on which the agency relied in setting the action level. The supporting information is placed on file with the Hearing Clerk, FDA, and the notice invites public comments on the action level.

Because FDA expects to continue to receive new information bearing on the appropriate limit for mercury in fish and other aquatic animals, it is appropriate to continue to regulate the mercury levels in fish and shellfish through an action level, rather than a formal tolerance. The Commissioner is therefore terminating the December 6, 1974, proposal to codify the action level for mercury in fish and shellfish and, in accordance with the procedure in § 109.4(b), is announcing the availability of the revised action level for mercury in fish and shellfish.

RECEIVED COMMENTS

The agency received 71 comments in response to the December 6, 1974 proposal. Although most of the comments have been rendered moot due to the withdrawal of the proposal, the Commissioner has decided to respond to them because many of them reflect a lack of understanding of FDA's current procedures regarding action levels for mercury in fish. Also, some information received bears on the still relevant issue of what the action level should be. Based on current information, the Commissioner has deter-

mined that the action level should be changed from 0.5 part per million (ppm) mercury to 1.0 ppm.

1. Two comments objected to the Commissioner's interpretation of "added" in applying the principles of section 406 of the act. Both comments pointed out that because mercury occurs naturally in some of the waters inhabited by fish, particularly marine fish, and is not introduced to these waters by some activity of man, resulting mercury residues in the fish are naturally occurring and not "added."

The Commissioner notes that these issues were also raised by the comments received in response to the proposal regarding general principles for the establishment of tolerances for added poisonous or deleterious substances in food. In the preamble to the September 30, 1977 final rule establishing the procedures for regulating food contaminants and naturally occurring poisonous or deleterious substances, the Commissioner discussed in detail the issue of added versus naturally occurring substances, with specific reference to mercury in fish. The Commissioner concluded that under the act the test for determining whether a substance is "added" or natural is whether it is necessarily an inherent part of the food, in which case it is natural. Otherwise it is "added" under the law.

This issue has been raised in a pending case involving mercury in fish (*Anderson Seafoods, Inc. v. Califano et al.*, No. 78-1962 (5th Cir. 1978)). In that case, the district court rejected FDA's definition of "added" and held that to be "added" within the meaning of section 402(a)(1) of the act (21 U.S.C. 342(a)(1)), the substance must be present in food as a result of human action (*United States v. Anderson Seafoods, Inc.*, 447 F. Supp. 1151 (N.D. Fla. 1978)). The district court also held, however, that some part of the mercury in swordfish, although not quantifiable, was due to human intervention. Thus, even under the district court's test, mercury in swordfish would be treated as an added poisonous or deleterious substance under section 402(a)(1) of the act.

As noted above, this issue is currently pending before the United States Court of Appeals for the Fifth Circuit in the appeal of the district court's decision in *Anderson Seafoods*. Pending a final resolution of this issue, the Commissioner intends to adhere to the definition of "added" found in § 109.3(d) of the agency's regulations (21 CFR 109.3(d)).

2. One comment stated that in view of the lack of adequate definitive information regarding mercury residues in fish, and action level should be set for a limited period, with automatic expiration in 1 or 2 years, so that reex-

amination of accumulated data would be automatic and that action level could be revised according to the most current data.

The Commissioner considers this provision unnecessary. The Food and Drug Administration will continue to monitor mercury residues in fish, shellfish, and other aquatic animals and will continue to evaluate any data regarding methylmercury in fish that become available, so that the action level can be reevaluated and revised as necessary. As with any other action level, the time for any such reevaluation must be based on the availability of scientific information rather than on an absolute calendar-year interval.

3. One comment requested that the definition of a "lot" of fish be revised to reflect current fishery practices. Specific changes requested were that a boatload of fish should be allowed to constitute a lot and that the fish in a lot should be allowed to range considerably in size. Another comment requested that the provision that fish constituting a lot be from "similar waters" be changed to "the same waters." The comment stated that in a locale where there are several lakes constituting "similar waters," one lake may be polluted and contain contaminated fish, while another nearby lake may not.

The Commissioner advises that because the proposed regulation for mercury in fish and shellfish is being withdrawn, there will not be a definition of "lot" specifically directed to fish sampled for mercury residues. Instead, in enforcing the action level, FDA will use its traditional definitions and interpretations of "lot," which appear in several places in the regulations (e.g., § 101.9(e) (21 CFR 101.9(e))) and in agency documents such as the Inspector Operations Manual sample collection instructions for unprocessed fish, e.g., imported whitefish, which include the following definition:

A lot is defined as follows: "Each group of fish of a distinct size, listed in the invoice as from a distinct lake, will be considered as a separate lot. Where an invoice does not list the lakes or origin of boxes of fish in a shipment, fish of the same size and kind will be considered to comprise a single lot. When the size of fish or lakes or origin in a shipment are not specified, the shipment will be treated as a single lot."

This definition is an example of how FDA defines a "lot" based on the manner in which the food is shipped (invoiced) in interstate commerce. In the case of a boatload of fish, if the fish are invoiced for sale without any classification other than the entire contents of the boat, then the entire amount of fish would constitute a single lot. If the fish sold from that boat are classified by size and/or by waters of origin, or any other more

specific classification, however, than each group of fish so classified would constitute a separate lot.

Regarding the use of "similar waters" rather than "the same waters," the Commissioner points out that "similar waters" applies to open waters, i.e., similar areas in one body of water, either at sea or in a very large lake. When the water-of-origin information is available, fish from different lakes constitute separate lots.

4. Some comments contended that regulation of mercury residues in fish should be based on the amount of methylmercury present rather than total mercury, because methylmercury is the compound of toxicological concern. One comment stated that only about half of the mercury in American fish is in the form of methylmercury.

The Commissioner does not agree with the contention that only half of the total mercury in fish is methylmercury. The limited data obtained to date indicate that mercury residues in most fish and other aquatic animals are 80 percent or more methylmercury. The Commissioner agrees, however, that it may be more appropriate to use methylmercury levels to regulate these mercury residues. The agency is currently developing an analytical method that may be adequate for determining methylmercury for enforcement purposes. If such a method is developed, the Commissioner will revise the action level to a methylmercury basis.

TOXICOLOGICAL REEVALUATION

A number of the comments requested that the Commissioner reevaluate the proposed 0.5 ppm action level. Several stated that the Commissioner had not considered all the available information in making the toxicological evaluation of mercury residues in fish and that this information does not support an action level as low as 0.5 ppm. Among the information provided in some of these comments were reports of a protective effect against methylmercury toxicity provided by the selenium that occurs in marine fish and studies of certain populations who ingested large amounts of fish containing methylmercury and who did not exhibit symptoms of mercury poisoning.

At the time of the proposal, the Commissioner was aware of some studies suggesting a protective effect of selenium against methylmercury toxicity but considered the available data inconclusive. Since 1974, other information on the selenium/methylmercury relationship has become available. A workshop was jointly sponsored by FDA and the National Marine Fisheries Service in 1977 to review recent research on the effects of selenium on methylmercury toxicity (a copy of the

report of the workshop is on file in the office of the Hearing Clerk, FDA). Participants had hoped to reach a consensus as to the extent that the presence of selenium in fish should be taken into account in reassessing the guideline for mercury. Although much work has been done in the area of mercury/selenium relationships and there appears to be some mechanism in fish for protection against methylmercury toxicity in animals, whether or not selenium is protective is not clear. The participants in the workshop concluded that the findings to date are inconclusive.

The Commissioner advises that at the time of the proposal, the estimate of tolerable weekly or daily intakes of methylmercury was based on information developed primarily by Swedish studies of Japanese individuals poisoned in the episode of Niigata, which resulted from consumption of contaminated fish and shellfish. Data on mercury levels in blood and hair, and in some cases the brains of poisoned patients, provided a basis for establishing methylmercury levels at which toxic effects were observed. The blood level at the time of onset of symptoms was estimated by extrapolation and it was concluded that the lowest blood level for the appearance of signs and symptoms of methylmercury poisoning was 200 parts per billion (ppb) (0.2 ppm). Biochemical studies in Finland and Sweden on the movement of methylmercury through the human system made it possible to relate blood levels to daily intake. Using trace amounts of radiolabeled methylmercury, it was shown that methylmercury is completely absorbed from food and is distributed rapidly throughout the body and that its estimated average biological half-life is about 70 days. This information was used to show the theoretical total body burden of mercury as a function of time when a constant dose of methylmercury is ingested. This calculated body burden becomes essentially steady after about a year. In this steady state the total amount of methylmercury in the body is proportional to the daily intake. This result was confirmed by studies on Swedish fishermen having relatively high daily intakes of methylmercury.

From these data and using these calculations it was estimated that a blood level of 200 ppb would be reached with a minimum daily intake of approximately 300 micrograms (μ g) of mercury, present as methylmercury in the diet. In setting intake standards for a whole population it is usual to apply a safety factor. In cases where human data are available the safety factor used is 10. Thus a maximum tolerable level would be 20 ppb of methylmer-

cury daily in the blood, or 30 μ g methylmercury daily in the diet.

The following limitations to this approach were recognized: (1) it was not known to what extent particular individuals are more or less sensitive to mercury than others; (2) the estimates were based on the "lowest level that caused an effect" rather than the normal procedure of using a "no effect dose level"; (3) questions about dose/response relationships in human fetuses and newborn infants were unanswered; and (4) there is a possibility of subclinical effects arising from exposure to very low levels of methylmercury.

Since the 0.5 ppm action level was proposed, there have been further studies of individuals exposed to methylmercury as a result of the poisoning episode in Iraq in 1972, in which homemade bread prepared from seed wheat treated with a methylmercurial fungicide was consumed. There are also reports on populations ingesting large amounts of fish that show that many individuals have blood mercury levels that clearly exceed the allowable limit and appear to be asymptomatic. The Iraqi studies contained indications that toxic effects were associated with a total intake of methylmercury in the range of 40 to 60 milligrams (mg) for a 70-kilogram (kg) man or with blood levels of 400 to 600 ppb.

These data would appear to suggest that the values used in 1974 for estimating a tolerable level of methylmercury for humans may have been too low. Additional data developed on the biological half-life of methylmercury in humans, however, indicate a need to take into account the problem of variations among individuals. In the Iraqi episode, 90 percent of the individuals studied had a biological half-life of methylmercury of 35 to 100 days and 10 percent showed values of 110 to 120 days. Individuals having a long biological half-life would accumulate much higher steady state levels than those having short biological half-lives and would thus be at greater risk from the same level of methylmercury intake.

In addition, information has been developed on the so-called "late onset of symptoms" associated with methylmercury poisoning. Specifically, by 1973, in the Agano area of Niigata, Japan, new cases of methylmercury poisoning were detected years after the consumption of contaminated fish had ceased. This finding indicates that there may be some damage which is not diagnosed under current procedures, and it introduces further uncertainty into the determination of the "lowest effect level" used to estimate tolerable intakes.

Therefore, the Commissioner concludes that, in spite of the contention of some of the comments, there are

substantial uncertainties and variations in the total body of information on methylmercury toxicity from long-term chronic exposure. In light of these uncertainties and variations, the data cannot be considered as supporting a change in the estimated tolerable intake of methylmercury.

SEAFOOD CONSUMPTION REEVALUATION

The Commissioner has recently received new data on the consumption of fish in the United States, particularly those species of dietary significance known to contain mercury residues. The new data present more comprehensive and detailed information on fish consumption than has been available previously (Report on the Chance of U. S. Seafood Consumers Exceeding the Current Acceptable Daily Intake for Mercury and Recommended Regulatory Controls, National Marine Fisheries Service, February 8, 1978). In this report, the National Marine Fisheries Service (NMFS) concluded that the 0.5 ppm guideline is unnecessarily restrictive and recommended an action level of 1.0 ppm mercury for swordfish and freshwater fish and no action level for marine species other than swordfish. The NMFS concluded that a 1.0 ppm action level would protect consumers as much as does the 0.5 ppm level, also, the higher level would provide a significant economic benefit to those industries most seriously affected by regulatory actions under the 0.5 ppm guideline and would enhance the future development of a number of presently underutilized fisheries. The report also stated that the less restrictive regulatory approach it recommended would significantly increase consumer confidence in seafood. Accompanying NMFS's recommendations for a less restrictive regulatory level was a recommendation that monitoring of mercury levels in fish and other seafoods and consumption patterns of fishery products in the United States be continued.

The NMFS consumption study report has been carefully studied, and the Commissioner concludes that the probability of systematic exposure to a substantial intake of methylmercury by the average consumer appears to be lower than FDA had originally estimated when it set the 0.5 ppm guideline. Among other considerations, the new data make it possible to estimate probable methylmercury intakes based on mercury levels in individual species of fish and other aquatic animals. When the 0.5 ppm level was reevaluated in 1974, the limitations in the available data required that maximum projected residues be applied to all species. This resulted in a higher estimated probable intake.

The Commissioner agrees with NMFS's conclusion that a 1.0 ppm reg-

ulatory level for swordfish and freshwater fish would provide adequate protection to consumers. Because completely abandoning a regulatory level for marine species other than swordfish may result in increased concentrations of mercury in some species as marketed, the Commissioner concludes that a regulatory level applicable to all species should be retained. Based on the NMFS's data on consumption rates, mercury residue levels, and individualized allowable daily intakes (ADI's) a 1.0 ppm regulatory level for marine species should provide adequate protection against significant numbers of consumers exceeding their ADI's.

Accordingly, the Commissioner concludes that 1.0 ppm is the appropriate level at which to regulate residues of mercury in fish and other aquatic animals. Elsewhere in this issue of the FEDERAL REGISTER, the Commissioner announces the availability of, and invites comments on, the Administrative Guideline establishing the action level of 1.0 ppm mercury in fish, shellfish, crustaceans, and other aquatic animals. The Administrative Guideline and underlying information supporting it are available for public examination in the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

The Administrative Guideline (No. 7408.09) establishing the action level provides the following instructions to FDA District Offices: "Recommend legal action to Division of Regulatory Guidance where the composite of fish or shellfish analyzed by the procedure outlined in the Twelfth Edition of the Official Methods of Analysis of the Association of Official Analytical Chemists 25.103-25.107 shows:

Mercury (Hg) 1.0 ppm (edible portion only)

NOTE.—Recommendations for legal action must clearly indicate the exact portion of the food used for analysis. The portion used for analysis must be prepared by the appropriate procedure outlined in Volume 1 of the Pesticide analytical Manual, sections 141.12 and 141.22.

The Food and Drug Administration will continue to monitor mercury levels in fish so that if there is any change in mercury residue levels as a result of raising the action level, or if there is any other change in the information regarding mercury in fish, the action level can be revised accordingly.

This notice of withdrawal and termination of rulemaking proceeding is issued under the Federal Food, Drug, and Cosmetic Act (secs. 306, 402, 406, 701(a), 52 Stat. 1045-1046 as amended, 1049, 1055 (21 U.S.C. 336, 342, 346, 371(a))) and under authority delegated to the Commissioner (21 CFR 5.1).

Dated: January 8, 1979.

DONALD KENNEDY,
Commissioner of Food and Drugs.
[FR Doc. 79-1810 Filed 1-18-79; 8:45 am]

[4110-03-M]

[21 CFR Parts 175 and 189]

[Docket No. 78N-0112]

2-NITROPROPANE

Proposed Removal From Food Additive Use

AGENCY: Food and Drug Administration.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends the comment period on the proposal to delete from the food additive regulations provisions for use of 2-nitropropane as a component of adhesives intended to contact food and to list it as a substance prohibited from addition to human food. The Commissioner of Food and Drugs, having evaluated available data, has concluded that 2-nitropropane is a carcinogen in test animals.

DATE: Written comments by April 2, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA-305), 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: In the FEDERAL REGISTER of December 1, 1978 (43 FR 56247), the Commissioner proposed to amend § 175.105 *Adhesives* (21 CFR 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 new § 189.310 *Nitropropane*. These actions were taken by the Commissioner after evaluating the available data and concluding that the report by the Department of Health, Education, and Welfare/National Institute for Occupational Safety and Health (HEW/NIOSH) demonstrates that 2-nitropropane is a carcinogen in test animals and that the continued use of 2-nitropropane as a food additive is no longer warranted. Interested persons were requested to submit their comments on the proposal on or before January 2, 1979.

The Commissioner has received requests for extension of time for com-

ment from the law firm of Covington and Burling on behalf of International Minerals and Chemical Corp. (IMC) and the law firm of Keller and Heckman on behalf of Durkee Foods, Division of SCM Corporation. The request for IMC sought an extension of time to prepare a written report on the most recent toxicology testing on 2-nitropropane, a risk assessment, and a regulatory analysis in response to the December 1 proposal. IMC has also made freedom of information requests to FDA and NIOSH in support of its request for extension. Further information on the availability of the material is expected to be indicated in the NIOSH response to the IMC request for information.

The Commissioner is extending the comment period to close of business April 2, 1979. The extension will permit consideration of the disposition of the request for background material and an opportunity for comments on any material that becomes available. Requests for access to the background material may be made to NIOSH.

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), the comment period on the December 1, 1978 proposal to remove 2-nitropropane from food additive use (43 FR 56248) is extended to April 2, 1979.

Interested persons may, on or before April 2, 1979 submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding the 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 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 15, 1979.

WILLIAM F. RANDOLPH,
Acting Associate Commissioner
for Regulatory Affairs.
[FR Doc. 79-1902 Filed 1-6-79; 11:34 am]

[4110-03-M]

[21 CFR Part 310]

[Docket No. 75N-00621]

ORAL HYPOLYCEMIC DRUGS

Availability of Agency Analysis and Reopening of Comment Period on Proposed Labeling Requirements

AGENCY: Food and Drug Administration.

ACTION: Extension of comment period on proposed rule.

SUMMARY: This document extends to March 16, 1979, the comment period on the Food and Drug Administration's (FDA's) analysis of the University Group Diabetes Program (UGDP) study and on the proposed labeling requirements for oral hypoglycemic drugs. This action is being taken to allow more time to review the extensive material made available as part of FDA's analysis. The original comment period would have expired on January 15, 1979.

ADDRESS: Written comments to the hearing Clerk (HFA-305), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, MD 20857.

DATES: Comments by March 16, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bradley, Bureau of Drugs (HFD-30), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of November 14, 1978 (43 FR 52732), the Commissioner of Food and Drugs announced the availability of FDA's analysis of the UGDP study and reopened, until January 15, 1979, the comment period on the labeling changes proposed in the FEDERAL REGISTER of July 7, 1975 (40 FR 28587). Comments on the FDA analysis of the UGDP were also invited.

A summary of the FDA analysis is contained in the Notice of Availability published in the FEDERAL REGISTER of November 14, 1978 (43 FR 52732). The analysis consists of a 121 page report complete with appendices and over 2,200 pages of records that were obtained from the UGDP or generated by FDA.

Requests have been received from the Upjohn Company and the American Diabetes Association to extend for an additional 60 days the comment period on the proposed oral hypogly-

cemic labeling. The basis for the requested extension includes the complexity of the issues, the volume of material to review, the need for review of certain of the data with experts who are not employees of the firm submitting the request, and the intervening Thanksgiving and Christmas holidays.

The Commissioner has considered these requests and finds that an extension of the comment period for 60 days is justified for the reasons cited in the petitions.

Accordingly, the comment period is extended to March 16, 1979. 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: January 11, 1979.

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

[FR Doc. 79-1545 Filed 1-12-79; 10:42 am]

[4510-26-M]

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[29 CFR Part 1913]

[Docket No. H-112A]

CONFIDENTIALITY OF EMPLOYEE MEDICAL RECORDS

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Proposed rule.

SUMMARY: On July 21, 1978, OSHA published an interim final rule¹ (43 FR 31329) and a proposed rule on access to employee exposure and medical records (43 FR 31371). Both the interim rule and the proposal include requirements that employers make available to OSHA, upon request, employee exposure and medical records. Because of the concern for confidentiality of these records, OSHA has developed draft administrative guidelines on its access to and the use of these records, a copy of which has already been placed in the public record of the rulemaking proceeding in conjunction with the OSHA proposal on records access. Notice is hereby given of the public availability of these draft guidelines, and public comment is invited on any issue raised by them. After review and analysis of the comments, OSHA intends to issue procedures on records access and handling as administrative regulations.

DATES: Comments must be postmarked on or before March 1, 1979.

¹Part 1910.

ADDRESS: Comments should be sent to: Docket Officer, Docket No. H-112A, Room S6212, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, D.C. 20210, 202-523-7895.

FOR FURTHER INFORMATION CONTACT:

Ms. Flo Ryer, Director, Office of Special Standards Programs, Room N-3663, U.S. Department of Labor, Third and Constitution Avenue, N.W. Washington, D.C., 20210, 202-523-7174.

SUPPLEMENTARY INFORMATION:

On July 21, 1978, OSHA published in the FEDERAL REGISTER an interim final rule (43 FR 31329)* and a proposed rule on access to employee exposure and medical records (43 FR 31371). Both the interim final rule and the proposed rule include requirements for the retention of all employee exposure and medical records which are maintained by employers, and for the availability of these records, upon request, to OSHA and the National Institute for Occupational Safety and Health (NIOSH). The text of the interim final rule and proposed rule and a discussion of their background, purpose, and significant issues appeared in the July 21 Federal Register document.

In accordance with 5 U.S.C. 553, OSHA gave interested persons until September 22, 1978, to present written comments, views or arguments on any issue raised by the proposal. As a result, OSHA received a total of 229 comments. Based on the widespread interest evidenced by these comments, OSHA scheduled public hearings on this proposal.

These hearings were held in Washington, D.C., December 5-8, 1978 and January 3-5, 1979; Chicago, Illinois, December 12-13, 1978 and January 9-10, 1979; and San Francisco, California, December 15, 1978.

A provision of both the interim final rule and the proposed rule (§1910.20(d)) provides for the employer to make available, upon request, to the Assistant Secretary of Labor, or to a designee, all employee exposure and medical records for examination and copying. While OSHA views this provision as simply implementing its authority under the OSH Act (29 USC 651 et seq.) to gain access to such records in appropriate circumstances, its inclusion in the rule raised the question of the agency's policies on access to and use of these data. Numerous commenters noted the absence of established OSHA procedures and policies concerning its access to, or handling of, often highly sensitive medical information; they indicated a need for

*The interim final rule was initially published on July 19, 1978 (43 FR 31019).

appropriate mechanisms protecting the confidentiality of these records. OSHA shares these concerns, and accordingly makes available for public comment the draft administrative guidelines for OSHA access to employee medical records.

The draft administrative guidelines respond to these concerns by articulating how OSHA intends to act in carrying out its authority. They would establish procedures which would provide answers to the following basic questions:

(1) Under what circumstances would OSHA seek to examine or copy identifiable exposure and medical records?

(2) Who in the agency would have authority to: (a) approve access requests; (b) initiate access request; and (c) use records obtained as a result of an access request?

(3) What procedures would be followed in gaining access to records?

(4) What internal security procedures would be followed to protect the confidentiality of records?

(5) How would the agency respond to requests for (a) interagency sharing or transfer; and (b) public disclosure of information in these records?

In developing procedures responsive to these basic questions, an attempt has been made to be as consistent as possible with the Privacy Protection Study Commission's Report with respect to governmental access to private sector records. Other sources of information considered include a draft report from the National Telecommunications and Information Administration to the Privacy Policy Coordinating Committee, draft work of the Interagency Regulatory Liaison Group Task Force on confidential business information, the Toxic Substances Control Act Confidential Business Information Security Manual, written statements of the Trade Secrets Subcommittee of the Toxic Substance Control Strategy Committee, the Court's decision in the *DuPont v. Finkley* case (459 F. Supp. 235 (1978)), and public comments on the OSHA proposal, including those of the National Commission on Confidentiality of Health Records.

The draft guidelines have been developed in light of the recommendations contained in those sources and in view of OSHA's needs to gain access to information whose confidential nature must be respected and protected. Further, these draft guidelines encompass the following recommended objectives:

1. A system of approving access to confidential records should be established so that a request to seek access requires an affirmative decision by an appropriate official within the agency that such access is necessary, and so that it is clear which officials within

OSHA may be held accountable for making the key decisions concerning records access.

2. Access to these records should be limited to those OSHA employees who have the need to examine such confidential and private information.

3. A system of control over, and physical security of, these records when in the physical possession of the agency should be established to assure that their integrity is maintained and that they are completely unavailable to unauthorized persons.

4. Requests for public disclosures of information should be carefully scrutinized so that no information which may properly be withheld from disclosure under an applicable provision of the Freedom of Information Act or the Privacy Act is in fact disclosed.

A copy of the draft guidelines was placed in the public record (Docket No. H-112) of the rulemaking on OSHA's proposal on access to exposure and medical records on November 24, 1978. Their availability to the public was announced in Mr. Grover Wrenn's opening statement on behalf of OSHA at the December 5 hearings held on that proposal.

Since that time, OSHA has received a number of preliminary comments on the guidelines. OSHA has also had a limited opportunity to reevaluate the guidelines. One major area of consideration relates to the ultimate legal effect of these guidelines. Based on public expressions of concern from a spectrum of interested parties and on its own evaluation of the issue, OSHA has preliminarily decided to promulgate the guidelines as procedural regulations in a new Part 1913 of 29 CFR, at or about the same time as the final rule on records access is issued.

A second area of concern involves the intended scope of the guidelines. As originally drafted, the guidelines in many respects applied equally to exposure records containing alleged trade secrets and confidential business information and to personally identifiable medical records.

After reevaluation, OSHA has preliminarily determined that the draft guidelines are uniquely suited to medical records, but not to alleged trade secret information. The reason for this is, first, that trade secrets are already afforded protection by statute (18 U.S.C. 1905 and section 15 of the OSH Act), by regulation (29 CFR 1903.9), and by the OSHA Field Operations Manual. Secondly, the draft guidelines do not provide procedures which would allow for a quick and fair determination of the validity of a trade secret claim. The potential for abuse and delay if trade secrets were to be additionally covered by these guidelines was therefore apparent. Thus, OSHA intends that the final regula-

tions will apply only to the agency's access to medical records.

OSHA invites comments on these preliminary determinations discussed above and all other issues raised in the draft guidelines.

The draft administrative guidelines for OSHA access to employee medical records as well as other public documents referred to in this notice may be obtained upon request at the OSHA Docket Office, Room S6212, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, D.C., 20210, 202-523-7895.

PUBLIC PARTICIPATION

Although these are rules of agency organization, procedure or practice and are therefore not subject to the rulemaking requirements of the OSH Act or of the Administrative Procedure Act (5 U.S.C. 553 (b)), OSHA has decided to invite public comment in view of the numerous expressions of public interest in these issues.

Accordingly, interested persons are invited to submit comments, views, and arguments on any issue raised by this proposed rule. These comments must be submitted on or before March 1, 1979, in quadruplicate, to the Docket Officer, Docket No. H-112A, Room S6212, U.S. Department of Labor, Third Street and Constitution Avenue, N.W., Washington, D.C., 20210, 202-523-7895. They will be available for public inspection and copying at the above address and will be carefully evaluated and considered by OSHA before it promulgates the final rule.

AUTHORITY

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, Room S-2315, Third Street and Constitution Avenue, N.W., Washington, D.C., 20210.

Accordingly, pursuant to sections 8 (c) (1), 8 (c) (3), and 8 (g) of the Occupational Safety and Health Act of 1970 (84 Stat. 1599, 1600; 29 U.S.C. 657) and Secretary of Labor's Order No. 8-76 (41 FR 25059) it is proposed to amend Title 29 of the Code of the Federal Regulations by adding a new Part 1913 containing procedural regulations on access to and use of employee medical records.

(Sec. 8, 84 Stat. 1599, 1600 (29 U.S.C. 657); Secretary of Labor's Order No. 8-76 (41 FR 25059)).

Signed at Washington, D.C., this 11th day of January, 1979.

EULA BINGHAM,

Assistant Secretary of Labor.

[FR Doc. 79-2084 Filed 1-18-79; 8:45 am]

[6560-01-M]

**ENVIRONMENTAL PROTECTION
AGENCY**

[40 CFR Part 65]

[FRL 1039-8]

**STATE AND FEDERAL ADMINISTRATIVE
ORDERS PERMITTING A DELAY IN COMPLIANCE
WITH STATE IMPLEMENTATION PLAN
REQUIREMENTS**

Proposed Approval of Administrative Orders
Issued By Connecticut Department of Environmental
Protection To New Haven Trap
Rock-Tomasso

AGENCY: Environmental Protection
Agency.

ACTION: Proposed Rules.

SUMMARY: EPA proposes to approve administrative orders issued by the Connecticut Department of Environmental Protection. The orders require the company to bring air emissions from its asphalt batching plants in Bristol and Portland, Connecticut into compliance with certain regulations contained in the federally approved Connecticut State Implementation Plan (SIP) by May 15, 1979. Because the orders have been issued to a major source and permit a delay in compliance with provisions of the SIP, they must be approved by EPA before they become effective as delayed compliance orders under the Clean Air Act (the Act). If approved by EPA, the orders will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's approval of the orders as delayed compliance orders.

DATE: Written comments must be received on or before February 20, 1979.

ADDRESSEE: Comments should be submitted to Director, Enforcement Division, EPA, Region I, Rm. 2103, J.F.K. Federal Building, Boston, MA 02203. The State orders, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

**FOR FURTHER INFORMATION
CONTACT:**

Attorney Michael Gurchin at 617/223-5061 or engineer Steven Fradkoff at 617/223-5610, both at the following address: U.S. Environmental Protection Agency, J.F.K. Federal Building, Room 2103, Boston, Massachusetts 02203.

SUPPLEMENTARY INFORMATION:

New Haven Trap Rock-Tomasso operates asphalt batching plants at Bristol and Portland, Connecticut. The orders under consideration address emissions from equipment at these plants with state registration numbers 0017, 0018, 0004, and 0005, which are subject to section 19-508-5(e) of the Connecticut Regulations for the abatement of air pollution. The regulation governs the testing of emissions from all sources, and is part of the federally approved Connecticut State Implementation Plan. The orders require final compliance with the regulation by May 15, 1979 through installation of baghouses and subsequent emission testing by procedures approved by the Connecticut Department of Environmental Protection. The source has consented to the terms of the order.

Because these orders have been issued to a major source of particulate emissions and permit a delay in compliance with the applicable regulation, they must be approved by EPA before they become effective as delayed compliance orders under Section 113(d) of the Clean Air Act (the Act). EPA may approve the orders only if they satisfy the appropriate requirements of this subsection.

If the orders are approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the orders during the period the orders are in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the orders would also constitute additions to the Connecticut SIP.

All interested persons are invited to submit written comments on the proposed orders. Written comments received by the date specified above will be considered in determining whether EPA may approve the orders. After the public comment period, the Administrator of EPA will publish in the FEDERAL REGISTER the Agency's final action on the orders in 40 CFR Part 65.

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

Dated: January 3, 1979.

WILLIAM R. ADAMS, Jr.,
Regional Administrator, Region I.
[FR Doc. 79-2067 Filed 1-18-79; 8:45 am]

[4110-02-M]

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Office of Education

[45 CFR Part 123]

BILINGUAL EDUCATION PROGRAM**Decision to Develop Regulations**

AGENCY: Office of Education, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Commissioner of Education proposes to amend the Bilingual Education Program regulations to reflect the Education Amendments of 1978 by issuing two separate sets of regulations.

(1) *Interim Final Regulations* are essential and effective immediately in order to issue grants for bilingual education programs during FY 1979. The Commissioner believes that it is impractical and contrary to the public interest to follow proposed rulemaking procedures that would delay the effective date of final regulations. The interim final regulations will amend existing regulations to implement certain provisions of the Education Amendments of 1978 that are not self-explanatory.

(2) *Proposed Regulations* will be published shortly after the interim final regulations. Proposed regulations will govern awards in FY 1980. They will:

- (a) Simplify and clarify the language of existing regulations;
- (b) Include the provisions published in the interim final regulations; and
- (c) Further regulate on provisions of the Education Amendments of 1978.

Proposed rulemaking procedures will be followed for the FY 1980 regulations. Both sets of regulations are policy significant.

**FOR FURTHER INFORMATION
CONTACT:**

Ms. Barbara J. Wells, 400 Maryland Avenue SW., (Room 421, Reporter's Building), Washington, D.C. 20202, Telephone: (202) 447-9273.

(Catalog of Federal Domestic Assistance Number 13.403; Bilingual Education.)

Dated: December 19, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.
[FR Doc. 79-2042 Filed 1-18-79; 8:45 am]

[4110-02-M]

[45 CFR Part 160c]

COMMUNITY EDUCATION PROGRAM**Decision To Develop Regulations**

AGENCY: Office of Education, HEW.

ACTION: Notice of decision to develop regulations.

SUMMARY: The Commissioner of Education proposes regulations governing grants and allotments for implementation of the new Community Schools and Comprehensive Community Education Act of 1978. The proposed regulations will simplify and clarify the language of the existing regulations and implement the Education Amendments of 1978. These regulations will improve leadership and financial support for implementation of planning, establishing, expanding, and operating local community education programs. These proposed regulations are policy significant.

FOR FURTHER INFORMATION CONTACT:

Ms. Julie Englund, U.S. Office of Education, 7th and D Streets, S.W., Room 5622, Washington, D.C. 20202, Telephone (202) 245-0691.

(Catalog of Federal Domestic Assistance Number 13.653, Community Education Program.)

Dated: December 14, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.
[FR Doc. 79-2043 Filed 1-18-79; 8:45 am]

[4110-02-M]

[45 CFR Part 184]

ETHNIC HERITAGE STUDIES PROGRAM

Decision To Develop Regulations

AGENCY: Office of Education, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Commissioner of Education proposes to amend the regulations for the Ethnic Heritage Studies Program. The regulations are being amended to include technical changes and for clarification and simplification of the language in the existing regulations to meet the requirements of Operation Common Sense.

FOR FURTHER INFORMATION CONTACT:

Dr. Stanley Wilcox (Room 3913, Regional Office Building No. 3), 400 Maryland Avenue, S.W., Washington, D.C. 20202. Telephone: (202) 245-2761.

Dated: December 12, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.
[FR Doc. 79-2044 Filed 1-18-79; 8:45 am]

[4110-02-M]

[45 CFR Part 193]

NATIONAL DIFFUSION NETWORK PROGRAM

Decision to Develop Regulations

AGENCY: Office of Education, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Commissioner of Education proposes to recodify the regulations governing the National Diffusion Network, NDN, to implement changes required by the Education Amendments of 1978, and policy changes within the Office of Education. Major provisions of the regulations describe the purpose of the program, govern the selection of projects eligible for funding, and describe characteristics of projects and specific activities to be carried out under the conditions of the awards. These regulations are policy significant.

FOR FURTHER INFORMATION CONTACT:

Dr. Andrew M. Lebby, 400 Maryland Avenue, S.W., (Room 3616, ROB-3), Washington, D.C. 20202. Telephone: (202) 245-9582.

(Catalogue of Federal Domestic Assistance Number 13.553, National Diffusion Network.)

Dated: November 28, 1978.

ERNEST L. BOYER,
U.S. Commissioner of Education.
[FR Doc. 79-2045 Filed 1-18-79; 8:45 am]

[3510-15-M]

DEPARTMENT OF COMMERCE

Maritime Administration

[46 CFR Part 251]

REGULATIONS AFFECTING SUBSIDIZED VESSELS AND OPERATORS

Construction-Differential Subsidy; Standard Contract Forms

AGENCY: Maritime Administration, Commerce.

ACTION: Extension of comment period.

SUMMARY: In FR Doc. 78-34361, appearing in the FEDERAL REGISTER on December 8, 1978 (43 FR 57624), Notice of Availability and request for comment on proposed regulation, standard forms for contracts which are subject to approval in awarding construction-differential subsidy, it was stated that written comments must be received by close of business on February 6, 1979. Upon request made and good cause shown by the Shipbuilders Council of America, the time for submission of comments has

been extended to close of business on March 1, 1979.

DATE: Written comments are due on or before March 1, 1979.

ADDRESS: Submit (in triplicate) to Secretary, Maritime Administration, Department of Commerce, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT:

Melvin S. Eck, Maritime Administration, Office of General Counsel, Washington, D.C. 20230, Tel. (202) 377-2771.

AUTHORITY: Sec. 204(b), Merchant Marine Act, 1936, as amended (46 U.S.C. 1114(b)); Reorganization Plans No. 21 of 1950 (64 Stat. 1273), and No. 7 of 1961 (74 Stat. 840), as amended by Pub. L. 91-469 (84 Stat. 1036); and Department of Commerce Organization Order 10-8 (38 FEDERAL REGISTER 19707, July 23, 1973).

Date: January 15, 1979.

By order of the Maritime Subsidy Board.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 79-2073 Filed 1-18-79; 8:45 am]

[6712-01-M]

FEDERAL COMMUNICATIONS COMMISSION

[FCC 78-828]

[47 CFR Chapter I]

CELLULAR MOBILE RADIO COMMUNICATIONS SYSTEM

Order Concerning Extension of Time for Limit for Adoption of Rules and Technical Standards

AGENCY: Federal Communications Commission.

ACTION: Order.

SUMMARY: Federal Communications Commission extends the deadline for adoption of rules and technical standards for nationwide, broadband, "cellular" mobile radio communication systems, to January 1, 1980. Cellular mobile systems are mobile radio telephone systems using advanced technology in order to achieve high quality communications with a high order of frequency reuse. In Docket 18262 the Commission expected to have adopted final rules by January 1, 1979. A pilot "developmental" program was instituted to yield data on which to base proposed rules. In order to obtain more detailed data before adopting final rules, the Commission is extending its target date for adoption of rules by one year. The Chief, Common Carrier Bureau, is given delegated authority to renew the authorizations of the participants in the pilot program.

DATES: Target date for adoption of definitive technical standards and institution of regular cellular radio communication service is January 1, 1980.

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

FOR FURTHER INFORMATION CONTACT:

Michael D. Sullivan, Mobile Services Division, Common Carrier Bureau. Telephone (202) 632-6450.

SUPPLEMENTARY INFORMATION:

In the matter of extension of time limit for adoption of rules and technical standards for cellular Mobile Radio Communication Systems; *Order*; adopted November 30, 1978; released December 6, 1978; By the Commission: Commissioner Lee absent.

1. On March 19, 1975, the Commission adopted its *Memorandum Opinion and Order* in Docket No. 18262, *Land Mobile Radio Service*, 51 FCC 2d 945, 40 FR 14452 (1975) (MO&O), terminating a long proceeding to provide spectrum relief for the land mobile radio services.¹ In that proceeding, the Commission, *inter alia*, allocated 40 MHz to the Domestic Public Land Mobile Radio Service for the development of a nationwide, broadband, "cellular" mobile radio communication system.

2. In paragraph 34 of the MO&O, the Commission emphasized the urgent need for additional mobile telephone service. Accordingly, we set a target date of January 1, 1979, for the adoption of rules and the institution of regular cellular service, and we stated that developmental operations would not extend beyond January 1, 1979.²

¹Land Mobile Radio Service, Docket No. 18262, Second Report and Order, 46 FCC 2d 752, 39 FR 18831 (1974), on reconsideration, 51 FCC 2d 945, 40 FR 14452 (1975), clarified, 55 FCC 2d 771, 40 FR 49779 (1975), *aff'd sub nom.* Nat'l Ass'n of Regulatory Utility Comm'rs v. FCC, 525 F.2d 630 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976). The rulemaking in Docket No. 18262 was initiated in 1968 with the Commission's Notice of Inquiry and Notice of Proposed Rule Making, 14 FCC 2d 311, 33 FR 10807 (1968).

²In paragraph 34 of the MO&O the Commission stated that: the public interest requires that development of cellular systems be carried forward as swiftly as possible. It is vital that the frequency spectrum made available for this purpose be put to use without delay in order to service the public needs for mobile radiotelephone and for limited dispatch service. There must be prescribed time limits within which an applicant who has received a developmental grant will carry out the proposal. Applications must include a proposed time schedule that must, at a minimum, call for beginning construction within one year following the grant and for completion of the developmental operation no later than January 1, 1979. We would expect to have adopted de-

3. The first application for developmental authority was filed on July 31, 1975, by the Illinois Bell Telephone Company (IBT), for a developmental cellular system in the Chicago, Illinois, metropolitan area. In a letter dated July 15, 1976, we suggested that IBT revise its application.³ IBT and the American Telephone and Telegraph Company sought reconsideration of the letter. On March 10, 1977, we granted reconsideration and granted IBT's application.⁴ IBT began constructing its developmental system in July 1977.

4. On February 14, 1977, American Radio Telephone Service, Inc. (ARTS), a radio common carrier, filed an application for a developmental system. ARTS proposed to test a cellular system designed by Motorola in the Baltimore-Washington area. We granted the application on October 28, 1977.⁵

5. On the same day as our grant to ARTS, we also returned as defective an application filed by ARCH, a joint venture, for a non-cellular "nonwireline multiple access exchange (N-MAX) mobile telephone system."⁶ The ARCH application was rejected because it did not comply with either the letter or the spirit of the guidelines for cellular systems laid down in paragraph 33 of our MO&O.⁷

6. Thus, the only developmental cellular systems presently authorized are those of IBT and American Radio Telephone Service, Inc. (ARTS). 51 FCC 2d at 955.

We have received six developmental reports from IBT and four from ARTS. IBT is currently in the equipment testing phase, and has informed us that in December 1978 it plans to start service tests to over 2000 mobile units. The ARTS system is in the early stages of a three-phase developmental program.

7. We recognized in our MO&O that "considerable additional work must be done before standards may be prescribed for [cellular] systems on a regular basis."⁸ Accordingly, we decided that only developmental systems would be authorized. "Following that

definitive technical standards and other regulations for regular system operation by that date.

³Illinois Bell Tel. Co., 62 FCC 2d 436 (1976).

⁴Illinois Bell Tel. Co., 63 FCC 2d 655 (1977), *appeal pending sub nom.* Rogers Radio Communication Services, Inc. v. FCC, Nos. 77-1352, 77-1357 (D.C. Cir.) (argued June 14, 1978). Note that part of the developmental data IBT is producing actually comes from Bell Laboratories' "Cellular test bed" in Newark, New Jersey, under several experimental licenses.

⁵American Radio Telephone Service, Inc., 66 FCC 2d 481 (1977).

⁶ARCH, 66 FCC 2d 496 (1977).

⁷51 FCC 2d at 954.

⁸*Id.* at 953.

program, we will adopt standards to which all systems, existing and new, will be required to conform."⁹ In 1975, we expected to be able to adopt technical standards and other rules governing cellular systems and move from a developmental stage to regular service by January 1, 1979. At this time, we believe that it would be desirable to have a further period of development before adopting rules which preclude new, creative approaches to cellular development. Accordingly, we now feel that it would be prudent to extend the target date for the adoption of the rules and technical standards and the institution of regular service to January 1, 1980, on our own motion.¹⁰

8. We are hereby delegating authority to the Chief, Common Carrier Bureau, to act on applications for renewal of developmental cellular authorizations consistent with this decision.

9. We are extending the period for cellular development in the hope that it will lead to the submission of information so that we can adopt a framework of rules which will make possible a nationwide compatible mobile communications network which will meet the needs of the American public. To this end, we still encourage the submission of new developmental proposals from the telecommunications industry. The experience gained from even a short period of developmental operation of a new system may be of more value in designing a framework of rules for future systems than an entire year of pleadings and comments. Accordingly, we are willing to entertain additional developmental proposals which would contribute significantly to our understanding of the cellular concept. Such proposals must be compatible with existing cellular technology, however, and they must be in keeping with the spirit of the MO&O in Docket 18262.¹¹

⁹*Id.* at 954. See also 63 FCC 2d at 662-63.

¹⁰Although we are taking action herein on our own motion, we note the filing, on September 13, 1978, of the "Petition of Illinois Bell Telephone Company and American Telephone Company for an Extension of the Completion Date for Cellular Mobile Telephone Development." IBT and AT&T ask that the completion date for the cellular program be extended from January 1, 1979, to January 1, 1980. We are granting this petition insofar as it is consistent with this Order. We are not, however, extending the period of existing developmental authorizations; the developmental licensees will be required to apply for renewal of their authorizations. The IBT authorization, File No. 20115-CD-P(-)-76, and the ARTS authorization, File No. 20777-CD-P(-)-77, expire on January 1, 1979.

¹¹We take note that the American Telephone and Telegraph Company and IBT have jointly filed a "Petition for Inquiry" looking toward standards for cellular systems. File No. RM-3200, Public Notice dated September 8, 1978 (Mimeo 7101). We have

Footnotes continued on next page

10. Authority for this action is contained in Sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i) and 303.

11. In view of the foregoing, IT IS ORDERED, That the target date for adoption of definitive technical standards and institution of regular cellular radio communication service shall be January 1, 1980.

12. It is further ordered, That authority to renew developmental cellular authorizations until January 1, 1980, is hereby delegated to the Chief, Common Carrier Bureau.

13. It is further ordered, That the "Petition of Illinois Bell Telephone Company and American Telephone and Telegraph Company for an Extension of the Completion Date for Cellular Mobile Telephone Development" IS GRANTED, insofar as it is not inconsistent with this Order, and is in all other respects DENIED.

FEDERAL COMMUNICATIONS
COMMISSION,
WILLIAM J. TRICARICO,
Secretary.

[FR Doc. 79-1507 Filed 1-18-79; 8:45 am]

Footnotes continued from last page
previously waived the requirement of Section 21.403 of the Rules that an applicant for developmental authority accompany its application with a petition to amend the Rules. See 63 FCC 2d at 666; cf. 66 FCC 2d at 483. This was done because the very purpose of the cellular developmental systems was to yield data which would aid us in the adoption of rules. We are now of the belief, however, that following the experience gained by IBT and ARTS, it would be helpful to have specific proposals for rules from renewal applicants. Therefore, we expect to release a Notice of Inquiry in the near future, pertaining to rules governing cellular systems. It will still not be necessary for rulemaking petitions to accompany the applications. We anticipate that if we grant renewals of any developmental authorizations we may require, as a condition on the authorizations, that the licensee submit detailed comments and proposed rules in response to our Notice of Inquiry. In our Notice of Inquiry, we will address the question of varying the standards established in our MO&O; at present, however, any requests for waiver of those standards must be adequately justified. In any event, developmental proposals must use a mobile unit which is capable of being used in other cellular systems.

[6712-01-M]

[47 CFR Part 18]

[Docket No. 20718]

INDUSTRIAL, SCIENTIFIC, AND MEDICAL
EQUIPMENT

Order Extending Time for Filing Comments and
Reply Comments

AGENCY: Federal Communications Commission.

ACTION: Order extending time for comments.

SUMMARY: Order Extending time for comments and reply comments in FCC Docket 20718 re overall revision of Part 18 of FCC Rules governing ISM equipment to May 1, 1979 and June 1, 1979, respectively.

DATES: Comments must be received on or before May 1, 1979, and Reply Comments must be received on or before June 1, 1979.

ADDRESSES: Federal Communications Commission, 1919 M St., N.W. Washington, D.C. 20554.

FOR FURTHER INFORMATION
CONTACT:

Art Wall, Office of Chief Engineer,
FCC, Washington, D.C. 20554 (202-
632-7095).

ORDER

Adopted: January 5, 1979.

Released: January 11, 1979.

In the Matter of overall revision of Part 18 governing industrial, scientific, and medical equipment, Docket 20718.

1. On September 29, 1978, the Commission released (43 FR 46326, October 6, 1978) a Notice of Proposed Rule Making in the above entitled matter soliciting public comments on or before January 15, 1979. Several parties have requested extensions of time within which to file comments on the grounds that the test procedures discussed in the proposal are not available.

2. Publication of the six test procedures has been unavoidably delayed. Recognizing the desirability of having these procedures available so they can be used to evaluate the proposed technical specifications, time for filing comments and reply comments is hereby extended to May 1, 1979, and June 1, 1979, respectively, pursuant to the authority granted by Section 0.241(d) of FCC Rules.

RAYMOND E. SPENCE,
Chief Engineer.

[FR Doc. 79-1901 Filed 1-18-79; 8:45 am]

[4310-55-M]

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[50 CFR Part 34]

REFUGE REVENUE SHARING ACT

Participation of Local Governments in Revenue
From Areas Administered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise Part 34 of Title 50, Code of Federal Regulations which prescribes regulations for revenue sharing with counties. These changes are necessitated by recent legislation which amended the Refuge Revenue Sharing Act. The proposed rule makes revenue sharing applicable to all service-administered lands instead of just to the refuge system; makes payments available for any governmental purpose; and provides a new computation for payments to county and local governments.

DATE: Comments must be received by February 20, 1979.

ADDRESS: Send comments to the Chief, Division of Realty, U.S. Fish and Wildlife Service, Department of the Interior, Washington, D.C. 20240.

FOR FURTHER INFORMATION
CONTACT:

Bernard J. Schaefer, Assistant
Chief, Division of Realty, Telephone
202-343-4026.

SUPPLEMENTAL INFORMATION: Public Law 95-469, approved October 17, 1978, which amended 16 U.S.C. 715s, changes the provisions for sharing revenues with counties in a number of ways. It makes revenue sharing applicable to all lands administered solely or primarily by the U.S. Fish and Wildlife Service, whereas previously it was applicable only to areas in the National Wildlife Refuge System. Areas added are national fish hatcheries, administrative sites, and research stations. The new law makes payments available for any governmental purpose, whereas the old law restricted the use of the payments to roads and schools. For fee (acquired) lands, the new law provides a payment of 75¢ per acre, 3/4 of 1% of fair market value, or 25% of net receipts, whichever is greater, whereas the old law provided a payment of 3/4 of 1% adjusted cost or 25% of net receipts, whichever was greater. The new law makes reserve (public domain) lands entitlement lands under Public Law 94-565 (16 U.S.C. 1601-1607), and provides for a payment of 25% of net receipts. The new law authorizes appropriations to make up any short-fall in

net receipts to make payments in the full amount for which counties are eligible. The old law provided that if the net receipts were insufficient to make the full payment, the payment to each county would be reduced proportionately. All written comments made pursuant to this notice will be available for inspection at the Division of Realty, U.S. Fish and Wildlife Service, 5th Floor Rear, 608 13th Street, N.W., Washington, D.C., during regular business hours, 7:45 a.m. to 4:15 p.m. (except holidays). The primary author of this proposal is Richard E. Corthell, Division of Realty, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (phone 202-343-4026).

NOTE.—The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive order 12044 and 43 CFR Part 14.

Accordingly, it is proposed to revise Part 34, Title 50, Code of Federal Regulations as follows:

PART 34—REFUGE REVENUE SHARING WITH COUNTIES

Sec.

- 34.1 Purpose.
- 34.2 Authority.
- 34.3 Definitions.
- 34.4 Eligibility of areas.
- 34.5 Distribution of revenues.
- 34.6 Schedule of appraisals.
- 34.7 Fair market value appraisals.
- 34.8 Appropriations authorized.
- 34.9 Protests.

AUTHORITY: 16 U.S.C. 715s, as amended.

§ 34.1 Purpose.

The purpose of the regulations contained in this part is to prescribe the procedures for making payments in lieu of taxes to counties for areas administered by the Secretary through the United States Fish and Wildlife Service in accordance with the Revenue Sharing Act.

§ 34.2 Authority.

(a) The Act of October 17, Public Law 95-469, amended the Act of June 15, 1935, as amended by the Act of August 30, 1964 (78 Stat. 701, 16 U.S.C. 715s), by revising the formula and extending the revenue sharing provisions to all fee and reserve areas that are administered solely or primarily by the Secretary through the United States Fish and Wildlife Service. Payments under this Act may be used for any governmental purpose.

(b) Pursuant to Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. 2000d), and the regulations issued pursuant thereto, which are contained in 43 CFR Part 17, counties must file an assurance with the Department, comply with the terms of the assurances, and comply with regulations contained in 43 CFR Part 17 in

order to continue to receive this Federal financial assurance.

§ 34.3 Definitions.

(a) The term "fee area" means any area which was acquired in fee by the United States and is administered, either solely or primarily, by the Secretary through the Service.

(b) The term "reserve area" means any area of land withdrawn from the public domain and administered, either solely or primarily, by the Secretary through the Service. For the purpose of these regulations, reserve areas also include lands in Hawaii, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, which were initially administered by the United States through Act of Congress, Executive Order, Public Land Order or Proclamation of the President and administered, either solely or primarily, by the Secretary through the Service.

(c) The term "county" means any county, parish, organized or unorganized borough, or other unit of local government that collects and distributes real property taxes where fee area and/or reserve areas are located. For the purpose of sharing revenues, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands shall each be treated as a county.

(d) The term "fund" means the revenues received by the Service from (1) the sale or disposition of animals, salmonoid carcasses and eggs, products of the soil (including, but not limited to, timber, hay, and grass), minerals, shells, sand, and gravel; (2) leases for public accommodations or facilities incidental to, but not in conflict with, the basic purpose of such areas; and (3) other privileges, including industrial leases at Crab Orchard National Wildlife Refuge, Illinois, as authorized by Section 8 of Public Law 95-616, approved October 27, 1978. The Service may pay from such revenues any necessary expenses incurred in connection with the revenue producing and revenue sharing activity. The fund shall also include any appropriations authorized by the Act to make up any difference between the total amount of receipts after payments of expenses and the total amount of payments to the counties.

(e) The term "net receipts" means the amount of revenue collected by the Service from an area of fee land and/or reserve land after the deduction of necessary expenses incurred in producing the particular revenues.

(f) The term "fair market value" means the amount in terms of money for which in all probability a property would be sold if exposed for sale in the open market by a seller who is willing but not obligated to sell, allowing a reasonable time to find a buyer who is willing but not obligated to buy, both

parties having full knowledge of all the uses to which the property is adapted, and for which it is capable of being used.

§ 34.4 Eligibility of areas.

In order for any county to receive payments under the Act, there must be located within the county, areas of land and/or water administered by the Secretary of the Interior, including wildlife refuges, wildlife ranges, wildlife management areas, fish hatcheries, research centers or stations, and administrative sites, and these areas must be solely or primarily administered by the Service. In addition to this Act, reserve areas administered solely or primarily by the Service are entitlement lands under Section 6(a) of the Act of October 29, 1976 (Public Law 94-565, 31 U.S.C. 1601-1607), for which regulations are published in Title 43, Part 1880, Code of Federal Regulations.

§ 34.5 Distribution of revenues.

The Act provides that the Secretary, at the end of each fiscal year, shall pay to each county out of the fund:

(a) For reserve areas, an amount equal to 25 percentum of the net receipts, collected by the Secretary in connection with the operation and management of such area, provided that when any such area is situated in more than one county, the distributive share to each from the aforesaid receipts shall be proportional to its acreage of such reserve area.

(b) For fee areas, whichever of the following is greater:

(1) An amount equal to 75¢ per acre for the total acreage of the fee area located within such county.

(2) An amount equal to three-fourths of 1 percentum of the fair market value, as determined by the Secretary, of that portion of the fee area (excluding any improvements thereto made after the date of Federal acquisition) which is located within such county. For those areas of fee land within the National Wildlife Refuge System as of September 30, 1977, the amount of payment will not be less than the amount paid on the adjusted cost basis as in effect at that time. Actual cost, or appraised value in case of donation, will be used for lands acquired during fiscal year 1978, and for those areas of fee lands added to lands administered by the Service after September 30, 1978, by purchase, donation, or otherwise, fair market value shall be determined by appraisal as of the date said areas are administered by the Service.

(3) An amount equal to 25 percentum of the net receipts collected by the Secretary in connection with the operation and management of such fee area during such fiscal year; but if a

fee area is located in two or more counties, the amount each such county is entitled to shall be the amount which bears to such 25 percentum, the same ratio as that portion of the fee area acreage which is within such county bears to the total acreage of such fee area.

(c) In accordance with Section 5(A) of the Act, each county which receives a payment under (a) and (b) above with respect to any fee area or reserve area shall distribute that payment to those units of local government which have incurred the loss or reduction of real property tax revenues because of the existence of such area in accordance with the following guidelines. The local units of government entitled to this distribution will be those such as, but not limited to, cities, towns, townships, school districts, and the county itself in appropriate cases, which levy and collect real property taxes separately from the county or other primary taxing authority or those for which a tax is separately stated on a consolidated tax bill of the primary taxing authority in areas wherein eligible lands are located. The amount of distribution or passthrough to which each unit of local government will be entitled shall be in the same proportion as its current tax loss bears to the current whole tax loss for the area. Counties shall distribute the payment to eligible local units of government within 90 days from receipt of the payment. In the event a county cannot make the required distribution for reasons of State or local law, or otherwise, the Service will make the payments directly to local units of government upon return of the check and information upon which to make the payments. Payments generated from reserve lands are not subject to the requirements for distribution since these lands have never been on tax rolls. Where reserve land payments are included in payments to counties, the Service will furnish with the payment, a statement as to the portion pertaining to such reserve lands, which amount may be retained by the county in full.

(d) Each county which receives a payment under these regulations shall maintain a record for a period of three years as to how the payment was distributed to units of local government under (c) above. The record shall be available for inspection by the Regional Director should a dispute arise as to

the distribution of payments. See Section 29.21-2(c) for a listing of the Regional Directors of the Service.

§ 34.6 Schedule of appraisals.

The Secretary shall make fair market value appraisals of areas administered by the Service within five years after October 17, 1978, beginning with areas established earliest, and on a schedule of approximately one-fifth of such areas each fiscal year. All areas for which payments were not authorized prior to fiscal year 1979 (i.e.; fish hatcheries, administrative sites, and research stations) shall be included in the areas appraised during the first fiscal year. Once appraised, areas shall be reappraised on a schedule of at least once every five years. Until areas are appraised, the fair market value for the purposes of this regulation shall be the adjusted cost as of September 30, 1978, except that fee lands added to such areas after that date shall be on the basis of fair market value.

§ 34.7 Fair market value appraisals.

Fee areas administered by the Service will be appraised in accordance with standard appraisal procedures in order to estimate the fair market value of each area as a whole. The evaluation will be premised on an appropriate determination of highest and best use in accordance with existing or potential zoning, the present condition of the land and the general economic situation in the vicinity. Standard appraisal techniques will involve a market data comparison of these areas with similar properties which have sold recently in the local market. These techniques may also include consideration of potential income and development of the cost approach for special use properties having limited marketability. An appropriate evaluation of these areas will also take into consideration a discount for size as recognized by the market for large properties where applicable. The appraisals will be made on a gross or overall basis rather than a summation of individual values for different cover type acreages. The appraisals will be accomplished by the regional director, using Service staff appraisers or private appraisers contracted by the Service. The Act requires that improvements placed upon the land after the date of Federal ac-

quisition be excluded from the fair market value. The only structures that will be included in the appraisal are those that were present at the time of Federal acquisition and have not been the subject of substantial renovation or modification with Federal funds. Evaluation of improvements will be based on their contributory value to the area as determined by the highest and best use study. Lands occupied by improvements not subject to appraisal will be valued as though unimproved. The appraisals will be reviewed by the Service's review appraisers and the determination of the regional director as to fair market value shall be final and conclusive and shall be the basis for computation of revenue sharing payments.

§ 34.8 Appropriations authorized.

The Act authorizes appropriations to the fund for any fiscal year when the aggregate amount of payments required to be made exceeds the net receipts in the fund.

§ 34.9 Protests.

(a) Computation of payments shall be based on Federal records concerning land, real property improvements, and accounting of net receipts from area administered solely or primarily by the Service.

(b) Any affected county may protest the results of the computations of its payments to the Regional Director in charge of the State and county affected. See Section 29.21-2(c) for a listing of the regional directors of the Service.

(c) Any protesting county shall submit sufficient evidence to show error in the computation or the data from which the computations are made.

(d) All protests to the regional director shall be filed within 90 days from the date of receipt of the payment.

(e) The regional director shall consult with the affected county to resolve conflicts in the computations and/or data. The regional director shall make a determination as to the correct payment, which determination shall be final and conclusive.

Dated: January 15, 1979.

ROBERT S. COOK,
Acting Director,
Fish and Wildlife Service.

[FR Doc. 79-1907 Filed 1-18-79; 8:45 am]

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Board, Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and must relate to the fitness, willingness, or ability of the applicant to provide all-cargo air service or to comply with the Act or the Board's orders and regulations. The answer shall be served upon the applicant and state the date of such service.

PHYLLIS T. KAYLOR,
Secretary.

[FR Doc. 79-2028 Filed 1-18-79; 8:45 am]

[3510-07-M]

DEPARTMENT OF COMMERCE

Bureau of the Census

CENSUS ADVISORY COMMITTEE ON HOUSING FOR THE 1980 CENSUS

Public Meeting

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. APP. (1976), notice is hereby given that the Census Advisory Committee on Housing for the 1980 Census will convene on February 9, 1979, at 9:30 a.m. The Committee will meet in Room 2424, Federal Building 3 at the Bureau of the Census in Suitland, Maryland.

The Census Advisory Committee on Housing for the 1980 Census was established in March 1976 to provide technical advice and guidance in planning the forthcoming decennial census of housing to ensure that the major statistical requirements of decision-makers are provided by the 1980 Census of Housing program.

The Committee is composed of 18 members, including a representative from each of nine organizations, and nine members appointed by the Secretary of Commerce.

The agenda for the meeting, which is scheduled to adjourn at 4:00 p.m., is: 1) Introductory remarks by the Director, Bureau of the Census, 2) status of planning for the 1980 census, 3) status of the 1980 housing census, 4) Community Services Program, 5) publication outlines for the 1980 housing census, 6) outlying areas program, and 7) committee recommendations and plans for the next meeting.

The meeting will be open to the public and a brief period will be set aside for public comment and questions. Extensive questions or statements must be submitted in writing to the Committee Control Officer at least 3 days prior to the meeting.

Persons planning to attend and wishing additional information concerning this meeting or who wish to submit written statements may contact Mr. Arthur F. Young, Chief, Housing Division, Bureau of the Census, Federal Building 3, Suitland,

Maryland. (Mail address: Washington, D.C. 20233). Telephone (301) 763-2863.

Dates: January 16, 1979.

MANUEL D. PLOTKIN,
Director,
Bureau of the Census.

[FR Doc. 79-1987 Filed 1-18-79; 8:45 am]

[3510-25-M]

Foreign Trade Zones Board

[Order No. 141]

RESOLUTION AND ORDER APPROVING APPLICATION OF THE GREATER CINCINNATI FOREIGN-TRADE ZONE, INC., FOR FOREIGN, TRADE ZONE FACILITIES IN THE GREATER CINCINNATI AND COLUMBUS, OHIO, AREAS

Proceedings of the Foreign-Trade Zones Board,
Washington, D.C.

RESOLUTION AND ORDER

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order:

The Board, having considered the matter, hereby orders:

After consideration of the application of the Greater Cincinnati Foreign-Trade Zone, Inc., filed with the Foreign-Trade Zones Board (the Board) on September 19, 1978, requesting a grant of authority for establishing, operating, and maintaining general-purpose foreign-trade zones in the Greater Cincinnati area of Ohio and northern Kentucky, and two special-purpose subzones near Cincinnati and Columbus, Ohio, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations are satisfied, and that the proposal is in the public interest, approved the application.

As the proposal involves industrial park type general-purpose zone sites that envisage the possible construction of buildings by parties other than the grantee, this approval includes authority to the grantee to permit the erection of such buildings, pursuant to Section 400.815 of the Board's regulations, as are necessary to carry out the zone proposal, providing that prior to its granting such permission it shall have the concurrences of the local District Director of Customs, the U.S. Army District Engineer, when appropriate, and the Board's Executive Secretary. Further, the grantee shall notify the Board's Executive Secretary for approval prior to the commencement of any manufacturing operation at any of the various zone sites. The Secretary of Commerce, as Chairman

and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

FOREIGN TRADE ZONES BOARD—
WASHINGTON, D.C.

GRANT TO ESTABLISH, OPERATE AND MAINTAIN FOREIGN, TRADE ZONE AND SUBZONE FACILITIES IN THE GREATER CINCINNATI AND COLUMBUS, OHIO, AREAS

WHEREAS, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

WHEREAS, the Greater Cincinnati Foreign-Trade Zone, Inc., (the Grantee) has made application (filed September 19, 1978, and amended November 2, 1978) in due and proper form to the Board, requesting the establishment, operation and maintenance of foreign-trade zones in Butler County, Ohio, and Campbell County, Kentucky, within the Cincinnati Customs port of entry; and, two special-purpose subzones, one in Hamilton County, Ohio, within the Cincinnati Customs port of entry, the other in Union County, Ohio, adjacent to the Columbus port of entry;

WHEREAS, notice of said application and amendment has been given and published, and full opportunity has been afforded all interested parties to be heard; and

WHEREAS, the Board has found that the requirements of the Act and the Board's Regulations (15 CFR Part 400) are satisfied;

NOW, THEREFORE, the Board hereby grants to the grantee the privilege of establishing, operating and maintaining foreign-trade zones and subzones, designated on the records of the Board as Zone No. 46 (Butler County, Ohio), Subzone No. 46A (Hamilton County, Ohio), Subzone 46B (Union County, Ohio), and Zone No. 47 (Campbell County, Kentucky) at two sites: (NKPA Site) and (Hosea Site), and more particularly described on the maps and drawings accompanying the application (as amended) in Exhibits IX and X, said grant being subject to the provisions, conditions, and restrictions of the Act and the regulations issued thereunder, to the same extent as though the same were

fully set forth herein, and also to the following express conditions and limitations:

Operation of the foreign-trade zones and subzones shall be commenced by the Grantee within a reasonable time from the date of issuance of the grant, and prior thereto the Grantee shall obtain all necessary permits from Federal, State, and municipal authorities.

The Grantee shall allow officers and employees of the United States free and unrestricted access to and throughout the foreign-trade zones and subzones in the performance of their official duties.

The Grantee shall notify the Executive Secretary of the Board for approval prior to the commencement of any manufacturing operation within the zone and subzone sites.

The grant shall not be construed to relieve the Grantee from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said zone and subzone sites, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and the Army District Engineer with the Grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and the installation of suitable facilities.

IN WITNESS WHEREOF, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer at Washington, D.C. this 12th day of January 1979, pursuant to Order of the Board.

C. L. HASLAM,
Foreign-Trade Zones Board,
Acting Chairman and Executive
Officer.

Attest:
JOHN J. DAFONTE,
Executive Secretary.

[FR Doc. 79-1909 Filed 1-18-79; 8:45 am]

[3510-15-M]

Maritime Administration

[Docket No. S-634]

OGDEN TRAVELER, INC.

Application.

Notice is hereby given that Ogden Traveler, Inc., 280 Park Avenue, New York, New York 10017, has filed an application dated December 29, 1978, with the Maritime Subsidy Board (the Board) pursuant to Title VI of the Merchant Marine Act, 1936, as amended (the Act), for an operating-differential subsidy contract, to expire Decem-

ber 31, 1979, unless extended, to operate the SS TRAVELER, 25,977 dead-weight tons, in the carriage of bulk raw and processed agricultural commodities in the foreign commerce of the United States (U.S.) from ports in the U.S. to ports in the Union of Soviet Socialist Republics (U.S.S.R.), or other permissible ports of discharge. Dry and liquid bulk cargoes may be carried from the U.S.S.R. and other foreign ports inbound to U.S. ports during voyages subsidized for carriage of export bulk raw and processed agricultural commodities to the U.S.S.R., or other permissible ports of discharge.

Full details concerning the U.S.-U.S.S.R. export bulk raw and processed agricultural commodities subsidy program, including terms, conditions and restrictions upon both the subsidized operators and vessels, appear in Title 46 of the Code of Federal Regulations, Part 294.

For purposes of section 605(c) of the Act, it should be assumed that should the Board grant the requested approval, the vessel named above will engage in the described trade, on a full-time basis, during the indicated time period. Under such approval, each voyage must be approved for subsidy assistance prior to its commencement, and the Board will act on such request(s) as an administrative matter for which there is no requirement for further section 605(c) notice(s).

Any person having an interest in the granting of the application and who would contest a finding by the Board that the service now provided by vessels of U.S. registry for the carriage of cargoes previously specified is inadequate, must on or before January 30, 1979 notify the Board's Secretary, in writing, of his interest and of his position, and file a petition for leave to intervene in accordance with the Board's Rules of Practice and Procedure (46 CFR 201). Each such statement of interest and petition to intervene shall state whether a hearing is requested under section 605(c) of the Act, and, with as much specificity as possible, the facts that the intervenor would undertake to prove at such hearing.

In the event a hearing under section 605(c) of the Act is ordered to be held with respect to the subject application, the purpose of such hearing will be to receive evidence relevant to (1) whether the application herein described, with respect to the vessel to be operated in an essential service and served by citizens of the U.S. would be in addition to the existing service or services, and if so, whether the service already provided by vessels of U.S. registry is inadequate, and (2) whether in the accomplishment of the purposes and policy of the Act additional vessels should be operated thereon.

If no request for hearing and petition for leave to intervene is received within the specified time, or if the Board determines that petitions for leave to intervene filed within the specified time do not demonstrate sufficient interest to warrant a hearing, the Board will take such actions as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidy (ODS)).

Dated: January 15, 1979.

JAMES S. DAWSON, Jr.,
Secretary.

[FR Doc. 79-2072 Filed 1-18-79; 8:45 am]

[3510-22-M]

National Oceanic and Atmospheric
Administration

NATIONAL MARINE FISHERIES SERVICE

Issuance of Permit To Take and Import Marine
Mammals

On November 1, 1978, Notice was published in the FEDERAL REGISTER (43 FR 50955), that an application had been filed with the National Marine Fisheries Service by Dr. Lanny Cornell, Vice President.

Research/Veterinary Husbandry, 1720 South Shores Road, Mission Bay, San Diego, California 92109, for a public display/scientific research permit to take and import six (6) beluga whales, six (6) pilot whales, twenty (20) common dolphins and/or Pacific white-sided dolphins, fifteen (15) spotted dolphins, spinner dolphins, striped dolphins and/or Northern right whale dolphins and fifty (50) Atlantic or Pacific bottlenose dolphins.

Notice is hereby given that on January 12, 1979, and as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the National Marine Fisheries Service issued a public display/scientific research permit to Sea World, Inc., subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, N. W., Washington, D.C.,

Regional Director, National Marine Fisheries Service, Southwest Region, 300 South Ferry Street, Terminal Island, California 90731;

Regional Director, National Marine Fisheries Service, Duval Building, 9450 Kroger Boulevard, St. Petersburg, Florida 33702;

Regional Director, National Marine Fisheries Service, Northeast Region,

Federal Building, 14 Elm Street, Gloucester, Massachusetts 01930; and
Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: January 12, 1979.

WINFRED H. MEIBOHM,
Associate Director,
National Marine Fisheries Service.

[FR Doc. 79-2010 Filed 1-18-79; 8:45 am]

[3510-22-M]

NEW ENGLAND FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The New England Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) will meet to discuss: (1) Report on NMFS groundfish mesh trials; (2) Report on NMFS Observer Program; (3) Report on legality of modifying the Surf Clam MP; (4) Report on development of Pollock MP; and (5) Other Business.

DATES: The meeting will convene on Wednesday, February 7, 1979, at approximately 10:00 a.m. and adjourn on Thursday, February 8, 1979, at approximately 5:00 p.m. The meeting is open to the public.

ADDRESS: The meeting will take place at the Holiday Inn, Junction of Routes 1 and 128, Peabody, Massachusetts.

FOR FURTHER INFORMATION CONTACT:

Spencer Apollonio, Executive Director, New England Fishery Management Council, Peabody Office Building, One Newbury Street, Peabody, Massachusetts 01960, Telephone: (617) 535-5450.

SUPPLEMENTARY INFORMATION: For information on seating arrangements, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: January 15, 1979.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

[FR Doc. 79-1895 Filed 1-18-79; 8:45 am]

[3510-22-M]

SOUTH ATLANTIC FISHERY MANAGEMENT COUNCIL

Public Meeting

AGENCY: National Marine Fisheries Service, NOAA.

SUMMARY: The South Atlantic Fishery Management Council, established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), will meet to discuss: (1) Council Decision Process on the King and Spanish Mackerel FMP; (2) Council Decision Process on the Snapper-Grouper FMP; (3) Review foreign fishing permits if any; and (4) Other management business.

DATES: The meeting will convene on Tuesday, January 23, 1979, at 1:00 p.m. and will adjourn on Thursday, January 25, 1979, at approximately 12:00 noon. The meeting is open to the public.

ADDRESS: The meeting will take place at Headquarters, 1 Southpark Circle, Suite 306, Charleston, South Carolina 29407.

FOR FURTHER INFORMATION CONTACT:

Ernest D. Premetz, Executive Director, South Atlantic Fishery Management Council, 1 Southpark Circle, Suite 306, Charleston, SC 29407, Telephone: (803) 571-4366.

SUPPLEMENTARY INFORMATION: For more information on seating, changes to the agenda, and/or written comments, contact the Executive Director.

Dated: January 16, 1979.

WINFRED H. MEIBOHM,
Acting Executive Director,
National Marine Fisheries Service.

[FR Doc. 79-1896 Filed 1-18-79; 8:45 am]

[3510-17-M]

Office of the Secretary

MID-AMERICA ECONOMIC DEVELOPMENT REGION

Notice of Designation of an Economic Development Region

Pursuant to the provisions of Section 501(a) of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3181(a)), having examined all pertinent data, I have determined that the States of Illinois, Indiana, Iowa, and the following 60 counties in the State of Ohio meet the requirements of the Act for designation as an economic development region: Allen, Ashland, Ashtabula, Auglaize, Butler, Cham-

paign, Clark, Clinton, Columbiana, Crawford, Cuyahoga, Darke, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Geauga, Greene, Hamilton, Hancock, Hardin, Henry, Huron, Knox, Lake, Licking, Logan, Lorain, Lucas, Madison, Mahoning, Marion, Medina, Mercer, Miami, Montgomery, Morrow, Ottawa, Paulding, Pickaway, Portage, Preble, Putnam, Richland, Sandusky, Seneca, Shelby, Stark, Summit, Trumbull, Union, Van Wert, Warren, Wayne, Williams, Wood, and Wyandot. Accordingly, in response to a request dated December 28, 1976, from the Governors of the four states, I have designated the above-described region as the Mid-America Economic Development Region.

Inquiries relating to this designation should be addressed to the Special Assistant to the Secretary for Regional Economic Coordination, Room 2092, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: January 9, 1979.

JUANITA M. KREPS
Secretary of Commerce.

[FR Doc. 79-2257 Filed 1-18-79; 10:30 am]

[3510-17-M]

MID-ATLANTIC ECONOMIC DEVELOPMENT REGION

Notice of Designation of an Economic Development Region

Pursuant to the provisions of Section 501 (a) of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3181(a)), having examined all pertinent data, I have determined that the entire States of Delaware and New Jersey, and parts of the States of Maryland, New York, and Pennsylvania meet the requirements of the Act for designation as an economic development region. Accordingly, in response to requests dated February 3, 1977, and June 16, 1978, from the Governors of the five states, I have designated as the Mid-Atlantic Economic Development Region the entire States of Delaware and New Jersey and the counties listed below in Maryland, New York, and Pennsylvania.

MARYLAND

Anne Arundel	Howard
Baltimore	Kent
Calvert	Montgomery
Caroline	Prince Georges
Carroll	Queen Annes
Cecil	St. Marys
Charles	Somerset
Dorchester	Talbot
Frederick	Wicomico
Harford	Worcester

INDEPENDENT CITY of Baltimore

NEW YORK

Albany	Onondaga
Bronx	Oneida
Cayuga	Ontario
Clinton	Orange
Columbia	Orleans
Dutchess	Oswego
Erie	Putnam
Essex	Queens
Franklin	Rensselaer
Fulton	Richmond
Genesee	Rockland
Greene	St. Lawrence
Hamilton	Saratoga
Herkimer	Schenectady
Jefferson	Seneca
Kings	Suffolk
Lewis	Sullivan
Livingston	Ulster
Madison	Warren
Monroe	Washington
Montgomery	Wayne
Nassau	Westchester
New York	Wyoming
Niagara	Yates

PENNSYLVANIA

Adams	Lancaster
Berks	Lebanon
Bucks	Lehigh
Chester	Montgomery
Cumberland	Northampton
Dauphin	Philadelphia
Delaware	York
Franklin	

Inquiries relating to this designation should be addressed to the Special Assistant to the Secretary for Regional Economic Coordination, Room 2092, Main Commerce Building, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

Dated January 9, 1979.

JUANITA N. KREPS,
Secretary of Commerce.

[FR Doc. 79-2258 Filed 1-18-79; 10:30 am]

[3510-17-M]

MID-SOUTH ECONOMIC DEVELOPMENT REGION

Notice of Designation of an Economic Development Region

Pursuant to the provisions of Section 501(a) of the Public Works and Economic Development Act of 1965, as amended (Public Law 89-136; 42 U.S.C. 3181(a)), having examined all pertinent data, I have determined that parts of the States of Alabama, Ken-

tucky, Mississippi, and Tennessee meet the requirements of the Act for designation as an economic development region. Accordingly, in response to requests from the Governors of the four States, I have designated as the Mid-South Economic Development Region the counties listed below in the States of Alabama, Kentucky, Mississippi, and Tennessee:

ALABAMA

Autauga	Hale
Baldwin	Henry
Barbours	Houston
Bullock	Lee
Butler	Lowndes
Choctaw	Macon
Clarke	Marengo
Coffee	Mobile
Conecuh	Monroe
Covington	Montgomery
Crenshaw	Perry
Dale	Pike
Dallas	Russell
Escambia	Sumter
Geneva	Washington
Greene	Wilcox

KENTUCKY

Allen	Jessamine
Anderson	Kenton
Ballard	Larue
Barren	Livingston
Boone	Logan
Bourbon	Lyon
Boyle	McCracken
Bracken	McClean
Breckinridge	Marion
Bullitt	Marshall
Butler	Mason
Caldwell	Meade
Calloway	Mercer
Campbell	Metcalfe
Carlisle	Muhlenberg
Carroll	Nelson
Christian	Nicholas
Crittendon	Ohio
Daviess	Oldham
Edmonson	Owen
Fayette	Pendleton
Franklin	Robertson
Fulton	Scott
Gallatin	Shelby
Grant	Simpson
Graves	Spencer
Grayson	Taylor
Hancock	Todd
Hardin	Trigg
Harrison	Trimble
Hart	Union
Henderson	Warren
Henry	Washington
Hickman	Webster
Hopkins	Woodford
Jefferson	

MISSISSIPPI

Adams	Lawrence
Amite	Leake
Attala	Leflore
Bolivar	Lincoln
Calhoun	Madison
Carroll	Marion
Claiborne	Montgomery
Clarke	Neshoba
Coahoma	Newton
Copiah	Panola
Covington	Pearl River
DeSoto	Perry
Forrest	Pike
Franklin	Quitman
George	Rankin
Greene	Scott
Grenada	Sharkey
Hancock	Simpson
Harrison	Smith
Hinds	Stone
Holmes	Sunflower
Humphreys	Tallahatchie
Issaquena	Tate
Jackson	Tunica
Jasper	Walthall
Jefferson	Warren
Jefferson Davis	Washington
Jones	Wayne
Lafayette	Wilkinson
Lamar	Yalobusha
Lauderdale	Yazoo

TENNESSEE

Bedford	Lauderdale
Benton	Lawrence
Carroll	Lewis
Cheatham	Lincoln
Chester	McNairy
Crockett	Madison
Davidson	Marshall
Decatur	Maury
Dickson	Montgomery
Dyer	Moore
Fayette	Obion
Gibson	erry
Giles	Robertson
Hardeman	Rutherford
Hardin	Shelby
Haywood	Stewart
Henderson	Sumner
Henry	Tipton
Hickman	Trousdale
Houston	Wayne
Humphreys	Weakley
Lake	Williamson
	Wilson

Inquiries relating to this designation should be addressed to the Special Assistant to the Secretary for Regional Economic Coordination, Room 2092, Main Commerce Building, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230.

Dated: January 9, 1979.

JUANITA M. KREPS,
Secretary of Commerce.

[FR Doc. 79-2259 Filed 1-18-79; 10:30 am]

[6820-33-M]

**COMMITTEE FOR PURCHASE FROM
THE BLIND AND OTHERS SEVERELY
HANDICAPPED**

PROCUREMENT LIST 1979

Addition

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Addition to procurement list.

SUMMARY: This action adds to Procurement List 1979 a commodity to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: January 19, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On October 20, 1978 the Committee for Purchase from the Blind and Other Severely Handicapped published a notice (43 FR 49035) of proposed addition to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodity is hereby added to Procurement List 1979:

Class 8135

Currency Packing Block
BEP Stock No. 1391

C. W. FLETCHER,
Executive Director.

[FR Doc. 79-1996 Filed 1-18-79; 8:45 am]

[3710-08-M]

DEPARTMENT OF DEFENSE

Department of the Army

**THE NATIONAL TRAINING CENTER, FORT
IRWIN SITE**

Filing of Environmental Impact Statement

In compliance with the National Environmental Policy Act of 1969, the Army, on January 19, 1979, provided the Environmental Protection Agency a Final Environmental Impact Statement (FEIS) concerning the proposed National Training Center, Fort Irwin Site. The alternatives of no actions and locating the NTC at MCB 29 Palms or Yuma Proving Ground are also analyzed. Copies of the statement have been forwarded to concerned Federal, state, and local agencies. Interested organizations or individuals may obtain copies for cost of reproduction from Commander, Forces Command (FORSCOM), ATTN: AFOP-FSS, Fort McPherson, Atlanta, Georgia 30330, telephone: (404) 752-2794.

In the Washington area, copies may be seen during normal duty hours, in the Environmental Office, Office of Assistant Chief of Engineers, Room 1E676, Pentagon, Washington, D.C. 20310, telephone: (202) 694-3434.

BRUCE A. HILDEBRAND,
Deputy for Environment, Safety
and Occupational Health,
OASA (IL&FM).

[FR Doc. 79-1538 Filed 1-18-79; 8:45 am]

[3810-70-M]

Office of the Secretary of Defense

**DOD ADVISORY GROUP ON ELECTRON
DEVICES**

Advisory Committee Meeting

Working Group C (Mainly Imaging and Display) of the DOD Advisory Group on Electron Devices (AGED) will meet in closed session at 201 Varick Street, New York, New York 10014 on 15 February 1979.

The purpose of the Advisory Group is to provide the Under Secretary of Defense for Research and Engineering, the Director, Defense Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This special device area includes such programs as infrared

and night vision sensors. The review will include classified program details throughout.

In accordance with Section 10(d) of Appendix 1, Title 5, United States Code, it has been determined that this Advisory Group meeting concerns matters listed in Section 552(b)(3) of title 5 of the United States Code, specifically Subparagraph (1) thereof, and that accordingly this meeting will be closed to the public.

Dated: January 15, 1979.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, Washington Head-
quarters Service, Department
of Defense.

[FR Doc. 79-1986 Filed 1-18-79; 8:45 am]

[3810-70-M]

OVERSEAS MILITARY BANKING PROGRAM

Services Sought

Consideration is being given to competitive solicitation for the procurement of banking services at U.S. military installations in the foreign countries specified below for fiscal Year 1980 (October 1, 1979, through September 30, 1980).

Competitive solicitation is being considered to meet Defense needs. All qualified firms, including the present contractors, would be included in the competition.

This notice pertains to five present contracts. No. 1 provides for 134 full-time and satellite banking facilities at U.S. military installations in the Federal Republic of Germany, the United Kingdom, Greece, the Netherlands, and Iceland. No. 2 provides for 4 facilities in Germany. No. 3 provides for 20 facilities in Japan, Okinawa, and the Philippines. No. 4 provides for 4 facilities in Japan. No. 5 provides for 17 facilities in South Korea.

Such facilities normally furnish U.S. and local currency to military disbursing officers and nonappropriated fund activities and maintain official and nonappropriated fund dollar and local currency accounts. They also provide checking and savings accounts, local currency, and other common retail banking services to Defense personnel and their dependents.

Present contracts are cost reimbursement plus fixed fee. The Government pays the net loss, if any, after income from service fees and the investment of account balances has been deducted from allowable expenses. Contractor expenses include personnel, supplies, and equipment. Office space is provided by the Government.

Interested financial institutions may obtain additional information and a questionnaire by making a written request to the Defense Supply Service-

Washington, Room 1D-245, The Pentagon, Washington, DC, 20310. Requests should specify the number, as given above, of each present contract for which information is desired. Deadline for return is February 23, 1979.

Dated: January 15, 1979.

MAURICE W. ROCHE,
Director, Correspondence and
Directives, Washington
Headquarters Services, Department of Defense.

[FR Doc. 79-1911 Filed 1-18-79; 8:45 am]

[6450-01-M]

DEPARTMENT OF ENERGY

INDUSTRIAL ENERGY CONSERVATION PROGRAM

Requirement for Certain Corporations to File Information on Energy Consumption for Identification; Correction

AGENCY: Department of Energy.

ACTION: Notice of Information Filing Requirement; Correction.

SUMMARY: This document corrects errors made in the notice of information filing requirement that appears on pages 1770 and following in the FEDERAL REGISTER of January 8, 1979.

FOR FURTHER INFORMATION CONTACT:

Robert G. Massey, Office of Industrial Applications and Commercialization, Suite 735, 666 11th St. N.W., Washington, D.C. 20001, (202) 724-3461.

SUPPLEMENTARY INFORMATION: The format for filing the information with the Department of Energy required by section II.C.3 of FR Doc. 79-713 which appeared on page 1772 in the FEDERAL REGISTER of January 8, 1979 is corrected to read as follows:

(3) A statement as follows and the date of submission:

(A) (name of corporation) consumed at least one trillion Btu's of energy in calendar year 1977 in SIC(s) _____, as determined according to instructions contained in "Requirement for Certain Corporations to File Information on Energy Consumption for Identification," (44 FR 1770, January 8, 1979).

(B) Excluding petroleum, natural gas and their derivatives used as feedstocks, (name of corporation) consumed at least one trillion Btu's of energy in calendar year 1977 in SIC(s) _____. I certify that all the information in this report is true and accurate to the best of my knowledge.

The first item in the list of energy consumption to be excluded from the determination of total energy consumption which is provided in section II.D.1. on page 1772 is corrected to read as follows:

(a) All uses of electricity self-generated by thermal means.

The conversion factor for Distillate fuel oil (including diesel) which is provided in section II.D.2. on page 1773 is corrected to read as follows:

Distillate fuel oil (including diesel)—5,825,000/bbl.

Issued in Washington, D.C., January 16, 1979.

OMI WALDEN,
Assistant Secretary,
Conservation and Solar Application.

[FR Doc. 79-2005 Filed 1-18-79; 8:45 am]

[6450-01-M]

INTERGOVERNMENTAL AND INSTITUTIONAL RELATIONS

Consumer Affairs Advisory Committee Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Consumer Affairs Advisory Committee will meet at 4:00 p.m., Monday, February 5, 1979, in Room 8E083, and reconvene at 9:00 a.m., Tuesday, February 6, 1979, in Room 8E069, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C.

The purpose of the Committee is to provide the Secretary of Energy with diversified expert advice from qualified individuals relating to the identification and evaluation of the impact of proposed or existing energy policies and programs on consumers, the identifications of areas where new policy initiatives or program change is needed, and planning, developing, and implementing equitable energy policies and programs.

The agenda for the meeting is as follows:

1. Role of Office of Consumer Affairs and Energy.
2. Report on Contracts and Grants Information.
3. Discussion of Proposed Refund Procedures to Purchasers of Petroleum Products from Firms Found to Have Violated the Mandatory Petroleum Regulations.
4. Subcommittee Reports.
5. Public Comment (10 Minute Rule).

The meeting is open to the public. The Chairwoman of the Committee is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee concerning items on the agenda will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements concerning items on the agenda should inform Georgia Hildreth, Director, Advisory Committee Management (202) 252-

5935, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter. An Executive Summary of the meeting may be obtained by calling the Advisory Committee Management Office at the above number.

Issued at Washington, D.C. on January 12, 1979.

TINA C. HOBSON,
Advisory Committee
Management Officer.

[FR Doc. 79-2003 Filed 1-18-79; 8:45 am]

[6450-01-M]

INTERGOVERNMENTAL AND INSTITUTIONAL RELATIONS

Consumer Affairs Advisory Committee Subcommittee Meetings

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given that the Consumer Affairs Advisory Committee Subcommittees will meet Monday, February 5, 1979, in Rooms 8E069 and 8E083, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. at the time indicated below.

The objective of the subcommittees is to make recommendations to the parent Committee with respect to matters concerning consumer aspects of DOE policies and programs.

The agenda and schedule of meetings is as follows:

Consumers' Right to Appropriate Energy Sources
9:00 a.m.—12:00 Room 8E083.

Agenda:
● Report on the California Distributed Energy Project.
● Update on Appropriate Technology Small Grants Program.
● Energy Transportation Policy.
● Gasohol.

Funded Public Participation of Consumer Organizations
9:00 a.m.—12:00 Room 8E069.

Agenda:
General Planning Session by Subcommittee Members.
Consumers' Right to Heat and Light
1:00 p.m.—4:00 Room 8E069.

Agenda:
● PURPA Implementation.
● Subcommittee Discussion on Conflict Between Energy Policy and Inflation.
Oversight of DOE
1:00 p.m.—4:00 Room 9E083.

Agenda:

- Follow-up Report on Committee Requests for Contracts & Grants Information.
- Discussion on National Consumer Cooperative Bank Act.
- Review of Functional Budget of the Office of Consumer Affairs.

The subcommittee meetings are open to the public. The Chairperson of each subcommittee is empowered to conduct the meeting in a fashion that will, in his/her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with a subcommittee concerning items on the agenda will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements concerning items on the agenda should inform Georgia Hildreth, Director, Advisory Committee Management (202) 252-5935, at least 5 days prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Transcripts of the meetings will be available for public review and copying at the Freedom of Information Public Reading Room, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. In addition, any person may purchase a copy of the transcript from the reporter. An Executive Summary of the Meeting may be obtained by calling the Advisory Committee Management Office at the above number.

Issued at Washington, D.C. on January 12, 1979.

TINA C. HOBSON,
Advisory Committee
Management Officer.

[FR Doc. 79-2004 Filed 1-18-79; 8:45 am]

[6450-01-M]

**NATIONAL PETROLEUM COUNCIL, TASK
GROUP OF THE COMMITTEE ON MATERIALS
AND MANPOWER REQUIREMENTS**

Meeting

Notice is hereby given that a task group of the Committee on Materials and Manpower Requirements will meet in January 1979. The National Petroleum Council was established to provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and natural gas or the oil and natural gas industries. The Committee on Materials and Manpower Requirements will analyze the potential constraints in these areas which may inhibit future

production and will report its findings to the National Petroleum Council. Its analysis and findings will be based on information and data to be gathered by the various task groups. The task group scheduling a meeting is the Task Group on Production Equipment. The time, location and agenda of the task group meeting follows:

The second meeting of the Task Group on Production Equipment will be on Wednesday, January 24, 1979, starting at 9:00 a.m. in Room 1992 on the 19th Floor of the Exxon Building, 800 Bell Avenue, Houston, Texas.

The tentative agenda for the meeting follows:

1. Introductory remarks by Chairman and Government Cochairman.
2. Discussion of the study methodology to be employed by the Task Group on Production Equipment and review of assignments.
3. Discussion of the timetable of the Task Group on Production Equipment.
4. Discussion of any other matters pertinent to the overall assignment of the Task Group on Production Equipment.

The meeting is open to the public. The chairman of the task group is empowered to conduct the meeting in a fashion that will, in his judgement, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the task group will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements should inform James R. Hemphill, Office of Resource Applications, 202-633-8383, prior to the meeting and reasonable provision will be made for their appearance on the agenda.

Summary minutes of the meeting will be available for public review at the Freedom of Information Public Reading Room, Room GA 152, DOE, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, D.C., on January 12, 1979.

GEORGE S. McISAAC,
Assistant Secretary for
Resource Applications.

JANUARY 12, 1979.

[FR Doc. 79-1908 Filed 1-18-79; 8:45 am]

[6560-01-M]

**ENVIRONMENTAL PROTECTION
AGENCY**

[FRL 1041-4]

SPRAYED ASBESTOS IN SCHOOLS: PETITION

Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Request for Comments on Citizens' Petition.

SUMMARY: The Environmental Protection Agency (EPA) requests comments from the public regarding a citizens' petition filed by the Environmental Defense Fund (EDF) requesting that asbestos-sprayed materials in school buildings be controlled under the Toxic Substances Control Act (TSCA). Comments will aid the Agency in responding to this petition.

DATE: Comments should be submitted by February 20, 1979.

ADDRESS: Copies of the petition are available from: John Ritch, Industry Assistance Office, TS-793, United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, Phone: 800-424-9065 or 554-1404 (Washington, D.C.). Send comments to: Larry E. Longanecker, Office of Toxic Substances, TS-794, United States Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION
CONTACT:**

Larry E. Longanecker, address as above, Phone: (202) 755-8963.

SUPPLEMENTARY INFORMATION: On December 21, 1978, the Environmental Defense Fund (EDF) submitted to the EPA a "Petition to the Environmental Protection Agency to Control Asbestos Emissions From Spray-on Materials Which Have Been Applied in Public School Buildings for Insulation, Fireproofing, Decorative or Other Purposes," pursuant to Section 21 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2620. Under TSCA, EPA has 90 days to respond to this citizen's petition. The petition points out the extensive past use of asbestos-sprayed materials, the well-established health effects of asbestos inhalation, and the presence of asbestos in the air of some school buildings. Petitioner concludes that exposure to this asbestos may pose an unreasonable risk to the health of building occupants, particularly children. Briefly, the petition requests that EPA promulgate rules under Section 6 of TSCA to require removal or encapsulation of asbestos found to be deteriorating or damaged. Specifically, the petition suggests that EPA take actions under Sections 6(a)(3), 6(a)(5), and 6(a)(7) to (1) identify all public schools in which sprayed-asbestos has been used and (2) require manufacturers and processors of sprayed-asbestos to take appropriate corrective action.

All asbestos-sprayed materials in schools would be identified and labelled. School officials and asbestos manufacturers and processors would jointly carry out the investigation. Manufacturers or processors would be

required either to (1) encapsulate or (2) remove and replace or repurchase sprayed-asbestos materials, depending upon which remedy provides adequate protection.

The petition requests that rulemaking activities be initiated no later than March 1, 1979, that investigative requirements be made immediately effective upon proposal of a rule, and that corrective action be immediately required where deteriorating asbestos has already been identified. EPA invites comment on the petition from State and local school officials, asbestos manufacturers and processors and all other interested parties.

Dated: January 15, 1979.

STEVEN D. JELLINEK,
Assistant Administrator
for Toxic Substances.

[FR Doc. 79-2068 Filed 1-18-79; 8:45 am]

[6730-01-M]

FEDERAL MARITIME COMMISSION

[General Order 7, Rev.]

PETITIONS OF RATE-FIXING AGREEMENTS FOR AN EXEMPTION FROM PROVISIONS

Filing of Petition

A petition has been filed by the Household Goods Carriers' Bureau seeking a total exemption from the provisions of Part 528, 46 CFR, *Self-Policing Requirements For Section 15 Agreements* (General Order 7, Revised) for and on behalf of the following rate-fixing agreements; viz:

International Household Goods Rate Agreement, Agreement No. 8470.

U.S. Hawaii/Puerto Rico/Guam Household Goods Rate Agreement, Agreement No. 8480.

U.S. Alaska Household Goods Rate Agreement, Agreement No. 8490.

In particular, a total exemption is being sought from the requirement imposed by General Order 7, Revised that rate-fixing agreements provide for a policing authority and an impartial adjudicator. An exemption under § 528.3(b)(3) of General Order 7 to allow an agreement officer or employee to perform the self-policing functions in lieu of an independent policing authority is a *not* being sought by petitioners.

Interested parties may inspect and obtain a copy of the petition at the Washington Office of the Federal Maritime Commission, 1100 L Street, NW., Room 11101, and at the Field Offices located at New York, N.Y.; New Orleans, Louisiana; San Francisco, California; Chicago, Illinois; and San Juan, Puerto Rico. Comments on the petition may be submitted to the Secretary Federal Maritime Commission, Washington, D.C., 20573, on or before February 8, 1979. Comments should

include facts and arguments concerning the requests for an exemption.

Dated: January 16, 1979.

By order of the Federal Maritime Commission.

FRANCIS C. HURNEY,
Secretary.

[FR Doc. 79-2011 Filed 1-18-79; 8:45 am]

[6210-01-M]

FEDERAL RESERVE SYSTEM

BANK HOLDING COMPANIES

Proposed De Novo Nonbank Activities

The bank holding companies listed in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to each application, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." Any comment on an application that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

Each application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated for that application. Comments and requests for hearings should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than February 14, 1979.

A. Federal Reserve Bank of New York, 33 Liberty Street, New York, New York 10045:

1. CITICORP, New York, New York (finance and insurance activities; Kansas): to engage, through its subsidiary, Citicorp Person-to-Person Financial Center, Inc., in making consumer

installment personal loans; purchasing and servicing consumer installment sales finance contracts; making loans for the account of others, such as 1-4 family unit mortgage loans; making loans secured by real and personal property the proceeds of which may be for other than personal, family, or household purposes; and the sale of life, accident and health, decreasing or level (for single payment loans) term life, and property and casualty insurance (including liability coverage on home and automobile policies where such is the general practice) directly related to extensions of credit by Applicant's subsidiary. These activities would be conducted from an office at 4370 West 109 Street, Overland Park, Kansas, and the geographic area to be served is the Kansas City, Kansas metropolitan area.

2. LINCOLN FIRST BANKS, INC., Rochester, New York (factoring and commercial finance activities; New York): To engage, through its subsidiary, Lincoln First Commercial Corporation, in making or acquiring loans and other extensions of credit such as would be made by a commercial finance or factoring company, including advances to domestic commercial customers secured by assignments of accounts receivable, inventory, equipment, and other collateral; and servicing loans and other extensions of credit for any person. These activities would be performed from an office at 183 East Main Street, Rochester, New York 14604, and the geographic areas to be served are central and western New York, particularly Rochester, Buffalo, and Syracuse, New York.

3. MANUFACTURERS HANOVER CORPORATION, New York, New York (consumer finance and insurance activities; New Jersey): To engage through Applicant's subsidiaries, Ritter Financial Corporation and The Financial Source, Inc., of New Jersey, in arranging, making, or acquiring loans and other extensions of credit secured by second mortgages on residential real property such as would be made by a consumer finance company; servicing such loans and other extensions of credit; and acting as agent or broker for the sale of credit life insurance directly related to such loans or extensions of credit by Applicant's subsidiaries. These proposed services would be provided from offices in Penns Grove, Sicklerville, Berlin, Camden, Cherry Hill, Haddonfield, Moorestown, Lambertville, Willingboro, Bridgeton, Hammonton, Mantua, Pleasantville, and Vineland, New Jersey, and the geographic areas to be served are the counties in which the offices are located and certain adjacent counties in New Jersey.

4. MANUFACTURERS HANOVER CORPORATION, New York, New York

York (consumer finance and insurance activities; Virginia): To engage through its subsidiaries, the Financial Source, Incorporated of Virginia, and Ritter Life Insurance Company, in arranging, making, or acquiring loans and other extensions of credit such as would be made by a consumer finance company under a revolving loan plan, including loans under a revolving loan agreement secured by mortgages or deeds of trust on real property or security loans and other extensions of credit for any person; acting as agent or broker for the sale of credit life insurance directly related to extensions of credit by Applicant's subsidiaries; and reinsurance of credit life insurance. These activities would be conducted at an office in Lawrenceville, Virginia, and the geographic areas to be served are Brunswick, Mecklenburg, Greensville, Sussex, and Dinwiddie Counties, Virginia.

B. Federal Reserve Bank of San Francisco, 400 Sansome Street, San Francisco, California 94102:

1. **FIRST NORTHERN BANCORPORATION**, Anchorage, Alaska (leasing and financing activities; Alaska, Washington): To engage, through its subsidiary, First Northern Leasing, Inc., in packaging brokering, making and consulting for lease and loan financing for personal, commercial, and industrial property not including real estate. These activities would be conducted from an office at 101 West Benson Boulevard, Anchorage, Alaska 99503, and the geographic areas to be served are Alaska and Washington.

2. **WESTERN BANCORPORATION**, Los Angeles, California (mortgage banking and insurance activities; national): To engage, through its subsidiary, Western Bancorp Mortgage Company, in making, acquiring, selling, and servicing real estate and construction loans and conducting related activities incidental to the mortgage banking business, and acting as agent or broker with respect to credit life and credit accident and health insurance and mortgage disability and mortgage redemption insurance directly related to extensions of credit or the provision of other financial services by Applicant or its subsidiaries. These activities would be performed from an office at 1515 Arapahoe Street, Denver, Colorado 80202, and the geographic areas to be served are Colorado, Montana, New Mexico, Wyoming, Idaho, Utah, Arizona, Nevada, California, Oregon, and Washington (making or acquiring 1-4 family residential loans; insurance) and national (selling and servicing loans; making or acquiring construction loans and loans on income-producing property).

C. Other Federal Reserve Banks: None.

Board of Governors of the Federal Reserve System, January 15, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 79-1899 Filed 1-18-79; 8:45 am]

[6210-01-M]

CHEVALIER, INC.

Proposed Retention of Credit Life Insurance Activities

Chevalier, Inc., Postville, Iowa, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain the activity of serving as agent for the sale of credit life, accident, and health insurance. Notice of the application was published on December 13, 1978, in the *Postville Herald*, a newspaper circulated in Postville, Iowa.

Applicant states that it would engage in the activities of selling as agent credit life, accident, and health insurance directly related to extensions of credit by the Citizens State Bank, Postville, Iowa. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Chicago.

Any views or requests for hearing should be submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than February 12, 1979.

Board of Governors of the Federal Reserve System, January 11, 1979.

THEODORE E. ALLISON,
Secretary of the Board.

[FR Doc. 79-1897 Filed 1-18-79; 8:45 am]

[6210-01-M]

FIRST NATIONAL BANCSHARES, INC.

Formation of Bank Holding Company

First National Bancshares, Inc., Plainview, Texas, has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 per cent or more of the voting shares of First National Bank of Plainview, Plainview, Texas. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than February 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 15, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 79-1899 Filed 1-18-79; 8:45 am]

[6210-01-M]

SOUTHWEST FLORIDA BANKS, INC.

Acquisition of Bank

Southwest Florida Banks, Inc., Fort Meyers, Florida, has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire 80 per cent or more of the voting shares of Madeira Beach Bank, Madeira Beach, Florida. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Atlanta. Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than February 9, 1979. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Board of Governors of the Federal Reserve System, January 15, 1979.

GRIFITH L. GARWOOD,
Deputy Secretary of the Board.

[FR Doc. 79-1900 Filed 1-18-79; 8:45 am]

[4110-03-M]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 77N-0166]

ACTION LEVEL FOR MERCURY IN FISH, SHELLFISH, CRUSTACEANS, AND OTHER AQUATIC ANIMALS

Availability of Revised Action Level

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces the availability of an Administrative Guideline that establishes a new action level for mercury in fish and shellfish.

ADDRESSES: Single copies of the action level are available from, and written comments on the guideline may be submitted to, the office of the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Howard N. Pippin, Bureau of Foods (HFF-312), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St., SW., Washington, D.C. 20204, 202-245-3092.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the *FEDERAL REGISTER*, the Commissioner of Food and Drugs withdraws proposed rulemaking and terminates a rulemaking proceeding that would have codified the existing action level that limits to 0.5 part per million (ppm) unavoidable residues of mercury in the edible portion of fish and shellfish. Instead of establishing a formal regulation, FDA will continue to use an administrative action level to regulate such mercury residues.

The Commissioner is therefore announcing the availability of Administrative Guideline No. 7408.09 establishing the action level of 1.0 ppm mercury in fish, shellfish, crustaceans, and other aquatic animals. The rationale for establishing this action level is discussed in the withdrawal and termination document referred to above. The Administrative Guideline establishing the action level is available for public examination in the office of the

Hearing Clerk, FDA (address above), and requests for single copies of the guideline may be made in writing to that office.

The Administrative Guideline provides the following instructions to FDA District Offices: "Recommend legal action to Division of Regulatory Guidance where the composite of fish or shellfish analyzed by the procedure outlined in the Twelfth Edition of the Official methods of Analysis of the Association of Official Analytical Chemists 25.103-25.107 shows:

Mercury (Hg)..... 1.0 ppm (edible portion only)

Note.—Recommendations for legal action must clearly indicate the exact portion of the food used for analysis. The portion used for analysis must be prepared by the appropriate procedure outlined in Volume 1 of the Pesticide Analytical Manual, §§ 141.12 and 141.22.

In addition to announcing the 1.0 ppm action level, this notice also informs interested persons of the availability of information the agency relied on in establishing the action level. Supporting documents also are available for public examination in the office of the Hearing Clerk, FDA.

Interested person may submit written comments (preferably four copies, each identified with the Hearing Clerk document number found in brackets in the heading of this document) of the guideline to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857. Received comments will be incorporated into the public file on the guideline and may be seen in the above-named office between 9 a.m. and 4 p.m., Monday through Friday.

Dated: January 8, 1979.

DONALD KENNEDY,
Commissioner of Food and Drugs.
[FR Doc. 79-1742 Filed 1-18-79; 8:45 am]

[4110-03-M]

[Docket No. 78F-0412]

AMERICAN CYANAMID CO.

Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: American Cyanamid Co. has filed a petition (FAP 2167) proposing that the regulations be amended to provide for safe use of acrylamide-acrylic acid resin as a flocculant in nonmedicated aqueous suspensions intended for addition to animal feeds.

FOR FURTHER INFORMATION CONTACT:

Jack C. Taylor, Bureau of Veterinary Medicine (HFV-136), Food and

Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-5247.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2167) has been filed by American Cyanamid Co., Wayne, NJ 07470, proposing that § 573.120 *Acrylamide-acrylic acid resin* (21 CFR 573.120) be amended to provide for the safe use of acrylamide-acrylic acid resin as a flocculant in nonmedicated aqueous suspensions intended for addition to animal feeds.

The environmental impact analysis report and other relevant material are being reviewed to determine whether the proposed use of the additive will have a significant environmental impact. In accordance with the provisions of § 25.25(b) (21 CFR 25.25(b)) of the environmental impact regulations, environmental impact consideration of the final action on this petition will be addressed in a future publication.

Dated: January 9, 1979.

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

[FR Doc. 79-1741 Filed 1-18-79; 8:45 am]

[4110-03-M]

[Docket No. 76N-0249]

BUCLIZINE HYDROCHLORIDE

Final Order on Objections and Request for a Hearing Regarding Approval of Supplemental New Drug Application

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Commissioner of Food and Drugs denies a hearing and refuses to approve the indications for Bucladin-S (NDA 10-911; DESI 9295) which lack substantial evidence of effectiveness. The drug is effective in the management of nausea, vomiting, and dizziness associated with motion sickness.

EFFECTIVE DATE: January 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Ronald Kartzinell, Bureau of Drugs (HFD-120), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857 (301-443-4020).

SUPPLEMENTARY INFORMATION: In a notice (DESI 10911) published in the *FEDERAL REGISTER* of July 28, 1972 (37 FR 15186), the Food and Drug Ad-

ministration (FDA) announced its evaluation of a report received from the National Academy of Sciences-National Research Council, Drug Efficacy Study Group (NAS-NRC) on the combination drug Bucladin Tablets (NDA 10-911, held by Stuart Pharmaceuticals, Division of ICI America, Inc., Wilmington, DE 19897; hereinafter ICI) containing buclizine hydrochloride, pyridoxine hydrochloride, scopolamine hydrobromide, atropine, sulfate, and hyoscyamine sulfate. The announcement stated that FDA intended to initiate proceedings to withdraw approval of the new drug application because there was as a lack of substantial evidence that the fixed combination drug is effective for its claimed uses and that each ingredient in the combination contributes to the total effects claimed. Holders of approved new drug applications and persons who might be adversely affected by removal of the drug from the market were given 30 days to submit data consisting of adequate and well-controlled clinical studies in support of Bucladin's effectiveness.

No data were submitted in response to the notice and a notice of opportunity for hearing was published in the FEDERAL REGISTER of November 15, 1972 (37 FR 24208) proposing to withdraw approval of NDA 10-911 on the grounds that there was a lack of substantial evidence of effectiveness for the combination drug. ICI and manufacturers of identical, similar or related drugs were invited to file hearing requests supported by substantial evidence of effectiveness. On December 6, 1972, ICI filed a hearing request and indicated its intention to reformulate and relabel Bucladin Tablets.

On June 18, 1973, ICI submitted a supplemental new drug application requesting permission to delete all ingredients from the combination product except buclizine hydrochloride; the firm also sought to relabel the reformulated drug as effective for nausea, vomiting and vertigo associated with labyrinthitis, Meniere's syndrome and motion sickness. On August 7, 1974, FDA notified ICI that the supplement was "permitted without approval . . . pending a determination of whether there is substantial evidence of effectiveness of the drug for all of the purposes claimed in the labeling." The conditionally permitted supplement allowed the reformulated product (renamed Bucladin-S) to be labeled as "effective" for management of nausea, vomiting and dizziness associated with motion sickness and as "possibly effective" for management of nausea, vomiting and vertigo which may occur in a variety of conditions including labyrinthitis and Meniere's syndrome. By letter dated August 27, 1974, the firm notified FDA that it was withdrawing

its hearing request for Bucladin and on October 11, 1974, a notice was published in the FEDERAL REGISTER (39 FR 36626) withdrawing approval of the new drug application for the combination product.

On March 13, 1975, FDA published a notice (DESI 9295) in the FEDERAL REGISTER (40 FR 11794) amending a March 9, 1971 notice (36 FR 4558) which evaluated two drugs containing buclizine hydrochloride as a single entity. The earlier DESI notice found the drugs effective for the prevention of motion sickness; lacking substantial evidence for a number of specified claims; and possibly effective for all other labeled indications. The March 13, 1975 notice stated that these evaluations were also applicable to ICI's newly-formulated Bucladin-S Tablets and invited interested persons to submit adequate and well-controlled clinical studies to support the possible effective indications.

Because no data were submitted by ICI in response to the DESI amendment, a notice of opportunity for hearing was published in the FEDERAL REGISTER of July 29, 1976 (41 FR 31586). The notice stated that claims which previously had been evaluated as "lacking substantial evidence of effectiveness" and for which no evidence had been submitted were illegal and, if continued, subject to regulatory action. The notice also reclassified the "possibly effective" claims to "lacking substantial evidence of effectiveness" and proposed to issue an order withdrawing approval of the named new drug applications. Manufacturers and other interested parties were advised of the opportunity to request a hearing and to submit substantial evidence to support the effectiveness of the claims.

On August 27, 1976, ICI requested a hearing. No clinical investigations of any kind were submitted in support of the request. Instead, the firm called FDA's attention to clinical information regarding meclizine hydrochloride, a drug which it contended was similar and related to buclizine hydrochloride. ICI also contended that the possibly effective indication (management of nausea, vomiting, and vertigo which may occur in a variety of conditions including labyrinthitis and Meniere's syndrome) was never the subject of a DESI evaluation and that the decision regarding this indication should be held in abeyance pending the issuance of a follow-up DESI notice for meclizine hydrochloride.

The Commissioner has considered the arguments submitted by ICI and has concluded that they are insubstantial and present no genuine issue of material fact requiring a hearing. The arguments are discussed below.

I. THE DRUG

Bucladin-S Tablets each contain 50 milligrams of buclizine hydrochloride.

II. RECOMMENDED USES

Bucladin-S Tablets are presently labeled as follows:

INDICATIONS: Based on a review of this drug by the National Academy of Sciences-National Research Council and/or other information, FDA has classified the indications as follows: Effective: Management of nausea, vomiting and dizziness associated with motion sickness. Possibly Effective: Management of nausea, vomiting and vertigo which may occur in a variety of conditions including labyrinthitis and Meniere's syndrome.

Final Classification of the less than effective indications requires further investigation.

III. DATA SUBMITTED TO SUPPORT CLAIMS OF EFFECTIVENESS

No adequate and well-controlled clinical investigations were submitted to support the firm's claim that Bucladin-S Tablets are effective in the management of nausea, vomiting and vertigo which may occur in labyrinthitis and Meniere's syndrome.

ICI's attempt to support the claim for its product by reference to data relating to meclizine hydrochloride is inadequate for several reasons. First, contrary to the express direction of the hearing regulation, the firm has not submitted the meclizine study, the protocol or underlying raw data. 21 CFR 314.200(d). Nor has ICI submitted a factual analysis of the meclizine data specifying how it accords with the criteria for adequate and well-controlled clinical investigations. 21 CFR 314.200(d)(2). In fact, no information whatever is provided with respect to the design or results of the meclizine study. ICI has not even identified which firm submitted the study, when it was submitted, in which of the thousands of NDAs on file with the agency it may be located, or even whether it has obtained the permission of sponsor of the study to utilize the data generated therefrom. 21 CFR 314.11 and 314.14.

Moreover, although ICI contends that meclizine and buclizine are related or similar within the meaning of 21 CFR 310.6, it has failed to submit any data demonstrating that identical effectiveness conclusions would apply to both drugs. Although buclizine hydrochloride and meclizine hydrochloride are structurally similar, it does not necessarily follow that the are pharmacologically identical. Either form of the drug may be more or less effective than the other for any given indication. Also, even if it were shown that the two drugs have the identical active

metabolite(s), there would undoubtedly be qualitative and quantitative differences in their pharmacokinetics. In short, on clinical data comparing the two drugs could prove that they have identical effects in vertigo, labyrinthitis and Meniere's syndrome. In the absence of any clinical data, no conclusion can be drawn regarding the effectiveness of buclizine hydrochloride for these indications.

IV. SUMMARY

ICI did not submit any adequate and well-controlled clinical studies which demonstrate that Bucladin-S is effective for the management of nausea, vomiting and vertigo which may occur in labyrinthitis and Meniere's syndrome. Nor did it submit any data to support its contention that buclizine hydrochloride is either pharmacologically or pharmacokinetically identical to meclizine hydrochloride.

V. LEGAL ARGUMENTS

The firm's contention that a DESI notice has never been issued for buclizine hydrochloride as indicated for nausea, vomiting and vertigo associated with labyrinthitis and Meniere's syndrome is erroneous. The FEDERAL REGISTER DESI notices of March 9, 1971, and March 13, 1975, and the July 29, 1976 notice of opportunity for hearing evaluated buclizine hydrochloride for all indications for which it was labeled. Except for the indication classified as effective, all other labeled indications, whether or not specifically identified in the notices, were determined either to lack substantial evidence of effectiveness or to be possibly effective. This determination applied to the reformulated product labeled for nausea, vomiting, and vertigo associated with labyrinthitis and Meniere's syndrome.

ICI's "understanding" that the decision regarding the "possibly effective" indication for Bucladin-S was being held in abeyance pending the issuance of a follow-up DESI notice for meclizine hydrochloride is equally erroneous. The March 13, 1975 FEDERAL REGISTER notice specifically amended the March 9, 1971 DESI notice to apply to Bucladin-S Tablets when recommended for vertigo and the other conditions evaluated as "possibly effective" on March 9, 1971; on that date Bucladin was indicated for, among other things, Meniere's syndrome and labyrinthitis.

Neither the March 13, 1975 notice nor any other FEDERAL REGISTER notice relating to buclizine hydrochloride has suggested in any way that meclizine hydrochloride was involved in a future

decision regarding buclizine hydrochloride.

VI. FINDINGS

On the basis of the foregoing, the Commissioner finds that there is a lack of substantial evidence that Bucladin-S Tablets are effective for the management of nausea, vomiting and vertigo which may occur in a variety of indications including labyrinthitis and Meniere's syndrome. Since ICI has failed to identify any adequate and well-controlled studies or legal reason showing that there is a genuine and substantial issue of fact requiring a hearing, its hearing request is denied.

Therefore under the Federal Food, Drug, and Cosmetic Act (sec. 505(d), 52 Stat. 1052, as amended (21 U.S.C. 355(d)), and under authority delegated to the Commissioner (21 CFR 5.1), approval of the supplemental application for this indication for Bucladin-S (NDA 10-911) is refused.

Dated: January 9, 1979.

DONALD KENNEDY,
Commissioner of Food and Drugs.
[FR Doc. 79-1739 Filed 1-18-79; 8:45 am]

[4110-03-M]

[Docket No. 78N-0311]

DRUGS FOR VETERINARY USE; DRUG EFFICACY STUDY IMPLEMENTATION

Nitrofurazone Topical Preparations

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The agency announces the findings of the National Academy of Sciences/National Research Council (NAS/NRC) Drug Efficacy Study Group for nitrofurazone topical preparations for animal use and concludes that the preparations are effective for certain uses in dogs, cats, and horses but are not to be used in food-producing animals. Sponsors of such products are requested to submit new animal drug applications with labeling for the uses deemed effective.

DATE: Supplements to new animal drug applications by July 30, 1979.

ADDRESS: Applications should be sent to the Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

Henry C. Hewitt, Bureau of Veterinary Medicine (HFV-112), Food and Drug Administration, Department of Health, Education, and Welfare,

5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION:

BACKGROUND

The Federal Food, Drug, and Cosmetics Act of 1938 (21 U.S.C. 301 et seq.) established that manufacturers of new drugs must submit a new drug application (NDA) to the agency before marketing each new drug. The NDA required information on the drug's composition, labeling, and directions for use, as well as evidence of safety under the recommended conditions of use. The Food and Drug Administration (FDA) reviewed the data and, if they were acceptable, the NDA was approved and the new drug permitted to be marketed.

The Drug Amendments of 1962 (Pub. L. 87-781; 76 Stat. 780-796) required that new drugs must additionally be shown to be effective before the NDA can be approved. In 1966, the agency took steps to review the effectiveness of drugs that had been approved for marketing before 1962. As an aid in reviewing the effectiveness of these drugs, the agency called upon NAS/NRC to determine whether there was appropriate scientific evidence to support the claims being made. This review was known as the Drug Efficacy Study.

To facilitate the review, manufacturers were requested by notices published in the FEDERAL REGISTER of July 9, 1966 (31 FR 9426) and October 6, 1966 (31 FR 13014) to submit a special report containing the best available evidence to support the labeled efficacy claims made for their drug products. The report was to include identification of the drug product, copies of its labeling, a bibliography of publications pertinent to the claims, and any available unpublished data that the manufacturer wished to have considered.

The results of the NAS/NRC review were announced by Drug Efficacy Study Implementation (DESI) notices published in the FEDERAL REGISTER.

The NAS/NRC reviewed a new animal drug application (NADA) for four furacin (nitrofurazone) topical products for animal use (NADA 6-475) sponsored by Norwich Pharmacal, 13-27 Eaton Ave., Norwich, NY 13815. The results have not been published because questions regarding the safety of the drug for use in food-producing animals arose after the NAS/NRC reviews (see the notice of opportunity for hearing published in the FEDERAL REGISTER of August 17, 1976 (41 FR 34899)).

Because of August 17, 1976 notice pertains to the use of nitrofurazone only in food-producing animals, the Commissioner deems it appropriate to

announce the results of the NAS/NRC review for nitrofurazone topical products and permit their use in the treatment of animals that are not food-producing.

NAS/NRC REVIEW FOR NITROFURAZONE TOPICAL, DESI

The NAS/NRC reviewed the following nitrofurazone topical products for animal use sponsored by Norwich Pharmacal under NADA 6-475:

1. Furacin Dressing Veterinary; contains 0.2% nitrofurazone in a water-soluble base:

Indications: For the prevention or treatment of surface bacterial infections of wounds, burns, cutaneous ulcers, eczema, ears and in the treatment of secondary bacterial infections of cow pox.

Administration: Apply directly on the lesion with a spatula or first place on a piece of gauze. Application of a bandage is optional. This preparation should be in contact with the lesion for at least 24 hours. The dressing may be changed several times daily or left on the lesion for a longer period.

2. Furacin Dressing Veterinary with Anesthetic; contains 0.2% nitrofurazone and 0.5% butacaine sulphate in a water-soluble base:

Indication: For the prevention or treatment of surface bacterial infections of wounds, burns, cutaneous ulcers, eczema, ears and in the treatment of secondary bacterial infections of cow pox.

Administration: Apply directly on the lesion with a spatula or first place on a piece of gauze. Application of a bandage is optional. This preparation should be in contact with the lesion for at least 24 hours. The dressing may be changed several times daily or left on the lesion for a longer period.

3. Furacin Soluble Powder Veterinary; contains 0.2% nitrofurazone in a water-soluble base:

Indications: For the prevention or treatment of surface bacterial infections of the eye, including bovine pink eye, and of wounds, burns, skin ulcers and abscesses after incision.

Administration: Apply several times daily to the lesion or affected area from the plastic squeeze bottle.

4. Furacin Solution Veterinary; contains 0.2% nitrofurazone in a water-miscible vehicle:

Indications: (1) For the prevention or treatment of surface bacterial infections.

(2) For the treatment of bovine mastitis in dry cows caused by *Staphylococcus aureus*; *Streptococcus agalactiae*, *dysgalactiae*, or *uberis*; *Escherichia coli* and *Pseudomonas aeruginosa*, sensitive to Furacin.

(3) For the treatment of genital tract infections and impaired fertility of large female animals caused by

strains of *Staphylococcus*, *Streptococcus*, *Escherichia coli*, *Salmonella*, *Pseudomonas* and *Vibrio fetus*, sensitive to Furacin.

Directions: (1) Surface bacterial infections: In topical bacterial infections, apply directly to the lesion. For wet dressings, it may be diluted with two or three parts of sterile water or saline solution. This may be applied several times daily or left beneath occlusive dressing for several days.

(2) Bovine mastitis—dry cow treatment: Into each quarter with a history of mastitis inject, aseptically, 30 cc, 4 to 6 weeks prior to onset of lactation. Repeat one week later if desired. Warning: Not for use in animals producing milk, since this use will result in contamination of the milk. Colostrum taken from treated animals after calving must not be used for food.

(3) Female Genital Tract Infections: To treat obvious bacterial infections of the female genital tract inject aseptically, 30 to 90 cc into the affected portions of the genital tract once daily until 48 hours after clinical signs subside or until negative bacteriological findings indicate recovery. In cases of impaired fertility inject, aseptically, 30 cc into the uterus 4 to 48 hours after breeding.

The NAS/NRC concluded that these products were "effective" for the prevention and treatment of surface bacterial infections of wounds, burns, and cutaneous ulcers. Additionally, NAS/NRC concluded that Furacin Dressing Veterinary, Furacin Dressing Veterinary with Anesthetic, and Furacin Solution Veterinary were "effective" for the prevention and treatment of surface bacterial infections of ears.

The NAS/NRC recommended the following labeling changes:

1. Delete "eczema" from the label because that term is not specific enough.

2. Provide a stronger statement to indicate a possible sensitizing property of butacaine and perhaps of the drug.

3. Indicate that the products are effective for infections caused by organisms sensitive to this drug.

EFFECTIVE CLASSIFICATION

The agency has reviewed the NAS/NRC report for nitrofurazone topical products and concurs with its conclusions. However, because of concern for the safety of residues from food-producing animals, the agency concludes that these products must be limited to use in dogs, cats, and horses (i.e., not for food use). The agency also finds that Furacin Soluble Powder is "probably not effective" for use in the eye, based upon the lack of documentation in small animals and the NAS/NRC conclusion that there is little justification for the use of powder preparations in the eye unless it is the only

way range cattle can be treated. This evaluation is concerned only with the effectiveness of these drugs. Nothing in this notice prevents further proceedings on questions of safety.

This announcement is published to inform NADA holders regarding the NAS/NRC and agency findings and to inform all interested persons that such articles must be the subject of an approved NADA and otherwise comply with the requirements of the Federal Food, Drug, and Cosmetic Act.

Sponsors with approved NADA's for nitrofurazone topical products are requested to submit supplemental NADA's before July 30, 1979 to revise their labeling by limiting the claims and presenting the conditions of use substantially as follows:

1. 0.2% Nitrofurazone Dressing (Water-soluble Base) Veterinary:

Indications: For the prevention or treatment of surface bacterial infections of wounds, burns, cutaneous ulcers. For use only on dogs, cats, and horses (not for food use).

Administration: Apply directly on the lesion with a spatula or first place on a piece of gauze. Application of a bandage is optional. This preparation should be in contact with the lesion for at least 24 hours. The dressing may be changed several times daily or left on the lesion for a longer period.

2. 0.2% Nitrofurazone Dressing (Water-soluble Base) with 0.5% Butacaine Sulfate Veterinary:

Indications: For the prevention or treatment of surface bacterial infections of ears, wounds, burns and cutaneous ulcers. For use only on dogs, cats, and horses (not for food use).

Administration: Apply directly on the lesion with a spatula or first place on a piece of gauze. Application of a bandage is optional. This preparation should be in contact with the lesion for at least 24 hours. The dressing may be changed several times daily or left on the lesion for a longer period.

3. 0.2% Nitrofurazone Soluble Powder Veterinary:

Indications: For the prevention or treatment of surface bacterial infections of wounds, burns, skin ulcers and abscesses after incision. For use only on dogs, cats, and horses (not for food use).

Administration: Apply several times daily to the lesion or affected area.

4. 0.2% Nitrofurazone Solution Veterinary:

Indications: For use only on dogs, cats, and horses (not for food use).

(1) For the prevention or treatment of surface bacterial infections.

(2) For the treatment of genital tract infections and impaired fertility of female horses caused by strains of *Staphylococcus*, *Streptococcus*, *Escherichia coli*, *Salmonella*, *Pseudomonas*

and *Vibrio fetus*, sensitive to nitrofurazone.

Directions:

(1) Surface bacterial infections: In topical bacterial infections, apply directly to the lesion. For wet dressings, it may be diluted with two or three parts of sterile water or saline solution. This may be applied several times daily or left beneath occlusive dressing for several days.

(2) Female genital tract infections in horses: To treat obvious bacterial infections of the female genital tract inject aseptically, 30 to 90 cc into the affected portions of the genital tract once daily until 48 hours after clinical signs subside or until negative bacteriological findings indicate recovery. In cases of impaired fertility inject, aseptically, 30 cc into the uterus 4 to 48 hours after breeding.

4. Warning statements: The label for nitrofurazone topical products should also carry the warning statement recommended in § 505.20 (21 CFR 505.20) for Antiseptics for External Use:

Caution—In case of deep or puncture wounds or serious burns consult veterinarian. If redness, irritation, or swelling persists or increases, discontinue use and consult veterinarian.

Additionally, the label for nitrofurazone with butacaine should carry a warning of a possible sensitizing property of butacaine and perhaps the drug.

For such products that are not now the subject of approved NADA's approval of an application must be obtained before marketing. Marketing before approval of an NADA will cause such products, and the persons who caused the products to be marketed, to be subject to regulatory action. Applications providing for the effective conditions of use identified in this notice need not include data required by § 514.111 (21 CFR 514.111) to establish the effectiveness of the drug for these uses but must include certain data, including (1) composition of the drug and a representative batch formula, (2) name of the supplier of the new drug substance, (3) specifications and test methods for the raw materials, (4) method of manufacture for the product, (5) specifications for the finished dosage form, and (6) stability data on the dosage form in the market container and a description of the analytical method used for the stability study. If only limited data are available, a commitment should be made to run postapproval stability studies on production batches. If data indicate a need for an expiration date, a statement of the expiration date must be included.

Additionally, the applicant must certify that it is in compliance with good manufacturing practices and must

submit proposed draft labeling. It is recommended that applicants follow the "Guidelines for Submitting NADA's for Generic Drugs Reviewed by NAS/NRC" available from the Hearing Clerk, FDA (address above).

New animal drug applications that comply with the requirements set forth in this notice and that meet all the other requirements of section 512(c) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)) will be approved and a regulation under section 512(i) of the act will be issued in the FEDERAL REGISTER identifying the approval.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 512, 52 Stat. 1050-1051 as amended, 82 Stat. 343-351 (21 U.S.C. 352, 360b)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1).

Dated: January 15, 1979

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

[FR Doc. 79-1837 Filed 1-18-79; 8:45 am]

[4110-03-M]

[NADA NO. 14-929V]

PARKE, DAVIS & CO.

Sernylan (Phencyclidine Hydrochloride)
Injectable; Withdrawal of Approval of NADA

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Director of the Bureau of Veterinary Medicine is withdrawing approval of a new animal drug application (NADA) which provides for the use of Sernylan (Parke, Davis's phencyclidine hydrochloride injectable) for intramuscular use as an immobilizing agent for primates. This action is taken in response to a request by the sponsor, Parke, Davis & Co.

EFFECTIVE DATE: January 19, 1979.

FOR FURTHER INFORMATION CONTACT:

Louis L. Nangeroni, Bureau of Veterinary Medicine (HFV-216), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4093.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 512(e), 82 Stat. 345-347 (21 U.S.C. 360b(e))) and under authority delegated to the Commissioner (21 CFR 5.1) and redelegated to the Director of the Bureau of Veterinary Medicine (21 CFR 5.84), the following notice is issued.

In a letter dated April 26, 1978, Parke, Davis & Co., Joseph Campau at the River, Detroit, MI 48232, requested that approval of NADA 14-929V be withdrawn because the drug is no longer being marketed. Therefore, in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA 14-929V and all supplements thereto is withdrawn, effective January 19, 1979.

Dated: January 3, 1979.

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

[FR Doc. 79-1740 Filed 1-18-79; 8:45 am]

[4110-03-M]

BOARD OF TEA EXPERTS

Rechartering

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Under the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App.)), the Food and Drug Administration announces the rechartering of the Board of Tea Experts by the Commissioner of Food and Drugs for an additional period of 2 years beyond January 3, 1979. The charter for this Committee will expire January 3, 1981.

FOR FURTHER INFORMATION CONTACT:

Richard L. Schmidt, Committee Management Office (HFA-27), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md 20857, 301-443-2765.

Dated: January 11, 1979.

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

[FR Doc. 79-1558 Filed 1-18-79; 8:45 am]

[4110-03-M]

[Docket No. 78P-00011]

DEPUY

Withdrawal of Reclassification Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a notice of withdrawal of a reclassification petition for a ceramic hip prosthesis. The petitioner requested that

the petition be withdrawn due to the difficulty of compiling the necessary data and other considerations.

FOR FURTHER INFORMATION CONTACT:

James G. Dillon, Bureau of Medical Devices (HFK-410), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238.

SUPPLEMENTARY INFORMATION: On December 2, 1977, DePuy, Warsaw, IN 46580, submitted to FDA under section 513(f) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(f)) a reclassification petition for a ceramic hip prosthesis. FDA referred the petition to an advisory committee, the Orthopedic Device Classification Panel, for a recommendation on whether to approve or deny the petition.

In the FEDERAL REGISTER of February 24, 1978 (43 FR 7709), FDA published a notice inviting interested persons to submit data, information, and views for consideration by the Panel. This notice stated that any data, information, and views submitted by March 27, 1978, would be mailed to the Panel for consideration before recommendations were made. The Panel's recommendations were received by the agency on March 27, 1978. The Panel recommended that the device be reclassified into class II (performance standards).

In the FEDERAL REGISTER of June 6, 1978 (43 FR 24601) FDA published a notice of this recommendation. In the June 6 notice, the Commissioner stated that he disagreed with the Panel recommendation and intended to deny the petition unless additional information was submitted to justify reclassification. Interested persons were given 60 days to submit written comments on the notice. At the request of the petitioner, the Commissioner extended the comment period for 60 days in a notice published in the FEDERAL REGISTER of August 11, 1978 (43 FR 35749).

On September 25, 1978, the petitioner requested that the petition be withdrawn because of the difficulty of compiling the necessary data and other considerations based on the company's competitive position. The Commissioner has determined that it is appropriate to allow the petition to be withdrawn. Therefore, the device remains in class III (premarket approval).

Dated: January 11, 1979.

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

[FR Doc. 79-1557 Filed 1-18-79; 8:45 am]

[4110-83-M]

Health Resources Administration

GRADUATE TRAINING IN FAMILY MEDICINE

Application Announcement

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1979 Grants for Graduate Training in Family Medicine are now being accepted under the authority of section 786(a) of the Public Health Service Act, as amended by the Health Professions Educational Assistance Act of 1976 (P.L. 94-484).

Section 786(a) authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathy, and other public or private nonprofit entities located in a State to assist in meeting the cost of planning, developing and operating or participating in approved graduate training programs in the field of family medicine.

To receive support, programs must meet the requirements of the Interim-Final regulations, published in the FEDERAL REGISTER on October 16, 1978 (42 FR 47694).

In the funding of approved applications, preference will be given to projects in which:

(1) Substantial training experience is in settings which exemplify interdependent utilization of physicians and physician assistants and/or nurse practitioners; and/or

(2) substantial portions of a project are conducted in a health manpower shortage area(s) designated under section 332 of the Public Health Service Act, or in an Area Health Education Center, funded, at least in part, under Section 781 of the Act; and/or

(3) (for osteopathic medicine programs) projects are conducted in conjunction with a school of osteopathy with which the training institution is affiliated.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer (D-15), Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782. Phone: (301) 436-6564.

To be considered for fiscal year 1979 funding, applications must be received by the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, at the above address no later than February 5, 1979. Approximately \$3.5 to \$4 million is expected to be available in FY 1979 for competitive grants.

Should additional programmatic information be desired, please contact:

Primary Care Education Branch, Division of Medicine, Bureau of Health Manpower,

Health Resources Administration, Center Building, Room 4-50, 3700 East-West Highway, Hyattsville, Maryland 20782. Phone: (301) 436-7350.

Competitive cycles for predoctoral and faculty development training under section 786(a) are not being initiated in fiscal year 1979.

Dated: January 9, 1979.

HENRY A. FOLEY,
Administrator.

[FR Doc. 79-1893 Filed 1-18-79; 8:45 am]

[4110-83-M]

HEALTH PROFESSIONS CAPITATION GRANTS

Application Announcement

The Bureau of Health Manpower, Health Resources Administration, announces that applications for Health Professions Capitation Grants for fiscal year 1979 are now being accepted under the authority of section 770 of the Public Health Service Act.

Grants are awarded to eligible schools of medicine, dentistry, osteopathy, public health, optometry, podiatry, pharmacy, and veterinary medicine for the support of their educational programs. The amount of each grant is determined by a formula based on the school's enrollment.

To be considered for fiscal year 1979 funding, applications must be postmarked no later than February 1, 1979. Application materials have been sent to all known eligible applicants. However, if the materials have not been received, they may be requested from:

Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-27, 3700 East-West Highway, Hyattsville, Maryland 20782. Phone: (301) 436-6564.

Any questions concerning the program also should be directed to the Grants Management Officer at the above address.

Dated: January 9, 1979.

HENRY A. FOLEY, Ph. D.,
Administrator.

[FR Doc. 79-1802 Filed 1-18-79; 8:45 am]

[4110-02-M]

Office of Education

NATIONALLY RECOGNIZED ACCREDITING AGENCIES AND ASSOCIATIONS

List

For purposes of determining eligibility for Federal assistance pursuant to 20 U.S.C. 1141(a) and other legislation, beginning with the Veterans' Readjustment Assistance Act of 1952, the

U.S. Commissioner of Education hereby publishes a list of nationally recognized accrediting agencies and associations which he determines to be reliable authorities as to the quality of training offered by educational institutions either in a geographical area or in a specialized field, and the general scope of recognition granted to the accrediting bodies.

This list supersedes the list previously promulgated by the Acting Commissioner of Education on April 20, 1977, 42 FR 20507-20509.

REGIONAL INSTITUTIONAL ACCREDITING ASSOCIATIONS

New England Association of Schools and Colleges.
Commission on Independent Schools.
Commission of Institutions of Higher Education.
Commission on Public Schools.
Commission on Vocational, Technical, Career Institutions.

REGIONAL INSTITUTIONAL ACCREDITING COMMISSIONS

Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.
Accrediting Commission for Schools, Western Association of Schools and Colleges.
Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges.
Commission on Colleges, Northwest Association of Schools and Colleges.
Commission on Colleges, Southern Association of Colleges and Schools.
Commission on Higher Education, Middle States Association of Colleges and Schools.
Commission on Institutions of Higher Education, North Central Association of Colleges and Schools.
Commission on Occupational Education Institutions, Southern Association of Colleges and Schools.
Commission on Schools, North Central Association of Colleges and Schools.

NATIONAL INSTITUTION AND SPECIALIZED ACCREDITING AGENCIES AND ASSOCIATIONS

Architecture: National Architectural Accrediting Board, Inc. (first professional degree programs).
Art: National Association of Schools of Art, Commission on Accreditation and Membership (professional schools and programs).
Bible College Education: American Association of Bible Colleges, Commission on Accrediting (Bible colleges and institutes).
Blind and Visually Handicapped Education: National Accreditation Council for Agencies Serving the Blind and Visually Handicapped (specialized schools for the blind and visually handicapped).
Blood Bank Technology: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Subcommittee on Accreditation, American Association of Blood Banks (programs for the specialist in blood bank technology).
Business: American Assembly of Collegiate Schools of Business, Accreditation Council

(baccalaureate and graduate degree programs in business and administration).

Association of Independent Colleges and Schools, Accrediting Commission (private, postsecondary degree and non-degree granting institutions that are predominantly organized to train students for business careers).

Chiropractic: Council on Chiropractic Education, Commission on Accreditation (programs leading to the D.C. degree).

Clinical Pastoral Education: Association of Clinical Pastoral Education, Inc. (professional training centers).

Continuing Education: Council for Non-Collegiate Continuing Education, Accrediting Commission (programs in non-collegiate continuing education).

Cosmetology: Cosmetology Accrediting Commission (cosmetology schools and programs).

Cytotechnology: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Cytotechnology Programs Review Committee, American Society of Cytology (programs for the cytotechnologist).

Dental and Dental Auxiliary Education: American Dental Association, Commission on Accreditation of Dental and Dental Auxiliary Programs (programs leading to the D.D.S. or D.M.D. degrees, advanced dental specialty programs, general practice residency programs and programs in dental hygiene, dental assisting and dental technology).

Dietetics: American Dietetic Association, Commission on Evaluation of Dietetic Education (coordinated undergraduate programs in dietetics and dietetic internships).

Engineering: Engineers' Council for Professional Development (first professional degree programs in engineering, graduate programs leading to advanced entry into the engineering profession and associate and baccalaureate degree programs in engineering technology).

Forestry: Society of American Foresters (program leading to a bachelor's or higher first professional degree and related resource-oriented programs).

Funeral Service Education: American Board of Funeral Service Education, Commission of Schools (independent schools and collegiate departments).

Health Services Administration: Accrediting Commission on Education for Health Services Administration (graduate programs in health services administration).

Histologic Technology: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the National Accrediting Agency for Clinical Laboratory Sciences, which is sponsored by the American Society for Medical Technology and the American Society of Clinical Pathologists (programs for the histologic technician).

Home Study Education: National Home Study Council, Accrediting Commission (home study schools).

Interior Design Education: Foundation for Interior Design Education Research, Committee on Accreditation (professional and technical programs).

Journalism: American Council on Education for Journalism, Accrediting committee (first professional degree programs).

Landscape Architecture: American Society of Landscape Architects, Landscape Archi-

tectural Accreditation Board (first professional degree programs).

Law: American Bar Association, Council of the Section of Legal Education and Admissions to the Bar (professional schools).

Librarianship: American Library Association, Committee on Accreditation (graduate programs leading to the first professional degree).

Marriage and Family Counseling: American Association of Marriage and Family Counselors, Committee on Accreditation (graduate degree programs and clinical training programs).

Medical Assistant Education: Accrediting Bureau of Health Education Schools (private medical assistant educational institutions and programs).

American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Curriculum Review Board, American Association of Medical Assistants (one- and two-year medical assistant programs).

Medical Laboratory Technician Education: Accrediting Bureau of Health Education Schools (schools and programs for the medical laboratory technician).

American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the National Accrediting Agency for Clinical Laboratory Sciences, which is sponsored by the American Society for Medical Technology and the American Society of Clinical Pathologists (associate degree and certificate programs for the medical laboratory technician).

Medical Record Education: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Education and Registration Committee, American Medical Record Association (programs for the medical record administrator and medical record technician).

Medical Technology: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the National Accrediting Agency for Clinical Laboratory Sciences, which is sponsored by the American Society for Medical Technology and the American Society of Clinical Pathologists (professional programs).

Medicine: Liaison Committee on Medical Education, representing the Council on Medical Education, American Medical Association and the Executive Council, Association of American Medical Colleges (programs leading to the M.D. degree).

Music: National Association of Schools of Music (baccalaureate and graduate degree programs and non-degree granting institutions offering music education).

Nuclear Medicine Technology: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Joint Review Committee on Educational Programs in Nuclear Medicine Technology, which is sponsored by the American College of Radiology, American Society for Medical Technology, American Society of Clinical Pathologists, American Society of Radiologic Technologists and the Society of Nuclear Medicine (programs for the nuclear medicine technologist).

Nursing: American Association of Nurse Anesthetists, Council on Accreditation of Educational Programs of Nurse Anesthesia (pro-

professional schools/programs of nurse anesthesia).

National Association for Practical Nurse Education and Service, Inc., Accrediting Review Board (practical nurse programs).

National League for Nursing, Inc., Board of Review for Associate Degree Programs, Board of Review for Baccalaureate and Higher Degree Programs, Board of Review for Diploma Programs, Board of Review for Practical Nursing Programs (professional, technical and practical nurse programs).

Occupational Therapy: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Accreditation Committee, American Occupational Therapy Association (professional programs).

Occupational, Trade and Technical Education: National Association of Trade and Technical Schools, Accrediting Commission (private trade and technical schools).

Optometry: American Optometric Association, Council on Optometric Education (professional programs).

Osteopathic Medicine: American Osteopathic Association (programs leading to the D.O. degree).

Pharmacy: American Council on Pharmaceutical Education (professional degree programs).

Physical Therapy:

American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Review Committee for Physical Therapy Education, which is sponsored by the American Medical Association (professional programs for the physical therapist).

American Physical Therapy Association, Committee on Accreditation in Education (professional programs for the physical therapist and programs for the physical therapist assistant).

Physician's Assistant Education: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Joint Review Committee on Educational Programs for Physician's Assistants, which is sponsored by the American Academy of Family Physicians, American Academy of Pediatrics, American Academy of Physician's Assistants, American College of Physicians, American College of Surgeons, American Society of Internal Medicine and the Association for Physician Assistant Programs (programs for the assistant to the primary care physician and the surgeon's assistant).

Podiatry: American Podiatry Association, Council on Podiatry Education (professional and graduate degree programs and podiatric assistant training programs).

Psychology: American Psychological Association, Committee on Accreditation (doctoral and internship programs in clinical and counseling psychology and doctoral programs in school psychology).

Public Health: Council on Education for Public Health (graduate schools of public health).

Rabbinical and Talmudic Education: Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (rabbinical and Talmudic Schools).

Radiologic Technology: American Medical Association, Committee on Allied Health Education Accreditation, in cooperation with the Joint Review Committee on Education in Radiologic Technology, which is

sponsored by the American College of Radiology and the American Society of Radiologic Technologists (programs for the radiographer and radiation therapy technologist).

Respiratory Therapy: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Joint Review Committee for Respiratory Therapy Education which is sponsored by the American Association for Respiratory Therapy, American College of Chest Physicians, American Society of Anesthesiologists and the American Thoracic Society (programs for the respiratory therapist and respiratory therapy technician).

Social Work: Council on Social Work Education, Commission on Accreditation (master's and baccalaureate degree programs).

Speech Pathology and Audiology: American Speech and Hearing Association, American Boards of Examiners in Speech Pathology and Audiology (master's degree programs).

Surgical Technology: American Medical Association, Committee on Allied Health Education and Accreditation, in cooperation with the Joint Review Committee on Education for the Surgical Technologist, which is sponsored by the American College of Surgeons, American Hospital Association and the Association of Surgical Technologists (programs for the surgical technologist).

Teacher Education: National Council for Accreditation of Teacher Education (baccalaureate and graduate degree programs).

Theology: Association of Theological Schools in the United States and Canada, Commission on Accrediting (graduate professional degree programs offered by schools of theology).

Veterinary Medicine:

American Veterinary Medical Association, Committee on Animal Technician Activities and Training (associate degree programs for animal technicians).

American Veterinary Medical Association, Council on Education (programs leading to the D.V.M. or V.M.D. degree).

Other: New York State Board of Regents (registration [Accreditation] of collegiate degree-granting programs or curricula offered by institutions of higher education).

NATIONAL ACCREDITING AGENCIES AND ASSOCIATIONS RECOGNIZED FOR PREACCREDITATION CATEGORIES

REGIONAL INSTITUTIONAL ACCREDITING COMMISSIONS

Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges (Candidate for Accreditation).

Accrediting Commission for Schools, Western Association of Schools and Colleges (Candidate for Accreditation).

Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges (Candidate for Accreditation).

Commission on Colleges, Northwest Association of Schools and Colleges (Candidate for Accreditation).

Commission on Colleges, Southern Association of Colleges and Schools (Candidate for Accreditation).

Commission on Higher Education, Middle States Association of Colleges and Schools (Candidate for Accreditation).

Commission on Independent Schools, New England Association of Schools and Colleges (Recognition of Candidacy for Accreditation).

Commission on Institutions of Higher Education, New England Association of Schools and Colleges (Candidate for Accreditation).

Commission on Institutions of Higher Education, North Central Association of Colleges and Schools (Candidate for Accreditation).

Commission on Occupational Education Institutions, Southern Association of Colleges and Schools (Candidate for Accreditation).

Commission on Public Schools, New England Association of Schools and Colleges (Recognition of Candidacy for Accreditation).

Commission on Schools, North Central Association of Colleges and Schools (Candidate for Accreditation).

Commission on Vocational, Technical, Career Institutions, New England Association of Schools and Colleges (Candidate for Accreditation, Candidacy for Accreditation).

NATIONAL INSTITUTIONAL AND SPECIALIZED ACCREDITING AGENCIES AND ASSOCIATIONS

American Association of Bible Colleges, Accrediting Commission (Candidate for Accreditation).

American Association of Nurse Anesthetists, Council on Accreditation of Educational Programs of Nurse Anesthesia (Preaccreditation).

American Council on Pharmaceutical Education (Candidate).

American Dental Association, Commission on Accreditation of Dental and Dental Auxiliary Programs (Candidate for Accreditation, Preliminary Approval).

American Dietetic Association, Commission on Evaluation of Dietetic Education (Developmental Accreditation).

American Optometric Association, Council on Optometric Education (Reasonable Assurance, Preliminary Approval).

American Osteopathic Association (Preaccreditation Status, Provisional Approval).

American Podiatry Association, Council on Podiatry Education (Reasonable Assurance, Preliminary Approval).

American Veterinary Medical Association, Council on Education (Reasonable Assurance of Accreditation).

Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission (Correspondent, Candidate).

Association of Independent Colleges and Schools, Accrediting Commission (Recognized Candidate Status).

Association of Theological Schools in the United States and Canada, Commission on Accrediting (Authorization of Self-Study).

Council on Chiropractic Education, Commission on Accreditation (Correspondent, Recognized Candidate for Accreditation).

Council on Education for Public Health (Preaccreditation).

Engineers' Council for Professional Development, Engineering Technology Committee (Candidate for Accreditation, Reasonable Assurance of Accreditation).

Liaison Committee on Medical Education (Reasonable Assurance, Provisional Accreditation).

National Association of Schools of Art, Commission on Accreditation and Membership (Candidacy Status).

National League for Nursing, Inc., Board of Review for Associate Degree Programs, Board of Review for Baccalaureate and Higher Degree Programs, Board of Review for Diploma Programs (Reasonable Assurance of Accreditation).

New York Board of Regents (Interim Registration, Preliminary Registration).

Dated: January 8, 1979.

JOHN ELLIS,
Acting U.S. Commissioner
of Education.

STATE AGENCIES RECOGNIZED FOR THE APPROVAL OF PUBLIC POSTSECONDARY VOCATIONAL EDUCATION

LIST

For purposes of determining eligibility for Federal Assistance, pursuant to 20 U.S.C. 1087-1(b), the U.S. Commissioner of Education hereby publishes a list of State agencies which he determines to be reliable authorities as to the quality of public postsecondary vocational education in their respective States.

This list supersedes the list previously promulgated by the Commissioner of Education on April 20, 1977, 42 FR 20509.

Arkansas State Board for Vocational Education.

Iowa State Board of Public Instruction.

Kansas State Board of Education.

Minnesota State Board for Vocational-Technical Education.

Missouri State Board of Education.

New Jersey State Board of Education.

New York State Board of Regents.

Oklahoma State Board of Vocational and Technical Education (for approval of postsecondary vocational education programs and courses offered at area vocational technical schools which are not offered for college credit).

Oklahoma State Regents for Higher Education (for approval of vocational education programs for which credit earned is applied toward a degree, diploma, or other postsecondary academic or collegiate award, or which are given at State Institutions comprising the Oklahoma State System of Higher Education).

Utah State Board of Vocational Education.

AGENCIES WITHDRAWN FROM LIST

Indiana State Board of Vocational and Technical Education (by request).

Kentucky State Board of Education (by request).

Dated: January 8, 1979.

JOHN ELLIS,
Acting U.S. Commissioner
of Education.

ACCREDITING AND STATE APPROVAL AGENCIES RECOGNIZED FOR THE APPROVAL OF NURSE EDUCATION

LIST

For the purposes of determining eligibility for Federal assistance, pursuant to the Nurse Training Act, as amended (42 U.S.C. 298(b)), the U.S. Commissioner of Education hereby publishes a list of recognized accrediting and State approval agencies which he determines to be reliable authorities as to the quality of training offered by schools and programs for diploma, associate degrees and baccalaureate and graduate degrees in nursing.

This list supersedes the list previously promulgated by the Commissioner of Education on April 20, 1977, 42 FR 20509-20510.

REGIONAL INSTITUTIONAL ACCREDITING COMMISSIONS

Accrediting Commission for Community and Junior Colleges, Western Association of Schools and Colleges.

Accrediting Commission for Senior Colleges and Universities, Western Association of Schools and Colleges.

Commission on Colleges, Northwest Association of Schools and Colleges.

Commission on Colleges, Southern Association of Colleges and Schools.

Commission on Higher Education, Middle States Association of Colleges and Schools.

Commission on Institutions of Higher Education, New England Association of Schools and Colleges.

Commission on Institutions of Higher Education, North Central Association of Colleges and Schools.

NATIONAL INSTITUTIONAL AND SPECIALIZED ACCREDITING AGENCIES AND ASSOCIATIONS

National League for Nursing, Inc.

Board of Review for Associate Degree Programs.

Board of Review for Baccalaureate and Higher Degree Programs.

Board of Review for Diploma Programs.

STATE AGENCIES

California Board of Registered Nursing.

Iowa Board of Nursing.

Louisiana State Board of Nursing.

Missouri State Board of Nursing.

Montana State Board of Nursing.

New Hampshire Board of Nursing Education and Nurse Registration.

New York State Board of Regents (Nursing Education Unit).

West Virginia Board of Examiners for Registered Nurses.

Dated: January 8, 1979.

JOHN ELLIS,
Acting U.S. Commissioner
of Education.

IFR Doc. 79-1894 Filed 1-18-79; 8:45 am

[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

(Docket No. NFD-6587; FDAA-570-DR)

ARIZONA

Amendment to Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of major disaster declaration for the state of Arizona (FDAA-570-DR), dated December 21, 1978.

DATED: December 26, 1978.

FOR FURTHER INFORMATION CONTACT:

A. C. Reid, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410 (202/634-7825).

NOTICE: The Notice of major disaster for the State of Arizona dated December 21, 1978, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of December 21, 1978.

The Counties of: Coconino, Pinal, and Yavapai.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance)

WILLIAM H. WILCOX,
Administrator, Federal Disaster
Assistance Administration.

[FR Doc. 79-2002 Filed 1-18-79; 8:45 am]

[4310-05-M]

DEPARTMENT OF THE INTERIOR

Office of Surface Mining

[Federal Lease No. W-3446]

ATLANTIC RICHFIELD CO., COAL CREEK MINE, CAMPBELL COUNTY, WYO.

Availability of Coal Mining and Reclamation Plan for Public Review

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Availability of Coal Mining and Reclamation Plan for Public Review.

SUMMARY: Pursuant to § 211.5 of Title 30, Code of Federal Regulations,

notice is hereby given that the Office of Surface Mining, Region V, has received sufficient additional informa-

tion from the applicant to form a coal mining and reclamation plan for a new mine appropriate for public review.

The plan, described below, involves extraction of federally-, privately-, and state-owned coal.

Applicant	Mine name	Location of lands to be affected		
		State	County	Township, range, and sections
Atlantic Richfield Co.	Coal Creek	Wyoming	Campbell	T. 46 N. R. 70 W: 4, 7, 8, 9, 15, 16, 17, 18, 19, 20, 21, 22, 27, 28, 29, 30, 31, 32, 33, 34. T. 46 N. R. 71 W: 13, 24. T. 45 N. R. 70 W: 3, 4, 5.

Office of Surface Mining Reference Number: WY-0003.—The mining and reclamation plan provides baseline environmental data, describes the mining and environmental protection procedures proposed by the operator to meet State and Federal requirements, and discusses the reclamation procedures proposed. The plan proposes a production rate of ten million tons per year, to be shipped by rail. The total area included in the permit application is 9,545 acres of which approximately 8,310 acres will be affected. A Draft Environmental Impact Statement for this mine was transmitted to the Environmental Protection Agency on August 24, 1978. A final Statement is in preparation.

The mining and reclamation plan submitted by ARCo for the Coal Creek Mine is available for public review in the Library, Office of Surface Mining, Region V, Room 207, Post Office Building, 1823 Stout Street, Denver, Colorado. This Notice is issued at this time for the convenience of the public. The Office of Surface Mining has not yet determined whether the plan is technically adequate. Therefore, OSM may request additional information during the technical review. Any information so obtained will also be available for public review.

No action with respect to approval of the plan shall be taken by the Regional Director until February 20, 1979, or until the appropriate comment period after submission of the Final Environmental Impact Statement to EPA has expired, whichever comes later.

Prior to a final decision on this plan, the Office of Surface Mining will issue a Notice of Pending Decision pursuant to Section 211.5(c)(2) of Title 30, Code of Federal Regulations.

FOR ADDITIONAL INFORMATION:

John Hardaway, Office of Surface

Mining, Region V, 1823 Stout Street, Denver, Colorado 80202.

WALTER N. HEINE, P.E.,
Director, Office of Surface
Mining, Reclamation and En-
forcement.

JANUARY 15, 1979.

(FR Doc. 79-2008 Filed 1-18-79; 8:45 am)

[4310-05-M]

PEABODY COAL CO., BIG SKY MINE, ROSEBUD COUNTY, MONT.

Availability of Mine Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Major Modification of Existing Coal Mining and Reclamation Plan.

SUMMARY: Pursuant to § 211.5(b) of Title 30, CFR, Notice is hereby given that the Office of Surface Mining has received the following mine plan for a coal mining and reclamation operation on Federal coal lands:

LOCATION OF LANDS

Applicant: Peabody Coal Company.
Mine Property Name: Big Sky Mine.
State: Montana.
County: Rosebud.
OSM Reference Number: MT-0007-3.
General Description of Affected Lands: 29 Acres in E½ of Section 22, T1N, R41E of the Montana Principal Meridian.

This application is available for public review in the library of Region V Offices of the Office of Surface Mining, Room 270, Post Office Building, 1823 Stout Street, Denver, Colorado.

This Notice is issued at this time for the convenience of the public. The OSM has not yet determined whether the plan is adequate and may, during the course of its reviews, request additional information. Any additional information so obtained will also be

available for public review. Prior to final decision on this mine plan, the Office of Surface Mining will issue a Notice of Pending Decision pursuant to § 211.5(c)(2) of Title 30, Code of Federal Regulations. Copies of the mining plan are also being sent to the offices of the Bureau of Land Management and the Geological Survey in Billings, Montana.

DATES: Comments on or objections to the plan should be received by the Region V Office no later than February 20, 1979.

ADDRESSES: Comments should be sent to the Regional Director, Office of Surface Mining and Reclamation and Enforcement, Region V, 1823 Stout Street, Denver, Colorado 80202.

WALTER N. HEINE,
Director, Office of Surface
Mining, Reclamation and En-
forcement.

JANUARY 15, 1979.

(FR Doc. 79-2009 Filed 1-18-79; 8:45 am)

[4310-05-M]

[Federal Lease No. U-28297]

SOUTHERN UTAH FUEL CO., CONVULSION CANYON MINE, SEVIER COUNTY, UTAH

Availability of Coal Mining and Reclamation Plan for Public Review

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Availability of Coal Mining and Reclamation Plan for Public Review.

SUMMARY: Pursuant to § 211.5 of Title 30, Code of Federal Regulations, notice is hereby given that the Office of Surface Mining, Region V, has received sufficient additional information from the applicant to form a coal mining and reclamation plan for a new mine appropriate for public review. The plan, described below, involves extraction of federally owned coal.

Applicant	Mine name	Location of lands to be affected		
		State	County	Township, range, and sections
Southern Utah Fuel Company.	Convulsion Canyon Mine	Utah	Sevier	T. 22 S., R. 5 E., Sections: 4, 5, 7, 17 & 18. T. 21 S., R. 5 E., Sections 32 & 33.

Office of Surface Mining Reference Number: UT-0026.—The mining and reclamation plan provides baseline environmental data, describes the mining and environmental protection procedures proposed by the operator to meet State and Federal requirements, and discusses the reclamation procedures proposed. The plan proposes a upper production rate of 2.1 million tons per year, to be shipped by truck and rail. The total area included in the permit application is 2632 acres. A Draft Environmental Impact Statement for Development of Coal Resources in Central Utah, within which this operation is located, but not addressed specifically, was transmitted to the Environmental Protection Agency on October 20, 1978. A final Statement is in preparation.

The mining and reclamation plan submitted by SUFCO for the Convulsion Canyon Mine is available for public review in the Library, Office of Surface Mining, Region V, Room 207, Post Office Building, 1823 Stout Street, Denver, Colorado.

This Notice is issued at this time for the convenience of the public. No action with respect to approval of the plan shall be taken by the Regional Director until February 20, 1979. The Office of Surface Mining has not yet determined whether the plan is technically adequate. Therefore, OSM may request additional information during its review. Any additional information so obtained will also be available for public review. Prior to a final decision on this plan, the Office of Surface Mining will issue a Notice of Pending Decision pursuant to §211.5(c)(2) of Title 30, Code of Federal Regulations.

WALTER N. HEINE,
Director, Office of Surface
Mining, Reclamation and En-
forcement.

[FR Doc. 79-2007 Filed 1-18-79; 8:45 am]

[4410-01-M]

DEPARTMENT OF JUSTICE

National Institute of Corrections

ADVISORY BOARD

Public Hearings

The Advisory Board of the National

Institute of Corrections (NIC) will hold four public hearings, during which selected practitioners and others involved in corrections will identify the priorities to which the agency's funding resources could be directed. Testimony will guide the Institute's program planning for Fiscal Year 1980.

Thirty-two people are expected to testify at each hearing. Statements will focus on the needs of corrections that can be addressed through NIC's legislatively mandated activities of training, technical assistance, research/evaluation, policy formulation/implementation, and clearinghouse. At the conclusion of each day's formal proceedings, time may be available for statements by members of the audience.

The hearings will be conducted from 8:30 a.m. to 5:00 p.m. each day, as follows:

JANUARY 29 AND 30, 1979

Museum of Modern Art, War Memorial Building, Corners of Van Ness and Macalaster Sts., San Francisco, CA, Board Room.

FEBRUARY 5 AND 6, 1979

Atlanta Regional Commission, 230 Peachtree St., N.W., Atlanta GA, Board Room.

FEBRUARY 12 AND 13, 1979

U.S. Department of Justice, Main Building, 10th and Pennsylvania Ave., N.W., Washington, D.C., Conference Rooms A and B.

FEBRUARY 15 AND 16, 1979

Houston City Council Chambers, City Hall, 901 Bagby, Houston, Texas.

FOR FURTHER INFORMATION CONTACT:

Nancy Sabanosh, National Institute of Corrections, 320 First Street, N.W., Room 970, Washington, D.C. 20534.

ROBERT L. SMITH,
Assistant Director,
National Institute of Corrections.

JANUARY 15, 1979.

[FR Doc. 79-2066 Filed 1-18-79; 8:45 am]

[4510-24-M]

DEPARTMENT OF LABOR

Bureau of Labor Statistics

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON FOREIGN LABOR AND TRADE

Meeting

The BRAC Committee on Foreign Labor and Trade will meet on Wednesday, January 31, 1979, at 1:30 p.m. in Room 4454 of the General Accounting Office Building, 441 G Street NW., Washington, D.C. The agenda for the meeting is as follows:

1. Development of international comparisons of hourly compensation.
2. International comparisons of unemployment rates.
3. Implications of the recommendations of the National Academy of Sciences' Panel to review productivity statistics for the international comparisons program.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth G. Van Aiken, Executive Secretary, Business Research Advisory Council on Area Code (202) 523-1559.

Signed at Washington, D.C., this 12th day of January 1979.

JANET L. NORWOOD,
Acting Commission
of Labor Statistics.

[FR Doc. 79-1838 Filed 1-18-79; 8:45 am]

[4510-24-M]

BUSINESS RESEARCH ADVISORY COUNCIL'S COMMITTEE ON PRODUCTIVITY AND TECHNOLOGICAL DEVELOPMENTS

Meeting

The BRAC Committee on Productivity and Technological Development will meet on Wednesday, January 31, 1979, at 9:30 a.m. in Room N-4437 (A,B,&C) of the New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C. The agenda for the meeting is as follows:

1. The implications for the BLS Productivity Program of the recommendations of the National Academy of Sciences' Panel to review productivity statistics (Al Rees, Chairman).
2. The role of capital formation in the productivity slowdown.

3. Measures of unit labor cost for selected industries.

This meeting is open to the public. It is suggested that persons planning to attend this meeting as observers contact Kenneth C. Van Auker, Executive Secretary, Business Research Advisory Council on Area Code 202-523-1559.

Signed at Washington, D.C., this 12th day of January.

JANET L. NORWOOD,
Acting Commissioner
of Labor Statistics.

[FR Doc. 79-1839 Filed 1-18-79; 8:45 am]

[4510-30-M]

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 USC 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 ap-

proved 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. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training Administration, 601 D Street, N.W., Washington, D.C. 20213.

Signed at Washington, D.C. this 16th day of January 1979.

ERNEST G. GREEN,
Assistant Secretary for
Employment and Training.

APPLICATIONS RECEIVED DURING THE WEEK ENDING JANUARY 11, 1979

Name of applicant and location of enterprise and principal product or activity

Outers Laboratories, Inc., La Crosse County, Wisconsin, Manufacture of sporting goods, farming operations and custom job shop work.

Gran Parque del Caribe, Inc., Municipalities of Dorado and Toa Alta, Puerto Rico, Zoo, theme park and amusement park.

Southland Mower Company, Selma, Alabama, Manufacture of rotary lawn mowers and grey iron castings.

Eastern Milk Producers Cooperative Association, Inc., Waverly, New York, Manufacture of cheese.

[FR Doc. 79-1537 Filed 1-18-79; 8:45 am]

[4510-43-M]

Mine Safety and Health Administration

[Docket No. M-79-1-M]

CLIMAX MOLYBDENUM CO.

Petition for Modification of Application of Mandatory Safety Standard

Climax Molybdenum Co., 13949
West Colfax Avenue, Golden, Colora-

do 80401, has filed a petition to modify the application of 30 CFR 57.9-22 (berms) to its Climax Mill in Climax, Colorado. The petition is filed under Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petition follows:

(1) The petition concerns a roadway extending behind the petitioner's No. 3 and 4 mill building and regrind plant.

(2) The roadway is approximately 330 feet long and varies in width from 22 feet to 45 feet.

(3) The roadway is used infrequently by vehicles.

(4) The petitioner states that the installation of berms or guards on the outer bank of the roadway would create the following hazards:

(a) The roadway would become so narrow that safe passage could not be guaranteed for the movement of vehicular and pedestrian traffic.

(b) Approximately 258 inches of snow fall annually in the area. Berms or guards would prevent effective and efficient removal of snow and ice.

(c) Inability to engage in proper snow removal would also create a drainage problem because water would run off directly into the No. 3 and 4 mill and the regrind plant. In addition to cleanup and slippage hazards, water would enter the electrical substations in the mill, creating a potential for electrical accidents.

(d) This inability to remove snow and ice would also result in material being deposited onto the railroad track, which is situated below the roadway.

(e) Installation of a berm along the roadway would reduce visibility of the train traffic located on a lower level and increase the potential for an accident involving vehicular traffic on the road and rail traffic.

(5) As an alternative to the installation of berms or guards, the petitioner proposes the following:

(a) Warning signs consisting of 15 foot lengths of pipe covered with fluorescent paint will be installed at regular intervals along the outer edge of the roadway so that men and equipment do not proceed over that edge.

(b) Traffic flow control signs as outlined in the petition will be installed at appropriate locations along the roadway.

(c) A "helper" will be present any time vehicles larger than a pickup truck (with the exclusion of snow removal equipment) travel along the roadway, to prevent accidental maneuvering over the outer edge of the roadway.

(d) The petitioner's vehicles which use the roadway will be inspected every 100 hours of operation. This in-

spection will include such items as defrosters, windshield wipers, back-up alarms, brakes, steering and other items whose proper maintenance help prevent the occurrence of accidents along the roadway.

(6) 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 February 20, 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 for inspection at that address.

Dated: January 10, 1979.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 79-1840 Filed 1-18-79; 8:45 am]

[4510-43-M]

[Docket No. M-78-61-C]

EASTERN ASSOCIATED COAL CORP.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted the petition (43 FR 19928) of Eastern Associated Coal Corp. to modify the application of 30 CFR 75.1105 to its Harris No. 2 Mine located in Boone County, W. Va., in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. MSHA has determined that an alternative method exists that will guarantee at all times no less than the same measure of protection given miners of the mine by the standard.

MSHA based its determination on the following findings:

1. The ten horsepower Gorman Rupp water pump listed in the petition is essential to prevent water from accumulating over the rails of No. 3 Pass sidetrack, off the north mains trolley haulage way.

2. The No. 3 pass sidetrack, 450 feet in length, is primarily used for parking mine supply cars and/or switching other track equipment. The water pump housed in a stacked masonry block enclosure was located approximately 650 feet from the 4 right main fan return airways with an automatic fire suppression system activated automatically by a rise in temperature.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by

the Secretary of Labor, ordered that the petition be granted, conditioned on the terms of the petition and MSHA's findings.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203.

Dated: January 9, 1979.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 79-1841 Filed 1-18-79; 8:45 am]

[4510-43-M]

[Docket No. M-77-205]

ELRO COAL CORP.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted in part the petition (42 FR 37455) of Elro Coal Corp. to modify the application of 30 CFR 75.1710 to its No. 2 Mine located in Wise County, Virginia, in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. MSHA has determined that the application of the standard to the mine will result in a diminution of safety to the miners of the mine.

MSHA based its determination on the following findings:

1. The minimum height from the mine floor to the bottom of the roof supports is 44 inches.

2. Joy Continuous Mining Machine (Model 14CM1-11A) height (mine floor to top of machine) is 31 inches.

3. Galis Roof Bolting Machine (Model 300) frame height is 24 inches.

4. Galis Shuttle Cars (Model 6L-56) have frame heights of 33 inches with a 6½ inch side-board added.

5. S and S Scoop Tractor (Model 488) frame height is 34 inches.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be denied as it relates to the Joy continuous mining machine and the Galis roof bolting machine, and granted as it relates to the Galis shuttle cars and the S and S scoop tractor.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: January 9, 1979.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 79-1842 Filed 1-18-79; 8:45 am]

[4510-43-M]

[Docket No. M-78-12]

IMPERIAL COLLIERY CO.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted in part the petition (42 FR 60231) of Imperial Colliery Co. to modify the application of 30 CFR 75.305 to its No. 11 Mine located in Kanawha County, W. Va., in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. MSHA has determined that an alternative method exists that will guarantee at all times no less than the same measure of protection given miners of the mine by the standard.

MSHA based its determination on the following findings:

1. An attempt to travel the airway in question by MSHA's investigator resulted in reaching a point approximately 300 feet into the 1 left section return, 200 feet into the No. 11 mains inby the empty track, and 300 feet inby the No. 1 Fan. The condition of the entries is very poor. The entries were developed in the 1940's and 1950's and no roof bolts were installed. The wooden roof support has deteriorated. The floor is badly hooved and hazardous roof conditions are present. The MSHA investigator agreed that examination of the return airway would result in a diminution of safety.

2. The projected life of the mine, according to management, is approximately 2 years. To rehabilitate the return airway from the 1 left barriers section to the No. 1 Fan would not be economically feasible and would not add any degree of safety for the workmen. The No. 2 Fan, as mentioned in the alternate method section of the petitioner's request, has been installed and is operating. More than adequate air quantity to supply the one working unit was available at the time of the investigation. The abandoned areas of the mine appear to be well ventilated and records do not indicate any ventilation problems.

3. The "alternate method" set forth in the petitioner's request of installing the No. 2 Fan, examining the air quantities and velocities in the working section and at the No. 1 Fan has been instituted and is being carried out.

4. It was the opinion of the investigator that if the following recommen-

dations were included with the tests set forth by the petitioner that the results would serve the purpose intended by the examination requirement:

a. Air quantity measuring stations should be established in the isolated intake airway outby the 1 left barriers section and in the track intake airway. Air measurements should be taken on a daily basis by a certified person and the results of these measurements be recorded in a book approved by the Secretary and made available to all interested persons.

b. If the measurements indicate that an unplanned change in air quantity of more than 25 percent exists, an immediate examination of the other areas of the mine should be conducted to determine the cause and corrective actions should be taken immediately. Corrective actions taken should be recorded in an approved book and made available to interested persons.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted, conditioned upon compliance with the recommendations stated above.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: January 9, 1979.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 79-1843 Filed 1-18-79; 8:45 am]

[4510-43-M]

[Docket No. M-78-24]

STANSBURY COAL CO.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted in part the petition of Stansbury Coal Co. to modify the application of 30 CFR 75.902 to its Stansbury Mine located in Sweetwater County, Wyoming, in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. MSHA has determined that an alternative method exists that will guarantee at all times no less than the same measure of protection given miners of the mine by the standard.

MSHA based its determination on the following findings:

MSHA conducted an investigation which consisted of reviewing blueprints, walking the two slopes in question, inspecting the supply transform-

er, protective devices and lighting installation, and discussing the petition with mine personnel.

The MSHA investigators recommended that the petition for modification be approved for the circuit described in the petition, if the following additional recommendations are complied with:

1. The lighting circuits and fixtures must be examined weekly and examinations recorded as required by § 75.512.

2. Any broken or damaged lighting fixture or flexible fixture hanger or any other potentially dangerous condition must be properly repaired or corrected with minimum delay by a qualified electrician. The broken, damaged or dangerous components must be deenergized until such repairs or corrections are made.

3. All repair work, maintenance, and bulb changing must be done by a qualified electrician after he assures himself the circuit is safe to work on.

4. At least one flexible fixture hanger and one lamp globe shall be in stock or on order at all times to minimize delay of any necessary repairs.

The investigators stated that the manner of installation and additional safeguards provided by the following will provide equivalent safety:

1. The installation of rigid steel conduit, flexible fixture hangers, and substantially constructed waterproof light fixtures significantly reduces the probability of broken grounds or ground faults caused by physical damage.

2. The rock slopes are well supported and maintained, thereby further reducing probability of broken grounds or ground faults.

3. Individual grounding conductors run to each light fixture, as well as parallel grounding paths through the conduits, and flexible fixture hangers assure reliable grounding means.

4. The lighting fixtures are the most likely place for an open ground or ground fault. By elevation 10 feet above the floor and well above normal slope traffic, exposure to these hazards can be restricted to only qualified electricians made aware of the special safety requirements listed in MSHA's report.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted, conditioned upon proper installation and maintenance of the lighting system in accordance with the safeguards described in the petition and the recommendations made by MSHA's investigators.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health

Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: January 10, 1979.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 79-1844 Filed 1-18-79; 8:45 am]

[4510-43-M]

[Docket No. M-78-422]

WESTMORELAND COAL CO.

Final Action Granting a Petition for Modification of Application of Mandatory Safety Standard

The Mine Safety and Health Administration (MSHA) has granted in part the petition (41 FR 21252) of Westmoreland Coal Co. to modify the application of 30 CFR 75.1710-1 to its Wentz No. 1 Mine located in Wise County, Virginia, in accordance with Section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. MSHA has determined that the application of the standard to the mine will result in a diminution of safety to the miners of the mine.

MSHA based its determination on the following findings:

1. The mine's roof is supported utilizing 48 inch roof bolts installed on not more than 4 foot centers. Except for the 2 sections at "B" Portal, the remaining sections are similar, generally damp and having extremely undulated mine floors.

2. During operations, the mine experienced two roof fall fatalities: March 11, 1969 and December 29, 1970, and has had 21 unintentional roof falls since 1970 when a record was started listing such occurrences.

3. On the 1 Right off 4 North Section, the minimum height floor to roof measurement was 48 inches.

4. On A Right Section, minimum height floor to roof measurement was 48 inches.

5. On Main North Section, minimum height floor to roof measurement was 47 inches.

6. Due to the extremely undulating mine floor and limited space available between the equipment frames and the mine roof, the MSHA investigator found that a diminution of safety would exist for the following equipment in the sections listed below.

a. 1 Right off 4 North Sections: One Lee Norse continuous mining machine (Model CM32) with a height of 37 inches, two Joy shuttle cars (Model 16SC) with heights of 36 inches.

b. "A" Right Section: One Lee Norse continuous mining machine (Model CM32) with a height of 39 inches, two Joy shuttle cars (Model 16SC) with heights of 36 inches.

c. Main North Section: One Lee Norse continuous mining machine (Model CM32) with a height of 37 inches, two Joy shuttle cars (Model 16SC) with heights of 35 inches.

Because of these findings, the Administrator for Coal Mine Safety and Health, under authority delegated by the Secretary of Labor, ordered that the petition be granted in part for the continuous mining machines and shuttle cars listed above in 1 Right off 4 North section, "A" Right section and Main North section. If conditions or circumstances change in these sections which would allow canopies to be installed which would not result in a diminution of safety, then compliance with section 75.1710-1 should be accomplished.

A copy of the decision is available for inspection by the public at the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Dated: January 9, 1979.

ROBERT B. LAGATHER,
Assistant Secretary
for Mine Safety and Health.

[FR Doc. 79-1818 Filed 1-18-79; 8:45 am]

[4510-26-M]

Occupational Safety and Health Administration

FEDERAL ADVISORY COUNCIL ON OCCUPATIONAL SAFETY AND HEALTH

Meeting

Notice is hereby given that the Federal Advisory Council on Occupational Safety and Health, established under Section 4(a) of Executive Order 11807 of September 28, 1974 (39 FR 35559), Occupational Safety and Health Programs for Federal Employees, will meet on February 6 starting 9:30 a.m. in Room N4437 ABC, New Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. The meeting will be open to the public.

The agenda provides for:

- I. Announcements.
- II. Appointments and Reappointments of FACOSH members.
- III. Government-Industry Data Exchange Program (GIDEP)—Status of SAF-ALERT SYSTEM.
- IV. Standing Committee on FARS—Status of the Standardized Reporting System.
- V. Standing Committee on Occupational Noise discussion and approval of Operational Plan.
- VI. Standing Committee on Safety and Health Conferences, discuss 1979 Conferences.
- VII. Status of Noise Standard.

The Council welcomes written data, views or comments concerning safety and health programs for Federal employees, including comments on the agenda items. All such submissions re-

ceived by close of business February 2, 1979, will be provided to the members of the meeting.

The Council will consider oral presentation relating to agenda items. Persons wishing to orally address the Council at the meeting should submit a written request to be heard by close of business February 2, 1979. The request must include the name and address of the person wishing to appear, the capacity in which appearance will be made, a short summary of the intended presentation and an estimate of the amount of time needed.

All communications regarding this Advisory Council should be addressed to Ms. Annie Asensio, Executive Director, FACOSH, Department of Labor, OSHA, First Floor South, 2100 M Street, N.W., Washington, D.C. 20210, telephone (202) 653-5500.

Signed at Washington, D.C. this 16th day of January, 1979.

EULA BINGHAM,
Assistant Secretary of Labor.

[FR Doc. 79-2063 Filed 1-18-79; 8:45 am]

[4510-26-M]

WYOMING STATE STANDARDS

Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under Section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator) under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State Plan which has been approved in accordance with Section 18(c) of the Act and 29 CFR Part 1902. On May 3, 1974, notice was published in the FEDERAL REGISTER (39 FR 15394) of the approval of the Wyoming Plan and the adoption of Subpart BB to Part 1952 containing the decision.

The Wyoming Plan provides for the adoption of Federal standards as State standards after public hearings. Section 1953.23(a)(2) of 29 CFR provides that whenever a Federal standard is promulgated, the State must adopt or promulgate a standard or standard change which will make the State standard at least as effective as the Federal standard or change within six months of the Federal promulgation or change. In response to Federal standard changes, the State has submitted by letter dated July 14, 1978, from Donald D. Owsley, Health and Safety Administrator, to Curtis A.

Foster, Regional Administrator, and incorporated as part of the plan, State standards comparable to the 29 CFR 1910.1044 Occupational Exposure to 1,2-Dibromo-3-Chloropropane (DBCP), which were published in Federal Register (43 FR 11514), Friday, March 17, 1978. This standard, which is contained in Wyoming Occupational Safety and Health Rules and Regulations for General Industry, was promulgated after hearings held on May 11, 1978, and by resolutions adopted by the Wyoming Occupational Health and Safety Commission on May 11, 1978, and became effective on July 6, 1978, pursuant to Section 27-278 Wyoming Statutes 1957 as amended 1973.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are at least as effective as the comparable Federal standards.

3. *Location of supplements for inspection and copying.* A copy of the standards supplements, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 1554, Federal Building, 1661 Stout Street, Denver, CO 80294; the Occupational Health and Safety Department, 200 East Eighth Avenue, Cheyenne, WY 82001; and the Technical Data Center, Room N2439R, Third and Constitution Avenue, N.W., Washington, DC 20210.

4. *Public participation.* Under § 953.2(c) of 29 CFR Part 1953, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Wyoming State Plan as a proposed change and making the Regional Administrator's approval effective upon publication for the following reason:

The standards were adopted in accordance with the procedural requirements of State law, which included public comments, and further public participation would be unnecessary.

This decision is effective January 19, 1979.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Denver, Colorado, this eighth day of August, 1978.

CURTIS A. FOSTER,
Regional Administrator.

[FR Doc. 79-2058 Filed 1-18-79 8:45 am]

[4510-29-M]

Pension and Welfare Benefit Programs

EMPLOYEE BENEFIT PLANS

Proposed Class Exemption To Permit Certain Transactions Involving Employee Benefit Plans Maintained by Insurance Agents and Brokers (Application Nos. D-985 and D-040)

AGENCY: Department of Labor.

ACTION: Notice of proposed class exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed class exemption from certain taxes imposed by the Internal Revenue Code of 1954 (the Code) and from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed class exemption, if granted, would permit the effecting of a sale of an insurance or annuity contract to an employee benefit plan and the receipt of a sales commission with respect to such sale by an agent or broker who is the employer maintaining the plan or a related person. The proposed exemption, if granted, would affect participants and beneficiaries of plans to which such insurance products are furnished, employers maintaining these plans, certain related persons that are covered by the exemption, and other persons participating in the transactions.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before March 20, 1979.

ADDRESSES: All written comments and requests for a hearing (preferably six copies) should be addressed to the U.S. Department of Labor, Pension and Welfare Benefit Programs, Office of Fiduciary Standards, Room C-4526, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: "Insurance In-House Plans." All the applications for exemption which form the basis of this class exemption and all comments relating to this proposed exemption will be available for public inspection at the Public Documents Room of the Pension and Welfare Benefit Programs, Room N-4467, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT:

Richard Small, U.S. Department of Labor, Pension and Welfare Benefit Programs, Office of Fiduciary Standards, Room C-4526, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523-8195. This is not a toll free number.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a class exemption from the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1) of the Code and from the restrictions of sections 406(a) and 406(b) of the Act. Two applications were filed requesting a class exemption for the subject transactions. One was filed jointly by the National Association of Life Underwriters (NALU) and the Association for Advanced Life Underwriting (AALU) (D-985). The other application was filed by Connecticut General Life Insurance Company (D-040).

The applications for class exemption were filed pursuant to 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, C.B. 722 and ERISA Procedure 75-1 (40 FR 18471), April 28, 1975).

Numerous applications have also been received for individual exemptions concerning transactions of the type described in this proposed class exemption. All such transactions will be exempted if they satisfy the terms and conditions of the proposed class exemption. As stated in ERISA Proc. 75-1, an application for an individual exemption will not ordinarily be considered separately if a class exemption which may encompass the transaction described in the application is under consideration by the Department. Accordingly, the Department is notifying directly each applicant for an individual exemption of the fact that such applicant's application is not being considered separately from this proposed class exemption, that such application will ordinarily be closed, and, therefore, that such applicant's comments with respect to this pending class exemption are sought by the Department.

The applications were filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978 (44 FR 1065, January 3, 1979), section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

SUMMARY OF FACTS AND REPRESENTATIONS

The applications contain representations with regard to the proposed class exemption which are summarized below. Interested persons are referred to the applications on file with the Department for the complete representations of the applicants.

1. It is common practice for insurance agents and brokers who are not employees of the insurance companies which they represent to establish employee benefit plans for themselves and their employees. Further, many agents and brokers have substantial economic interests in corporate and other entities which maintain plans for their employees. These plans are usually funded either wholly or partially with insurance or annuity contracts in order to provide pre-retirement death benefits and guaranteed payouts at retirement. Since the insurance agency or a member of such firm is licensed to effect sales of insurance and annuity contracts, commissions generated in connection with plan funding transactions are paid to the insurance agency or licensed member.

2. The provision of insurance and annuity contracts to the plan by the agent or broker which, within the meaning of section 4975(e)(2) of the Code and section 3(14) of the Act, is a disqualified person or party in interest with respect to a plan, and the receipt of commissions therefor, may be prohibited transactions under section 4975(c)(1) of the Code and section 406 of the Act.

3. Transactions described in the applications for exemption have occurred continually since the effective date of the prohibited transaction restrictions of the Code and the Act. Although the Applicants state that the transitional provisions of sections 414(c)(4) and 2003(c)(2)(D) of the Act applied to the transactions, such relief expired on June 30, 1977, and was not available for agents and brokers who were not considered to have furnished the type of services involved as of June 30, 1974. Furthermore, neither Prohibited Transaction Exemption 77-9¹ nor any other administrative exemption granted heretofore has covered all the transactions effected by the disqualified persons/parties in interest which are the subject of this proposed exemption. Accordingly, the applicants have requested that the proposed class exemption be effective as of January 1, 1975, the effective date of the Prohibited Transactions provisions of the Code and Act.

4. It would be contrary to normal business practices and unnecessarily restrictive, to require an employee benefit plan maintained by an employer-agent or broker to have its purchases of insurance and annuity contracts effected by an unrelated person. Moreover, with respect to the pur-

¹ Notice of the granting of the exemption was published in the FEDERAL REGISTER on June 24, 1977 (42 FR 32395). See also the Proposed Amendment of Prohibited Transaction Exemption 77-9 published in the FEDERAL REGISTER on April 28, 1978 (43 FR 18354) for further clarification of section V(a) of that exemption.

chase of individual insurance policies for the plan, the cost to the plan would be unaffected by the identity of the agent or broker, since commissions received by the agent or broker on such sales to the plan are determined under a scale of compensation which is uniformly applied to all agents and brokers similarly situated with the same insurance company and are not subject to negotiation.

5. The benefit received by the agent or broker in the form of sales commissions is paid for, directly or indirectly, by the agent or broker as the employer maintaining the plan. The receipt of sales commissions by the employer who is an agent or broker represents a direct reduction in cost to the employer which would not be available if the employer was precluded from furnishing insurance or annuity contracts to the plan and was, instead, required to purchase it from a third person whose commission income on the sale could not be credited against the employer's cost. Consequently, the agent or broker can furnish insurance to the plan at a lower overall cost thereby providing an incentive for the agent or broker to secure better coverage for the plan than if the insurance or annuity contracts were to be purchased from an unrelated third person.

6. In support of the class request that agents and brokers be permitted to receive and retain the commissions derived from sales effected for their in-house plans, the applicants represent that the rebating of commissions by the agent or broker to the plan is illegal by specific statute in every state and the District of Columbia. All of these jurisdictions have passed the Model Unfair and Deceptive Practices Act which was promulgated by the National Association of Insurance Commissioners. Thus, the assignment, transfer or "return" to the plan of commissions attributable to sales effected on behalf of that plan would constitute violations of state insurance laws. The applicants further contend that state laws prohibited the payment of commissions except to licensed agents or brokers. Accordingly, these state laws would preclude the direct payment of commissions to the plan by the insurance company in connection with the sale of insurance to the plan which is effected by a licensed agent or broker.

In addition, the applicants also represent that many states have statutes prohibiting discrimination as to rates, premiums, dividends or benefits between individuals or risks of the same class, or of equal expectation of life. In view of these state law restrictions, the applicants contend that the plan would be prohibited from obtaining insurance on a "net basis", i.e., without the cost element contained in the in-

surance company premium which is attributable to the commission otherwise payable to the agent or broker, since this practice would result in discrimination between persons of similar risk or classification.

GENERAL INFORMATION

It should be noted that the exemption, as proposed, only would be available if the total commissions received by the agent or broker in each taxable year as a result of effecting transactions under the exemption do not exceed five percent of the total commissions received in that taxable year by such agent or broker. This condition is designed to ensure that the sale of insurance to an "in-house" plan does not represent more than an incidental part of the agents' or brokers' insurance business.

It should also be noted that the term "insurance or annuity contract", as used in the exemption, is intended to cover contracts issued by insurance companies including those which provide only for the provision of administrative services. It should be further noted that under section 408(d) of the Act, no exemption may be granted under section 408(a) for transactions of the type described herein between a plan and certain persons such as an owner-employee as defined in section 401(c)(3) of the Code, or a shareholder-employee as defined in section 1379 of the Code. The proposed exemption is intended, however, to be applicable to such persons for purposes of section 4975 of the Code.

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 disqualified person or other party in interest with respect to a plan to which the exemption is applicable from certain other provisions of the Code and the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the plan's participants and beneficiaries and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the 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) Before an exemption may be granted under section 4975(c)(2) of the Code and section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in

the interests of the plan or plans and of their participants and beneficiaries, and protective of the rights of such participants and beneficiaries of such plan or plans;

(3) The Class exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Code and the Act, including statutory 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) If granted, the pending class exemption will be applicable to a particular transaction only if the transaction satisfies the conditions specified in the class exemption; and

WRITTEN COMMENTS AND HEARING REQUEST

All interested persons are invited to submit written comments on this proposed class exemption to the address and within the time period set forth above. In addition, any interested person may submit to the address and within the time period set forth above, a written request that a hearing be held relating to the pending class exemption. Such written request should state the reasons for such person's interest in the proposed class exemption.

A list of individual applications which involve the subject transactions as well as the individual and class applications for exemption, all written comments and all requests for a hearing (preferably six copies) will be made part of the record and will be available for public inspection at the addresses set forth above.

PROPOSED EXEMPTION

Based on the applications hereinabove described, the Department has under consideration the granting of the following class exemption under the authority of section 4975(c)(2) of the Code and section 408(a) of the Act and in accordance with the procedures set forth in.

ERISA Procedure 75-1: Effective January 1, 1975, the restrictions of sections 406(a), and 406(b) 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 sales of insurance or annuity contracts effected for an employee benefit plan and to the receipt of sales commissions in connection with such sales by an agent or broker who is the employer maintaining the plan or a person related to the employer if the following conditions are met:

(a) The insurance agent or broker effecting the sale;

(1) Is an employer any of whose employees are covered by the plan;

(2) Is a 10 percent or more partner in capital or profits of an employer described in subparagraph (1); or

(3) Is a disqualified person or party in interest with respect to the plan by reason of an affiliation with the employer establishing or maintaining the plan that is described in section 4975(e)(2)(E), (G) or (H) of the Code and section 3(14)(E), (G) or (H) of the Act. For purposes of the condition set forth in paragraph (a)(1), an "employer" includes a sole proprietor maintaining a plan in which he or she is the only participant.

(b) The plan pays no more than adequate consideration for the insurance contracts or annuities;

(c) Effective (one year from date of granting of this exemption), the total commissions received in each taxable year of the insurance agent or broker as a result of effecting transactions under this exemption do not exceed 5 percent of total insurance commission income received in that taxable year by such agent or broker.

Signed at Washington, D.C., this 15th day of January, 1979.

IAN D. LANOFF,
Administrator for Pension and
Welfare Benefit Programs,
Labor-Management Services
Administration, U.S. Department
of Labor.

[FR Doc. 79-1889 Filed 1-16-79; 8:45 am]

[4510-28-M]

Office of the Secretary

WORKER ADJUSTMENT ASSISTANCE

Investigations Regarding Certifications of Eligibility To Apply

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in

accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 26, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 26, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C., this 8th day of January 1979.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers or former workers of:)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
Affinity Mining Company, Keystone #5 mine (U.M.W.A.).	Sophia, West Virginia.....	12/18/78	12/13/78	TA-W-4,581	mining of coal
Allied Chemical Corp., Semet Solvay Div., Shannon Branch Preparation (U.M.W.A.).	Capels, West Virginia.....	1/2/78	12/13/78	TA-W-4,582	cleaning of coal
Allied Chemical Corp., Semet Solvay Div., Shannon Branch Mine (U.M.W.A.).	Capels, West Virginia.....	1/2/78	12/13/78	TA-W-4,583	mining of coal
Bishop Coal Company (U.M.W.A.).	Pocahontas, Virginia.....	12/18/78	12/13/78	TA-W-4,584	mining of coal
Consolidation Coal Company (U.M.W.A.).	Pocahontas, Virginia.....	12/18/78	12/13/78	TA-W-4,585	mining of coal
Eastern Associated Coal Corporation, Keystone #1 Mine (U.M.W.A.).	Keystone, West Virginia ...	12/18/78	12/13/78	TA-W-4,586	mining of coal
Eastern Associated Coal Corporation, Keystone #2 mine (U.M.W.A.).	Herndon, West Virginia.....	12/18/78	12/13/78	TA-W-4,587	mining of coal
Eastern Associated Coal Corporation, Keystone #3 (U.M.W.A.).	Herndon, West Virginia.....	12/18/78	12/13/78	TA-W-4,588	mining of coal
Eastern Associated Coal Corporation, Keystone #4 Mine (U.M.W.A.).	Sophia, West Virginia.....	12/18/78	12/13/78	TA-W-4,589	mining of coal
Eastern Associated Coal Corporation, Harris #1 Mine (U.M.W.A.).	Bald Knob, West Virginia.	12/18/78	12/13/78	TA-W-4,590	mining of coal
Eastern Associated Coal Corporation, Harris #2 Mine (U.M.W.A.).	Bald Knob, West Virginia.	12/18/78	12/13/78	TA-W-4,591	mining of coal
Eastern Associated Coal Corporation, Hershaw Mine (U.M.W.A.).	Bald Knob, West Virginia.	12/18/78	12/13/78	TA-W-4,592	mining of coal
Eastern Associated Coal Corporation, Kopperston #1 (U.M.W.A.).	Kopperston, West Virginia.	12/18/78	12/13/78	TA-W-4,593	mining of coal
Eastern Associated Coal Corporation, Kopperston #2 Mine (U.M.W.A.).	Kopperston, West Virginia.	12/18/78	12/13/78	TA-W-4,594	mining of coal
Eastern Associated Coal Corporation, Wharton #2 Mine (U.M.W.A.).	Barrett, West Virginia.....	12/18/78	12/13/78	TA-W-4,595	mining of coal
Eastern Associated Coal Corporation, Wharton #11 Mine (U.M.W.A.).	Barrett, West Virginia.....	12/18/78	12/13/78	TA-W-4,596	mining of coal
Eastern Associated Coal Corporation, Wharton #4 Mine (U.M.W.A.).	Wharton, West Virginia....	12/18/78	12/13/78	TA-W-4,597	mining of coal

APPENDIX—Continued

Petitioner (Union/workers or former workers of.)	Location	Date Received	Date of Petition	Petition Number	Articles Produced
Eastern Associated Coal Corporation, Lightfoot #1 Mine (U.M.W.A.).	Wharton, West Virginia	12/18/78	12/13/78	TA-W-4,598	mining of coal
Eastern Associated Coal Corporation, Lightfoot #2 (U.M.W.A.).	Wharton, West Virginia	12/18/78	12/13/78	TA-W-4,599	mining of coal
Eastern Associated Coal Corporation, Wells Preparation Plant (U.M.W.A.).	Wharton, West Virginia	12/18/78	12/13/78	TA-W-4,600	cleaning of coal
Eastern Associated Coal Corporation, Colver Mine (U.M.W.A.).	Colver, Pennsylvania	12/18/78	12/13/78	TA-W-4,601	mining of coal
Eastern Associated Coal Corporation, Delmont Loading Facility (U.M.W.A.).	Hunker, Pennsylvania	12/18/78	12/13/78	TA-W-4,602	loading of coal
Eastern Associated Coal Corporation, Federal #1 Mine (U.M.W.A.).	Grant Town, West Virginia	12/18/78	12/13/78	TA-W-4,603	mining of coal
Eastern Associated Coal Corporation, Federal #2 Mine (U.M.W.A.).	Fairview, West Virginia	12/18/78	12/13/78	TA-W-4,604	mining of coal
Eastern Associated Coal Corporation, Joanne Mine (U.M.W.A.).	Rachel, West Virginia	12/18/78	12/13/78	TA-W-4,605	mining of coal
Gopher Mining Company, Strip Mine (U.M.W.A.).	Springdale, West Virginia	1/2/78	12/13/78	TA-W-4,606	mining of coal
Gopher Mining Company, Tipple (U.M.W.A.).	Springdale, West Virginia	1/2/78	12/13/78	TA-W-4,607	cleaning of coal
Gopher Mining Company, Black Bear Mine (U.M.W.A.).	Hilton Village, West Virginia	1/2/78	12/13/78	TA-W-4,608	mining of coal
Gopher Mining Company (U.M.W.A.).	Hump Mountain, West Virginia	1/2/78	12/13/78	TA-W-4,609	mining of coal
Gould Mines, Inc., Gould #1 Surface Mine (U.M.W.A.).	Greenbrier County, West Virginia	1/2/78	12/13/78	TA-W-4,610	mining of coal
Gould Mines, Inc., Surface Mine #6 (U.M.W.A.).	Greenbrier County, West Virginia	1/2/78	12/13/78	TA-W-4,611	mining of coal
Gould Mines, Inc., Gram #1 Surface (U.M.W.A.).	Greenbrier County, West Virginia	1/2/78	12/13/78	TA-W-4,612	mining of coal
Gould Mines, Inc., Viking #5 Surface (U.M.W.A.).	Greenbrier County, West Virginia	1/2/78	12/13/78	TA-W-4,613	mining of coal
Itmann Coal Company (U.M.W.A.).	Pocahontas, Virginia	12/18/78	12/13/78	TA-W-4,614	mining of coal
Mill Coal Company, Inc. #2 Mine (U.M.W.A.).	Leivasy, West Virginia	1/2/78	12/13/78	TA-W-4,615	mining of coal
Ranger Fuel Corp., Beckley #2 Mine (U.M.W.A.).	Beckley, West Virginia	12/13/78	12/13/78	TA-W-4,616	mining of coal
Ranger Fuel Corp., Beckley #4 (U.M.W.A.).	Beckley, West Virginia	12/18/78	12/13/78	TA-W-4,617	mining of coal
Ranger Fuel Corp., F-Mine (U.M.W.A.).	Bolt, West Virginia	12/18/78	12/13/78	TA-W-4,618	mining of coal
Ranger Fuel Corp., A-Bolt Mine (U.M.W.A.).	Bolt, West Virginia	12/18/78	12/13/78	TA-W-4,619	mining of coal
Ranger Fuel Corp., K-Mine (U.M.W.A.).	Bolt, West Virginia	12/18/78	12/13/78	TA-W-4,620	mining of coal
Ranger Fuel Corp., AA-Mine (U.M.W.A.).	Bolt, West Virginia	12/18/78	12/13/78	TA-W-4,621	mining of coal
Ranger Fuel Corp., Cove Creek Mine (U.M.W.A.).	Bolt, West Virginia	12/18/78	12/13/78	TA-W-4,622	mining of coal
Ranger Fuel Corp., Bolt Preparation Plant (U.M.W.A.).	Bolt, West Virginia	12/18/78	12/13/78	TA-W-4,623	cleaning of coal
Royal Coal Company, Preparation Plant (U.M.W.A.).	Clairmont, West Virginia	12/18/78	12/13/78	TA-W-4,624	cleaning of coal
Royal Coal Company, Mine #5 (U.M.W.A.).	Fayette Station, West Virginia	12/18/78	12/13/78	TA-W-4,625	mining of coal
Royal Coal Company, Mine #8 (U.M.W.A.).	Prance, West Virginia	12/18/78	12/13/78	TA-W-4,626	mining of coal
Royal Coal Company, Mine #7b (U.M.W.A.).	Prance, West Virginia	12/18/78	12/13/78	TA-W-4,627	mining of coal
Royal Coal Company, Mine #7 (U.M.W.A.).	Prance, West Virginia	12/18/78	12/13/78	TA-W-4,628	mining of coal
Royal Coal Company, Mine #11 (U.M.W.A.).	Leyland, West Virginia	12/18/78	12/13/78	TA-W-4,629	mining of coal
Royal Coal Company, Mine #10 (U.M.W.A.).	Leyland, West Virginia	12/18/78	12/13/78	TA-W-4,630	mining of coal
Royal Coal Company, Mine #3 (U.M.W.A.).	Leyland, West Virginia	12/18/78	12/13/78	TA-W-4,631	mining of coal
Royal Coal Company, Mine #6 (U.M.W.A.).	Leyland, West Virginia	12/18/78	12/13/78	TA-W-4,632	mining of coal
United Pocahontas Coal Company, Mine #14 (U.M.W.A.).	Algoma, West Virginia	12/18/78	12/13/78	TA-W-4,633	mining of coal
United Pocahontas Coal Company, Preparation Plant (U.M.W.A.).	Algoma, West Virginia	12/18/78	12/13/78	TA-W-4,634	cleaning of coal
United Pocahontas Coal Company, Mine #6a (U.M.W.A.).	Crumpler, West Virginia	12/18/78	12/13/78	TA-W-4,635	mining of coal
United Pocahontas Coal Company, Mine #18 (U.M.W.A.).	Crumpler, West Virginia	12/18/78	12/13/78	TA-W-4,636	mining of coal
United Pocahontas Coal Company, Preparation Plant (U.M.W.A.).	Crumpler, West Virginia	12/18/78	12/13/78	TA-W-4,637	cleaning of coal
United Pocahontas Mine #19 (U.M.W.A.).	Crumpler, West Virginia	12/18/78	12/13/78	TA-W-4,638	mining of coal
United Pocahontas Coal Company, Mine #10 (U.M.W.A.).	Crumpler, West Virginia	12/18/78	12/13/78	TA-W-4,639	mining of coal

[FR Doc. 79-1375 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4438]

BRENEMAN, INC.

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-4438: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 29, 1978 in response to a worker petition received on November 27, 1978 which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers and former workers producing plastic window shades at the Madison, Indiana plant of Breneman, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (44 FR 56953). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Breneman, Inc., a major customer, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of window shades increased absolutely in 1977 compared to 1976 and in the first nine months of 1978 compared to the first nine months of 1977.

The Madison plant produced plastic window shades exclusively for one customer. In late 1978, that customer ceased all orders for one style produced by the Madison plant and began purchasing that style from a foreign manufacturer. The style represented a major portion of the output by the Madison plant during 1977 and 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 plas-

tic window shades produced by the Madison, Indiana plant of Breneman, 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 Madison, Indiana plant of Breneman, Inc., who became totally or partially separated from employment on or after September 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of January 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-1521 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-3943 TA-W-3945]

DUPLAN KNITS WEST DUPLAN KNITS WEST**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-3943 and 3945: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on July 5, 1978, in response to a worker petition received on July 5, 1978, which was filed on behalf of workers and former workers engaged in employment related to the production of knitted fabrics and printed fabrics at the Compton, California plant and the Los Angeles, California sales office of Duplan Knits West. The investigation revealed that the Compton plant did not produce printed fabrics.

The Notice of Investigation was published in the FEDERAL REGISTER on July 18, 1978 (43 FR 30928-29). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Duplan Knits West, its customers, Duplan Corporation, 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.

A Department of Labor survey revealed that none of the customers of Duplan Knits West had purchased imported finished fabrics in 1976, 1977 or the first half of 1978. Another survey revealed that none of Duplan Knits West customers had any commissioned fabric dyeing or finishing performed by foreign sources in 1976, 1977 or the first half of 1978.

Conclusion

After careful review, I determine that all workers of the Compton, California plant and the Los Angeles, California sales office of Duplan Knits West are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of January 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-1522 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4281]

HANNA FURNACE CORP.**Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4281: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 20, 1978 in response to a worker petition received on October 17, 1978 which was filed by the United

Steelworkers of America on behalf of workers and former workers producing merchant pig iron at the Buffalo, New York plant of the Hanna Furnace Corporation. The investigation revealed that the company also operates sales offices in West Seneca, New York; Greenwich, Connecticut; Detroit, Michigan and Philadelphia, Pennsylvania.

The investigation was expanded to include the West Seneca, New York; Greenwich, Connecticut; Detroit, Michigan and Philadelphia, Pennsylvania sales offices of the Hanna Furnace Corporation.

The Notice of Investigation was published in the *FEDERAL REGISTER* on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Hanna Furnace Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of merchant pig iron declined each year from 478,000 tons in 1975 to 373,000 tons in 1977 before increasing from 218,000 tons in the three quarters of 1978. The ratio of imports to the domestic production of merchant pig iron declined each year from 51.5 percent in 1975 to 38.8 percent in 1977 before increasing from 29.8 percent in the first three quarters of 1977 to 80.0 percent in the first three quarters of 1978.

The Department conducted a survey of some of the customers of merchant pig iron of the Hanna Furnace Corporation. Customers accounting for a significant percent of the company's in both 1977 and in the first ten months of 1978 increased purchases of imported pig iron in 1977 compared to 1976 and in the first ten months of 1978 compared to the like 1977 period while decreasing purchases from the Hanna Furnace Corporation in the first 10 months of 1978 compared to the same period in 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with the merchant pig iron produced at the Buffalo, New York plant of the Hanna Furnace Corporation 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 the Buffalo, New York plant and of the Greenwich, Connecticut; Detroit, Michigan; West Seneca, New York and Philadelphia, Pennsylvania sales offices of the Hanna Furnace Corporation, who became totally or partially separated from employment on or after October 13, 1977, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1523 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4206]

KAISER STEEL CORP.

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-4206: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 21, 1978 in response to a worker petition received on September 18, 1978 which was filed on behalf of workers and former workers engaged in mining and concentrating of iron ore at the Eagle Mountain, California mine of the Kaiser Steel Corporation.

The Notice of Investigation was published in the *FEDERAL REGISTER* on October 10, 1978 (43 FR 46591). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Kaiser Steel Corporation, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that sales or production, or both, of the firm or subdivision have decreased absolutely.

All of the iron ore mined and processed at Eagle Mountain is used solely to supply Kaiser's Fontana steel mill, as part of the vertically integrated steel-making process. Production of

iron ore did not decline from 1976 to 1977, in quantity, and increased in the first nine months of 1978 compared to the first nine months of 1977.

Employment at the Eagle Mountain mine was higher in 1977 than in 1976. Worker separations in September, 1978, were due to the conversion of the Fontana plant to the basic oxygen process which resulted in a production slow-down at the plant.

Conclusion

After careful review, I determine that all workers of the Eagle Mountain, California, mine of the Kaiser Steel 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 9th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1524 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-3496]

LORING COAT COMPANY INCORP.

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-3496: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on April 11, 1978 in response to a worker petition received on March 31, 1978 which was filed by the International Ladies' Garments Workers' Union on behalf of workers and former workers producing rainwear at Loring Coat Company, Incorporated, Newburgh, New York. The investigation revealed that the plant primarily produces women's rain and cloth coats.

The Notice of Investigation was published in the *FEDERAL REGISTER* on May 2, 1978 (43 FR 8790). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Loring Coat Company, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to

whether any of the other criteria have been met, the following criterion has not been met.

that sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales of women's rain and cloth coats increased in 1977 compared to 1976 and increased in 1978 compared to 1977.

Conclusion

After careful review, I determine that all workers of Loring Coat Company, Incorporated, Newburgh, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1525 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4188]

ORANGE COUNTY COAT COMPANY, INC.

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-4188: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 20, 1978 in response to a worker petition received on September 19, 1978 which was filed by the International Ladies' Garment Workers' Union, Locals 156-165 on behalf of workers and former workers producing women's sportswear, jackets and vests at Orange County Coat Company, Incorporated, Newburgh, New York. The investigation revealed that the firm primarily produces women's jackets and vests.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Orange County Coat Company, 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 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 average number of production workers increased in each quarter compared to the previous quarter from the third quarter of 1977 through the third quarter of 1978. Average production employment increased in the last half of 1977 compared to the same period of 1976 and increased in the first nine months of 1978 compared to the same period of 1977.

Average monthly production hours increased in the second half of 1977 compared to the same period of 1976, and increased in the first three quarters of 1978 compared to the same period of 1977.

There is no immediate threat of separation to workers at Orange County Coat.

Conclusion

After careful review, I determine that all workers of Orange County Coat Company, Incorporated, Newburgh, New York are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1526 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4315]

S.M.R. ASSOCIATES

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 by the Industrial Union of Marine and Shipbuilding Workers of America on behalf of workers and former workers producing semi-trailers and metal containers for air freight at Air support Industries, Glassboro, New Jersey. During the course of the investigation it was determined that the name of the company is S.M.R. Associates.

The 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 petitioner 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 9th day of January, 1979.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc. 79-1527 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4323]

SAN JUAN MILLING CO.

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-4323: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 31, 1978 in response to a worker petition received on October 23, 1978 which was filed on behalf of workers and former workers mining gold, silver, lead and zinc and producing lead and zinc concentrates at San Juan Milling Company, Silverton, Colorado. The investigation revealed that the mining predominantly yielded lead and zinc ore with minute amounts of silver, gold and copper.

The Notice of Investigation was published in the FEDERAL REGISTER on November 7, 1978 (43 FR 51865). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of San Juan Milling Company, American Metal Market, the American Bureau of Metal Statistics, 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 refined and recovered lead increased absolutely from 1976 to 1977 and from January through September in 1977 to the same period in 1978. The import to domestic production ratio increased from 10.7 percent in 1976 to 18.4 percent in 1977. The import to domestic production ratio again increased from 19.2 percent for the first half of 1977 to 19.8 percent for the first half of 1978.

Imports of lead are affected by the differential between the domestic producers' price and the price of lead on the London Metal Exchange (LME). Generally, the price charged by domestic producers ranges from two to four cents per pound above the LME price. When the LME price drops more than two to four cents per pound below the domestic producers' price, there is increased demand for imported lead. From October, 1977 through September 1978, the LME price of lead averaged more than four cents less than the U.S. producers' price.

U.S. imports of slab zinc increased relative to domestic production from 127.0 percent in 1976 to 127.9 percent in 1977. Imports increased absolutely in the first three quarters of 1978 compared to the same period in 1977. The import to domestic production ratio increased from 122.2 percent for the first three quarters in 1977 to 159.0 percent for the same period in 1978.

Imports of zinc are affected by the differential between the domestic price of zinc established by U.S. producers and the price established by the London Metal Exchange. When the LME price drops more than the estimated transportation cost of five cents per pound below the producers' price, the demand for imported zinc increases. From October, 1977 through September, 1978, the price differential averaged more than five cents per pound.

Lead and zinc were mined together at San Juan, since both were extracted from the same ore. Because the price San Juan receives for both lead and zinc concentrates is tied to the domestic producers' price, the San Juan price is closely affected by the difference between the U.S. producers' price and the London Metal Exchange price.

In addition, because San Juan is not fully integrated with a lead smelting operation as is the case for the major U.S. producers, the demand for San Juan's lead concentrate is highly vulnerable to competition from imported lead. Because San Juan is a small and sporadic supplier of zinc, the company is also highly vulnerable to competition from imported zinc.

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 lead and zinc ore mined and lead and zinc concentrates produced at San Juan Milling Company, Silverton, Colorado, 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 San Juan Milling Company, Silverton, Colorado, who became totally or partially separated from employment on or after January 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 9th day of January 1979.

C. MICHAEL AHO
Director, Office of
Foreign Economic Research.

[FR Doc. 79-1528 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4224]

WILLIAM ORNSTEEN HEEL CO., INC.

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-4224: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 29, 1978 in response to a worker petition received on September 25, 1978 which was filed on behalf of workers and former workers producing wood heels and plastic heels for women's novelty shoes and dress shoes at William OrNSTEEN Heel Company, Inc., Bradford, Massachusetts.

The Notice of Investigation was published in the FEDERAL REGISTER on October 17, 1978 (43 FR 44795-6). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of William OrNSTEEN Heel Company, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The petitioners allege that the liquidation of OrNSTEEN's customers, which are shoe manufacturers, has adversely affected production and employment levels at the subject firm. However, imports of finished shoes cannot be considered like or directly competitive with shoe heels.

Customers of William OrNSTEEN Heel Company, Inc., who were surveyed, indicated that they did not purchase imported heels in 1976, 1977 or during the first three quarters of 1978.

Conclusion

After careful review, I determine that all workers of William OrNSTEEN Heel Company, Inc., Bradford, Massachusetts are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 9th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1529 Filed 1-18-79; 8:45 am]

[4510-28-M]

ROCKWELL INTERNATIONAL CORP., ADMIRAL GROUP

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

TA-W-4244 Cheektowaga, New York
TA-W-4246 Schaumburg, Illinois
TA-W-4246b Bloomington, Illinois
TA-W-4246c Des Plaines, Illinois
TA-W-4246d Westwood, Massachusetts
TA-W-4246e East Hartford, Connecticut
TA-W-4246f Philadelphia, Pennsylvania
TA-W-4246g Baltimore, Maryland
TA-W-4246h Miami, Florida
TA-W-4246i Oklahoma City, Oklahoma
TA-W-4246j Denver, Colorado
TA-W-4246k City of Commerce, California
TA-W-4252 McKees Rock, Pennsylvania
TA-W-4253 East Rutherford, New Jersey
TA-W-4254 Medford, Massachusetts
TA-W-4268 Detroit, Michigan
TA-W-4286 Brisbane, California
TA-W-4296 Long Island City, New York
TA-W-4300 San Antonio, Texas
TA-W-4301 Houston, Texas
TA-W-4321 West Babylon, New York
TA-W-4350 Rosemont, Illinois

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4244, 4246, 4246b-4246k, 4252-4254, 4268, 4286, 4296, 4300, 4301, 4321, and 4350: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on the dates listed in Appendix I in response to worker petitions which were filed on behalf of workers and former workers distributing, selling and servicing Admiral-produced color and monochrome televisions at locations of the Admiral Group, Rockwell International Corporation listed in Appendix I. The investigation revealed that these facilities also distribute, sell and service the refrigerators and freezers

which are also produced by Rockwell's Admiral Group.

The Notice of Investigation was published in the *FEDERAL REGISTER* on the dates listed in Appendix II. No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Admiral Group, Rockwell International Corporation, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. With respect to workers distributing, selling and servicing refrigerators and freezers, without regard to whether any of the other criteria have been met, the following criterion has not been met:

that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threats thereof, and to the absolute decline in sales or production.

The investigation revealed that all of the refrigerators and freezers distributed, sold and serviced by the subject locations of Rockwell's Admiral Group are produced by Admiral's plant in Galesburg, Illinois. The Department issued a notice of negative determination regarding eligibility to apply for adjustment assistance for all workers of Admiral's Galesburg, Illinois plant (TA-W-4246a).

With respect to workers distributing, selling and servicing color and monochrome televisions, all of the group eligibility requirements of Section 222 of the Act have been met.

U.S. imports of color televisions decreased from 2856.3 thousand units in 1976 to 2538.7 thousand units in 1977. Imports increased from 1971.6 thousand units in the first three quarters of 1977 to 1999.7 thousand units in the like period of 1978. The ratio of imports to domestic production decreased from 45.5 percent in 1976 to 38.3 percent in 1977. The ratio decreased from 40.6 percent in the first three quarters to 35.5 percent in the like period of 1978.

U.S.A. imports of monochrome televisions increased from 4326.9 thousand units in 1976 to 4907.8 thousand units in 1977. Imports increased from 3504.0 thousand units in the first three quarters of 1977 to 4338.0 thousand units in the like period of 1978. The ratio of

imports to domestic production increased from 266.3 percent in 1976 to 413.7 percent in 1977. The ratio increased from 401.1 percent in the first three quarters of 1977 to 452.3 percent in the like period of 1978.

A Department survey of customers of Rockwell's Admiral Group indicated that Admiral's largest customers increased purchases of imported color televisions and decreased purchases of color sets from Admiral in 1977 compared with 1976 and in the first three quarters of 1978 compared with the like period of 1977.

The major customers of Admiral's monochrome televisions increased purchases of imports while decreasing purchases of monochrome sets from Admiral from 1976 to 1977 and the first three quarters of 1978 compared with the like period 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 the color and monochrome televisions produced, distributed, sold and serviced by the Admiral Group, Rockwell In-

ternational Corporation 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 the locations of the Admiral Group, Rockwell International Corporation listed in Appendix II engaged in employment related to the distribution, sales and service of Admiral-produced color and monochrome televisions who became totally or partially separated from employment on or after the respective impact dates listed in Appendix II are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further determine that the workers at the subject locations who were solely engaged in employment related to the distribution, sales and service of Admiral-produced refrigerators and freezers are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 8th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

APPENDIX I

Location	Date Petition Received	Date Investiga- tion	Date Published in FEDERAL REGISTER	FEDERAL REGISTER Number
TA-W-4244 Cheektowaga, NY.....	10/03/78	10/04/78	10/20/78	43FR49060-1
TA-W-4246 Schaumburg, IL.....	10/02/78	10/04/78	10/20/78	43FR49060-1
TA-W-4252 McKees Rock, PA.....	10/04/78	10/10/78	10/20/78	43FR49061
TA-W-4253 East Rutherford, NJ.....	10/06/78	10/10/78	10/20/78	43FR49061
TA-W-4254 Medford, MA.....	10/06/78	10/10/78	10/20/78	43FR49061
TA-W-4268 Detroit, MI.....	10/13/78	10/17/78	10/27/78	43FR50271
TA-W-4266 Brisbane, CA.....	10/20/78	10/24/78	11/03/78	43FR51476
TA-W-4296 Long Island City, NY.....	10/23/78	10/25/78	11/03/78	43FR51475
TA-W-4300 San Antonio, TX.....	10/25/78	10/26/78	11/03/78	43FR51475-6
TA-W-4301 Houston, TX.....	10/25/78	10/26/78	11/03/78	43FR51475-6
TA-W-4321 West Babylon, NY.....	10/30/78	10/31/78	11/07/78	43FR51865
TA-W-4350 Rosemont, IL.....	11/03/78	11/06/78	11/17/78	43FR53851-2

The investigation of TA-W-4246 was expanded to include the following plants, warehouses, and distribution centers of Rockwell's Admiral Group:

TA-W-4246b, Bloomington, IL; TA-W-4246c, Des Plaines, IL; TA-W-4246d, Westwood, MA; TA-W-4246e, East Hartford, CT; TA-W-4246f, Philadelphia, PA; TA-W-4246g, Baltimore, MD; TA-W-4246h, Miami, FL; TA-W-4246i, Oklahoma City, OK; TA-W-4246j, Denver, CO; and TA-W-4246k, City of Commerce, CA

APPENDIX II

Case Number	Admiral Facility Location	Function	Impact Date
TA-W-4244	Cheektowaga, NY	Buffalo, NY Regional Center	Mar. 18, 1978
TA-W-4246	Schaumburg, IL	Admiral Headquarters	Jan. 21, 1978
TA-W-4246b	Bloomington, IL	Parts Warehouse	Feb. 18, 1978
TA-W-4246c	Des Plaines, IL	Products Warehouse	Oct. 22, 1977
TA-W-4246d	Westwood, MA	Boston, MA Regional Center	Nov. 19, 1977
TA-W-4246e	East Hartford, CT	Metro NY Regional Center	Sept. 29, 1977
TA-W-4246f	Philadelphia, PA	Philadelphia, PA Regional Center	Jan. 21, 1978
TA-W-4246g	Baltimore, MD	Baltimore, MD Regional Center	Aug. 19, 1978
TA-W-4246h	Miami, FL	Miami, FL Regional Center	Feb. 18, 1978
TA-W-4246i	Oklahoma City, OK	Oklahoma City, OK Regional Center	Sept. 29, 1977
TA-W-4246j	Denver, CO	Denver, CO Regional Center	Feb. 18, 1978
TA-W-4246k	City of Commerce, CA	Los Angeles, CA Regional Center	Sept. 29, 1977
TA-W-4252	McKees Rock, PA	Pittsburgh, PA Regional Center	Dec. 24, 1977
TA-W-4253	East Rutherford, NJ	Metro NY Regional Center	Dec. 24, 1977
TA-W-4254	Medford, MA	Boston, MA Regional Center	Nov. 19, 1977
TA-W-4268	Detroit, MI	Detroit, MI Regional Center	Mar. 28, 1978
TA-W-4286	Brisbane, CA	San Francisco, CA Regional Center	Dec. 24, 1977
TA-W-4296	Long Island City, NY	Metro NY Regional Center	Oct. 20, 1977
TA-W-4300	San Antonio, TX	San Antonio-Houston, TX Regional Center	Oct. 7, 1978
TA-W-4301	Houston, TX	San Antonio-Houston, TX Regional Center	Oct. 7, 1978
TA-W-4321	West Babylon, NY	Metro NY Regional Center	May 24, 1978
TA-W-4350	Rosemont, IL	Chicago, IL Regional Center	Dec. 24, 1977

[FR Doc. 79-1391 Filed 1-18-79; 8:45 am]

[4510-28-M]

Office of the Secretary

[TA-W-3563]

AMAX SPECIALTY METALS CORP., AKRON, N.Y.

Negative Determination Regarding Application for Reconsideration

On December 23, 1978, the petitioner requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance in the case of former workers of Amax Specialty Metals Corporation's plant at Akron, New York. The determination was published in the FEDERAL REGISTER on December 8, 1978, (43 FR 57674).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) if it appears, on the basis of facts not previously considered, that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) if, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioner cited new evidence that Amax sold zirconium to customers in France, England, Japan and

Canada and feels that foreign customers will fabricate articles for reentry back into the United States from the subject firm's exported zirconium.

The Department learned that the subject firm, a raw material supplier, sold small amounts of zirconium ingots and scrap to France after production ceased in April 1978. Lesser amounts of zirconium ingots were sold to Canada, England and Japan. The impact of increased or decreased export sales is not relevant to the certification test of Section 222 of the Trade Act of 1974, whether increased imports of articles like or directly competitive with articles produced by the petitioning workers can be regarded as contributing importantly to employment and sales or production declines. Furthermore, imported fabricated zirconium, even when fabricated from exported zirconium ingots and scrap, would not be an article that is "like or directly competitive with" the zirconium metal produced by Amax.

CONCLUSION

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration and Planning.

[FR Doc. 79-1846 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4184]

AVTEX FIBERS, INC., FRONT ROYAL, VA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4184: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 20, 1978 in response to a worker petition received on September 18, 1978 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing rayon tire and industrial yarn and rayon staple fiber.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of AVTEX Fibers, 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. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of rayon and acetate staple fibers and yarns increased from 69 million pounds in 1976 to 82 million pounds in 1977. Imports declined from 61 million pounds in the first three quarters of 1977 to 57 million pounds in the like quarters of 1978. The ratio of imports to domestic production increased from 7.8 percent in 1976 to 11.7 percent in 1977.

The Department conducted a survey of the principal customers for which AVTEX Fibers, Inc. supplied rayon staple fiber for in 1977. The survey revealed that major customers decreased their purchases of rayon staple fiber from the subject firm and increased purchases of imported rayon staple fiber in 1977 compared to 1976. This survey is from TA-W-2645, AVTEX's Nitro, West Virginia plant. Customers of rayon staple fiber for both Nitro and Front Royal are the same. Workers at the Nitro plant were certified eligible to apply for Trade Adjustment Assistance on May 9, 1978.

The Department conducted an additional survey of the principal customers AVTEX Fibers, Incorporated supplied rayon tire and industrial yarn in

1977 and 1978. Customers representing a significant portion of the subject firms sales in 1977 decreased purchases of rayon tire and industrial yarn from the subject firm and increased purchases of imported rayon tire and industrial yarn in the first three quarters of 1978 compared to the like quarters of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with rayon staple fiber and rayon tire and industrial yarn produced at AVTEX Fibers, Inc., Front Royal, Va. contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers at the Front Royal, Virginia plant of AVTEX Fibers, Incorporated engaged in employment related to the production of rayon staple fiber and rayon tire and industrial yarn who became totally or partially separated from employment on or after March 5, 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 12th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1847 Filed 1-18-79; 8:45 am]

[4510-28]

[TA-W-4277]

BROCKTON SOLE AND PLASTICS CO., WINCHESTER, TENN.

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-4277: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 20, 1978 in response to a worker petition received on October 18, 1978 which was filed on behalf of workers and former workers producing heel bases, soles and shanks for shoes and boots at the Winchester, Tennessee plant of Brockton Sole and Plastics Company. The investigation revealed that the plant also produces rands.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758-50759). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Brockton Sole and Plastics, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Total company sales and production of each product, heel bases, steel shanks and rands, increased in the fourth quarter of 1977 compared with the same period of 1976 and in the first nine months of 1978 compared with the same period of 1977. Although sales of unit soles were down in 1977, average employment in that year was higher than in 1976.

The Department conducted a customer survey for unit soles. The survey indicated that in 1978 decreased purchases of unit soles from Brockton Shoe and Plastics Company were not associated with increased customer reliance on foreign sources.

CONCLUSION

After careful review, I determine that all workers of the Winchester, Tennessee, plant of Brockton Sole and Plastics Company 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 12th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1848 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4380]

COMET MANUFACTURING CO., PHILADELPHIA, PA.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4380: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 14, 1978 in response to a worker petition received on November 9, 1978 which was filed by the Knitgoods Union, International Ladies' Garment Workers' Union on behalf of workers and former workers producing men's swimwear and sportswear and some ladies' blouses and skirts at Comet Manufacturing Company, Philadelphia, Pennsylvania. The investigation revealed that the plant primarily produces men's swimwear and men's robes, and a limited number of other items, such as terry cloth jackets and men's swimwear ensembles.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55013). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Comet Manufacturing Company, its manufacturer, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Production of men's swimwear and men's robes, in both quantity and value, increased at Comet Manufacturing Company in 1977 compared with 1976 and in the first eleven months of 1978 compared with the same period in 1977. Production and sales are equivalent at Comet.

CONCLUSION

After careful review, I determine that all workers of Comet Manufacturing Company, Philadelphia, Pennsylvania 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 12th day of January 1979.

HARRY J. GILMAN,
Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1849 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4515]

CONSOLIDATED METALS CORP., DOVER, N.J.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 14, 1978 in response to a worker petition received on December 12, 1978 which was filed on behalf of workers and former workers producing welded austenitic stainless steel pipe at the Dover, New Jersey plant of Consolidated Metals Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on December 26, 1978 (43 FR 60243). No public hearing was requested and none was held.

The petitioner requested withdrawal of the petition in a letter. 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 11th day of January 1979.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc. 79-1850 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4466]

DEANNA DEE, INC., LOS ANGELES, CALIF.

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-4466: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 6, 1978 in response to a worker petition received on November 27, 1978 which was filed by the International Ladies' Garment Workers Union on behalf of workers and former workers producing women's coats at Deanna Dee, Incorporated, Los Angeles, California. The investigation revealed that Deanna Dee manufactures wool and cashmere women's coats.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59165-66). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Deanna Dee, Incorporated, the U.S. Department of Commerce, the U.S. International Trade Commis-

sion, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Evidence developed during the course of the investigation indicated that sales and production did not decrease. Sales of women's coats in dollars, adjusted by utilizing the wholesale price index for women's apparel, increased in 1977 compared to 1976 and increased in the first eleven months of 1978 compared to the same period in 1977.

CONCLUSION

After careful review, I determine that all workers of Deanna Dee, Incorporated, Los Angeles, California 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 12th day of January 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-1851 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4368]

DOWNEN ZIER KNITS, INC., ROCKVILLE CENTER, LONG ISLAND, 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-4368: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November 6, 1978 which was filed on behalf of workers and former workers producing knit and finished fabric at the Rockville Center, Long Island, New York plant of Downen Zier Knits, Inc.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012-13). No public hearing was requested and none was held.

The determination was based upon information obtained principally from the Accountant for the Trustee in

Bankruptcy for Downen Zier, the company's customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Downen Zier Knits, Rockville Center, Long Island, New York produced and finished knit fabrics. The petition alleges that increased imports of apparel adversely affected production and employment at Downen Zier Knits. Imported apparel can not be considered to be like or directly competitive with finished fabrics. Imports of finished fabrics must be considered in determining import injury to workers producing finished knit fabrics.

Imports of finished fabric declined from 464 million square yards in 1976 to 453 million square yards in 1977 and increased from 341 million square yards in the first nine months of 1977 to 386 million square yards in the first nine months of 1978. The ratio of imports to domestic production of finished fabric has been less than 2 percent in each of the past four years.

Most of the customers surveyed, who accounted for the bulk of Downen Zier's business, did not purchase any imported finished fabric from 1976 through October 1978.

CONCLUSION

After careful review, I determine that all workers of Downen Zier Knits, Inc., Rockville Center, Long Island, 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 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration and Planning.

[FR Doc. 79-1852 Filed 1-18-79; 8:45 am]

[4510-28]

[TA-W-4381]

FAG BEARINGS CORP., STAMFORD, CONN.**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-4381: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 14, 1978 in response to a worker petition received on November 14, 1978 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing base bearings at the Stamford, Connecticut of FAG Bearings Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55013). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of FAG Bearings Corporation, 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.

From 1976 to 1977 imports of ball bearings increased in quantity from 111.9 million to 127.9 million, the ratio of imports to domestic production increased from 45.6 percent to 49.2 percent. The ratio of imports to domestic consumption increased from 33.6 percent to 34.9 percent. For the first nine months of 1978 compared to the same period of 1977 imports increased from 97.1 million to 138.4 million. The ratio of imports to domestic production increased from 49.8 percent to 66.2 percent. Imports in relation to U.S. consumption increased from 35 percent to 42.9 percent.

The company has formally announced that the Stamford plant will be permanently closed by the end of 1979. Company imports of ball bearings in the range of sizes produced at the Stamford plant increased from 1977 to 1978 and will totally replace domestic production by the end of 1979.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with ball

bearings produced at the Stamford, Connecticut plant of the FAG Bearing Corporation 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 FAG Bearings Corporation, Stamford, Connecticut who became totally or partially separated from employment on or after March 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 8th day of January 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-1853 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4250]

GRUNART, INC., PATERSON, N.J.**Certification Regarding Eligibility To Apply for Worker Adjustment Assistance**

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4250: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 10, 1978 in response to a worker petition received on October 2, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' sportswear at Grunart, Incorporated, Paterson, New Jersey. The investigation revealed that most of production is tops and skirts.

The Notice of Investigation was published in the FEDERAL REGISTER on October 20, 1978 (43 FR 49061). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Grunart, Incorporated, its manufacturer, 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 skirts increased from 442,000 dozen in the first nine months of 1977 to 1,068,000 dozen in the first nine months of 1978. U.S. imports of women's, misses' and children's

blouses and shirts increased from 30,273,000 dozen in 1976 to 30,849,000 dozen in 1977, and from 24,036,000 dozen in the first nine months of 1977 to 28,505,000 dozen in the first nine months of 1978.

Grunart is a contractor producing junior sportswear for a single manufacturer. This manufacturer is experiencing declining sales in the current fiscal year (year ending January 31, 1979). The Department surveyed some of this manufacturer's customers. Several of the respondents reported that they reduced purchases from the manufacturer and increased purchases of imports in 1977 and the first nine 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 ladies' tops and skirts produced at Grunart, Incorporated, Paterson, 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 Grunart, Incorporated, Paterson, New Jersey who became totally or partially separated from employment on or after September 26, 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 11th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

[FR Doc. 79-1854 Filed 1-18-79; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened

total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address

shown below, not later than January 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 10th day of January 1979.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

APPENDIX

Petitioner: (Union/workers or former workers of)—	Location	Date received	Date of petition	Petition No.	Articles produced
Advent Corporation (workers)	Cambridge, Mass.	1/3/79	12/20/78	TA-W-4,640	speakers for stereo, audio & video systems
American & Efrid Mills, Inc., Spun Fibers Division (workers)	Lenoir, North Carolina	1/8/79	1/5/79	TA-W-4,641	long & short staple, both of synthetic yarns
American Felt & Filter, Glenville Station (ACTWU)	Greenwich, Conn.	1/5/79	1/2/79	TA-W-4,642	industrial felt products
Armstrong Rubber Company, Pacific Coast Division (URW)	Hanford, California	1/8/79	1/3/79	TA-W-4,643	radial & bias-belted passengers cars, replacement cars, replacement tires & camper & pickup trucks replacement tires
Arvin Industries, Inc. (I.A.M. & A.W.)	Princeton, Kentucky	1/2/79	12/20/78	TA-W-4,644	AM-FM stereo compact systems
Beacon Garment Company, Inc. (workers)	Fall River, Mass.	1/4/79	1/2/79	TA-W-4,645	ladies' dresses & sportswear
Bonanza Coal Company, Inc. (U.M.W.A.)	Lexington, Kentucky	1/2/78	12/13/78	TA-W-4,646	mining of coal
Mercer Dress (workers)	Burgin, Kentucky	1/3/79	12/29/78	TA-W-4,647	ladies' sportswear, suits & dresses
Monroe Auto Equipment Company (UAW)	Hartwell, Georgia	1/3/79	12/12/78	TA-W-4,648	automobile shock absorbers
Ronald Coat Company (ILGWU)	Baltimore, Maryland	1/2/79	12/29/78	TA-W-4,649	ladies' cloth coats
Slab Fork Coal Co. Slab Fork #10 (U.M.W.A.)	Raleigh County, West Virginia	12/18/78	12/13/78	TA-W-4,650	mining of coal
Slab Fork Coal Co. Slab Fork #8 (U.M.W.A.)	Raleigh County, West Virginia	12/18/78	12/13/78	TA-W-4,651	mining of coal
Slab Fork Coal Co. Preparation Plant #1 (U.M.W.A.)	Raleigh County, West Virginia	12/18/78	12/13/78	TA-W-4,652	cleaning of coal
Slab Fork Coal Co. Preparation Plant #2 (U.M.W.A.)	Raleigh County, West Virginia	12/18/78	12/13/78	TA-W-4,653	cleaning of coal
Slab Fork Coal Co. SlabFork-Gastin (U.M.W.A.)	Wyoming County, West Virginia	12/18/78	12/13/78	TA-W-4,654	mining of coal
Stouffer's Management Food Service, Inc. (workers)	Cleveland, Ohio	1/2/79	12/7/78	TA-W-4,655	prepared food for Youngstown Sheet & Tube cafeteria
Suz-ETTA Fashions, Inc. (workers)	Jersey City, New Jersey	1/5/79	12/29/78	TA-W-4,656	women's coats, pants suits, & jackets

Signed at Washington, D.C. this 11th day of January 1979.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc. 79-1845 Filed 1-18-79; 8:45 am]

[4510-28-M]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to Section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers'

firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject

matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Westmoreland Coal Co., Winding Gulf Division, Eccles No. 6 Mine (U.M.W.A.).	Beckley, West Virginia	12/18/78	12/13/78	TA-W-4,657	mining of coal
Westmoreland Coal Co., Winding Gulf Division, Eccles No. 5 Mine (U.M.W.A.).	Beckley, West Virginia	12/18/78	12/13/78	TA-W-4,658	mining of coal
Westmoreland Coal Co., Winding Gulf Division, Winding Gulf No. 4 Mine (U.M.W.A.).	Beckley, West Virginia	12/18/78	12/13/78	TA-W-4,659	mining of coal
Westmoreland Coal Co., Winding Gulf Division, Macalpin Mine (U.M.W.A.).	Beckley, West Virginia	12/18/78	12/13/78	TA-W-4,660	mining of coal
Westmoreland Coal Co., Winding Gulf Division, East Gulf Mine (U.M.W.A.).	Beckley, West Virginia	12/18/78	12/13/78	TA-W-4,661	mining of coal
Westmoreland Coal Co., Winding Gulf Division, Eccles Preparation Plant (U.M.W.A.).	Beckley, West Virginia	12/18/78	12/13/78	TA-W-4,662	cleaning of coal
Westmoreland Coal Co., Winding Gulf Division, East Prescott Preparation Plant (U.M.W.A.).	Beckley, West Virginia	12/18/78	12/13/78	TA-W-4,663	cleaning of coal
Westmoreland Coal Co., Stonega Division, Bullit Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,664	mining of coal
Westmoreland Coal Co., Stonega Division, Derby No. 4 Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,665	mining of coal
Westmoreland Coal Co., Stonega Division, Derby No. 5 Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,666	mining of coal
Westmoreland Coal Co., Stonega Division, Armo Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,667	mining of coal
Westmoreland Coal Co., Stonega Division, Prescott No. 1 Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,668	mining of coal
Westmoreland Coal Co., Stonega Division, Prescott No. 2 Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,669	mining of coal
Westmoreland Coal Co., Stonega Division, Prescott CBA Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,670	mining of coal
Westmoreland Coal Co., Stonega Division, Osaka No. 2 (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,671	mining of coal
Westmoreland Coal Co., Stonega Division, Wentz No. 1 (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,672	mining of coal
Westmoreland Coal Co., Stonega Division, Wentz No. 2 (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,673	mining of coal
Westmoreland Coal Co., Stonega Division, Wentz B. Portal Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,674	mining of coal
Westmoreland Coal Co., Stonega Division, Time Branch No. 1 (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,675	mining of coal
Westmoreland Coal Co., Stonega Division, Time Branch No. 2 (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,676	mining of coal
Westmoreland Coal Co., Stonega Division, Holton Marker Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,677	mining of coal
Westmoreland Coal Co., Stonega Division, Holton Taggard Mine (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,678	mining of coal
Westmoreland Coal Co., Stonega Division, Bullit Preparation Plant (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,679	cleaning of coal
Westmoreland Coal Co., Stonega Division, Wends Preparation Plant (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,680	cleaning of coal
Westmoreland Coal Co., Stonega Division, Time Branch Preparation Plant (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,681	cleaning of coal
Westmoreland Coal Co., Stonega Division, Prescott Preparation Plant (U.M.W.A.).	Big Stone Gap, Virginia	12/18/78	12/13/78	TA-W-4,682	cleaning of coal
Westmoreland Coal Co., Hampton Division, Ferrell Mine (U.M.W.A.).	Clothier, West Virginia	12/18/78	12/13/78	TA-W-4,683	mining of coal
Westmoreland Coal Co., Hampton Division, No. 3 Mine (U.M.W.A.).	Clothier, West Virginia	12/18/78	12/13/78	TA-W-4,684	mining of coal
Westmoreland Coal Co., Hampton Division, No. 6 Mine (U.M.W.A.).	Clothier, West Virginia	12/18/78	12/13/78	TA-W-4,685	mining of coal
Westmoreland Coal Co., Hampton Division, Ferrell Preparation Plant (U.M.W.A.).	Clothier, West Virginia	12/18/78	12/13/78	TA-W-4,686	cleaning of coal
Westmoreland Coal Co., Hampton Division, No. 3 Preparation Plant (U.M.W.A.).	Clothier, West Virginia	12/18/78	12/13/78	TA-W-4,687	cleaning of coal
Westmoreland Coal Co., Hampton Division, No. 6 Preparation Plant (U.M.W.A.).	Clothier, West Virginia	12/18/78	12/13/78	TA-W-4,688	cleaning of coal
Westmoreland Coal Co., Imperial Division, No. 7 Mine (U.M.W.A.).	Quinwood, West Virginia ..	12/18/78	12/13/78	TA-W-4,689	mining of coal

APPENDIX—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Westmoreland Coal Co., Imperial Division, No. 2 Mine (U.M.W.A.).	Quinwood, West Virginia..	12/18/78	12/13/78	TA-W-4,690	mining of coal
Westmoreland Coal Co., Imperial Division, No. 8 Mine (U.M.W.A.).	Quinwood, West Virginia..	12/18/78	12/13/78	TA-W-4,691	mining of coal
Westmoreland Coal Co., Imperial Division, No. 29 Mine (U.M.W.A.).	Quinwood, West Virginia..	12/18/78	12/13/78	TA-W-4,692	mining of coal
Westmoreland Coal Co., Imperial Division, Carl Preparation Plant (U.M.W.A.).	Quinwood, West Virginia..	12/18/78	12/13/78	TA-W-4,693	cleaning of coal
Westmoreland Coal Co., Imperial Division, Cliftob Preparation Plant (U.M.W.A.).	Quinwood, West Virginia..	12/18/78	12/13/78	TA-W-4,694	cleaning of coal

[FR Doc. 79-1869 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4261]

JERSEY FASHIONS, INC., JERSEY CITY, N.J.

Determinations 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-4261: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 16, 1978 in response to a worker petition received on October 4, 1978 which was filed on behalf of workers and former workers cutting ladies' and girls' coats as Jersey Fashions, Inc., Jersey City, New Jersey.

The Notice of Investigation was published in the FEDERAL REGISTER on October 27, 1978 (43 FR 50269-70). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Jersey Fashions, Inc., its 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 Act must be met. With respect to workers in the warehousing and shipping departments, 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 those produced

by the firm or appropriate subdivision have contributed importantly to the total or partial separations, or threat thereof, and to the decline in sales and/or production.

Evidence developed during the course of the Department's investigation revealed that Jersey Fashions, Inc. warehouses and ships both domestically produced coats and imported coats for the manufacturer with which it is affiliated. An increase in imports by the affiliated manufacturer would result in increased income for the warehouse and shipping departments.

Futhermore, the average number of workers per week increased every quarter from the first quarter of 1977 through the third quarter of 1978 compared to the same quarter of the previous year. Fluctuations in employment from quarter to quarter are attributable to seasonal factors.

With regard to workers in the cutting departments of Jersey Fashions, Inc. 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 2,252 thousand dozens in 1976 to 2,723 thousand dozens in 1977. In the first three quarters of 1978 imports decrease slightly to 1,906 thousand dozens compared to 2,081 thousand dozens in the same period of 1977. The ratio of imports to domestic production increased from 48.3 percent in 1976 to 54.9 percent in 1977.

The manufacturer with which Jersey Fashions is affiliated decreased contract work with the subject firm in fiscal year 1978 (May 1977 through April 1978) compared to fiscal year 1977 and increased purchases of imported ladies' and girls' coats.

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 and girls' coats produced at Jersey Fashions, Inc., Jersey City, New Jersey contributed importantly to the decline in sales or production and to the total or partial separation of workers of the cutting departments of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Jersey Fashions, Inc., Jersey City, New Jersey engaged in employment related to the cutting of women's and girls' coats who became totally or partially separated from employment on or after October 2, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

I further determine that workers engaged in employment related to the warehousing and shipping of women's and girls' coats at Jersey Fashions, Inc., Jersey City, 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 12th day of January 1979.

C. MICHAEL AHO,
Director, Office of

Foreign Economic Research.

[FR Doc. 79-1855 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4228]

THE LAMSON & SESSIONS CO., BEDFORD HEIGHTS, OHIO

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-4228: investigation regarding certification of eligibility to apply for

worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 29, 1978 in response to a worker petition received on September 25, 1978 which was filed on behalf of workers and former workers producing threaded screws and nuts at the Bedford Heights, Ohio plant of the Lamson and Sessions Company. The investigation revealed that the plant produced only specialty threaded screws.

The Notice of Investigation was published in the *FEDERAL REGISTER* on October 17, 1978 (43 FR 44795-44796). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Lamson and Sessions 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 criteria have been met.

U.S. imports of bolts and large screws increased from 474,084 thousand pounds in 1976 to 491,140 thousand pounds in 1977 and increased from 255,849 thousand pounds in the first six months of 1977 to 287,314 thousand pounds in the first six months of 1978. The ratio of imports to domestic production increased from 53.8 percent in 1976 to 54.7 percent in 1977 and increased from 53.6 percent in the first six months of 1977 to 60.7 percent in the first six months of 1978.

A Departmental survey of the customers of Lamson and Sessions Company revealed that some customers reduced purchases from the subject firm and increased purchases of imported specialty threaded screws in 1977 compared to 1976 and in the first nine months of 1978 compared to the first nine months of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with specialty threaded screws produced at the Bedford Heights, Ohio plant of Lamson and Session Company contributed importantly to the decline in sales and production and to the separation of workers at that facility. In accordance with the provisions of the Act, I make the following certification:

All workers of the Bedford Heights, Ohio plant of Lamson and Sessions Company who became totally or partially separated from employment on or after June 24, 1978 be certified eligible to apply for adjustment as-

sistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 12th day of January 1979.

C. MICHAEL AHO,

Director, Office of

Foreign Economic Research.

[FR Doc. 79-1856 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4480]

LEVI STRAUSS & CO., LUBBOCK, TEX.

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-4480: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 6, 1978 in response to a worker petition received on December 4, 1978 which was filed on behalf of workers and former workers producing men's jeans at the Lubbock, Texas plant of Levi Strauss & Company.

The Notice of Investigation was published in the *FEDERAL REGISTER* on December 19, 1978 (43 FR 59165-66). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Levi Strauss & Company, 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 group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of men's and boys' woven cotton and man-made jeans and dungarees increased from 14 million pairs in 1976 to 23 million pairs in 1977 and from 16.7 million pairs in the first nine months of 1977 to 24.8 million pairs in the first nine months of 1978.

Customers who reduced purchases of jeans from Levi Strauss were surveyed. The survey revealed that customers increased purchases of imported jeans in the first six months of 1978 compared to the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's jeans produced by Levi Strauss & Company contributed importantly to

the decline in sales or production and to the total or partial separation of workers of the Lubbock, Texas plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Lubbock, Texas plant of Levi Strauss & Company who became totally or partially separated from employment on or after February 28, 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 12th day of January 1979.

HARRY J. GILMAN,

Supervisory International
Economist, Office of Foreign
Economic Research.

[FR Doc. 79-1857 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4492]

LEWNER FASHIONS, LTD., NEW YORK, N.Y.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4492: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 8, 1978 in response to a worker petition received on December 4, 1978 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing ladies' leather and suede coats at Lewner Fashions, Ltd., New York, New York.

The Notice of Investigation was published in the *FEDERAL REGISTER* on December 19, 1978 (43 FR 59179-59180). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Lewner Fashions, its major customer, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of men's, women's and children's leather coats and jackets increased absolutely in 1977 from 1976 and in January-September 1978 compared to the same period in 1977.

Imports of coats by Lewner's major customer increased in 1977 from 1976 and in January-July 1978 from the same period in 1977 while purchases

from Lewner decreased in the same periods.

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' leather and suede coats produced at Lewner Fashions, Ltd., New York, New York 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 Lewner Fashions, Ltd., New York, New York who became totally or partially separated from employment on or after November 28, 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 11th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 79-1858 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4039]

MARSHAL RAY CORP., TROY, N.Y.

Revised Determination of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 and in accordance with Section 223(a) of such Act, on November 7, 1978 the Department of Labor issued a Notice of Negative Determination of Eligibility to Apply for Adjustment Assistance applicable to workers and former workers of Marshall Ray Corporation, Troy, New York.

The Notice of Negative Determination was published in the FEDERAL REGISTER on November 17, 1978 (43 FR 53860).

Subsequent to the publication of the original determination, the Office of Trade Adjustment Assistance received an inquiry on behalf of workers and former workers who were separated from Marshall Ray Corporation. Further investigation revealed that all of the group eligibility requirements of Section 222 of the Act have been met.

Imports of men's and boys' tailored dress coats and sportcoats increased from 2,567,000 units in the first six months of 1977 to 3,237,000 units in the same period of 1978.

The Department conducted a survey of customers of Marshall Ray. The survey revealed that some customers decreased purchases from Marshall Ray and increased purchases of imported sportcoats.

CONCLUSION

Based on the additional evidence, a review of the entire record, and in accordance with the provisions of the Act, I have determined that the following certification is hereby made as follows:

All workers at Marshall Ray Corporation, Troy, New York who became totally or partially separated from employment on or after July 27, 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 11th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 79-1859 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-3315]

MAVEST, INC. AND MODERN
MANUFACTURING CORP., TIMONIUM, MD.

Revised Determination of Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 and in accordance with Section 223(a) of such Act, on October 24, 1978 the Department of Labor issued a Notice of Negative Determination of Eligibility to Apply for Adjustment Assistance applicable to workers and former workers of Mavest, Incorporated and Modern Manufacturing Corporation, Timonium, Maryland.

The Notice of Negative Determination was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50755).

Subsequent to the publication of the original determination, the Office of Trade Adjustment Assistance received an inquiry on behalf of workers and former workers who were separated from Mavest and Modern Manufacturing. Further investigation revealed that all of the group eligibility requirements of Section 222 of the Act have been met.

Imports of men's and boys' tailored dress coats and sportcoats increased from 2,567,000 units in the first six months of 1977 to 3,237,000 units in the same period of 1978.

The Department conducted a survey of customers of Mavest and Modern Manufacturing. The survey revealed that some customers decreased purchases from Mavest and Modern Manufacturing and increased purchases of imported sportcoats.

CONCLUSION

Based on the additional evidence, a review of the entire record, and in accordance with the provisions of the

Act, I have determined that the following certification is hereby made as follows:

All workers at Mavest, Incorporated and Modern Manufacturing Corporation, Timonium, Maryland who became totally or partially separated from employment on or after July 7, 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 11th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.

[FR Doc. 79-1860 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4310]

NABISCO, INC., FAIR LAWN, 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-4310: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 30, 1978 in response to a worker petition received on October 26, 1978 which was filed by the Bakery and Confectionery Workers' International Union of America on behalf of workers and former workers producing cookies and crackers at Nabisco, Inc., Fair Lawn, New Jersey.

The 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 information upon which the determination was made was obtained principally from officials of Nabisco, Inc., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or subdivision have contributed importantly to the total or partial separation, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation revealed that the declines in production and employment at the Fairlawn plant are attributable

to the fact that Nabisco, Inc., transferred some of the production of cookies and crackers from its Fair Lawn, New Jersey facility to a modern plant in Richmond, Virginia.

The Richmond facility was opened in 1974. Production at the Richmond plant has increased steadily from year to year since its opening; production at some of the less efficient plants (Fair Lawn, Pittsburgh, and Philadelphia) has been reduced. Productivity figures show that the Richmond plant is much more efficient than the Fair Lawn facility. Nabisco, Inc., is currently upgrading some of the equipment at the Fair Lawn facility.

• Sales by Nabisco's Bisquit Division, of which the Fair Lawn facility is a part, have increased in 1977 compared to 1976. Sales increased in the first three quarters of 1978 compared to the like period of 1977. Production by Nabisco's Bisquit Division remained approximately constant in the first three quarters of 1978 compared to the first three quarters of 1977.

CONCLUSION

After careful review, I determine that all workers of Nabisco, Inc., Fair Lawn, 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 12th day of January 1979.

C. MICHAEL AHO,
Certifying Officer.

[FR Doc. 79-1861 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-3692]

NEW BRUNSWICK CHILDREN'S COAT CO.,
HIGHLAND PARK, N.J.

Affirmative Determination Regarding Application for Reconsideration

On December 8, 1978, the Central District Council of New Jersey, International Ladies' Garment Workers' Union, AFL-CIO, requested administrative reconsideration of the Department of Labor's negative determination regarding eligibility to apply for worker adjustment assistance. This determination was published in the FEDERAL REGISTER on November 17, 1978, (43 FR 53861).

The petitioning union raises one basic issue in the application; namely, that the manufacturer who supplied the New Brunswick Children's Coat Company with orders and material during the base period was approved for trade adjustment assistance.

CONCLUSION

After review of the application, I conclude that this claim of the peti-

tioning union is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C., this 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

[FR Doc. 79-1862 Filed 1-18-79; 8:45 am]

[4510-26-M]

[TA-W-4312]

PERVEL INDUSTRIES, INC., PLAINFIELD, CONN.

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-4312: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on October 30, 1978 in response to a worker petition received on October 26, 1978 which was filed on behalf of workers and former workers producing vinyl-coated fabrics at Pervel Industries, Inc., Plainfield, Conn. The investigation revealed that Pervel Industries, Incorporated produced vinyl and urethane-coated fabric, flocked fabrics and printed textiles.

The 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 determination was based upon information obtained principally from officials of Pervel Industries, Inc., its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the 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 separation, or threat thereof, and to the absolute decline in sales or production.

Pervel Industries, Incorporated produced coated fabrics, printed textiles and flocked fabric. The petition alleges that increased imports of shoes, handbags and linens have adversely affected sales and production at Pervel Industries, Incorporated.

Imported shoes, handbags and linens cannot be considered to be like or directly competitive with coated fabrics, printed textiles and flocked fabrics. Imports of coated fabrics, printed textiles and flocked fabric must be considered in determining injury to workers producing coated fabrics, printed textiles and flocked fabric at Pervel Industries, Incorporated.

The ratio of imports to domestic production and consumption for coated fabrics remained below 5.0 percent during the period from 1974 to 1977.

The Department's survey of customers who purchased coated fabrics from Pervel revealed that customers did not decrease their purchases from Pervel and increase their purchases of imported coated fabrics.

The ratio of imports to domestic production and consumption for finished fabric remained below 2.0 percent from 1974 to 1977.

The Department's survey of customers for whom Pervel printed textiles revealed that customers did not decrease their business with Pervel and increase their business with foreign suppliers of finished fabric.

Industry sources indicate that there are no significant imports of flocked fabrics.

CONCLUSION

After careful review, I determine that all workers of Pervel Industries, Inc., Plainfield, Conn. 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 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

[FR Doc. 79-1863 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4062]

PUTNAM MANUFACTURING CO., NORTH
GROSVENORDALE, CONN.

[TA-W-4079-A]

THE ARROW CO., DIVISION OF CLUETT,
PEABODY & CO., INC., EVELETH, MINN.

[TA-W-4112]

MARION DYER, GAFFNEY, S.C.

[TA-W-4180]

GENESCO, INC., FOOTWEAR SECTOR,
NASHVILLE, TENN.

Corrections

Due to an administrative error, the following documents should be corrected as follows:

In the matter of Putnam Manufacturing Company, No. TA-W-4062, in FR Doc. 78-23792 appearing at page 38636 in the FEDERAL REGISTER of August 29, 1978, the date of the petition in the appendix under Putnam Manufacturing Company, No. TA-W-4062 should be corrected to read "August 10, 1978."

In the matter of the Arrow Company, No. TA-W-4079-A in FR Doc. 78-32446 appearing at page 53854 in the FEDERAL REGISTER of November 17, 1978, the last paragraph of that document should read: "Signed at Washington, D.C. this 9th day of November 1978."

In the matter of Marion Dyers, No. TA-W-4112, in FR Doc. 78-31853 appearing at page 52560 in the FEDERAL REGISTER of November 13, 1978, the city in South Carolina, which appears in the heading and the 2nd and 8th paragraphs, should be corrected to read "Gaffney, South Carolina."

In the matter of Genesco, Incorporated, No. TA-W-4180, in FR Doc. 78-36160 appearing at page 61044 in the FEDERAL REGISTER of December 29, 1978, the impact date which appears in the Conclusion under TA-W-4180 should be corrected to read "December 28, 1977."

Signed at Washington, D.C., this 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

[FR Doc. 79-1864 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4449]

ROCKWELL INTERNATIONAL CORP., ADMIRAL
SERVICE DIVISION, ROSEMONT, ILL.

Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on November 29, 1978 in response to a worker petition received on November 17, 1978 which was filed by the International Brotherhood of Electrical Workers on behalf of workers and former workers providing service repairs for televisions, stereos, refrigerators and freezers at Rockwell International Corporation, Admiral Service Division, Rosemont, Illinois.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56953). No public hearing was requested and none was held.

The petitioning group of workers in this case was included in a determination (TA-W-4350) issued on January 8, 1978 which certified as eligible to apply for adjustment assistance all workers engaged in sales and service of televisions and denied eligibility to all

workers engaged in the sales and service of refrigerators and freezers. Since all workers separated, totally or partially, from the Rosemont, Illinois plant of Rockwell International Corporation, Admiral Service Division on or after December 24, 1977 (impact date) and before January 28, 1981 (expiration date of the determination) are covered by an existing determination, a new investigation would serve no purpose. Therefore, it is recommended that this investigation be terminated.

Signed at Washington, D.C. this 11th day of January, 1979.

MARVIN M. FOOKS,
Director, Office of
Trade Adjustment Assistance.

[FR Doc. 79-1865 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4264]

TEXACO, INC., PITTSBURGH DIVISION OFFICE,
CORAOPLIS, PA.

Negative Determination Regarding Application for Reconsideration

On December 4, 1978, the petitioners requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of all workers of Texaco, Inc., at the Pittsburgh Division Office in Coraopolis, Pennsylvania. The determination was published in the FEDERAL REGISTER on December 8, 1978, (43 FR 57690).

Pursuant to 29 CFR 90.18(c), reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justifies reconsideration of the decision.

The petitioners ask if imports of petroleum products have increased, then why has their industry suffered and why is it necessary for five of the largest oil companies to go on all allocations due to the shortage of petroleum products.

The Department would make a distinction between crude oil and refined petroleum products such as the various grades of gasoline, kerosene, diesel fuel, jet fuel, aviation gasoline, and fuel oil. The petitioners are not claiming that increased imports of refined products led to their separations but rather that the scarcity of crude

oil was responsible. The Trade Act certification test, however, is whether increased imports of an article contributed importantly to worker separations and production or sales declines. Furthermore, increased imports of crude oil promote, rather than inhibit, the employment in marketing since increased crude oil imports enable the company to maintain or increase its domestic production of refined petroleum products which were marketed by the Pittsburgh Division Office of Texaco.

The shortage of refined petroleum products by some oil companies is the result of many factors, chiefly, inadequate refinery capacity, increased demand for winter heating oil, temporary refinery shutdowns and the continued demand for gasoline even in the slower winter driving months.

CONCLUSION

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of fact or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 12th day of January 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-1866 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4190]

VICKI CLOTHING CO., INC., NEWBURGH, N.Y.

Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4190: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 20, 1978 in response to a worker petition received on September 19, 1978 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's storm coats at Vicki Clothing Company, Incorporated, Newburgh, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on October 31, 1978 (43 FR 50758). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Vicki Clothing Company,

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 sales or production, or both, of the firm or subdivision have decreased absolutely.

Evidence developed in the course of the investigation indicated the firm is an apparel contractor whose sales equal production.

Company production increased in the second and third quarters of 1977 compared to the same quarters in 1976, and increased in the first nine months of 1978 compared to the same period of 1977.

The value of company production increased in each quarter, compared to the same quarter in the previous year, from the third quarter of 1977 through the third quarter of 1978.

CONCLUSION

After careful review, I determine that all workers of Vicki Clothing Company, Incorporated, Newburgh, 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 11th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

[FR Doc. 79-1867 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4328]

VICTOR GOLF EQUIPMENT CO., ELYRIA, OHIO

Negative Determination Regarding Eligibility To Apply for Work Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4328: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 2, 1978 in response to a worker petition received on October 27, 1978 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing golf balls and solid balls at Victor Comptometer Corporation, Worthington

Golf Ball Plant, Elyria, Ohio. The investigation revealed that the plant primarily produces wound and solid golf balls. The plant is a facility of the Victor Golf Equipment Company which is a division of Victor Comptometer Corporation.

The Notice of Investigation was published in the FEDERAL REGISTER on November 13, 1978 (43 FR 52564). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Victor Golf Equipment 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. 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.

None of the customers of balls produced by the Elyria plant purchased imported golf balls. Reduced purchases by the customers in the first eleven months of 1978 reflect a general decline in demand for golf balls by those customers.

CONCLUSION

After careful review, I determine that all workers of the Elyria, Ohio plant of the Victor Golf Equipment Company, a division of Victor Comptometer 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 11th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration, and Planning.

[FR Doc. 79-1868 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4361]

BARRY KNITTING MILLS, INC., PHILADELPHIA, PA.

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of

TA-W-4361: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November 6, 1978 which was filed by the Knitgoods Union, International Ladies' Garment Workers Union on behalf of workers and former workers producing men's and ladies' sweaters at Barry Knitting Mills, Incorporated in Philadelphia, Pennsylvania. The investigation revealed that the plant primarily produces men's sweaters.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55011). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Barry Knitting Mills, Incorporated, its 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 men's and boys' sweaters, knit cardigans and pullovers increased from 20.4 million units in 1975 to 26.5 million units in 1976 and to 28.3 million units in 1977. Imports increased to 33.2 million units in the first three quarters of 1978 as compared to 22.6 million units in the first three quarters of 1977.

U.S. imports of women's, misses' and children's sweaters increased from 1975 to 1976. In 1977, imports of sweaters increased by 9.0 percent over the average level of imports for the years 1973 through 1976. 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.

The Department conducted a survey of the customers of Barry Knitting Mills, Incorporated. Customers accounting for a substantial portion of Barry's sales in the first ten months of 1977 reduced purchases of sweaters from Barry and increased purchases of imported sweaters in the first ten months of 1978 compared to the same period in 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and ladies' sweaters produced at Barry

Knitting Mills, Incorporated, Philadelphia, Pennsylvania 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 Barry Knitting Mills, Incorporated, Philadelphia, Pennsylvania who became totally or partially separated from employment on or after September 15, 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 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration and Planning.

[FR Doc. 79-2047 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4362]

**BERGMAN KNITTING MILLS, INC.,
PHILADELPHIA, PENNSYLVANIA**

**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-4362: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November 6, 1978 which was filed by the Knitgoods Union, International Ladies Garment Workers' Union on behalf of workers and former workers producing knit sweaters for men, women and boys at Bergman Knitting Mills, Incorporated in Philadelphia, Pennsylvania. The investigation revealed that the plant produces only men's and boys' sweaters.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Bergman Knitting Mills, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' sweaters, knit cardigans and pullovers increased from 20.4 million units in

1975 to 26.5 million units in 1976 and to 28.3 million units in 1977. Imports increased to 33.2 million units in the first three quarters of 1978 as compared to 22.6 million units in the first three quarters of 1977.

A Departmental survey was conducted with Bergman's major customers to determine whether their anticipated 1979 purchases would be from domestic or foreign sources. Most of the customers surveyed indicated that they currently import men's sweaters and that they are increasing their imports of sweaters. In addition, one of the major manufacturers who contracted sweater production to Bergman was itself affected by imports. The manufacturer had experienced decreasing sales in 1978 compared to 1977. Retailers had decreased their purchases from the manufacturer and had increased purchases of imported sweaters from 1977 to 1978.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' sweaters produced at Bergman Knitting Mills, Incorporated, Philadelphia, Pennsylvania 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 Bergman Knitting Mills, Incorporated, Philadelphia, Pennsylvania who became totally or partially separated from employment on or after August 5, 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 12th day of January 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-2048 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4363]

**CAPITOL KNITTING MILLS, INC., LITTLE FALLS,
NEW JERSEY**

**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-4363: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November

8, 1978 which was filed by the Amalgamated Clothing and Textile Workers' Union of behalf of workers and former workers producing knit sweaters at Capitol Knitting Mills, Incorporated, Little Falls, New Jersey. The investigation revealed that the plant primarily produced men's and women's sweaters and knitted fabric.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Capitol Knitting Mills, Incorporated its 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 men's and boys' sweaters, knit cardigans and pullovers increased from 20.4 million units in 1975 to 26.5 million units in 1976 and to 28.3 million units in 1977. Imports increased to 33.2 million units in the first three quarters of 1978 as compared to 22.6 million units in the first three quarters of 1977.

U.S. imports of women's, misses' and children's sweaters increased both absolutely and relative to domestic production from 1975 to 1976. Imports of sweaters in 1977 were greater than average level of imports for the years 1973 through 1976. The ratio of imports of sweaters to domestic production exceeded 140 percent in 1976 and in 1977. The IP ratio in 1977 was higher than the average IP ratio for the period 1973 through 1976.

U.S. imports of finished fabric (bleached, dyed, and printed) increased in the first three quarters of 1978 compared to the first three quarters of 1977. The ratio of imports to domestic production increased in each year from 1975 through 1977.

In a Departmental survey the customers of Capitol Knitting Mills, Incorporated indicated that they increased their reliance of imported men's and women's sweaters and decreased their purchases from Capitol Knitting Mills, Incorporated during the first eleven months of 1978 compared to the same period of 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increase of imports of articles like or directly competitive with men's and women's sweaters and knitted fabric produced at Capitol Knitting Mills, In-

corporated, Little Falls, 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 Capitol Knitting Mills, Incorporated, Little Falls, New Jersey who become totally or partially separated from employment on or after June 25, 1978 and before November 20, 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 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration and Planning.

[FR Doc. 79-2049 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4391]

CHALFONT MILLS, INC., QUAKERTOWN,
PENNSYLVANIA

[TA-W-4391A]

CHALFONT MILLS, INC., NEW YORK, NEW
YORK

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-4391 and TA-W-4391A: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 16, 1978 in response to a worker petition received on November 14, 1978 which was filed by the Knitgoods Union, International Ladies' Garment Workers' Union on behalf of workers and former workers producing men's and ladies' sweaters at Chalfont Mills, Incorporated, Quakertown, Pennsylvania. The investigation revealed that the plant primarily produced men's sweaters.

The investigation was expanded to include the New York, New York sales office of Chalfont Mills, Incorporated.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55011-55012). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Chalfont Mills, Incorporated, its 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 as-

sistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' sweaters, knit cardigans and pullovers increased from 20.4 million units in 1975 to 26.5 million units in 1976 and to 28.3 million units in 1977. Imports increased to 33.2 million units in the first three quarters of 1978 as compared to 22.6 million units in the first three quarters of 1977.

A Departmental survey of a major manufacturer that contracted work to Chalfont revealed that this manufacturer substantially increased its purchases of imported men's sweaters and decreased its utilization of Chalfont Mills, Incorporated during the first ten months of 1978 compared to the same period 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 men's sweaters produced at Chalfont Mills, Incorporated, Quakertown, Pennsylvania contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant and at the New York, New York sales office of Chalfont Mills, Incorporated. In accordance with the provisions of the Act, I make the following certification:

All workers of the Quakertown, Pennsylvania plant and the New York, New York sales office of Chalfont Mills, Incorporated who became totally or partially separated from employment on or after January 14, 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 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration and Planning.

[FR Doc. 79-2050 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4366]

DEVON APPAREL, INC., PHILADELPHIA,
PENNSYLVANIA

[TA-W-4366a]

DEVON APPAREL, INC., NEW YORK, NEW
YORK

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-4366 and TA-W-4366a: Investigation regarding certification of eligibility to apply for worker adjustment

assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 13, 1978 in response to a worker petition received on November 6, 1978 which was filed by the Knitgoods Union, International Ladies' Garment Workers' Union on behalf of workers and former workers producing ladies' coordinated sportswear: slacks, jackets, vests, sweaters, blouses, skirts, etc. at Devon Apparel, Incorporated in Philadelphia, Pennsylvania. The investigation revealed that the plant also produces women's walking shorts but does not produce vests. The investigation was expanded to include Devon's New York, New York sales office.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55012-3). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Devon Apparel, Incorporated, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met.

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Sales and production of ladies' coordinated sportswear increased at Devon Apparel, Incorporated from 1976 to 1977 and during the first ten months of 1978 compared to the same period of 1977.

CONCLUSION

After careful review, I determine that all workers of the Philadelphia, Pennsylvania facilities and the New York, New York sales office of Devon Apparel, Incorporated 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 12th day of January 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.

[FR Doc. 79-2051 Filed 1-18-79 8:45 am]

[4510-28-M]

(TA-W-4145)

**FORMAKER FOUNDATIONS, INC., WEST
PATERSON, NEW JERSEY****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-4145: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on September 13, 1978 in response to a worker petition received on September 11, 1978 which was filed on behalf of workers and former workers producing brassieres at Formaker Foundations, Inc., West Paterson, New Jersey. The investigation revealed that the company was closed in December 1977.

The Notice of Investigation was published in the FEDERAL REGISTER on September 26, 1978 (43 FR 43588). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Formaker Foundations, Incorporated, its customers, The New Jersey Bank, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. The Department's investigation revealed that all of the requirements have been met.

U.S. imports of brassieres, bralettes, and bandeaux increased from 8.75 million dozen in 1976 to 9.51 million dozen in 1977. The Import/Production ratio (I/P) increased from 51.7 percent in 1976 to 59.3 percent in 1977.

The Department conducted a survey of customers purchasing brassieres from the subject firm during 1976 and 1977. Customers responding to the survey indicated declines in purchases from Formaker Foundations, Incorporated and increased purchases of imported brassieres from 1976 to 1977.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increased imports of articles like or directly competitive with brassieres produced at Formaker Foundations, Incorporated, West Paterson, New Jersey contributed importantly to the decline in sales and to the separation of workers at that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of Formaker Foundations, Incorporated, West Paterson, New Jersey engaged in employment related to the production of brassieres who became totally or partially separated from employment on or after September 1, 1977 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 12th day of January 1979.

JAMES F. TAYLOR,
*Director, Office of Management,
Administration and Planning.*

(FR Doc. 79-2052 Filed 1-18-79; 8:45 am)

[4510-28-M]

(TA-W-4422)

**GARMENT MAKERS, INC., BROOKLYN, NEW
YORK****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-4422: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 27, 1978 in response to a worker petition received on November 20, 1978 which was filed on behalf of workers and former workers producing women's coats at Garment Makers, Incorporated, Brooklyn, New York.

The Notice of Investigation was published in the FEDERAL REGISTER on December 5, 1978 (43 FR 56952). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Garment Makers, Incorporated, its 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 Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Evidence developed during the course of the investigation revealed that company production increased in the fourth quarter of 1977 compared with the same period of 1976 and in 1978 compared with 1977. Production increased in each quarter of 1978 compared with the same quarter of 1977. The subject firm is an apparel contrac-

tor; therefore sales and production are equivalent.

CONCLUSION

After careful review, I determine that all workers of Garment Makers, Incorporated, Brooklyn, 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 12th day of January 1979

JAMES F. TAYLOR,
*Director, Office of Management,
Administration and Planning.*

(FR Doc. 79-2053 Filed 1-18-79; 8:45 am)

[4510-28-M]

(TA-W-4474)

**NEW ENGLAND BOBBIN, INC., NASHUA, NEW
HAMPSHIRE****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-4474: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on December 6, 1978 in response to a worker petition received on November 29, 1978 which was filed on behalf of workers and former workers producing textile bobbins for weaving at New England Bobbin, Incorporated, Nashua, New Hampshire.

The Notice of Investigation was published in the FEDERAL REGISTER on December 19, 1978 (43 FR 59165-59166). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of New England Bobbin, 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.

New England Bobbin, Incorporated produced bobbins. The petition alleges that increased imports of textiles and finished wearing apparel affected pro-

duction and employment at New England Bobbin, Incorporated, Nashua, New Hampshire. Imported textiles and finished apparel can not be considered to be like or directly competitive with bobbins. Imports of bobbins must be considered in determining import injury to workers producing bobbins.

Imports of bobbins are negligible and supply only a very small percentage of the domestic bobbin market. Moreover, demand in general for bobbins has declined as a result of technological change in the textile industry. Shuttle looms using bobbins are now being replaced by imported shuttleless looms which do not require bobbins. In fact, in 1977, the ratio of imports to U.S. production of shuttleless looms was 650 percent. The imported shuttleless looms have proven to be more efficient than the older shuttle looms or domestically produced shuttleless looms.

CONCLUSION

After careful review, I determine that all workers of New England Bobbin, Incorporated, Nashua, New Hampshire 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 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management
Administration and Planning.
[FR Doc. 79-2054 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4062]

PUTNAM MANUFACTURING CO., NORTH GROSVENORDALE, CONNECTICUT

Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 233 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4062: 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 15, 1978 in response to a worker petition received on August 10, 1978 which was filed on behalf of workers and former workers producing children's and some ladies' outerwear at Putnam Manufacturing Company, North Grosvenordale, Connecticut. The investigation revealed that the firm primarily produces children's snowsuits.

The Notice of Investigation was published in the FEDERAL REGISTER on August 29, 1978 (43 FR 38635). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Putnam Manufacturing Company, its manufacturers, their customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of ski/snow suits and coat/legging sets increased absolutely and relative to domestic production from 1976 to 1977 and increased absolutely in the first nine months of 1978 compared with the same period of 1977.

The Department conducted a survey of customers of children's snowsuits produced by Putnam Manufacturing. The survey indicated that some customers decreased purchases from Putnam Manufacturing and increased purchases of imported children's snowsuits.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with children's snowsuits produced at Putnam Manufacturing Company, North Grosvenordale, Connecticut 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 Putnam Manufacturing Company, North Grosvenordale, Connecticut who became totally or partially separated from employment on or after August 10, 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 12th day of January 1979.

JAMES F. TAYLOR,
Director, Office of Management,
Administration and Planning.
[FR Doc. 79-2055 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4399]

SAND N' SURF INC., PHILADELPHIA, PENNSYLVANIA

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-4399: Investigation regarding certification of eligibility to apply for

worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 16, 1978 in response to a worker petition received on November 14, 1978 which was filed by the knitgoods Union ILGWU on behalf workers and former workers producing bathrobes and bathing suits for men and women at Sand N' Surf Incorporated, Philadelphia, Pennsylvania. The investigation revealed that the plant produces men's swim trunks and athletic shorts.

The Notice of Investigation was published in the FEDERAL REGISTER on November 24, 1978 (43 FR 55011). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Sand N' Surf, Incorporated, its customers (manufacturers), the Knitgoods Union, 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.

The Department conducted a survey of manufacturers which accounted for a major portion of sales of Sand N' Surf. The survey indicated that these manufacturers did not purchase imported garments or use foreign contractors. The manufacturers which decreased orders with Sand N' Surf indicated that total sales increased from 1977 to 1978. Most manufacturers indicated that they had increased contract work with Sand N' Surf.

CONCLUSION

After careful review, I determine that all workers of Sand N' Surf Incorporated, Philadelphia, Pennsylvania 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 12th day of January 1979.

C. MICHAEL AHO,
Director, Office of
Foreign Economic Research.
[FR Doc. 79-2056 Filed 1-18-79; 8:45 am]

[4510-28-M]

[TA-W-4415]

**SPATOLA BROTHERS SHOE CO., WAYCROSS,
GEORGIA****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-4415: Investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on November 21, 1978 in response to a worker petition received on November 17, 1978 which was filed on behalf of workers formerly producing cold cure casuals for women, jogging shoes, and dress shoes for men at the Spatola Brothers Shoe Company, Waycross, Georgia. The investigation revealed that the firm produced men's and women's nonrubber and athletic footwear.

The Notice of Investigation was published in the *FEDERAL REGISTER* on December 5, 1978 (43 FR 56951-52). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of the Spatola Brothers Shoe Company, its manufacturer, 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 nonrubber footwear increased from 152.1 million pairs during January-September of 1977 to 160.4 million pairs during January-September of 1978. The ratio of imports to domestic production increased from 131.6 percent in 1976 to 137.3 percent in 1977 and from 143.4 percent during January-September of 1977 to 150.5 percent during January-September of 1978.

U.S. imports of men's nonrubber footwear increased from 62.9 million pairs in 1976 to 63.2 million pairs in 1977. The ratio of imports to domestic production increased from 75.4 percent in 1976 to 78.5 percent in 1977.

U.S. imports of men's and women's athletic footwear increased from 34.7 million pairs in 1976 to 51.4 million pairs in 1977. The ratio of imports to domestic production increased from 343.6 percent in 1976 to 407.6 percent in 1977.

From August 1976 to October 1978, contract work with one manufacturer accounted for virtually all of Spatola

Brothers' production. This manufacturer, when contacted by the Department, verified that it had ceased contract work with Spatola Brother in October 1978. During the period from January to November of 1978 compared to the same period of 1977, the manufacturer had decreased its reliance on domestic sources for footwear and increased its reliance on foreign sources to the extent that imports represented the preponderance of the manufacturer's total footwear sales.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and women's nonrubber and athletic footwear produced at the Spatola Brothers Shoe Company, Waycross, Georgia 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 the Spatola Brothers Shoe Company, Waycross, Georgia who became totally or partially separated from employment on or after May 30, 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 12th day of January 1979.

JAMES F. TAYLOR,
*Director, Office of Management
Administration and Planning.*

[FR Doc. 79-2057 Filed 1-18-79; 8:45 am]

[7537-01-M]

**NATIONAL FOUNDATION ON THE
ARTS AND THE HUMANITIES***National Endowment for the Arts***ARCHITECTURE, PLANNING, AND DESIGN
ADVISORY PANEL****Renewal**

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Architecture, Planning and Design Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 15, 1981. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: a) applica-

tions submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: January 15, 1979.

JOHN H. CLARK,
*Director, Office of Council and
Panel Operations, National
Endowment for the Arts.*

[FR Doc. 79-1988 Filed 1-18-79; 8:45 am]

[7537-01-M]

DANCE ADVISORY PANEL**Renewal**

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4) and Paragraph 9 of Office of Management and Budget Circular A-63) notice is hereby given that renewal of the Dance Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 15, 1981. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: a) applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: January 15, 1979.

JOHN H. CLARK,
Director, Office of Council and
Panel Operations, National
Endowment for the Arts.

[FR Doc. 79-1989 Filed 1-18-79; 8:45 am]

[7537-01-M]

EXPANSION ARTS ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Expansion Arts Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 15, 1981. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: a) applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: January 15, 1979.

JOHN H. CLARK,
Director, Office of Council and
Panel Operations, National
Endowment for the Arts.

[FR Doc. 79-1990 Filed 1-18-79; 8:45 am]

[7537-01-M]

FEDERAL GRAPHICS EVALUATION ADVISORY PANEL

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Federal Graphics Evaluation Advisory Panel has been approved by the

Chairman of the National Endowment for the Arts for a period of 2 years until January 15, 1981. The Committee's objectives and scope of activities include the provision of expert review and advice to Federal Agencies in the improvement of graphics design standards and performance throughout the Federal government. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: January 15, 1979.

JOHN H. CLARK,
Director, Office of Council and
Panel Operations, National
Endowment for the Arts.

[FR Doc. 79-1991 Filed 1-18-79; 8:45 am]

[7537-01-M]

LITERATURE ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Literature Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 15, 1981. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: a) applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: January 15, 1979.

JOHN H. CLARK,
Director, Office of Council and
Panel Operations, National
Endowment for the Arts.

[FR Doc. 79-1992 Filed 1-18-79; 8:45 am]

[7537-01-M]

MUSIC ADVISORY PANEL

Notice of Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Music Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a period of 2 years until January 15, 1981. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: a) applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

JOHN H. CLARK,
Director, Office of Council and
Panel Operations, National
Endowment for the Arts.

[FR Doc. 79-1993 Filed 1-18-79; 8:45 am]

[7537-01-M]

THEATRE ADVISORY PANEL

Renewal

In accordance with the provision of the Federal Advisory Committee Act (Pub. L. 92-463), Section 10(a)(4) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 959(a)(4)) and Paragraph 9 of Office and Management and Budget Circular A-63) notice is hereby given that renewal of the Theatre Advisory Panel has been approved by the Chairman of the National Endowment for the Arts for a

period of 2 years until January 15, 1981. The Committee's objectives and scope of activities include the formulation of expert advice and recommendations to the Chairman, National Endowment for the Arts and the National Council on the Arts with respect to: a) applications submitted to the National Endowment for the Arts for Federal grant assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, and b) policies and programs of the National Endowment for the Arts. This Committee shall report to the National Endowment for the Arts, National Foundation on the Arts and the Humanities.

This charter will be filed with the standing Committees of the Senate and the House of Representatives having legislative jurisdiction over the Endowment and to the Library of Congress.

Dated: January 15, 1979.

JOHN H. CLARK,
Director, Office of Council and
Panel Operations, National
Endowment for the Arts.

[FR Doc. 79-1994 Filed 1-18-79; 8:45 am]

[7536-01-M]

National Endowment for the Humanities

HUMANITIES PANEL ADVISORY COMMITTEE

Meeting

JANUARY 10, 1979.

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that a meeting of the Humanities Panel will be held at 806 15th Street, NW, Washington, D.C. 20506, in room 1134, from 9 a.m. to 5:30 p.m. on February 5, 1979.

The purpose of the meeting is to review the applications submitted to the Research Tools Program of the National Endowment for the Humanities, for projects in the fields of Linguistics and Lexicography beginning June 1, 1979.

Because the proposed meeting will consider financial information and disclose information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings, dated January 15, 1978, I have determined that the meeting would fall within exemptions (4) and (6) of 5 U.S.C. 552b(c) and that it is essential to close the meeting to protect the free exchange of internal views and to avoid interference with operation of the Committee.

It is suggested that those desiring more specific information contact the

Advisory Committee Management Officer, Mr. Stephen J. McCleary, 806 15th Street, NW, Washington, D.C. 20506, or call area code 202-724-0367.

STEPHEN J. MCCLEARY,
Advisory Committee
Management Officer.

[FR Doc. 79-2085 Filed 1-18-79; 8:45 am]

[7555-01-M]

NATIONAL SCIENCE FOUNDATION

ADVISORY COMMITTEE FOR ATMOSPHERIC SCIENCES

Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Atmospheric Sciences.

Date: February 1 and 2, 1979.

Time: 9:00 a.m.—5:00 p.m.

Place: Room 543, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Dr. Alan J. Grobner, Division Director, Division of Atmospheric Sciences, Room 844, National Science Foundation, Washington, D.C. 20550, telephone (202) 634-1490.

Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of committee: The Advisory Committee for Atmospheric Sciences provides advice, recommendations, and oversight concerning support for research and research-related activities in the atmospheric sciences area.

Agenda:

February 1, 1979:

0900—Welcome.

0915—Introduction of New Members, Approval of Agenda, Minutes of October 1978 ASAC Meeting, Annual Report of ASAC, 1978.

1000—Discussion of NSF Atmospheric Sciences Division. Funding Priorities.

February 2, 1979:

0900—Discussion of NSF Support of Graduate Students, Postdoctoral Scientists, etc.

1600—Future Activities of the Advisory Committee for Atmospheric Sciences.

1700—Adjourn.

M. REBECCA WINKLER,
Committee Management
Coordinator.

JANUARY 16, 1979.

Reason for late notice: 5 new members were recently appointed to the Advisory Committee. Due to this, it was difficult to get a date that was acceptable to both the old and new members. Normally, during the regular meeting of the Advisory Committee, future meeting dates are determined.

[FR Doc. 79-2029 Filed 1-18-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON ANTHROPOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Anthropology of the Advisory Committee for Behavioral and Neural Sciences. (Physical/Archaeology).

Date and time: February 8 and 9, 1979: 9:00 a.m. to 5:00 p.m. each day.

Place: Room 628, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. John E. Yellen, Program Director, Anthropology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4208.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in physical anthropology/archaeology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include 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.

JANUARY 17, 1979.

[FR Doc. 79-2030 Filed 1-18-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON DEVELOPMENTAL BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Developmental Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: February 8, 9, and 10th, 1979 from 9 to 5 each day.

Place: Room 540, National Science Foundation, 1800 G Street, N.W. Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Mary E. Clutter, Program Director, Developmental Biology Program, Room 326, National Science Foundation, Washington, D.C. 20550, telephone (202) 632-4314.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in developmental biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include 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.

JANUARY 17, 1979.

[FR Doc. 79-2032 Filed 1-18-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON LINGUISTICS

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee of Linguistics of the Advisory Committee for Behavioral and Neural Sciences.

Date and time: February 8 and 9, 1979; 9:00 A.M. to 5:00 P.M. each day.

Place: Room 421, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Paul G. Chapin, Program Director, Linguistics Program Room 320, National Science Foundation, Washington, D.C. 20550, telephone (202) 254-6326.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Linguistics.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The Proposals being reviewed include information of a proprietary or confidential nature, including technical 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.

tions by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
Committee Management
Coordinator.

JANUARY 17, 1979.

[FR Doc. 79-2033 Filed 1-18-79; 8:45 am]

[7555-01-M]

SUBCOMMITTEE ON METABOLIC BIOLOGY

Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Metabolic Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: February 8 and 9, 1979—9:00 a.m. to 5:00 p.m. each day.

Place: Room 1242, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Elijah B. Romanoff, Program Director, Metabolic Biology Program, Room 331, National Science Foundation, Washington, D.C. 20550, Telephone—(202) 632-4312.

Purpose of Subcommittee: To provide advice and recommendations concerning support for research in Metabolic Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include 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.

[FR Doc. 79-2031 Filed 1-18-79; 8:45 am]

[7590-01-M]

NUCLEAR REGULATORY COMMISSION

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS

Proposed Meetings

In order to provide advance information regarding proposed meetings of the ACRS Subcommittees and Working Groups, and of the full Committee, the following preliminary sched-

ule reflects the current situation, taking into account additional meetings which have been scheduled and meetings which have been postponed or cancelled since the last list of proposed meetings published December 20, 1978 (43 FR 59448). Those meetings which are definitely scheduled have had, or will have, an individual notice published in the FEDERAL REGISTER approximately 15 days (or more) prior to the meeting. Those Subcommittee and Working Group meetings for which it is anticipated that there will be a portion or all of the meeting open to the public are indicated by an asterisk (*). It is expected that the sessions of the full Committee meeting designated by an asterisk (*) will be open in whole or in part to the public. ACRS full Committee meetings begin at 8:30 a.m. and Subcommittee and Working Group meetings usually begin at 8:30 a.m. The exact time when items listed on the agenda will be discussed during full Committee meetings and when Subcommittee and Working Group meetings will start will be published approximately 15 days prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the February 1979 ACRS full Committee meeting can be obtained by a prepaid telephone call to the Office of the Executive Director of the Committee (telephone 202/634-3267, ATTN: Mary E. Vanderholt) between 8:15 a.m. and 5:00 p.m., EST.

SUBCOMMITTEE AND WORKING GROUP MEETINGS

*Salem Nuclear Power Station, Unit No. 2, January 24, 1979, rescheduled from December 19, 1978, Washington, DC. The Subcommittee will review the application of the Public Service Electric and Gas Company for a license to operate Unit No. 2 of this Station. Notice of this meeting was published December 20, 1978 and January 9, 1979 (43 FR 59448 and 44 FR 2044, respectively). A notice of change of time only, also appears elsewhere in this issue.

*Architect-Engineer Balance of Plant, January 26, 1979, rescheduled from December 18, 1978, Washington, DC. The Subcommittee will review the Fluor Power Services, Inc. Balance of Plant Standard Safety Analysis Report (BOPSSAR) and its relationship to the Babcock and Wilcox Standard Reference System B-SAR-205 for a preliminary design approval. Notice of this meeting was published December 20, 1978 (43 FR 59448) and January 11, 1979 (44 FR 2439).

*Power and Electrical Systems, January 31, 1979, Washington, DC. RESCHEDULED for February 28, 1978.

Notice of this meeting was published December 20, 1978 (43 FR 59448).

**Anticipated Transients without Scram (ATWS), January 31, 1979, Washington, DC. The Subcommittee will continue its discussions of vol. 3, NUREG-0460, "Anticipated Transients without Scram for Light-Water Reactors." Notice of this meeting was published January 16, 1979.*

**Regulatory Activities, February 7, 1979, Washington, DC. CANCELLED. Notice of this meeting was published December 20, 1978 (43 FR 59448).*

**Plant Arrangements, February 7, 1979, Washington, DC. RESCHEDULED for March 7, 1979, Washington, DC. Notice of this meeting was published December 20, 1978 (43 FR 59448).*

**Evaluation of Licensee Event Reports, February 7, 1979, Washington, DC. The Subcommittee will meet in Executive Session to plan its review of Licensee Event Reports submitted during the period 1976-1978.*

**Procedures and Administration, February 7, 1979, Washington, DC. The Subcommittee will discuss work assignments of ACRS fellows and appointments of individuals as ACRS fellows.*

**Power and Electrical Systems, February 28, 1979, Washington, DC. Rescheduled from January 31, 1979. The Subcommittee will review the potential adverse interactions through the interconnection of protection and safety systems with reactor control systems on the Westinghouse RESAR-414 design.*

**Regulatory Activities, March 7, 1979, Washington, DC. The Subcommittee will review working papers and future regulatory guides; also, it will discuss pertinent activities which affect the current licensing process and/or reactor operations. Notice of this meeting was published December 20, (43 FR 59448).*

**Plant Arrangements, March 7, 1979 (Tentative), Washington, DC. Rescheduled from February 7, 1979. The Subcommittee will continue its review of NRC Task Action Plan A-17, Systems Interactions in Nuclear Power Plants.*

**San Onofre Nuclear Generating Station, Units 2 and 3, March 21-22, 1979, Los Angeles, CA. The Subcommittee will review the application of the Southern California Edison Company for a license to operate Units 2 and 3 of this Station. Notice of this meeting was published December 20, 1978 (43 FR 59448).*

**Palo Verde Nuclear Generating Station, Units 4 and 5, March 27, 1979, Phoenix, AZ. The Subcommittee will review the application of the Arizona Nuclear Power Company for a permit to construct Units 4 and 5 of this Station. Notice of this meeting was published December 20, 1978 (43 FR 59448).*

lished December 20, 1978 (43 FR 59448).

ACRS FULL COMMITTEE MEETINGS

February 8-10, 1979

A. *Salem Nuclear Generating Station, Unit No. 2—Operating License Review

B. *Fluor Pioneer, Inc. Balance of Plant Standard Safety Analysis Report (BOPSSAR)/Babcock and Wilcox Standard Reference System B-SAR-205—Preliminary Design Approval.

March 8-10, 1979—Agenda to be announced.

April 5-7, 1979—Agenda to be announced.

Dated: January 15, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 70-1788 Filed 1-18-79; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON THE SALEM NUCLEAR POWER STATION

Change

The meeting of the ACRS Subcommittee on the Salem Nuclear Station scheduled to be held on January 24, 1979, in Washington, D.C. will start at 8:30 a.m. instead of 1 p.m. on that date.

Notice of this meeting was published on January 9, 1979 (44 FR 2044). All other matters pertaining to this meeting remain the same as previously announced.

Dated: January 15, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 79-1787 Filed 1-18-79; 8:45 am]

[7590-01-M]

[Docket No. 40-2991]

UNION CARBIDE CORP.

Availability of Draft Environmental Statement for Gas Hills, Wyoming, Uranium Mill

Notice is hereby given that a Draft Environmental Statement has been prepared by the Commission's Office of Nuclear Material Safety and Safeguards related to license renewal for the operation of the Union Carbide Gas Hills Uranium Mill located in Natrona County, Wyoming. The Draft Statement also covers a proposed uranium heap leaching project located

about 10 miles from the mill. The Draft Environmental Statement is available for inspection by the public in the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C. 20555. The Draft Statement is also being made available at the State Clearinghouse, State Planning Coordinator, Office of the Governor, Capitol Building, Cheyenne, Wyoming 82001. Requests for copies of the Draft Environmental Statement (identified as NUREG-0441) should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Division of Technical Information and Document Control.

The Applicant's Environmental Report, as supplemented, submitted by Union Carbide Corporation is also available for public inspection at the above-designated locations. Notice of availability of the Applicant's Environmental Report was published in the FEDERAL REGISTER on February 14, 1977 (42 FR 9069).

Interested persons may submit comments on the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Draft Environmental Statement (local agencies may obtain these documents upon request). Comments by Federal, State, and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. Comments are due by March 5, 1979. Upon consideration of comments submitted with respect to the Draft Environmental Statement, the Commission's staff will prepare a Final Environmental Statement, the availability of which will be published in the FEDERAL REGISTER.

Comments on the Draft Environmental Statement from interested persons of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Maryland, this 9th day of January, 1979.

For The Nuclear Regulatory Commission.

ROSS A. SCARANO,
Section Leader, Uranium Mill
Licensing Section, Fuel Processing and Fabrication
Branch, Division of Fuel Cycle
and Material Safety.

[FR Doc. 79-1551 Filed 1-18-79; 8:45 am]

[7590-01-M]

[Docket Nos. 50-280 and 50-281]

VIRGINIA ELECTRIC AND POWER CO.

Proposed Issuance of Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-32 and DPR-37 issued to Virginia Electric and Power Company (the Licensee), for operation of the Surry Power Station, Unit Nos. 1 and 2 located in Surry County, Virginia.

The amendments would revise the provision in the Technical specifications related to a reevaluation of the ECCS using an approved model as required by Order for Modification of License Dated April 7, 1978 for Unit 2 and Exemption dated June 30, 1978 for Unit 1. The ECCS evaluation includes an increase in the steam generator tube plugging levels from 25% to 28% in accordance with the licensee's application for amendment dated December 26, 1978.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By February 20, 1979, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of

the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend his petition, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission United States Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Section, or may be delivered to the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C. by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at (800) 325-6000 (in Missouri (800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to A. Schwencer: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this FEDERAL REGISTER notice). A copy of the petition should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board designated to rule on the petition and/or request, that the petitioner has made a substantial showing of good cause for the granting of a late petition and/or request. That determination will be based upon a balancing of the factors specified in 10 CFR § 2.714(a)(i)-(v) and § 2.714(d).

For further details with respect to this section, see the application for amendment dated December 26, 1978, which is available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., and at the Swem Public Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Bethesda, Maryland this 15th day of January, 1979.

For the Nuclear Regulatory Commission.

A. SCHWENCER,
Chief, Operating Reactors
Branch #1, Division of Operating Reactors.

[FR Doc. 79-1995 Filed 1-18-79; 8:45 am]

[7590-01-M]

ADVISORY COMMITTEE ON REACTOR SAFEGUARDS SUBCOMMITTEE ON ANTICIPATED TRANSIENTS WITHOUT SCRAM (ATWS)

Meeting

The ACRS Subcommittee on Anticipated Transients without Scram (ATWS) will hold an opening meeting on January 31, 1979, in Room 1046, 1717 H Street, N.W., Washington, DC 20555 to continue its discussion of Vol. 3, NUREG-0460, "Anticipated Transients without Scram for Light-Water Reactors."

In accordance with the procedures outlined in the FEDERAL REGISTER on October 4, 1978, (43 FR 45926), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The agenda for subject meeting shall be as follows: *Wednesday, January 31, 1979, 8:30 a.m. until the conclusion of business.*

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, various industries, and their consultants, pertinent to this review. The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether the project is ready for review by the full Committee.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the Designated Federal Employee for this meeting, Dr. Thomas G. McCreless, (telephone 202/634-3267) between 8:15 a.m. and 5:00 p.m., EST.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555.

Dated: January 9, 1979.

JOHN C. HOYLE,
Advisory Committee
Management Officer.

[FR Doc. 79-2256 Filed 1-18-79; 10:30 am]

[8010-01-M]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 10556; 812-43801]

CWC HOUSING INVESTMENT GROUP AND CONTINENTAL WINGATE CO., INC.

Filing of Application for Exemption From All
Provisions of the Act

JANUARY 12, 1979.

Notice is hereby given that CWC Housing Investment Group ("Group"), 20 Kilby Street, Boston, Massachusetts 02109, a Massachusetts limited partnership, and its general partner, Continental Wingate Company, Inc. ("General Partner") (collectively, "Applicants"), filed an application on October 20, 1978, and amendments thereto on November 17, 1978, December 29, 1978, and January 12, 1979, pursuant

to Section 6(c) of the Investment company Act of 1940 ("Act"), for an order exempting the Group from all provisions of the Act and rules thereunder. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicants state that the Group was formed under the Massachusetts Limited Partnership Act on June 28, 1978. The Group is designed to implement the policy of Title IX of the Housing and Urban Development Act of 1968 that private investors be provided a means and an incentive to acquire equity interests in, and thereby provide equity financing for, government-assisted rental housing projects for low and moderate income persons.

The Group will operate as a "two-tier" partnership, i.e., the Group, a limited partnership, will invest in other limited partnerships (hereinafter referred to as "operating partnerships") which, in turn, will be engaged in the development, rehabilitation, ownership and operation of housing for low and moderate income persons. The Group is organized as a limited partnership because a limited partnership is the only form of organization which provides investors with both (1) the ability to claim on their individual tax returns the deductions, losses, credits, and other tax items arising from the rehabilitation and operation of the real estate projects, and (2) liability limited to their capital investment.

One of the Group's primary objectives is to pass through to its limited partners net losses which may be used to offset other taxable income. Rehabilitated governmentally-assisted housing projects, according to Applicants, generally incur substantial net losses, for tax purposes, particularly in their early years.

Applicants state that the Group has filed and amended a registration statement under the Securities Act of 1933 covering the sale of 350 to 1,000 units ("Units"), each consisting of one limited partnership interest. These interests are to be sold only to qualified investors with a minimum subscription of one Unit costing \$5,000. The total capital of the Group, assuming all Units are sold, will be \$5,450,000 before deductions for organization expenses, sales commissions, and expenses of the offering. This amount includes \$75,000 from the initial Limited Partner, which is an affiliate of the General Partner, and \$5,375,000 from public investors. The Group will pay selling commissions of up to \$450 per Unit. The Group will have a minimum of \$1,497,500 and a maximum of \$4,796,000 available for investment

after deductions for sales commissions and offering expenses.

Applicants further state that sales of Units to the public are proposed to be effected through Shearson Hayden Stone Inc., Continental Wingate Capital Corporation ("CWCC"), and other registered broker-dealers. CWCC is a wholly owned subsidiary of the General Partner. No subscription for units will be accepted unless it is approved by the General Partner, which approval shall be conditioned upon representations as to suitability of the investment for each subscriber. Units will be offered and sold only to investors who represent, among other things, (1) that the Federal income tax bracket at which a substantial portion of losses from this investment will be applied is at least 50% (46% for corporations) and is expected to continue to be at such level for six years; (2) that they have a net worth of at least \$50,000 (exclusive of home, furnishings, and automobiles); and (3) that they are aware of the risks involved in investing in the Group. Each transferee of Units must, as a condition to being admitted to the Group as a substituted Limited Partner, represent that he meets the same suitability standards as those applicable to original investors.

Applicants state that the Group will be controlled by the General Partner pursuant to the partnership agreement. However, the partnership agreement provides that a majority in interest of the Limited Partners may dissolve the Partnership, amend the partnership agreement, and subject to (a) the receipt of an opinion of counsel that the Group will not (i) lose its status as a Limited Partnership under Massachusetts law or (ii) be treated for Federal income tax purposes as an association taxable as a corporation, and (b) the receipt of required government consents, remove the General Partner and/or elect substitute general partners. The opinion as to loss of status as a limited partnership under Massachusetts law will not be required to remove the General Partner for a material violation of the Group's partnership agreement. Also under the partnership agreement, each Limited Partner is entitled to review the records of the Group at reasonable times, including the register of the names, addresses, and number of Units owned by each other Limited Partner.

The Group's capital contributions to the operating partnerships will be made in stages and will be contingent, in each case, upon the occurrence of certain events, such as closing of construction, financing arrangements, completion of construction, receipts of certificates of occupancy, achievement of certain occupancy levels, and closing of permanent financing arrangements.

Because the Group will invest only in limited partnership interests, both the Group and the General Partner will have only limited control over the management of the operating partnerships. However, the general partners of each operating partnership are Gerald Schuster and A. Carleton Dukess, who, in turn, are directors, officers and principal shareholders of the General Partner. Each operating partnership agreement provides for (1) the right of the Group to approve or disapprove the sale or refinancing of its project (until January 1, 1999, the requirement for such consent will exist in all cases; after that date, such consent will not be required if the net proceeds will be sufficient to pay off all Partnership debt other than Mortgage Loans and to return the Group's capital contributions, less all prior cash distributions from cash flow or otherwise); and (2) upon the occurrence of certain events, the right to demand the resignation of the general partners.

Applicants state the General Partner and its affiliates will receive substantial reimbursements, fees and other compensation from the proceeds of the sale of the Units and from operations of the operating partnerships.

In addition, the General Partner will be entitled to receive 1% of the Group's profits, losses, and net cash receipts, and upon liquidation of the Group, 1% of the net proceeds available for distribution after return to the Limited Partners of their cash contributions to the Group plus a cumulative six percent annual return on such contributions minus any prior cash flow contributions. The general partners of the operating partnerships will be entitled to receive a 3% interest in the profits, losses, and net cash receipts from each operating partnership, and upon liquidation of any operating partnership, 14% of the net proceeds available for distribution after return to the Group of its capital contribution to such operating partnership plus a cumulative six percent annual return on such contributions, minus any prior cash distributions to the Group from such operating partnership's cash flow.

Applicants further state that in the initial period, the General Partner will be paid a builders and developers fee and will be reimbursed for costs not funded by project mortgage proceeds, building fees to general contractors, and anticipated GNMA discounts. Moreover, during the Group's operational period, affiliates of the General Partner will receive in consideration for their management services, a five year rent-up and additional management fee. The General Partner believes and represents that the reimbursements, compensation, fees and

expenses receivable by it and its affiliates from the Group and/or the operating partnerships in which the Group will invest are reasonable, fair, and do not involve overreaching, and are competitive from the point of view of the Group, the operating partnerships in which the Group will invest and investors in the Group.

The Group states that it will file with the Commission pursuant to Section 15(d) of the Securities Exchange Act of 1934 all required annual reports, quarterly reports, and current reports on Forms 10-K, 10-Q and 8-K, as well as any other reports required by such Act. The General Partner will also distribute to each Limited Partner within 75 days after the end of each fiscal year an annual report containing a balance sheet, statement of income, partner's equity, and changes in financial position for such fiscal year. Such annual report shall include a report of the Group's activities during the year and a cash flow statement setting forth distributions to Limited Partners and specifying the specific sources of such cash. Within 75 days of the close of each fiscal year, each Limited Partner also will be sent a schedule containing all information from the Group necessary for the preparation of his federal and state income tax returns.

The General Partner expressly recognizes that it has a fiduciary obligation to the Group and will act in accordance with such fiduciary obligation in publicly or privately offering and selling limited partnership interests in other limited partnerships which it may sponsor. The General Partner will also act in accordance with such fiduciary obligations to the Group in choosing which operating partnerships the Group will invest in, if it does not invest in all of the operating partnerships described in the Group's prospectus.

Applicants maintain that the Group is not an investment company as defined in the Act, but request that, in any event, the Group be exempted from all provisions of the Act pursuant to Section 6(c) thereof. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act and rule thereunder if, and to the extent that, such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants contend that the exemption of the Group from the provisions of the Act is both necessary and appropriate in the public interest. It is asserted that the form of organization of the Group, i.e., a limited partnership, which is necessary to limit the li-

ability of private investors investing in subsidized and low and moderate income housing, is incompatible with the regulatory framework of the Act. Applicants contend that to discourage the two-tier limited partnership arrangement by application of the Act would eliminate the primary means of attracting equity capital into government-assisted housing and would frustrate the national policy declared by Congress "to encourage the widest possible participation by private enterprise in the provision of housing for low and moderate income persons."

Applicants further state that the exemption would be consistent with the protection of investors and the purposes and policies of the Act. Sales of the Units will be restricted to specially qualified investors, who will be apprised of the management and operations of Group through reports sent to the Limited Partners and filed with the Commission and who must make representations as to income, net worth and present and projected income tax rate. With the exception of funds which the Group may hold in bank accounts or other interim investments, pending contribution to the capital of the operating partnerships, all of the proceeds of the sale of the Units will be invested in the operating partnerships. Such operating partnerships are specifically identified and described in the Group's registration statement under the Securities Act of 1933. Each such operating partnership is engaged in the development and construction of housing for low and moderate income tenants.

Applicants point out, in addition, that the Group's stated investment policies and objectives circumscribe the General Partner's discretion to invest the Group's assets. Likewise, the discretion of the general partners of the operating partnerships is limited by the governmental regulations to which each such entity is subject. The General Partner also represents that until the net proceeds of the offering by the Group have been invested or committed to investment, no partnership of the same objectives for which it acts as general partner will make a public offering of its securities. Finally the General Partner represents that all transactions between it and its affiliates, on one hand, and the Group and the operating partnerships, on the other hand (including the reimbursements, compensation, fees and expenses receivable in connection therewith), will be made only on terms that are reasonable and fair and consistent with the policies and purposes of the Group, do not involve any overreaching, and are no less favorable to the Group than those offered by others in the same vicinity.

Notice is further given that any interested person may, not later than February 5, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication, should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the rules and regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2013 Filed 1-18-79; 8:45 am]

[8010-01-M]

[Release No. 15490; SR-CBOE-78-23]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Order Approving Proposed Rule Change

JANUARY 11, 1979.

I. BACKGROUND

On June 28, 1978, the Chicago Board Options Exchange, Incorporated, LaSalle at Jackson, Chicago, Illinois 60604, (the "CBOE" or "Exchange") 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 (17 CFR 240.19b-4) thereunder, copies of a proposed rule change which would permit the CBOE to provide for the maintenance of limit order books by Exchange employees to be known as "order book officials" or "OBO's," rather than by CBOE members.¹ This

rule change proposal is intended by the CBOE to replace an earlier proposal which would have permitted CBOE members to continue to function as board brokers, but would have provided for the appointment of board brokers by a competitive bidding system, known as "bid-a-book."²

Under the competitive bidding proposal, an applicant would state the level of compensation for which he would be willing to act as a board broker in a particular class of options. That compensation would be received by the board broker from the CBOE which, in turn, would assess fees upon brokers using board broker services. The Commission approved the "bid-a-book" rule change on June 24, 1977,³ but noted that the rule was not self-executing and that its implementation would require the CBOE to submit additional rules delineating the specific terms governing board broker appointments and the precise level of fees to be charged by the CBOE for providing limit order book services.⁴

On April 4, 1978, the CBOE filed rule proposals with the Commission that were designed to implement the "bid-a-book" system, i.e., rules delineating the operating details of the proposed system, including how board broker assignments were to be award-

ed⁵ and a proposed fee schedule.⁶ At the request of the CBOE, however the Commission has taken no action on the "bid-a-book" implementation proposals because the CBOE, if the instant proposal is approved, will withdraw its "bid-a-book" implementation proposals.⁷ Accordingly, the only proposal which this order addresses is SR-CBOE-78-23, which proposes an OBO system for the maintenance of limit order books on the CBOE.

II. BOARD BROKER FUNCTIONS

The CBOE, since its inception in 1973, has used CBOE members, known as "board brokers,"⁸ to perform the functions associated with maintenance of the limit order book. Thus, the board broker acts as a central repository for the limit orders of public investors and executes those orders on the book if the current market renders them capable of execution. For each class of options⁹ there is one limit order book and one board broker ap-

¹File No. SR-CBOE-78-9 (filed April 4, 1978). Notice of the proposal was provided in Securities Exchange Act Release No. 14688 (April 20, 1978), 14 SEC Docket 834 (May 2, 1978) and the terms of substance were published in 43 FR 18374 (April 28, 1978).

²File No. SR-CBOE-78-10 (filed April 4, 1978). Notice of the proposal was provided by Securities Exchange Act Release No. 14687 (April 20, 1978), 14 SEC Docket 834 (May 2, 1978), and the terms of substance were published in 43 FR 18373 (April 28, 1978).

³Letter from Joseph W. Sullivan, President of the CBOE, to Kathryn B. McGrath, Associate Director, Division of Market Regulation (July 28, 1978) at 2 (File No. SR-CBOE-78-23). The CBOE also consented to an indefinite extension of the statutory time for the Commission's consideration of the bid-a-book implementation rules. See, Amendment No. 1 to File No. SR-CBOE-78-9, Form 19b-4A, Item 7, (filed July 28, 1978); and Amendment No. 1 to File No. SR-CBOE-78-10, Form 19b-4A, Item 7 (filed July 28, 1978).

⁴CBOE Rule 7.1 (CBOE Guide (CCH) Para. 2221, at 2111) defines a "board broker" as: "... an individual member, a nominee of a member organization or a member organization who or which is registered with the Exchange for the purposes of (i) acting as a 'broker's broker' for specified classes of options, at the post at which such classes of options are traded, by accepting and attempting to execute orders placed with him by other members, and (ii) monitoring the market for such classes of options at the post, all in accordance with the provisions of this Chapter."

CBOE Rule 7.1 also provides that a member organization that is doing business with the public in accordance with Chapter IX of the CBOE Rules, or any individual member or nominee employed by or otherwise associated with such a member organization, shall be ineligible to become associated as a board broker.

⁵A "class" consists of options of the same type (i.e., put or call) covering the same underlying security.

¹File No. SR-CBOE-78-23. Notice of the proposal was provided in Securities Exchange Act Release No. 15081 (August 21, 1978), 15 SEC Docket 682 (September 5, 1978), and the terms of substance were published in 43 FR 38651 (August 29, 1978).

²File No. SR-CBOE-77-6 (filed March 28, 1977). Notice of the proposal was provided in Securities Exchange Act Release No. 13434 (April 6, 1977), 11 SEC Docket 2195 (April 12, 1977), and by publication in 42 FR 20870 (April 22, 1977).

³Securities Exchange Act Release No. 13673 (June 24, 1977), 12 SEC Docket 1013 (July 12, 1977).

⁴*Id.*, 12 SEC Docket, note 1 at 1014. Prior to the Commission's order approving the "bid-a-book" rule change, CBOE board brokers sued the CBOE in Illinois state court seeking a declaratory judgment that the rule's implementation would deprive board brokers of certain rights under state law. (*Belenke et al v. Chicago Board Options Exchange, Inc.*, No. 77L 11428 (Cir. Ct. of Cook Co., Ill., filed June 15, 1977)).

On July 11, 1977, essentially the same board brokers filed a petition in the United States Court of Appeals for the Seventh Circuit for review of the Commission's June 24, 1977 approval order. (*Carey v. Securities and Exchange Commission*, Civil Action No. 77-1704 (C.A. 7, filed July 11, 1977)). The board brokers also requested the Commission to stay its "bid-a-book" approval order, pending judicial review. The Commission denied this request, in part, because the "bid-a-book" rule change was not self-executing and thus could not be implemented unless and until the CBOE filed additional rules with the Commission, ("Order Denying Stay," Securities Exchange Act Release No. 13869 (August 18, 1977), 12 SEC Docket 1530 (August 30, 1977)).

pointed by the Exchange to maintain the book.¹⁰ In performing these functions the board broker acts solely in an agency capacity and is prohibited from trading for his own account in those options in which he is registered as a board broker.¹¹ As a member, the board broker is also financially responsible for any errors which may result from his mishandling of agency orders entrusted to him.

Each appointed board broker oversees a trading station staffed by at least two clerical assistants and every two stations share the services of an assistant board broker.¹² Active stations employ additional clerks and assistant board brokers. Each of the 28 board brokers on the floor is exclusively assigned from one to five classes of options. The board broker also is responsible for controlling the trading crowd at his station and is further obligated to report any unusual activities or market conditions involving his assigned options classes.¹³

The board broker also must conduct "opening trading rotations", (i.e., a call market) in each series¹⁴ of his assigned options classes, during which certain orders accumulated since the previous close are executed and opening trading prices are established,¹⁵ and "closing trading rotations," during which closing prices are established at the end of each trading day.¹⁶ The

board broker also must conduct trading rotations when called upon to do so by a floor official during a "fast" market.¹⁷

All current board brokers have been appointed under CBOE rules which took into account board broker vacancies and the skill and experience of the applicants, as well as that of their prospective staffs. Board broker appointments may be terminated under CBOE Rule 7.3(b), after notice and opportunity for hearing, for "financial or operating difficulty," for the "protection of investors," or where it "would further the interests of the Exchange or its members in maintaining fair and orderly markets."¹⁸ Finally, a board broker is compensated directly by CBOE members for orders placed on a CBOE limit order book and executed by that board broker.¹⁹

III. SR-CBOE-78-23: THE CURRENT RULE CHANGE PROPOSAL

During April, 1978, when options trading on the CBOE and other options exchanges reached record volumes, the CBOE experienced difficulty in handling its order flow. In response to perceived competitive disadvantages stemming from these operational difficulties, the CBOE's Executive Committee reexamined the Exchange's board broker system. That Committee concluded that the existing board broker system is the CBOE's "greatest weakness" and that the only way the Exchange could maintain "optimum efficiency" and "timely control over the quality of service" would be to "implement an Order Book Official system . . . to perform the Board Broker functions."²⁰ Consequently, pursuant to a unanimous vote of its Board of Directors, the CBOE filed with the Commission the instant rule proposal that would authorize the Exchange to replace its board broker system with an OBO system.²¹

The CBOE has also filed, pursuant to Section 19(b)(3)(A) of the Act, two

additional rule proposals which relate to SR-CBOE-78-23. First, on December 4, 1978, the CBOE filed a proposal that would establish a schedule of exchange fees for limit orders executed on the CBOE floor by the Exchange's OBO's.²² The Proposal would establish a uniform fee schedule for all options orders handled by OBO's and would not differentiate among options series or classes in any manner.²³ These rates will not be implemented unless and until the Commission first approves the instant OBO proposal (SR-CBOE-78-23).²⁴

Second, on January 5, 1979, the CBOE filed a proposal which would amend its constitution by inclusion of an interpretation which clarifies that the article prohibiting employees and salaried officers from purchasing or selling options on the CBOE does not apply to employees or officers who do so in the performance of their duties and responsibilities as assigned by the CBOE.²⁵ This proposal, approved by a membership vote on January 8, 1978, was appropriately filed pursuant to Section 19(b)(3)(A) of the Act, and became effective, pursuant to that Section, upon receipt by the Commission of notice that such final Exchange action has been taken.²⁶

Under CBOE's proposal to convert to an OBO system, the functions now

²²File No. SR-CBOE-78-31. Notice of the proposal was provided in Securities Exchange Act Release No. 15429 (December 22, 1978), and the terms of substance were published in 44 FR 1808 (January 8, 1979).

²³The CBOE states that the basis for its uniform fee schedule is that "the schedules of charges it establishes from time to time will not provide a separate profit center for the Exchange, but will to the extent practicable, be designed to recover the Exchange's estimated costs in operating its OBO and Order Support Systems." File No. SR-CBOE-78-31, Form 19b-4A at 2-3.

²⁴This proposal, since it is a fee proposal appropriately filed under Section 19(b)(3)(A) of the Act, generally would be effective upon filing. As noted, however, the proposal is expressly conditioned on the Commission's approval of the OBO proposal and would become effective concurrently with that approval. Moreover, under Section 19(b)(3)(B) of the Act, the Commission may summarily abrogate the fee proposal at any time within 60 days of its filing with the Commission and require the proposal to be refiled and reviewed pursuant to the advance approval requirement of Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

²⁵File No. SR-CBOE-78-37. Notice of the proposal was provided in Securities Exchange Act Release No. 15482 (January 9, 1979).

²⁶See Amendment No. 1 to File No. SR-CBOE-78-37. As with proposed exchange fees, under Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C), the Commission has 60 days from the date an interpretation to an existing exchange rule has been filed to consider whether the interpretation should be abrogated and subjected to the advance approval procedures of Section 19(b)(2) of the Act (15 U.S.C. 78s(b)(2)).

¹⁰There is no hard copy "specialist's book" in the traditional sense. The book on the CBOE consists of: (a) the data on an electronic overhead screen (which displays the best bid and offer from the board broker's order file in each option series and the market size of those best bids and offers) and (b) the board broker's order file. See CBOE Rule 7.7, CBOE Guide (CCH) Para. 2227, at 2116. The screen also displays the best quotation in the trading crowd, which is transmitted to brokerage firms. See CBOE Reference Manual, 2d ed., March 1978, at 29.

¹¹CBOE reference Manual, 2d ed., March 1978, at 27. The policy against board brokers trading for their own accounts is based on the floor Procedure Committee's interpretation of CBOE Rule 7.50, CBOE Guide (CCH) Para. 2250, at 2118.

¹²Both board brokers and assistant board brokers must be members of the CBOE and registered on the CBOE as board brokers, but assistant board brokers (a) lack formal appointments by the Exchange to take charge of the book for specific classes of options at an assigned trading station and (b) are salaried employees of appointed board brokers.

¹³CBOE Rule 7.6, CBOE guide (CCH) Para. 2226, at 2116.

¹⁴A "series" consists of options of the same class having the same exercise price and expiration date.

¹⁵CBOE Rule 6.2 and 6.201, CBOE Guide (CCH) Para. 2132, at 2081.

¹⁶The practice of conducting "closing rotations" has been temporarily eliminated for four months from October 23, 1978, through February 28, 1979. For this period the Commission has authorized the CBOE and other options exchanges to extend their trading

hours until 4:10 p.m. (E.S.T.). See Securities Exchange Act Release No. 15241 (October 18, 1978), 15 SEC Docket 1319 (October 31, 1979).

¹⁷CBOE Rule 6.6(a,b), CBOE Guide (CCH) Para. 2136, at 2083.

¹⁸CBOE Guide (CCH) Para. 2223, at 2112-13.

¹⁹Prior to May 1, 1978, these intra-member rates were fixed by the CBOE. Since that date, Section 6(e) of the Act and Securities Exchange Act Rule 19b-1 (17 CFR 240.19b-1) have prohibited an exchange from fixing intra-member rates.

²⁰Letter from CBOE Executive Committee, by Edward F. Neild, III, Chairman, to CBOE Board of Directors (June 22, 1978), at 1. See File No. SR-CBOE-78-23, Exhibit 3.

²¹In proposing an OBO system, the CBOE also proposed in SR-CBOE-78-23 to rescind its authority to establish a competitive bidding system for the appointment of members as board brokers.

performed by board broker members would be performed by OBO's who, as salaried employees of the Exchange, would be subject to the direct supervision and control of the CBOE. The CBOE states that "[b]y changing to an OBO system, the Exchange will be able to exercise day to day personnel management control, will have the needed flexibility to reassign options classes and personnel as circumstances warrant and will have direct and timely control over the nature and quality of service provided to Exchange members and the public."²⁷

The CBOE stated in its filing that it intends to implement the OBO system at the "approximate rate of one post per month, commencing approximately thirty days following the effectiveness of this proposed rule change."²⁸ The Commission understands, however, that the CBOE may proceed more rapidly depending upon its ability to implement the transition with the least amount of disruption to its trading floor.²⁹ Further, to aid in the transition and provide the CBOE with the broadest supply of potential OBO employees, the proposal would permit the CBOE to hire members as OBO's. Any members of the Exchange who accept employment as OBO's would be allowed to retain their memberships but would be required to assume "inactive" membership status, thereby suspending the privileges of membership, including voting and trading privileges, as long as they serve as OBO's.³⁰

As noted above, board brokers are themselves currently liable for their errors in performing the board broker function. Under this proposal, the CBOE would assume limited liability to its members for errors or omissions by OBO's, their assistants or clerks. As to any single claim,³¹ the Exchange

would not be liable in excess of the larger of \$100,000 or the amount recovered under any applicable insurance. As to any number of single claims on a single trading day, the Exchange would not be liable to its members in excess of the larger of \$200,000 or the amount of recovery under any applicable insurance. If the number of single claims on a single trading day could not be fully satisfied because of the \$200,000 limitation on the Exchange's liability, then recovery of all such claims would be limited to a pro rata share of the \$200,000. The CBOE states that these limitations are in substance the same as those of the two other options exchanges having an OBO system, (see Midwest Stock Exchange (Art. XLVI, Rule 8) and Pacific Stock Exchange (Rule VI, Section 72)).³²

Further, the CBOE would not be liable to members for errors or omissions resulting from failures by a member to enter or cancel an order on a timely basis or clearly and accurately to communicate information material to the transaction.³³ Finally, the CBOE does not propose to limit its liability to non-members for claims arising from the negligence of its OBO's.

In explaining the basis and purpose of its proposed conversion to an OBO system, the CBOE states that its exercise of day-to-day managerial control will enable it "to meet the needs of member firms and their customers with optimum efficiency."³⁴ The

errors and omissions made by an OBO with respect to any single transaction. The term "transaction" is defined in paragraph (b)(1) of proposed CBOE Rule 7.11 to mean any order or instruction, or series of orders or instructions, which is placed with an OBO at substantially the same time by the same member and which relates to any one or more series of options of the same class.

²⁷MSE Guide (CCH) [2086, at 2174; PSE Guide (CCH) [4271, at 3107-22. OBO systems similar to that proposed by CBOE have been in place on the options floors of the Pacific Stock Exchange ("PSE") and Midwest Stock Exchange ("MSE") since those exchanges commenced options trading. The PSE and the MSE received express Commission authority to commence option trading using OBO systems on March 30, 1976, and December 8, 1976, respectively. Securities Exchange Act Release No. 12283, 9 SEC Docket 317 (April 13, 1976); Securities Exchange Act Release No. 13045, 11 SEC Docket 1120 (December 21, 1976).

²⁸Proposed CBOE Rule 7.11 also requires any claim against the Exchange for losses arising from errors or omissions of an OBO to be presented to the Exchange in writing not later than the next business day following the transaction giving rise to the claim. Where the error or omission results in an unmatched trade, the claim must be presented no later than the next business day after the unmatched trade has been closed out in accordance with CBOE Rule 10.1. Paragraph (b)(3) of CBOE Rule 7.11 provides for binding arbitration on all disputed claims.

²⁹File No. SR-CBOE-78-23, Form 19b-4A, at 53.

CBOE believes that the efficiencies achieved by implementation of this proposal will enhance the competitive position of the CBOE in relation to other market centers trading options and improve the overall services provided by the Exchange to its members and the public. Finally, the CBOE states that its proposal finds its statutory basis in, and is in accordance with, Section 6(b)(5) of the Act, which provides that the rules of an Exchange shall promote just and equitable principles of trade and protect investors and the public interest. The CBOE also states that this proposal would further the maintenance of a fair and orderly market and assure fair competition among markets in furtherance of the purposes of Section 11A(a)(1)(C) of the Act (15 U.S.C. 78k-1(a)(1)(C)).³⁵

IV. COMMENTS RECEIVED

The Commission received two comment letters concerning the CBOE proposal. On October 2, 1978, the Board Brokers Association ("BBA"), an organization representing certain CBOE board brokers, filed extensive written comments in opposition to the OBO proposal.³⁶ The comment letter incorporates by reference three prior BBA comment letters which were filed with the Commission in response to previous CBOE rule proposals which would have affected CBOE board brokers.³⁷ In addition, on November 29, 1978, the American Stock Exchange, Inc. (the "Amex") filed a comment letter concerning the fees which the

³⁵*Id.* at 60-61. In addition, the CBOE states that its proposed Interpretation .01 to Rule 2.22, which would permit the Exchange to charge fees for services provided by OBO's, is based upon Section 6(b)(4) of the Act, which permits an exchange's rules to provide for the equitable allocation of reasonable charges among its members. *Id.*

³⁶The BBA's October 2, 1978, comment letter is entitled "Statement of the Board Brokers Association, Chicago Board Options exchange, Incorporated, in opposition to proposed CBOE rules changes filed July 28, 1978," (i.e., File No. SR-CBOE-78-23) ("BBA October Comments"). The letter states (p.1) that the BBA represents 19 of the 53 CBOE board brokers.

An omission from the comment letter was corrected by the BBA by letter dated December 19, 1978. The BBA provided supplemental information concerning their comments by letter dated December 18, 1978, from David V. Kahn, Althelmer & Gray, counsel to the BBA, to Thomas Etter, Division of Market Regulation. See File No. SR-CBOE-78-23.

³⁷The letters incorporated by reference in the BBA October Comments (note *, p.10) are from the following files: File No. SR-CBOE-76-2 (April 12, 1976); File No. SR-CBOE-77-6 (May 13, 1977); File No. SR-CBOE-78-9 (April 4, 1978) and File No. SR-CBOE-78-10 (April 4, 1978).

²⁷File No. SR-CBOE-78-23, Form 19b-4A at 52. The CBOE notes in comparison that, "[u]nder a system of competitive bidding by member Board Brokers, the Exchange could only specify minimum staffing levels, could only terminate or suspend appointments for substandard performance, would be inhibited (by the need to renegotiate contracts) in its ability to relocate options classes on the trading floor in response to changing trading conditions and would not have direct control over the quality of services provided." *Id.*

²⁸*Id.* at 53.

²⁹The Commission understands that the CBOE intends to phase-in its OBO stations in simple geographic order starting from the trading posts at the south end of the trading floor and proceeding north. By this systematic procedure, the CBOE expects to avoid any further exercise of discretion as to the sequence by which current board brokers will be replaced.

³⁰See File No. SR-CBOE-78-23, letter from Scott L. Lager, CBOE's First Vice President and General Counsel, to Theodore W. Urban, Division of Market Regulation (November 27, 1978).

³¹The CBOE defines the term "single claim" to mean a claim arising out of all

CBOE might charge for OBO services.³⁸

In summary, the BBA asserts that the proposed rule changes "will profoundly alter the structure and operation of the CBOE floor in respects that have not been revealed by the CBOE in its filings and that are counterproductive to the interests of the public, CBOE and its members."³⁹ The BBA contends that the OBO proposal was submitted to the Commission without any member input or comment and that the proposal rejects the concept that trading on the CBOE floor should occur exclusively between members. The BBA states that the proposal is a repudiation by the CBOE of a basic recommendation of both the CBOE Task Force which initially recommended the bid-a-book system and the CBOE Board, both of which previously had declared that the concept of trading exclusively between members is vital to CBOE's well-being.

The BBA submits that it would be contrary to law for the Commission to permit an exchange, through its OBO employees or otherwise, to act as a broker. It notes that, under the OBO plan, the CBOE will have a direct economic interest in limit order trading. The BBA asserts that the OBO's are "members" within the meaning of that term as defined in the Act and that the proposed rule changes call for OBOs whose compensation is to be fixed by the Exchange and whose brokerage services are to be paid for by the charges to be fixed by the Exchange. The BBA believes that in light of these factors, the proposals should not be approved without proceedings which it contends are required under Section 6(e) of the Act (15 U.S.C. 78f(e)).

Further, the BBA contends that the proposals will impose burdens on competition not necessary or appropriate in furtherance of the purposes of the Act in contravention of the requirement of Section 6(b)(8) of the Act (15 U.S.C. 78f(b)(8)).⁴⁰ In its view, the CBOE submission demonstrates that the Exchange's proposed rules changes "are by no means supported by the bases nor do they serve the purposes set forth for them by CBOE."⁴¹ The BBA concludes that the CBOE proposals "therefore should not be approved—certainly not without proceedings for factfinding by the

Commission and oral presentations by all parties affected."⁴²

The comment letter by the Amex is concerned solely with the fees which the CBOE might charge for its OBO services. The Amex expresses concern that if the CBOE uses a fee schedule that permits fees to vary among trading stations, the CBOE would be in a position to trade below cost in any of its options that were also traded on rival exchanges and to subsidize such trading by profits generated from those options traded exclusively on the CBOE. The Amex contends that such differences in pricing for OBO services would be inconsistent with Section 6(b)(4) of the Act (15 U.S.C. 78f(b)(4)).

V. Discussion

For the reasons discussed below, the Commission finds that the proposed rule change of the CBOE to establish an OBO system is consistent with the requirements of the Act, in particular, Sections 6(b)(1),⁴³ 6(b)(5),⁴⁴ 11A(a)(1)(C)(i),⁴⁵ 11A(a)(1)(C)(ii),⁴⁶ and 19(g)(1),⁴⁷ and accordingly should be approved.

Section 6(b)(5) requires that the rules of an exchange be designed "to foster cooperation and coordination with persons engaged in . . . facilitating transactions in securities" and Section 11A(a)(1)(C)(i) expresses a Congressional finding that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . economically efficient execution of securities transactions." The CBOE proposal appears consonant with these statutory goals. Since trading volume and activity may differ greatly in different options traded on its floor, the CBOE has a strong interest in structuring its market in a way which will meet the demands of public investors and their brokers for prompt and efficient limit order book services. Thus, the CBOE states in support of its proposed rule change that:

"By changing to an OBO system, the Exchange will be able to exercise day to day personnel management control, will have the needed flexibility to reassign options classes and personnel as circumstances warrant and will have direct and timely control over the nature and quality of service provided to Exchange members and the public."⁴⁸

The Commission finds that the CBOE's proposal to assume responsibility for maintenance of the limit order book as an Exchange-offered

service should enable the Exchange to standardize further the operation of all limit order books, to deploy its employees efficiently from stations of light volume to stations of heavy volume in response to shifting market conditions and to hire additional staff to meet additional market demands.

Second, the Commission finds that the CBOE's proposal to use Exchange employees to oversee trading activities at different stations on the floor appears likely to enhance the CBOE's capacity to enforce compliance by its members and persons associated with its members with the requirements of the federal securities laws and the CBOE's own rules. The use of exchange employees rather than members in this capacity should enable the CBOE to control more effectively and directly its on-floor surveillance responsibilities. Moreover, because OBO's, as Exchange employees, are not dependent for their compensation upon brokerage commissions paid them by members, their independence as regulatory agents of the Exchange may thereby be strengthened. Accordingly, the CBOE proposal furthers the purposes of Sections 6(b)(1), 6(b)(5) and 19(g)(1) of the Act.⁴⁹

Finally, the Commission finds that the CBOE proposal may enhance competition between the CBOE and other options exchanges in options traded on more than one exchange and is thus consistent with Section 11A(a)(1)(C)(ii) of the Act.⁵⁰ In an OBO System, the CBOE may be able, through its standardization of operating procedures and the use of salaried employees, to incur lower costs in providing limit order book services than those currently incurred by board brokers in providing those services. In assessing fees for its limit order book services, the CBOE intends to use these anticipated cost savings to finance technological improvements in receiving, storing and executing limit orders through the CBOE's "Order

³⁸Section 6(b)(1) requires an exchange, as a condition of registration, to be "so organized and [have] the capacity . . . to enforce compliance by its members and persons associated with its members, with the provisions of [the Act], the rules and regulations thereunder and the rules of the exchange." Section 19(g)(1) makes this a continuing duty for an exchange after registration. Finally, Section 6(b)(5) requires that an exchange have rules designed "to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade . . . and, in general, to protect investors and the public interest."

³⁹Section 11A(a)(1)(C)(ii) states the Congressional finding that "it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . fair competition among brokers and dealers [and] among exchange markets" (emphasis supplied).

³⁸Letter from William J. Brodsky, Vice President, Trading and Markets, Amex, to Theodore W. Urban, Division of Market Regulation (November 29, 1978).

³⁹BBA October Comments, at 6.

⁴⁰The BBA also asserts that the CBOE proposal is deficient in certain other respects. See BBA October Comments at 52-56. While not reiterated here, these additional assertions have been considered fully by the Commission.

⁴¹*Id.* at 7.

⁴²*Id.*

⁴³15 U.S.C. 78f(b)(1).

⁴⁴15 U.S.C. 78f(b)(5).

⁴⁵15 U.S.C. 78k-1(a)(1)(C)(i).

⁴⁶15 U.S.C. 78k-1(a)(1)(C)(ii).

⁴⁷15 U.S.C. 78s(g)(1).

⁴⁸Exhibit 1 to Form 19b-4A, File No. SR-CBOE-1978-23, at 53.

Support System."⁵¹ In achieving cost reductions and by improving upon the prompt and efficient execution of customers' limit orders, the CBOE may thereby strengthen its ability to compete with other options exchanges in multiply-traded options.

The Commission has fully considered the adverse comments filed in this proceeding by the BBA,⁵² and has concluded that these comments provide no basis to preclude a finding that the CBOE's proposal is consistent with the requirements of the Act and rules and regulations thereunder.

At the outset, the Commission rejects the BBA's contention that a national securities exchange is prohibited under the Act from using employees to carry out the functions associated with maintenance of the limit order book. The CBOE proposal to establish an OBO system, of course, is not the first of its kind. The Commission has previously approved such systems for the options markets of two other national securities exchanges.⁵³ Indeed, the Commission has found consistent with the requirements of the Act the proposal of another exchange to use automated technology to maintain the limit order book and provide for the matching and execution of orders according to price and time priority.⁵⁴

Nothing in the Act prohibits the establishment of an OBO system by which the function of maintaining a limit order book is performed by exchange employees. Rather, the Act simply requires that an exchange be "so organized and [have] the capacity to be able to carry out the purposes of [the Act] and to comply, and * * * to enforce compliance by its members and persons associated with its members with the provisions of [the Act], the rules and regulations thereunder, and the rules of the exchange."⁵⁵ As

discussed above, the Commission finds that the CBOE's proposal meets this standard.⁵⁶

Further, the BBA's contention that the legislative history of the Act affords no support for an OBO system is simply erroneous. In explaining its grant to the Commission of broad regulatory authority over the activities of specialists, Congress, focusing upon the specialist's execution of orders in the limit order book, stated in 1934 that:

"There are many who believe that the exchange mechanism would function better without the specialist, that the work done by the specialist could be done more effectively by a clerk or official of the exchange clearing the orders in a purely mechanical way, much as they are cleared today on the New York Stock Exchange in the 'bond crowd'" (emphasis supplied).⁵⁷

As another alternative to the specialist system, Congress also discussed segregating the specialist's agency and dealer functions, and assigning those functions to different members on an exchange.⁵⁸ While Congress in adopting Section 11(b) of the Act did not require that exchanges replace their specialist systems with either an exchange-operated limit order book system or a segregated system,⁵⁹ Congress can hardly be said to have withheld from exchanges the authority to use employees to maintain the limit order book, particularly since Congress noted, without disapproval, use of that approach in the New York Stock Exchange's bond market.

The Commission also rejects the BBA's contention that the CBOE's OBO proposal will impose fixed commission rates in violation of Section 6(e) of the Act. That Section provides, in relevant part, that "no national securities exchange may impose any schedule or fix rates of commissions * * * or other fees to be

charged by its members," except where the Commission makes specified findings (emphasis supplied). Under the instant proposal, the fees for OBO services will be assessed by and paid to the Exchange itself, not CBOE's members.⁶⁰

The BBA strains the statutory definition of "member" in an attempt to characterize exchange employees as "members" under the Act, thereby invoking the prohibition of Section 6(e). Thus, the BBA cites Section 3(a)(3)(A) of the Act, 15 U.S.C. 78c(a)(3)(A), which defines a "member" of a national up securities exchange to include "any natural person permitted to effect transactions on the floor of the exchange without the services of another person acting as broker." But, under CBOE's proposal, the Exchange itself, not its employees, "effects transactions." OBO's are simply acting within the scope of their employment with the exchange, not in any proprietary capacity. In any event, definitions under Section 3(a) of the Act apply "unless the context otherwise requires." Accordingly, because the Exchange, and not its employees, will assume financial and operational responsibility for the OBO System, the Commission finds in this context that employees of an exchange hired as order book officials are not "members" of that exchange for purposes of the Act solely by reason of their employment as OBO's.

The BBA also contends that the CBOE proposal will compromise the self-regulatory capabilities of the Exchange because an OBO system must necessarily attract persons less qualified than current board brokers and because the CBOE, while required to oversee trading in its market, at the same time will be dependent upon trading volume to generate revenues to support the OBO System. The appropriate standard for measuring the proposal's consistency with the Act is not whether persons hired as OBO's may perhaps prove to be more or less qualified than current board brokers, but rather whether an exchange under an OBO system can effectively discharge its self-regulatory responsibilities under Section 6(b) of the Act. In approving the OBO proposals of other exchanges, the Commission found that an exchange can meet its statutory obligations under an OBO

⁵¹ See File No. SR-CBOE-78-31 (filed Dec. 4, 1978), note 22, *supra*.

⁵² Although comments have been received from the AMEX and the BBA on the OBO fee structure, the fees to be charged by the CBOE are included not in the instant proposal but in a separate rule change filing by the CBOE, File No. SR-CBOE-78-31 (see note 22, *supra*). The public comment period on the CBOE's proposed fee schedule extends until February 7, 1979. Thus, while the comments of the BBA and the AMEX on the fees to be assessed by the CBOE are not pertinent here, the Commission will consider them in determining whether to exercise its authority under Section 19(b)(3)(C) to abrogate the CBOE's filing made in SR-CBOE-78-31.

⁵³ See note 32, *supra*.

⁵⁴ See Securities Exchange Act Release No. 14674 (April 18, 1978), 14 SEC Docket 817 (May 2, 1978) (authorizing on a pilot basis the Cincinnati Stock Exchange "Multiple Dealer Trading System") and Securities Exchange Act Release No. 15413 (Dec. 15, 1978), 16 SEC Docket 511 (Jan. 2, 1979) (extension of Cincinnati Stock Exchange's pilot program).

⁵⁵ Section 6(b)(1) of the Act, 15 U.S.C. 78f(b)(1).

⁵⁶ Moreover, as discussed *supra*, the CBOE membership has approved an interpretation to the CBOE's constitution to make explicit the exchange's authority to use an OBO system.

⁵⁷ Report of the House Comm. on Interstate and Foreign Commerce to Accompany H.R. 9323, H.R. Report No. 1383, 73d Cong., 2d Sess. 14-15 (1934) ("House Report on H.R. 9323").

⁵⁸ House Report on H.R. 9323, *supra*, at 14.

⁵⁹ Section 11(b) of the Act, Pub. L. 73-291, § 11(b), 48 Stat. 891-92, as originally enacted provided, in relevant part: "When not in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of investors, the rules of a national securities exchange may permit * * * a member to be registered as a specialist. If under the rules and regulations of the Commission a specialist is permitted to act as a dealer, or is limited to acting as a dealer, such rules and regulations shall restrict his dealings so far as practicable to those reasonably necessary to permit him to maintain a fair and orderly market * * *."

⁶⁰ The prospect under an earlier proposed rule change that CBOE members who handled the limit order book might ultimately receive fees collected by the CBOE for limit order book services prompted the Commission to institute proceedings under Section 19(b)(2) of the Act to determine whether to disapprove the CBOE proposal. See Securities Exchange Act Release No. 12358 (April 22, 1976), 9 SEC Docket 479 (May 11, 1976). The CBOE subsequently withdrew that proposal.

System and the Commission perceives no basis to find otherwise here. Indeed, the CBOE proposal appears to enable the exchange to strengthen its regulatory program since persons with surveillance responsibilities will be subject to direct supervision and control by the Exchange. Moreover, the Commission retains broad and flexible authority under the act to take remedial action if it determines that the CBOE, after implementing its OBO system, is failing to carry out an effective surveillance and enforcement program for trading occurring on its floor.⁶¹

Similarly, the Commission finds no basis to conclude that the receipt by the CBOE of fees from members will lead, or is likely to lead, the CBOE to ineffective performance of its self-regulatory duties. Indeed, the CBOE is currently dependent upon trading volume as a source of operating revenues.⁶² This has not been shown, however, to have had any detrimental effect upon the CBOE's self-regulatory capabilities. In any event, as noted above, the Commission has authority to take effective remedial action if the CBOE, for any reason, fails to satisfy its self-regulatory obligations.

The Commission also finds unpersuasive assertions by the BBA that the OBO proposal "unfairly discriminates" against board broker members in violation of Section 6(b)(5) of the Act⁶³ and of the alleged "fiduciary obligation" owed by the CBOE to its members.⁶⁴ In denying the motion of the BBA for a stay of its order approving the CBOE's earlier competitive bidding proposal,⁶⁵ the Commission stated that:

"Unfair discrimination" *** is found where other groups similarly situated are accorded different treatment, without any rational basis (footnote omitted). The members of no group other than the board brokers, however, occupy a monopoly position on the CBOE floor."⁶⁶ (Emphasis supplied)

First, the CBOE proposal to change from a board broker system to an OBO system does have a rational

basis. As discussed above, the CBOE's adoption of an OBO system is an attempt by the Exchange, consistent with specific provisions of the Act, to increase the efficiency of its market in providing limit order book services to public customers, to strengthen the Exchange's on-floor surveillance capabilities, and to foster competition for public order flow between the CBOE and other options exchanges in options traded in more than one market.

Second, the Commission reiterates its earlier findings that board brokers, as a group, are distinctly dissimilar from other CBOE members. A board broker's exclusive operation of the limit order book in one or more options classes is reinforced by the CBOE's "public order priority" rule. That rule grants priority to non-boarder-dealer limit orders over the orders of others at the same price, but only if these public limit orders are placed with the board broker in the appropriate options class⁶⁷ and are not instead placed with a floor broker.⁶⁸ Moreover, as discussed above, the board broker is solely responsible for conducting opening and closing "rotations" in the options to which he is assigned and is entrusted with the unique responsibility of monitoring trading activities at his station.

In rejecting the claim of unfair discrimination, the Commission also notes that the CBOE memberships held by persons now acting as board brokers are not confined to the performance of any particular member function.⁶⁹ Accordingly, persons now acting as board brokers, like others currently acting as floor brokers, market makers or "upstairs" members, are eligible to engage in any membership function on the CBOE.⁷⁰ By adoption of an OBO system, the CBOE has simply restructured its market so that maintenance of the limit order book will now be an Exchange function, not a member function. And, if any member now acting as a board broker

does not wish to engage in any other function on or off the CBOE floor, he or she may choose to apply for an OBO position with the Exchange.

The Commission is, of course, mindful that elimination of the board broker function may have an adverse effect, however transitory, upon some members now acting as board brokers.⁷¹ Nonetheless, where an exchange's proposed rule change furthers valid statutory purposes, as the Commission has found the CBOE proposal to do, these collateral effects do not establish "unfair discrimination" under the Act. In measuring an exchange's proposed rule change against the requirements of the Act, the Commission must consider not only the interests of an exchange's own membership or a particular group of members, but must also take into account the public interest,⁷² the protection of investors,⁷³ the self-regulatory responsibilities of the exchange,⁷⁴ and the effect upon competition among exchange markets and between exchange markets and other markets.⁷⁵ In doing so, the Commission is mindful that a national securities exchange is not simply a private corporation or association existing solely, or even primarily, for the pecuniary gain of its members. Rather, exchanges are quasi-public organizations "affected with a public interest"⁷⁶ and, as self-regulatory organizations, are accorded governmental-type powers to carry out the purposes of the Act.⁷⁷ Thus, while finding unpersuasive the BBA's claim that the CBOE has breached a "fiduciary obligation" by treating board brokers unfairly, the Commission also believes that according undue weight to these claims would disrupt the careful balancing of different interests required by the federal statutory scheme.

Nor is the Commission persuaded that the CBOE's "phase-in" of the OBO System on a station-by-station basis determined by geographic location on the floor unfairly discriminates against those board brokers who are replaced in the early months of the phase-in period. A gradual transition to an OBO System appears calculated to ameliorate the potential for

⁶¹ See e.g., Sections 19(c), 19(h) and 21 of the Act, 15 U.S.C. 78s(c), (h) and 78u.

⁶² See CBOE Rule 2.21 (charge on net Commissions for transactions effected on the Exchange).

⁶³ Section 6(b)(5) of the Act requires, in part, that the rules of an exchange not be designed "to permit unfair discrimination between customers, issuers, brokers, or dealers." ***

⁶⁴ The BBA's assertions concerning CBOE's "fiduciary obligations" are set forth in their written comments on CBOE's earlier competitive bidding proposals. Those comments have been incorporated by reference by the BBA in its submission on the current CBOE proposal. See note 37, *supra*.

⁶⁵ See note 4, *supra*.

⁶⁶ See August Order, 12 SEC Docket at 1532.

⁶⁷ CBOE Rules 6.45 and 7.4, *CBOE Guide* (CCH) ¶12175, 2224. See August Order, *supra*, 12 SEC Docket at 1532-33, n.16.

⁶⁸ Unlike a board broker who is given sole control over the limit order book in his options class, a floor broker is not assigned any particular options class and, accordingly, must compete with other floor brokers on the CBOE for agency orders to be handled in the trading crowd.

⁶⁹ While most memberships on other exchanges are also unrestricted as to the functions in which a member may engage, there are exceptions. Thus, the Amex has offered a limited membership allowing a person to function only as a market maker (a "registered options trader") on the Amex options floor. See Amex Constitution, Art. IV, Sec. 1(b).

⁷⁰ Of course, all applicable financial and other standards must be met by any member who seeks to act in a particular capacity on the CBOE floor.

⁷¹ As members of the CBOE, however, current board brokers are eligible to engage in any recognized member function on the Exchange. See text accompanying note 70, *supra*.

⁷² Section 6(b)(5) of the Act.

⁷³ *Id.*

⁷⁴ Sections 6(b)(1) and 19(g)(1) of the Act.

⁷⁵ Section 11A(a)(9)(ii) of the Act.

⁷⁶ House Report on H.R. 9323, *supra*, at 15, cited in *Silver v. New York Stock Exchange*, 373 U.S. 341, 350 (1963).

⁷⁷ See Report of the Senate Comm on Banking, Housing and Urban Affairs to Accompany S. 249, Sen. Rep. No. 94-75, 94th Cong., 1st Sess. 29 (1975) (hereinafter "Senate Report").

temporary disruption to the trading floor and thus serves the purposes of the Act in promoting the efficiency of an exchange's operations.⁷⁸ Accordingly, the Commission finds that the CBOE has a rational basis for achieving a gradual transition to an OBO System so that displacement of some board brokers before others would not constitute "unfair" discrimination.

The BBA further contends that the CBOE proposal is inconsistent with Section 6(b)(8) of the Act which proscribes exchange rules that impose a burden on competition unless "necessary or appropriate in furtherance of the purposes of [the Act.]" In comparison to the current board broker structure, however, the Commission cannot find that the proposed OBO System imposes an inappropriate burden on competition. While different board brokers may operate on the CBOE floor in different options classes, only one board broker is appointed for each class of options. Thus the current environment does not foster competition among board brokers.

In earlier comments, the BBA, in reliance upon *United States v. E. I. duPont*, 351 U.S. 377 (1956), asserted that the services of board brokers and floor brokers are "interchangeable" and, thus, board brokers should not be deemed to have monopoly-type franchises in their exclusive options classes. First, the holding in *duPont* has no application to Commission proceedings under Section 19(b) to determine the consistency of an exchange's proposed rule change with the requirements of the Securities Exchange Act. In any event, assuming the relevance of *duPont*, the Commission finds that the services provided by floor brokers and CBOE board brokers are not "interchangeable". Public limit orders may gain priority over other orders at the same price only if they are placed with the board broker for execution; a limit order held by a floor broker in the trading crowd is ineligible for public order priority. Also, only the board broker conducts opening and closing rotations in his assigned options and is entrusted with overseeing the trading activities occurring at his station.

Moreover, the change to an OBO System has the potential of enhancing intermarket competition. By assuming direct control over the costs of providing limit order book services to public investors, the CBOE may be able to reduce those costs. In addition, the Commission notes that revenues collected by the CBOE will be used not only to pay employees and meet other operating expenses but will also be used to finance technological improve-

ments in providing limit order book services through the CBOE's automated "Order Support System" which is now being implemented.⁷⁹

The Commission believes that the CBOE proposal does not impose any burden upon competition not necessary or appropriate in furtherance of the purposes of the Act, but rather furthers the public policy goals of enhancing the potential for competition among markets as set forth under the Act. To the extent that centralization of limit order book services in the CBOE may impose any specific burden on competition, the Commission finds that any potential anti-competitive effect is outweighed by the CBOE proposal's furtherance of the purposes of the Act in fostering economically efficient executions of securities transactions, and by enhancing the regulatory capabilities of the CBOE to monitor and enforce compliance by its members with the Act, rules thereunder, and rules of the Exchange.

The BBA's assertion that the CBOE proposal cannot be approved without holding an evidentiary hearing is without merit. No evidentiary hearing is required under Section 19(b) of the Act. In connection with the initial filing of a proposed rule change under Section 19(b)(1), the Commission is required simply to publish notice and give interested persons an opportunity to submit written data, views, and arguments, an opportunity which the BBA has been provided. Section 19(b) provides that the Commission shall approve a proposed rule change if it makes the findings enumerated in that Section; upon making those findings, the Commission is to grant approval under Section 19(b)(2)(A) without further proceedings. On the other hand, if the Commission does not make such findings, it is required to initiate a proceeding pursuant to Section 19(b)(2)(B) of the Act to determine whether to disapprove a proposed rule change.⁸⁰

With respect to the CBOE's OBO proposal, the Commission is able to make the requisite findings, without initiating such further proceeding, on the basis of the CBOE's proposed rule change filing on Form 19b-4A, 17 CFR 249.19a; the submission of written data, views, and arguments; and the Commission's own expertise in overseeing the operation of the national securities exchanges.

In regard to Commission procedures to review proposed rule changes by self-regulatory organizations, the

Senate Report on S. 249 (the predecessor of the Securities Act Amendments of 1975) explained:

"Section 19(b)(2) would give the SEC sufficient flexibility to fashion a proceeding appropriate to the particular self-regulatory proposal being considered. In many, perhaps most, situations, notice and an opportunity for written comment would be sufficient and there would undoubtedly be few, if any, comments. In cases in which fundamental policy issues are involved, however, oral hearings or publicly announced conferences might be most appropriate."⁸¹

The Commission believes that no fundamental policy issues are posed by the CBOE's rule change. As noted, on two previous occasions the Commission has found that establishment of an OBO system is a valid exercise of an exchange's authority. The BBA has filed extensive written comments on this and previous CBOE rule proposals and the Commission has fully reviewed and considered them. The Commission believes that an oral or evidentiary hearing on the CBOE proposal will not appreciably further any purpose and, accordingly, denies BBA's request for such hearing.

Finally, the BBA contends that the fees to be charged by the CBOE for providing OBO services will be unreasonable and inequitably allocated among CBOE members, in violation of Section 6(b)(4) of the Act, 15 U.S.C. 78f(b)(4). The proposed rule change before the Commission, however, does not set forth any specific level or schedule of fees.⁸² The BBA takes the position, however, that any fees charged by the CBOE would violate Section 6(b)(4) because the CBOE would thereby be "appropriating" the income of board brokers. Thus, the BBA's argument is bottomed upon the premise that CBOE members who act as board brokers have some vested right or a reasonable expectation that they may continue to act in that capacity indefinitely, notwithstanding the CBOE's authority to amend its rules to improve its market in a manner consistent with the requirements of the Act. As the Commission stated in its August Order:

⁷⁸ Senate Report, *supra*, at 30.

⁸² The CBOE's fee schedule is the subject of a separate proposed rule change filing by the CBOE. See note 22, *supra*. In that filing, the CBOE states that "the Exchange may, in the event it should deem it advisable for competitive reasons, lower its charges for particular classes of options". The current fee filing, however, sets forth a uniform fee schedule applicable to all classes of options. Under Section 19(b)(3)(A) of the Act, the CBOE, if it seeks to change its fees in any respect, must file a subsequent proposed rule change with the Commission. Accordingly, the question whether the CBOE, consistent with Section 6(b)(4) of the Act, may prescribe different OBO fees for different classes of options need not be addressed here.

⁷⁹ See Sections 6(b)(5) and 11A(a)(1)(C)(i) of the Act.

⁸⁰ See File No. SR-CBOE-78-31 (filed Dec. 4, 1978), note 22, *supra*.

⁸¹ As explained above, the CBOE proposal does not constitute the imposition of fixed rates of commission to be charged by members. Accordingly, the hearing procedures outlined under Section 6(e)(4), 15 U.S.C. 78f(e)(4), of the Act are inapplicable here.

"[A]ny [vested] 'right' [of a board broker], if it exists, is acquired under, and remains subject to, the governing rules of [the CBOE], as they may be amended from time to time, insofar as those rules and amendments thereto are consistent with the Act and the rules and regulations promulgated thereunder."³³

The Commission notes that the BBA has not asserted any written contract in which the CBOE has agreed to refrain from proposing changes to its rules to alter the current board broker structure. And, as mentioned above, the memberships held by the board brokers have never been confined to the board broker function; persons who acquire CBOE memberships may perform any member function of the CBOE. Moreover, given the authority of exchanges as self-regulatory organizations under the Act, the Commission finds it unreasonable for an exchange member to expect that the *status quo* will not change in a manner which may affect his current economic interests. In accepting Exchange membership, and thereby subjecting themselves to the self-regulatory authority of the CBOE, board brokers must be deemed to have accepted the possibilities that have, in this case, come to pass.³⁴

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the above-referenced rule change be, and it hereby is, approved.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2012 Filed 1-18-79; 8:45 am]

[8010-01-M]

[File No. 1-7512]

MANHATTAN LIFE CORP.

Application To Withdraw from Listing and
Registration

JANUARY 15, 1979.

In the matter of The Manhattan Life Corporation, Common Stock, Par Value \$2.00.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the AMERICAN STOCK EXCHANGE, INC. ("Amex").

³³ See August Order, *supra*, 12 SEC Docket at 1531.

³⁴ Cf. *Allan v. Securities and Exchange Commission*, [Current] Fed. Sec. L. Rep. (CCH) 196,451, at p. 93,673 (7th Cir. 1978).

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of The Manhattan Life Corporation (the "Company") has been listed for trading on the Amex since March 31, 1975. On January 2, 1979, the stock was listed for trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith, such stock was suspended from trading on the Amex. In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant to maintaining a dual listing on both exchanges. The Company does not see any particular advantage in the dual trading of its stock and believes that dual listing would fragment the market for such stock.

The application relates solely to the withdrawal from listing and registration on the Amex and shall have no effect on the continued listing of such common stock on the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before February 16, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2015 Filed 1-18-79; 8:45 am]

[8010-01-M]

[Release No. 10557]

NATIONWIDE LIFE INSURANCE CO. AND MFS
VARIABLE ACCOUNT

Filing of Application

JANUARY 15, 1979.

Notice of filing of application pursuant to section 11 of the Act for an order approving certain offers of exchange and pursuant to section 6(c) of the Act for an order exempting proposed transactions from sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d), and Rule 22c-1.

Notice is hereby given that Nationwide Life Insurance Company ("Nationwide"), a stock life insurance company organized under the laws of the State of Ohio, and MFS Variable Account ("MFS"), One Nationwide Plaza, Columbus, OH 43216 (812-4378), a separate account of Nationwide registered under the Investment Company Act of 1940 ("Act") as a unit investment trust (collectively "Applicants"), filed an application on October 16, 1978, and an amendment thereto on December 11, 1978, pursuant to Section 11 of the Act for an order approving certain offers of exchange, and pursuant to Section 6(c) of the Act, for an order exempting from Sections 2(a)(32), 2(a)(35), 22(c), 26(a)(2)(C), 27(c)(1), 27(c)(2), 27(d), and Rule 22c-1 of the Act, to the extent necessary, a proposed change in the pricing of one of their existing variable annuity contracts. All interested persons are referred to the Application on file with the Commission for a statement of the representations contained therein, which are summarized below.

MFS, a separate account of Nationwide, was organized as a unit investment trust pursuant to a custodian agreement between Nationwide, as sponsor-depositor, and The State Street Bank and Trust Company ("State Street"), as custodian, and registered under the Act. MFS was established for the purpose of funding Individual Deferred Variable Annuity Contracts ("Contracts") issued by Nationwide. Presently Applicants assess an initial sales charge on the gross purchase payments under the Contracts. However, Applicants propose to implement a change in pricing of the Contracts. In lieu of the customary initial sales load, Applicants propose to assess a contingent deferred sales charge ("Contingent Charge").

Under the proposed Contracts a purchaser may make a single purchase payment, an irregular series of periodic purchase payments, or a regular series of periodic purchase payments. The amount and frequency of purchase payments is discretionary with the purchaser, and no requirements are imposed except for minimum amounts of the initial purchase payments (\$1,500 for non-tax-qualified contracts and \$300 on an annualized basis for the first contract year for contracts funding tax-qualified pension or profit-sharing plans). The purchaser may allocate all or a portion of each purchase payment among one or more of eight sub-accounts of the MFS, each of which invests in the shares of one of eight mutual funds managed by Massachusetts Financial Services Company, or to the general account of Nationwide. The Contracts provide for the accumulation of such purchase payments with any accrued

earnings until the annuity commencement date selected by the purchaser, at which time annuity payments begin as designated by the contract owner.

Under the proposed Contracts the contract owner may, at any time prior to the annuity commencement date, withdraw some or all of the accumulated contract value. However, Applicants would assess a Contingent Charge, which would be applied in the case of certain withdrawals by a contract owner from the contract value. The Contingent Charge would equal 5% of the lesser of: (1) all purchase payments received during the 96 months immediately prior to the valuation period during which the surrender is requested; or (2) the amount surrendered. The cumulative sum of all such charges, per contract owner, would never exceed 5% of that owner's purchase payments received during the 96 months immediately prior to the valuation period during which the surrender is requested.

An exception to the assessment of a Contingent Charge would permit certain surrenders without the imposition of a sales charge. This exception would apply to redemptions after the end of the second contract year. Under the exception, a contract owner would be able to redeem up to 10% of purchase payments made within 96 months immediately prior to the valuation period during which the redemption is requested without imposition of the Contingent Charge.

When a redemption is requested to effect a cash withdrawal prior to the annuity commencement date, State Street would surrender to the depositor cash equal to the amount of the cash withdrawal requested by the contract owner, plus the applicable Contingent Charge. The requested cash withdrawal would then be remitted to the contract owner. The Contingent Charge would be paid by State Street to Nationwide to reimburse it for the expenses incurred in connection with the sale of the Contracts. These expenses include commissions, promotional costs, sales administration, and similar sales related expenses.

Other charges which would be assessed by Nationwide under the Contracts include an annual contract maintenance charge of \$30 per Contract and an asset charge equal, on an annual basis, to 1.3% of the daily net asset value of the assets of the MFS. The asset charge is composed of a mortality risk premium, equal to approximately .8%, and an expense risk charge, equal to approximately .5%. Applicants state that these charges are calculated to reimburse Nationwide for costs related to administration of the Contracts and the assumption of mortality and expense risks.

Applicants submit that the proposed pricing change in the Contracts is consistent with all provisions of the Act and that no exemptive relief is required in order to implement the transaction. However, to avoid any possibility that questions may be raised as to the potential applicability of various definitional and regulatory sections of the Act, Applicants have requested an order of the Commission exempting the proposed transaction, to the extent necessary, from the provisions of the Act detailed below.

SECTION 2(a)(35)

Section 2(a)(35) of the Act defines "sales load" as the difference between the price of a security to the public and that portion of the proceeds from its sale which is received and invested or held for investment by the issuer, less and portion of such difference deducted for trustee's or custodian's fees, insurance premiums, issue taxes or administrative expenses or fees which are not properly chargeable to sales or promotional activities. Applicants assert that the proposed Contingent Charge is consistent with the intent of the definition of "sales load" contained in the Act. While eliminating the usual initial sales load deduction from purchase payments Nationwide would continue to incur expenses related to the sale of the Contracts, including commissions paid to sales personnel and the costs of promotion and sales administration. The Contingent Charge would be retained by Nationwide to reimburse it solely for expenses related to the sale of the Contracts, which Applicants maintain is within the Section 2(a)(35) definition of sales load, but for the timing of the imposition of the charge. Applicants assert that the deferral of the sales charge, and its contingency upon the occurrence of an event which might not occur, does not change the basic nature of this charge, which is in every other respect a sales charge. However, Applicants have requested an exemption from the provisions of Section 2(a)(35), to the extent necessary, to implement their proposed change in the pricing of the Contracts.

SECTIONS 27(c)(2) AND 26(a)(2)(C)

Section 27(c)(2) of the Act, in pertinent part, makes it unlawful to sell any periodic payment plan certificate unless the proceeds of all payments on such certificates are deposited with a custodian having the qualifications described in Section 26(a)(1), and are held by such custodian under an agreement containing substantially the provisions required in Sections 26(a)(2) and (3) of the Act. Section 26(a)(2)(C) provides essentially that no payment to the depositor of, or a principal underwriter for, a registered

unit investment trust shall be allowed the trustee or the custodian as an expense except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping and other administrative duties normally performed by the custodian.

Applicants assert that the proposed Contingent Charge is not the typical kind of expense contemplated by Section 26(a)(2). Applicants submit that Section 26 of the Act was enacted to deal with certain abuses by requiring the trust instrument of a unit investment trust to: (1) designate as trustee or custodian a bank of a specified minimum size; (2) require that all funds and property of the trust be held by a trustee; and (3) provide that the trustee is entitled to reimburse itself out of the trust property for its expenses incurred and fees actually earned. Applicants submit that these requirements were not intended to preclude the depositor of a unit investment trust from taking a sales load. They assert that the Contingent Charge is intended specifically and solely to reimburse Applicants for sales related expenses. Applicants maintain that the deferral of the imposition of this charge, and making it contingent upon an event which may never occur, do not change the basic nature of this charge as a sales charge to which Section 26(a)(2)(C) was not intended to apply. Furthermore, Applicants contend that Section 27(c)(2) excepts deductions for sales load from the requirement that the proceeds be deposited with a custodian. Applicants assert that the Contingent Charge is a sales load to which this exception should apply, and that deferring the imposition of the charge and making it contingent upon an event which might never occur should in no way be construed as violative of Section 27(c)(2). However, Applicants have requested an exemption from the provisions of Sections 27(c)(2) and 26(a)(2)(C), to the extent necessary, to implement their proposed change in the pricing of the Contracts.

Applicants have consented that the foregoing requested exemption may be made subject to the following conditions: (1) that the deductions under the Contract for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe and the Commission may reserve jurisdiction for such purpose; and (2) that the payment of sums and charges out of the assets of MFS shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants consent to this condition shall not be determined to be a concession to the Commission of authority to regulate the payment of

sums and charges out of such assets, other than the charges for administrative services, and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payment of such other sums and charges.

SECTION 2(a)(32) AND 27(d)

Section 2(a)(32) of the Act, in pertinent part, defines "redeemable security" as any security under the terms of which the holder, upon its presentation to the issuer, is entitled to receive approximately his proportionate share of the issuer's current net assets, or the cash equivalent thereof. Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain initial sales charges. Applicants submit that the imposition of the Contingent Charge does not violate Section 2(a)(32) or Section 27(d). Applicants assert that Sections 2(a)(32) and 27(d) both contemplate the assessment of an initial sales load. However, Applicants assert that, with a Contingent Charge, the net amount invested is the gross purchase payments. Thus, the owner's proportionate share or account value would be the gross purchase payments, plus or minus any increase or decrease in value, less the Contingent Charge. Applicants assert that deferring the imposition of the sales charge in no way restricts the contract owner from receiving his proportionate share or the value of his account on redemption. Rather, Applicants maintain that the Contingent Charge will merely be deducted at the time of redemption in determining that proportionate share, instead of being deducted from purchase payments. Applicants contend that the Contingent Charge merely defers the timing of the imposition of the sales charge and makes the charge contingent upon an event which might never occur. Applicants submit that this method of assessing sales charges permits the purchaser's net amount invested to be increased, thus providing a benefit to the purchaser. However, Applicants have requested an exemption from the provisions of Section 2(a)(32) and 27(d), to the extent necessary, to implement their proposed change in the pricing of the Contracts.

SECTION 27(c)(1)

Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company, to sell any such certifi-

cate unless such certificate is a redeemable security. Applicants submit that the assessment of a Contingent Charge upon certain redemptions, which is fully disclosed in the prospectus, should not be construed as such a restriction on redemption. Applicants assert that the Contracts are still redeemable securities, whether the sales charge is imposed against the purchase payment at the time of purchase, or whether such charge is deferred and made contingent upon an occurrence at a later instant during the contract period. Applicants assert that this is particularly true where the deferral of the Contingent Charge until a redemption is effected has the general effect of increasing the contract value that is available for redemption, as compared with the contract value that would be available for redemption were the sales charge deducted from the purchase payment before investment on behalf of the owner. However, Applicants have requested an exemption from the provisions of Section 27(c)(1), to the extent necessary, to implement their proposed change in the pricing of the Contracts.

Applicants further assert that the proposed transfers involve only a change in the Contracts' underlying accumulation units, which are merely accounting units of measure to quantify contract value, and, thus, do not involve an exchange of a unit investment trust security for the security of any other investment company. However, to avoid any questions that might be raised as to the applicability of Section 11, Applicants are requesting an Order pursuant to Section 11, to the extent necessary, to permit the proposed offer of transfer rights described above.

SECTION 6(c)

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any person, security, or transaction, or any class or classes of persons, securities or transactions from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Notice is further given that any interested person may, not later than February 9, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing

thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicants at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following February 9, 1979, unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

(FR Doc. 79-2016 Filed 1-18-79; 8:45 am)

[8010-01-M]

[Rel. No. 10558]

NATIONAL LIQUID RESERVES, INC.

Filing of Application

JANUARY 15, 1979.

Notice of filing of application pursuant to section 6(c) of the Act for an order of exemption from rules 2a-4 and 22c-1 thereunder.

Notice is hereby given that National Liquid Reserves, Inc. ("Applicant"), 605 Third Avenue, New York, New York 10016, (812-4402), a no-load, open-end diversified management investment company registered under the Investment Company Act of 1940 ("Act"), filed an application on December 8, 1978, and an amendment thereto on January 4, 1979, pursuant to Section 6(c) of the Act for an order of the Commission exempting Applicant from the provisions of Rules 2a-4 and 22c-1 thereunder to the extent necessary to permit Applicant to calculate its price per share for the purposes of sales and redemptions of its shares, to the nearest one cent on a share value of one dollar. In all other respects, portfolio securities held by the Company will be valued in accordance with the views set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of representations contained therein, which are summarized below. Applicant states that it is a money market fund designed as an investment vehicle for institutional and

individual investors who seek liquidity for their investment. The application states that its portfolio is invested primarily in short-term marketable obligations issued or guaranteed as to principal and interest by the U.S. Government (or its agencies or instrumentalities), obligations of U.S. banks, commercial paper, and short-term corporate obligations. Application asserts that since its inception in 1974 and in keeping with its policies, its portfolio has been invested largely in certificates of deposit of domestic banks, which are members of the Federal Reserve System and which have capital, surplus, and undivided profits in excess of \$100,000,000, and commercial paper rated A-1 by Standard & Poor's Corporation or Prime-1 by Moody's Investor Services, Inc.

Applicant states that it does not presently have nor does it intend to have investments in instruments having a remaining maturity of greater than one year. Applicant states that it values its portfolio at market and asserts that because of the short maturities of its portfolio, its net asset value per share has varied between \$9.96 and \$10.02 from its inception on May 28, 1974. Applicant states that its Board of Directors has authorized, subject to shareholder approval, a split-up of Applicant's common stock approximately 10 for 1 through a stock dividend of approximately 9 shares for each share outstanding, so that after the split-up, each new share will have a net asset value of \$1.00. Applicant asserts that it expects that as a result of rounding the net asset value per share to the nearest \$.01 on a \$1.00 price, Applicant's price per share for the purpose of sales and redemptions will remain at \$1.00.

Applicant states that its Board of Directors believes that this split and consequent \$1.00 price per share will benefit Applicant and its shareholders. Applicant, designed as an investment vehicle for institutional and individual investors who seek liquidity for their investment, has as its investment objectives maximum current income and preservation of capital. Applicant's investors, the Applicant asserts, want the daily income dividends declared by the Applicant to reflect income as earned, and the sales and redemption price not to change. Applicant represents that its Board of Directors has therefore reached the conclusion that stability of capital and a steady flow of investment income would be of benefit to existing shareholders and a helpful tool in attracting potential investors to Applicant. Applicant asserts that its shareholders would have the convenience of being able to determine the value of their holdings simply by knowing the number of shares they own. Also, the task of maintaining an

investment record would be made easier for Applicant's shareholders. Applicant also states that this change is expected to avoid the periodic changes in Applicant's net asset value per share as a result of which investors have realized nominal capital gains and losses upon redemption.

Rule 22c-1 adopted under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. In IC-9786 the Commission issued an interpretation of Rule 22c-1 expressing its view that Rule 22c-1 which would require a fund using a "floating" net asset value to maintain an accuracy in computing its price of one percent (equivalent to the nearest one cent on a net asset value of \$10.00). Rule 2a-4 adopted under the Act provides, as here relevant, that the "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to current market value for portfolio securities with respect to which market quotations are readily available and for other securities and assets fair value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission issued an interpretation of Rule 2a-4 expressing its view that it was inconsistent with Rule 2a-4 for certain money market funds to "round off" calculations of their net asset value per share to the nearest one cent on a share value of \$1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security or transaction or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant submits that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant asserts that a substantial number of money market funds now offer the

public a \$1.00 price for their shares. Applicant represents that, to the extent necessary, the Applicant's Board of Directors will consider the advisability of temporarily suspending payment of dividends, or making a capital gains or other distribution, to maintain a \$1.00 price per share, if the net asset value per share declines to a value below \$.997 or rises to a value of above \$1.003, respectively. Applicant states that in order to attempt to assure the stability of Applicant's price it will also adhere to the following conditions:

1. Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertakes—as a particular responsibility within its overall duty of care owed to the shareholders of Applicant—to assure to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objectives, that Applicant's price per share as computed for the purpose of sales and redemptions, rounded to the nearest cent, will not deviate from one dollar.

2. Applicant will maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share. Applicant will not purchase a portfolio security with a remaining maturity of greater than one year, nor will it maintain a dollar-weighted average portfolio maturity in excess of 120 days. Applicant states that, in addition, in the future to help maintain a \$1.00 net asset value, the Board of Directors has resolved that unless particular circumstances dictate otherwise, portfolio securities having maturities of 60 days or less when purchased shall be valued at cost adjusted for amortization of premiums and accretion of discounts and that securities originally purchased with maturities in excess of 60 days should be valued beginning on the 60th day prior to maturity using market quotations on the 61st day prior to maturity with unrealized appreciation or depreciation of the 61st day, if any, amortized to maturity.

3. Applicant will invest in a portfolio of money market instruments consisting of U.S. Government obligations issued or guaranteed as to principal and interest by the U.S. Government or its agencies or instrumentalities (whether or not subject to repurchase agreements), U.S. bank obligations, high grade commercial paper, and short-term corporate obligations. Investments in U.S. bank obligations (including certificates of deposits, letters of credit, and bankers' acceptances) will be limited to domestic banks and their foreign branches provided such

domestic banks are members of the Federal Reserve System and have capital, surplus, and undivided profits (as published in their most recently published financial statements prior to the date of the investment) in excess of \$100,000,000. The commercial paper purchased by Applicant will be (i) rated A-1 by Standard & Poor's or Prime-1 by Moody's Investor Services, Inc., or (ii) issued by companies which at the time of purchase have an outstanding debt issue rated AA or better by Standard & Poor's or Aa or better by Moody's. The short-term obligations of corporations purchased by Applicant will be rated when purchased, AA or better by Standard & Poor's or Aa or better by Moody's.

Notice is further given that any interested person may, not later than February 7, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2017 Filed 1-18-79; 8:45 am]

[8010-01-M]

[Rel. No. 10560]

PILGRIM FORMULA SHARES, INC.

Filing of Application

JANUARY 15, 1979.

Notice of filing of application pursuant to section 8(f) of the Act for an

order declaring that company has ceased to be an investment company

Notice is hereby given that Pilgrim Formula Shares, Inc. ("PFS"), 185 Cross Street, Fort Lee, New Jersey 07024, registered under the Investment Company Act 1940 ("Act") as a diversified, open-end, management investment company, filed an application on November 13, 1978, for an order of the Commission, pursuant to Section 8(f) of the Act, declaring that PFS has ceased to be an investment company as defined in the Act. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

The application states that PFS was incorporated under the laws of the State of Maryland on July 13, 1973, and that it has been registered under the Act since 1973. Pursuant to a Plan and Agreement of Reorganization dated July 12, 1978 between PFS and Pilgrim Fund Inc. ("Pilgrim"), substantially all of the net assets of PFS were transferred to Pilgrim in exchange for shares of capital stock of Pilgrim, which shares were then distributed to the shareholders of PFS on a prorata basis pursuant to a Plan of Liquidation and Dissolution. The effective date of said transactions pursuant to the Plan and Agreement of Reorganization was October 31, 1978, and as of November 7, 1978, PFS had cash assets of less than \$3,000, which amount was maintained as a reserve to pay accrued expenses and expenses to be incurred in the final liquidation and dissolution of PFS.

The Board of Directors of PFS, on October 26, 1978, authorized PFS to file an application pursuant to Section 8(f) of the Act, inasmuch as PFS does not have any current operations and has no plans or intentions to continue as either an investment company or a corporation, and further authorized PFS to file for dissolution under Maryland law.

Section 8(f) of the Act provides, in pertinent part, that when the Commission, upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and that, upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is further given that any interested person may, not later than February 9, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing

thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant(s) at the address(es) stated above. Proof of such service (by affidavit, or in case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0-5 of the Rules and Regulations promulgated under the Act, an order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2018 Filed 1-18-79; 8:45 am]

RLC CORP.

Application To Withdraw From Listing and Registration

[File No. 1-5728]

JANUARY 15, 1979.

In the matter of RLC Corp., Common Stock, Par Value \$1.

The above named issuer has filed an application with the Securities and Exchange Commission, pursuant to Section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the specified security from listing and registration on the AMERICAN STOCK EXCHANGE, INC. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The common stock of RLC CORP. (the "Company") has been listed for trading on the Amex since October 1, 1968. On February 21, 1978, the stock was also listed for trading on the New York Stock Exchange, Inc. ("NYSE") and concurrently therewith, such stock was suspended from trading on the Amex. In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant to maintaining a dual listing on both exchanges. The Company does not see any particular advantage in the dual listing of its stock and believes that dual listing would fragment the market for such stock.

The application relates solely to the withdrawal from listing and registration on the Amex and shall have no effect on the continued listing of such common stock of the NYSE. The Amex has posed no objection in this matter.

Any interested person may, on or before February 16, 1979, submit by letter to the Secretary of the Securities and Exchange Commission, Washington, D.C. 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchange and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission will, on the basis of the application and any other information submitted to it, issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2019 Filed 1-18-79; 8:45 am]

[8010-01-M]

Release No. 34-15491/File No. SR-Amex-78-29]

AMERICAN STOCK EXCHANGE, INC.

Self-Regulatory Organization

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"), 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 28, 1978 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Board of Governors of the American Stock Exchange has approved the rescission of Rule 929 which prohibits member firms from carrying options accounts for Exchange employees.

(Brackets indicate deletions; italics indicate new material)

Accounts of Exchange Employees

Rule 929. No member or member organization shall approve for options trading any account in which an employee of the Exchange or of any corporation in which the Exchange owns the majority of the capital stock, is directly or indirectly interested.]

Exchange's Statement of Basis and Purpose

At present, Exchange policy prohibits its employees from effecting certain securities transactions, including transactions in any option, whether or not listed on the Amex. Rule 929 prohibits member firms from carrying options accounts for Exchange employees. The basic purpose of the Exchange's policy is to avoid conflicts of interest and the misuse of non-public information. However, there is no risk that Amex employees will misuse non-public information obtained in the performance of their duties in transactions in options where neither the option nor its underlying security is listed on the Amex. Therefore, the Exchange has modified its policy to permit its employees to effect options transactions where neither the option nor the underlying security is traded on the Amex.* Rule 929 has been rescinded to accommodate this change in policy.

The rescission of Rule 929 relates to the administration of the Exchange, and is consistent with Section 6(b)(1) of the Act.

Comments Received From Members, participants, or Others on Proposed Rule Change

No comments were solicited or received with respect to the proposed rule change.

Burden on Competition

The Amex has determined that no burden on competition will be imposed by the proposed rule change.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L

*All other options exchanges permit their employees to effect such options transactions.

Street, N.W. Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 21 days of the date of this filing.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

GEORGE A. FITZSIMMONS,
Secretary.

JANUARY 12, 1979.

[FR Doc. 79-2020 Filed 1-18-79; 8:45 am]

[8010-01-M]

[Release No. 34-15492 File No. SR-CBOE-1978-35]

CHICAGO BOARD OPTIONS EXCHANGE, INC.

Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 22, 1978 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

(Brackets indicate deletions; italics indicate new material)

FINANCIAL REPORTS

Rule 15.5 No change.

Interpretations and Policies

.01 Each member shall file with the Exchange a report of financial condition on SEC Form X-17A-5 as required by Securities and Exchange Commission Rule 17a-10. Any member who fails to file in a timely manner such report of financial condition pursuant to SEC Rule 17a-10 shall be subject to late filing charges as follows:

Days late and amount

01-30.....	\$100
31-60.....	\$200
61-90.....	\$400

Repeated or aggravated failure to file in a timely manner a report of financial condition on Form X-17A-5 will be referred to the Business Conduct Committee. A failure to file such financial report of more than 90 days will be referred to the Business Conduct Committee.

EXCHANGE'S STATEMENT OF BASIS AND PURPOSE

The purpose of the proposed rule change is to make explicit in the CBOE Rules the obligation of Exchange members subject to Rule 17a-10 filing requirements to file in a timely manner reports of financial condition on Form X-17A-5 and to establish a schedule of late filing charges to encourage prompt compliance with such filing requirement. It is believed that these late filing charges will serve to communicate to the membership the necessity of prompt compliance and eliminate the necessity for more formal disciplinary action; however formal disciplinary action remains an available alternative, especially in case of aggravated or repeated failures to file required financial reports in a timely manner. The proposed late filing charge would also serve to defray the cost to the CBOE of dealing with members who have been delinquent in their filings.

The basis under the Act for the proposed rule interpretation is Section 6(b)(5) of the Securities Exchange Act which requires that the Exchange's rules be designed to promote just and equitable principles of trade and to protect investors and the public interest.

Comments have not been solicited or received respecting this proposed rule interpretation.

The Exchange does not believe the proposed rule interpretation will impose any burden on competition.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and

should be submitted within 21 days of the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 12, 1979.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2021 Filed 1-18-79; 8:45 am]

[8010-01-M]

[Release No. 34-15495; File No. SR-CBOE-78-34]

CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED

Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 18 (June 4, 1975) (the "Act"), notice is hereby given that on December 20, 1978 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

INTRODUCTORY STATEMENT OF THE CHICAGO BOARD OPTIONS EXCHANGE, INC.

The Chicago Board Options Exchange, Incorporated ("CBOE") and the Midwest Stock Exchange, Incorporated ("Midwest") have entered into an agreement dated August 15, 1978 (the "Agreement"), to combine the options market of the two exchanges. (A copy of the Agreement has been filed as an exhibit to the form 19b-4A.) The Agreement contemplates the possibility that the transaction might occur in two stages: first, a relocation of Midwest's options market so as to be physically adjacent to CBOE's trading floor (the "Relocation"); and second, a full combination of the two options markets such that Midwest ceases to have responsibility for or connection with an options market, the options listed on Midwest become listed on CBOE and the Midwest options members become special members of CBOE (the "Combination").

The two-stage approach was agreed to in recognition that the Combination involved amendments to the rules of both exchanges, approval of which could take six or more months from the date of the Agreement, whereas some important benefits might be gained considerably earlier through a mere physical move of the Midwest options market without the necessity for rule amendments. In this filing, not only the proposed amendments to CBOE's rules necessary for accomplishing the full Combination but also CBOE's request for separate approval of the Relocation are presented as a proposed rule change, pursuant to a

suggestion of the Staff, even though the Relocation itself does not require formal rule amendments. Concurrently herewith Midwest is also filing a proposed rule change covering both the formal amendments to its rules needed to accomplish the Combination and its request for approval of the Relocation.¹ In order to avoid unnecessary duplication in these filings, CBOE and Midwest have prepared a joint memorandum in support of the combination of the CBOE and Midwest options markets (the "Joint Memorandum"), which has been filed as an exhibit to each Form 19b-4A and incorporated by reference at various places in response to the appropriate items of the Form.²

For all the reasons set forth herein and in the Joint Memorandum, CBOE hereby requests that its filing and the concurrent filing of Midwest be processed on the most expeditious schedule possible (with minimum intervals between dates of filing, publication of notices, deadline for comments, and the Commission's final action) so that approval of the full Combination may be possible by not later than March 16; in that case the parties would forego the two-stage approach and therefore separate consideration of the Relocation (Stage I) would be unnecessary. If, however, it appears presently or in the course of consideration of this filing that approval of the full Combination (Stage II) is likely not to be possible by March 16 for any reason, CBOE hereby requests that Stage I be separately considered and approved as expeditiously as possible, so that the Relocation may occur at the earliest possible date in view of the important (even though partial) benefits that can be achieved by proceeding with Stage I, as set forth in the Form 19b-4A and in the Joint Memorandum.³

The full Combination will of course result in a modest increase in the size of CBOE's market. It will not, however, expand options trading in the ag-

¹Release No. 34-15494; File No. SR-MSE-78-30.

²Although both CBOE and Midwest are in full accord with the basic arguments and conclusions expressed in the "Joint Memorandum" it should be understood that statements specifically relating to Midwest's past experience, expectations, reasons, etc., are those of Midwest and that statements specifically relating to CBOE's plans, reasons, etc., are those of CBOE.

³If at all possible, CBOE and Midwest would like to complete the Relocation by not later than the weekend of March 24 in the event that approval of the full Combination appears not to be possible by March 16. As a practical matter the parties (i) will need an interval of approximately sixty days between approval of the Relocation and its actual effectuation and (ii) will want to avoid moving during any weekend related to expiration of any option series.

gregate, will not expand combined options-stock trading in the same market, and will not involve any new product or new form of options trading. Nor will it present any moratorium-related issues; the only relevant issue is market surveillance and regulation and, as will be seen below and in the Joint Memorandum, these will clearly be enhanced, not impaired, by the Combination.

Even less will the Relocation alone present moratorium-related issues. It will amount to a mere physical move of Midwest's options market, with no change in its operation and no diminution of Midwest's regulatory responsibility, but with an enhancement of Midwest's capacity to carry out both operational and regulatory functions through new contractual arrangements with CBOE.

At the time of agreeing to the voluntary moratorium, CBOE and Midwest informed the Chairman of the proposed transaction and of their intent to ask for prompt consideration during the moratorium. The two exchanges had in mind then, and again emphasize (i) Midwest's business reasons for terminating its options program and (ii) the obvious desirability of transferring the entire program to a location in Chicago in order to avoid unnecessarily harsh impacts on Midwest's members and employees whose livelihoods were involved in the Midwest options program. These considerations sharply distinguish the proposed Combination (and *a fortiori* the proposed Relocation considered separately) from other types of proposed rule changes that occasioned the moratorium. Accordingly, CBOE believes that the proposed rule changes should not be deemed expansionary within the meaning of the Points of Agreement with respect to the moratorium and should not be the basis for a general opening up of the right to file expansionary rule change proposals.

STATEMENT OF THE TERMS AND SUBSTANCE OF THE PROPOSED RULE CHANGE

The proposed rule change would implement the Agreement by making the amendments to CBOE's rules necessary in order to accomplish the full Combination of the CBOE and Midwest options markets. No amendments to CBOE's rules would be required in order to accomplish the relocation of the Midwest options market. The text of the formal amendment to CBOE's rules is set forth in Exhibit A hereto.

STATEMENT OF BASIS AND PURPOSE BY THE CHICAGO BOARD OPTIONS EXCHANGE, INCORPORATED.

The basis and purpose of the proposed rule change is as follows:

PURPOSE OF PROPOSED RULE CHANGE

The general purpose of this proposed rule change is to implement the Agreement with respect to the Combination of the options markets of CBOE and Midwest. The business reasons in support of the Combination and the public benefits that would be gained from the Combination are set forth in the Joint Memorandum (Exhibit 3 to the Form 19b-4A). The purpose of the proposed Relocation stage is to make possible the prompt achievement of certain of the benefits to be gained from the full Combination, in the event that the Commission's consideration of the full Combination becomes prolonged. The benefits to be gained from the Relocation are also set forth in the Joint Memorandum.

The specific purpose of each proposed amendment to CBOE's rules is as follows:

CERTIFICATE OF INCORPORATION

Article Fifth: This proposed amendment would enable CBOE to create different classes of membership (in this case, regular memberships for present CBOE members and special memberships for present Midwest options members) and provides that each regular member would have one vote. The amendment further provides that authority over the voting rights relating to other classes of membership would be contained in CBOE's by-laws (i.e., its Constitution and Rules) instead of its corporate charter, as permitted by Section 102 of the Delaware Corporation Law, with the result that the amending process would be less cumbersome.

Article Sixth: The first paragraph of this proposed amendment provides that, to the extent not set forth in the Certificate of Incorporation, authority over the conditions of membership and all matters relating to the membership, including limitations upon or qualifications of voting power of members, would be contained in the by-laws. The second paragraph of this proposed amendment provides that the by-laws would contain authority over matters relating to CBOE's internal management, organization, business and affairs. The Second paragraph does not relate to the combination of the two options markets, but is being made at this time for reasons of convenience and efficiency. Both paragraphs are consistent with Section 102 of the Delaware Corporation Law which permits authority over such matters to be contained in either the corporate charter or the by-laws, and are intended to give CBOE more flexibility in the conduct of its affairs than would be the case if all such matters were delineated in the Certificate of

Incorporation, with its attendant cumbersome amending process.

Article Eighth: This proposed amendment provides that authority for the classification of CBOE's Board of Directors would be contained in its by-laws and is intended to confirm the classification which is now set forth in CBOE's Constitution. This proposed amendment does not relate to the combination of the two options markets, but is being made at this time for reasons of convenience and efficiency. This proposed amendment is consistent with Section 141 of the Delaware Corporation Law, which permits the corporate charter of a non-stock corporation to authorize the creation of classifications of its board of directors that are different from those specified for stock corporations.

CONSTITUTION

Section 1.1(b): This proposed amendment would define the term "member" to include a regular member and a special member, or their registered nominees, thereby taking account of the proposed new class of membership, and is intended to make the rules of CBOE generally applicable to special members as well as regular members.

Section 2.1(b): Because CBOE proposes to create a new class of membership, this proposed amendment would specify that the terms of eligibility for an existing CBOE membership apply only to regular memberships; the terms of eligibility for a special membership would be stated in proposed Section 2.1(d).

Section 2.1(d): This proposed amendment would establish and define the terms of eligibility for a new class of members of CBOE (i.e., "special members") that would be available to Midwest options members in good standing on the effective date of the Combination and would also establish the right of those special members to act as market makers or floor brokers in those Midwest options classes which continue to be open for trading on CBOE. Special members would be subject to all the obligations of regular CBOE members, and the rights of special members would terminate ten years after CBOE assumes full responsibility for the Midwest options market. The Midwest options classes available for trading by special members would be (i) those classes of call options which were open for trading on Midwest on the last business day prior to the effective date of the Combination, and (ii) put classes on the securities underlying the classes of eligible call options, regardless of when trading commences in such put classes. Special members would be in a minority among CBOE members; for that reason, certain rights of special members would be detailed in this Section

2.1(d) and in proposed Section 2.6 (b) and (c) of the Constitution as a means of protecting against restriction of those rights by a majority vote of regular CBOE members. As proposed in Section 12.1, Sections 2.1(d), 2.6(b) and (c) and 12.1 could not be amended in a manner adversely affecting the rights of special members without the affirmative vote of a majority of the special members, voting as a separate class.

Section 2.6 This proposed amendment would establish the voting rights of a regular member (one vote) and a special member (one-sixth vote, except as otherwise provided by law) and would establish that a special member would have the same eligibility as a regular member to serve as a director or member of any committee of CBOE. The provisions with respect to the rights of special members are intended to provide the means by which such members participate in the selection of CBOE's directors and in the administration of its affairs and, as noted in the discussion with respect to proposed Section 2.1(d), would be included as Section 2.6(b) and (c) in the Constitution as a means of protecting against the restriction of those rights by a majority vote of regular CBOE members. The section would specify that a special member would have no interest in or right to share in any distribution of the assets of CBOE in the event of any liquidation or dissolution of CBOE. This provision restates a portion of CBOE's corporate charter that denies to special members any right to a distribution on liquidation or dissolution of CBOE.

Section 12.1 This proposed amendment would provide a means of protecting against the restriction of certain rights of special members (who would be in a minority on CBOE) by requiring that any amendment to Sections 2.1(d), 2.6 (b) and (c) and 12.1 of the Constitution adversely affecting the special members would require the affirmative vote of a majority of the special members eligible to vote, voting as a separate class.

RULES

Rule 2.23. This proposed amendment would permit the sale or cancellation by CBOE of a special membership in accordance with the provisions of Rule 3.14(b)* when amounts due to CBOE are more than six months past due. Regular memberships may now be sold under such circumstances, and special memberships would be included within that procedure. The provision with respect to cancellation of a special membership is intended to be used when the secondary market for special memberships ceases to exist, e.g., as the

end of the ten-year life of the special memberships approaches.

Rule 3.10. This proposed amendment would provide a mechanism for establishing CBOE membership records with respect to special members and declaring an original application for special membership effective by tying such effectiveness to the filing by the special member of the usual documents and information required for membership on CBOE.

Rule 3.12. This proposed amendment would make clear that a special member would have no interest in or right to share in any distribution of the property of CBOE in the event of a dissolution or liquidation of CBOE.

Rule 3.13(b). This proposed amendment would include special memberships within the existing CBOE procedure for purchasing a membership.

Rule 3.14 (a) and (c). This proposed amendment would include special memberships within the existing CBOE procedure for sale or other transfer of a membership by an owner.

Rule 3.14(b). This proposed amendment would include special memberships within the existing CBOE procedure for the sale of a membership by CBOE where a member has died or been declared legally incompetent and his legal representative has not consummated a transfer within six months, or where a member's good standing has been suspended and has failed to be reinstated at the end of the period of suspension, or where a member's good standing has been terminated. In addition, the amendment would establish a procedure by which CBOE could cancel a special membership under such circumstances where it determines not to offer the special membership for sale. The provision with respect to cancellation of a special membership is intended to be used when the secondary market for special memberships ceases to exist, e.g., as the end of the ten-year life of the special memberships approaches.

Rule 3.15(a). This proposed amendment would include holders of special memberships within the existing CBOE procedure that is available to holders of non-transferable regular memberships for surrender of such a membership and would permit the holder of a special membership to surrender that membership in order to terminate his future obligations to CBOE. Such surrender might take place if the secondary market for such memberships ceases to exist, e.g., as the end of the ten-year life of the special membership approaches.

Rule 3.16(d). This proposed amendment would generally prohibit the leasing of special memberships, but would also establish the limited right of certain special members to continue leasing their memberships to persons

who had been their lessees on Midwest continuously since July 18, 1978, and would subject all such lease arrangements to the existing requirements for leasing, and terminating the lease of, a regular membership. Further, the transfer of a special membership would terminate any lease arrangement with respect to that special membership. The exception to the general prohibition on leasing special memberships was included so that the limited number of leasing agreements in effect on Midwest at the time the exchanges reached an agreement in principle for the Combination could be continued following the Combination.

Rule 6.5. This proposed amendment would draw a distinction between the classes of options available for trading by regular members and those available for trading by special members (referred to as "MSE Options"), and is intended to call attention in the Rules (which tend to be more widely known by members than the Constitution) to the definition of MSE Options that is contained in proposed Section 2.1(d) of the Constitution. By utilizing a guideline under Rule 6.5, the listing of securities underlying the MSE Options could be updated readily as necessary by means of a filing under Section 19(b)(3) of the Act.

Rule 9.1. This proposed amendment is necessary because of the proposed new class of membership. The amendment would make clear that special members, in contrast to regular members, could act only as floor brokers or market makers on CBOE and could not transact business with the public.

BASIS UNDER THE ACT FOR PROPOSED RULE CHANGE

Section 6(b)(1) of the Act requires that an exchange have the capacity to be able to carry out the purposes of the Act and to comply and to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange. The Joint Memorandum contains a discussion of CBOE's market and regulatory capacity. Given CBOE's present capacity and its current and planned programs for expansion, CBOE is confident that it can readily accommodate the Midwest options market.

The Agreement contemplates the possibility that the Relocation would take place prior to the effective date of the Combination, with CBOE providing most of the facilities and services necessary for the operation of the Midwest options market at that time. Upon the effective date of the Combination, except for incremental additions needed for CBOE to assume responsibility for surveillance with respect to its new special members (the

*The reference to Rule 3.13(b) in the current rule is a typographical error.

former Midwest options members), no additional market or regulatory capacity would be needed by CBOE. Should the Relocation not precede the Combination, CBOE would of course take over responsibility for the entire Midwest options program at one time. CBOE's market and regulatory capabilities are more than adequate for that task.

Section 6(b)(2) of the Act requires that the rules of an exchange provide that any registered broker or dealer or natural person associated with a registered broker or dealer may become a member of such exchange. After the effective date of the Combination, special memberships will be freely transferable⁶ and may be purchased by any registered broker or dealer or natural person associated with a broker or dealer who otherwise meets the existing requirements for membership on CBOE.

Section 6(b)(3) of the Act requires in part that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. The Agreement and the formal amendments to CBOE's rules set forth the rights of special members in this regard.

Section 6(b)(4) of the Act requires that the rules of an exchange provide for the equitable allocation of reasonable dues, fees and other charges among the members of the exchange. Section 6(b)(5) of the Act requires that the rules of an exchange be designed in part to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade and, in general, to protect investors and the public interest. Section 6(b)(6) of the Act requires that the rules of an exchange provide that its members be appropriately disciplined for violation of the provisions of the Act, the rules and regulations thereunder or the rules of the exchange. Section 6(b)(7) of the Act requires in part that the rules of an exchange provide a fair procedure for the disciplining of members, and for the denial of membership or the prohibition or limitation with respect to access to the services of the exchange or a member thereof. With respect to each of the foregoing statutory matters, special members of CBOE will be treated as regular CBOE members and will be fully subject to the existing rules of CBOE, as they are amended from time to time, governing such matters. In the event that the full Combination is preceded by the Relocation stage, the members of each exchange will continue to be fully subject to the existing

rules of each exchange governing such matters, as they are amended from time to time, until the full Combination is accomplished.

CBOE did not solicit and has not received comments on the proposed rule change.

CBOE does not believe that the Combination will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Joint Memorandum sets forth the basis for such conclusion. For additional reasons, set forth in the Joint Memorandum, CBOE does not believe that the Relocation considered separately would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The Commission encourages those submitting comments on the proposed rule change to address (i) whether the proposed action is an expansion or material alteration of an existing options programs within the meaning of the options moratorium⁶ and (ii) whether the proposed action imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁷ Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 30 days of the date of this publication.

By the Commission.

⁶ See Securities Exchange Act Release No. 14878 (June 22, 1978.)

⁷ 15 U.S.C. 78f(b)(8) and Form 19b-4A.

Dated: January 12, 1979.

GEORGE A. FITZSIMMONS,
Secretary.

EXHIBIT A TO (FILE NO. SR-CBOE-78-34)

(Additions are italicized; deletions are bracketed.)

The formal amendments to CBOE's rules necessary for implementation of the Combination¹ are as follows:

PROPOSED AMENDMENTS TO CERTIFICATE OF INCORPORATION

FIFTH: (a) The Corporation shall have members, and the [conditions of] membership of the Corporation [to the extent not stated in this certificate of incorporation, shall be stated] shall consist of regular members and such other classes (if any) as may be provided in the by-laws of the Corporation. Each regular member shall be entitled at every meeting of members to one vote in person or by proxy. Members of each other class shall have only such voting rights and power (which may vary as between classes) as may be provided to such class in the by-laws of the Corporation, it being intended that, for each class, the by-laws, to the fullest extent permitted by law, may entirely withhold voting rights or grant voting rights only with respect to certain matters or generally with respect to all matters submitted to a vote by members, and, for each class granted voting rights, may grant voting power equal to, or more or less than, one vote per member of the class. Every reference in this Certificate of Incorporation to "members" or "membership" shall mean all classes of members and membership except as otherwise expressly provided in the text in which such words appear and except in paragraph (b) of Article FIFTH and in Article TENTH where the words "members" and "membership" mean regular members and regular membership only. Each reference in this Certificate of Incorporation to a majority or other proportion of the members entitled to vote on any matter shall mean such majority or other proportion of the votes of such members. Subject to any limitation on the number of members which may be provided for in the by-laws of the Corporation, and except as provided in paragraph (b) of this Article FIFTH, membership in the Corporation shall be open to all individuals and organizations who qualify for membership pursuant to the by-laws.

(b) No Change

SIXTH: The By-laws of the Corporation shall consist of its Constitution and Rules, each as amended from time

¹ Special memberships are not leasable, except to a lessee to whom the lessor had leased a Midwest options membership continuously from July 18, 1978.

¹ Implementation of the Relocation does not require any formal amendments to CBOE's rules.

to time. The original By-laws shall be adopted by the initial Board of Directors of the Corporation, and thereafter the power to make, alter or repeal the Constitution shall be vested in the members of the Corporation entitled to vote thereon, and shall be exercisable by such vote of those members, subject to such condition (if any) of prior approval by the Board of Directors, as the Constitution may provide, while the power to make, alter or appeal the Rules shall be vested in the Board of Directors and shall be exercisable by such vote of Directors as the Constitution may provide.

To the extent that the conditions of membership are not stated in this Certificate of Incorporation, they shall be stated in the by-laws. In addition, the by-laws may contain provisions not inconsistent with this Certificate of Incorporation, as amended from time to time, governing any or all matters relating to the membership of the Corporation, including (without limiting the foregoing) the method of admission, the number, qualifications and classifications of members, the limitations, rights, powers, and duties of members, provisions relating to the transferability of memberships, the method of expulsion from and other termination of membership and limitations upon or qualifications of voting power by members. The by-laws may prescribe standards to determine good standing of members and if standards are so prescribed only members in good standing shall be entitled to vote on matters presented to members for their vote.

In addition, the by-laws may cover any and all other matters relating to the Corporation, including (without limiting the foregoing) its internal organization, management, business and affairs, in a manner not inconsistent with this Certificate of Incorporation, as amended from time to time. Such matters may be covered by the Constitution, or may be assigned expressly or impliedly (by absence of a provision in the Constitution) to the Rules.

EIGHTH: The governing body of the Corporation shall be its Board of Directors. The business and affairs of the Corporation shall be managed by the Board of Directors except to the extent that the authority, powers and duties of such management shall be delegated to a committee or committees of the Corporation established pursuant to the by-laws as hereafter provided. In addition to any committees of the Board of Directors which may be established as permitted by law, the by-laws of the corporation may provide for the establishment of one or more committees (the members of which shall be selected as provided in the by-laws and need not be either members of the Board of Directors or

members of the Corporation), each of whom shall have the authority, powers and duties, including such authority, powers and duties in the management of the business and affairs of the Corporation, as the by-laws shall provide.

The number of Directors shall be as fixed in the Constitution and, to the extent provided in the Constitution, shall include non-member Directors appointed to represent the public. The Chairman of the Board, the Vice-Chairman of the Board and the President of the Corporation shall by virtue of their offices be members of the Board of Directors. The members of the Board of Directors may be divided into such number of classes as may be provided in the by-laws of the Corporation, provided that the provision in such by-laws establishing such classes must be adopted by a vote of the members entitled to vote thereon.

PROPOSED AMENDMENTS TO CONSTITUTION

ARTICLE I—DEFINITIONS

Section 1.1 Definitions.

(b) The term "member" means an individual member or a member organization of the Exchange (or a registered nominee of such a member organization) that is a regular member in good standing [in accordance with the Constitution and Rules, or a registered nominee of such a member organization] described in Section 2.1(b) of Article II of the Constitution, or that is a special member in good standing described in Section 2.1(d) of Article II of the Constitution to the extent that such special members are entitled to the rights and are subject to the obligations of members under the Certificate of Incorporation, the Constitution, or the Rules.

ARTICLE II—MEMBERSHIP

SECTION 2.1 NUMBER OF MEMBERSHIPS

(b) The regular membership of the Exchange shall consist of persons who acquire memberships made available by the Exchange in accordance with the Rules and shall also consist of those members of the Board of Trade of the City of Chicago who, pursuant to paragraph (b) of Article FIFTH of the Certificate of Incorporation, elect to apply for membership and are approved for membership in accordance with the Rules. Except as otherwise expressly provided in the Certificate of Incorporation, the Constitution or the Rules, every regular member of the Exchange shall be entitled to the same rights and privileges, and shall be subject to the same obligations, as every other regular member.

(c) No Change

(d) The special membership of the Exchange shall consist of persons who were options members in good standing of the Midwest Stock Exchange, Incorporated ("Midwest"), as of _____² and, subject to the conditions of approval for membership as stated in the Constitution and Rules, transferees of such persons. Special members in good standing, or lessees of such special members under lease arrangements that have been in effect continuously from July 18, 1978, shall be entitled to act as Market-Makers or Floor Brokers in accordance with Chapters VI and VIII of the rules in and only in those classes of MSE Options which continue to be open for trading on the Exchange; provided that all special memberships shall expire and all rights of special members shall cease, ten years after the date stated in the first sentence of this paragraph (d), and provided further, that a special membership may be cancelled by the Exchange at an earlier date under the circumstances, and with the effect, as provided in the Rules. Special members shall as a condition of their membership be subject to all of the obligations of regular members under the Constitution and the Rules, except as may be otherwise expressly provided in the Constitution or the Rules. For purposes of this paragraph (d), the term "MSE Options" shall mean (i) those classes of call options which were open for trading on Midwest at the close of business on the last business day prior to the date defined in the first sentence of this paragraph (d) other than classes of call options which, on the day Midwest commenced trading in such classes, also were open for trading on the Exchange, and (ii) all classes of put options on the securities underlying the classes of call options covered by (i).

Voting and Other Rights and Powers

Section 2.6

(a) Each regular member shall have the voting rights and power provided by law and by the Certificate of Incorporation.

(b) Except as otherwise provided by law and by Section 12.1, each special member shall be entitled at every meeting of members to one-sixth of one vote in person or by proxy, voting together with regular members and not as a separate class, and shall count as one-sixth of a member in all other instances when reference is made in the Constitution to a majority or other proportion or number of members (in-

²The date to be inserted in this blank is the thirtieth day after the conditions set out in paragraph 3.6 of the Agreement dated August 15, 1978 between the Exchange and Midwest have been satisfied, or such other date as to which the Exchange and Midwest shall agree in writing pursuant to paragraph 3.2 of such agreement.

cluding, without limiting the generality of the foregoing, reference to calling meetings of members, nominating by petition of members, determining a quorum of members or voting by members).

(c) Special members shall have the same eligibility as regular members to serve as directors of the Exchange and to serve on any committee of the Exchange.

(d) Special members shall have no interest in or right to share in any distribution of the property and assets of the Exchange in the event of any liquidation or dissolution of the Exchange.

ARTICLE XII—AMENDMENTS

CONSTITUTION

Section 12.1. The Constitution may be amended at any regular or special meeting of members by the affirmative vote of a majority of the members present in person or represented by proxy at the meeting; provided, however, that any amendment to Section 2.1(d), Section 2.6 (b) and (c), or to this Section 12.1 having an adverse effect on special members must be approved by the affirmative vote of a majority of both the special members eligible to vote and the regular members present in person or represented by proxy at the meeting, voting as separate classes. [The notice of the meeting shall state that such a proposed amendment will be considered.]

PROPOSED AMENDMENTS TO RULES

CHAPTER II—ORGANIZATIONS AND ADMINISTRATION

LIABILITY FOR PAYMENT

Rule 2.23. A member that does not pay any dues, fees, assessments, charges or other amounts due to the Exchange within 30 days after the same has become payable shall be reported to the Chairman, who may, after giving reasonable notice to the member of such arrearages, suspend the member until payment is made. Should payment not be made within 6 months after payment is due, [the] a regular membership may be disposed of by the Exchange or a special membership may be disposed of or cancelled by the Exchange, in accordance with Rule [3.13(b)] 3.14(b).

CHAPTER III—MEMBERSHIP

EFFECTIVENESS OF MEMBERSHIP APPLICATIONS

Rule 3.10. (a) An application which has been approved by the Membership Committee shall become effective as follows:

[(a)] (i) An application for membership pursuant to paragraph (b) of Ar-

ticle FIFTH of the Certificate of Incorporation shall become effective upon payment to the Secretary of a registration fee in such amount as may be provided in Part C of Chapter II of the Rules.

[(b)] (ii) Except as provided in Rule 3.14(c) with respect to transferees of memberships, and except as provided in Rule 3.16(d) with respect to lessees of memberships, all other applications for membership (excluding applications for approval as the nominee of a member organization, or applications for the registration of an individual member on behalf of an organization) shall become effective upon the purchase of a membership and payment to the Secretary of the purchase price therefor and a registration fee in such amount as may be provided in Part C of Chapter II of the Rules.

[(c)] (iii) An application for registration as a nominee of a member organization shall become effective upon the effectiveness of the membership of the member organization and payment of a registration fee in such amount as may be provided in Part C of Chapter II of the Rules. Payment shall be made within 2 business days following the later of the receipt of the notice of approval by the applicant or the effectiveness of the membership of the member organization.

[(d)] (iv) An application for registration of an individual membership on behalf of an organization shall become effective upon the effectiveness of the individual membership and payment of a registration fee in such amount as may be provided in Part C of Chapter II of the Rules. Payment shall be made within 2 business days following the later of the receipt of the notice of approval by the applicant or the effectiveness of the individual membership.

(b) An original application for special membership made by an options member of the Midwest Stock Exchange, Incorporated, pursuant to paragraph (d) of Section 2.1 of the Constitution shall become effective upon the filing with the Secretary of the documents and information required to be filed under Rules 3.5, 3.6, 3.7 and 3.8.

OWNERSHIP OF MEMBERSHIP

Rule 3.12. The Exchange shall not recognize any interest in the property or other rights represented by a membership except that of its owner as registered with the Exchange. A nominee is not an owner, nor is a member organization on whose behalf an individual membership is registered nor is a lessee of a membership pursuant to Rule 3.16(d). No rights shall be acquired by the ownership of a regular membership except the right to an aliquot part of the net assets, if any, remaining after the payment of all debts

and obligations of the Exchange in the event of its dissolution and winding-up and, if the owner of the membership is in good standing, such rights as may be provided by the Constitution and Rules to members in good standing. Special members shall have no interest in or any right to share in any distribution of the property and assets of the Exchange in the event of its dissolution and winding-up.

PURCHASE OF MEMBERSHIP

Rule 3.13.

(a) No Change.

(b) Outstanding Memberships. Outstanding transferable memberships with respect to which notices of sale have been filed under Rule 3.14 may be purchased by approved applicants, through the office of the Secretary, in accordance with the following procedures. All bids from approved applicants must be submitted in writing to the Secretary of the Exchange. The Secretary will file all bids by class of membership according to the highest price and the earliest submission date. The highest bid with the earliest filing date will be posted on the Exchange bulletin board. All bids remain in effect until written revocation thereof is received by the Secretary. When a bid filed in accordance with the procedures of this Paragraph (b) is matched with an offer filed in accordance with the provisions of Rule 3.14(a), then a binding sale will occur. Memberships purchased under this Paragraph (b) shall be acquired and paid for within 60 days of the applicant's receipt of the Notice of Approval issued pursuant to Rule 3.8.

(c) No Change.

SALE AND TRANSFER OF MEMBERSHIP

Rule 3.14 (a) Sale by Owner. The owner of a transferable membership who desires to sell his membership shall submit a written offer of sale to the Secretary of the Exchange. The Secretary will file all such offers by class of membership according to the lowest price and the earliest submission date. The lowest offer with the earliest filing date will be posted on the Exchange bulletin board. All offers remain in effect until written revocation thereof is received by the Secretary. When an offer filed in accordance with this paragraph (a) is matched with a bid filed in accordance with the provisions of Rule 3.13(b) then a binding sale will occur. In the case of a proposed transfer of all of the memberships of a member organization, the member organization's written offer shall include a representation that the customer's accounts, if any, held by such member have been transferred to other members. A member who has filed an offer of sale shall, so long as he remains in good

standing and until a confirmation of the purchase of his membership has been filed with the Secretary, continue to have all of the rights and privileges, and shall remain subject to all of the duties and obligations, of membership.

(b) *Sale or Cancellation by Exchange.* Whenever one or more of the following conditions exist with respect to a transferable regular membership or a special membership, the Exchange may [shall] offer the membership for sale by filing with the Secretary of the Exchange [and] a written notice of transfer specifying the price at which the membership is to be sold: [shall be filed with the Secretary of the Exchange].

(a) No change

(b) No change

(3) No change

Whenever one or more of such conditions exist with respect to a special membership and the Exchange determines not to offer such special membership for sale, the Exchange may cancel such special membership by filing a cancellation of special membership form with the Secretary of the Exchange. Notice of each such cancellation shall be mailed to all members and shall be posted on the bulletin board of the Exchange. Following such cancellation, the individual or organization having its special membership cancelled shall cease to have any of the rights, privileges or obligations of membership.

(c) No Change

(1) No Change

(2) No Change

(3) No Change

(4) No Change

Notwithstanding the foregoing, transfers pursuant to this Paragraph (c) shall not become effective until there has been deposited with the Secretary of the Exchange an amount equal to the weighted average [of all membership sales that] of the price at which all sales of membership of the same class as the membership being transferred took place during the ninety days immediately preceding the date on which the transferee is approved for membership (or if no sales took place during such ninety day period, then an amount equal to the price at which the last prior sale took place) or an acceptable Letter of Guarantee from a Clearing Member for such amount, which amount shall be applied as though it were proceeds of the sale of membership for the purposes of Rule 3.15 hereof; provided, however, that where the owner of a transferable membership is subject to an effective performance obligation agreement with the Exchange, but has received Exchange approval to transfer such membership, the amount to be deposited with the Secretary of the

Exchange or represented by an acceptable Letter of Guarantee from a Clearing Member as the final condition to be met prior to the effectiveness of the transfer shall be held for the purposes of Rule 3.15, as described above.

SPECIAL PROVISIONS REGARDING MEMBERSHIPS

Rule 3.16. (a) Surrender of [Non-transferable] Memberships. Individuals or organizations owning non-transferable memberships acquired pursuant to paragraph (b) of Article FIFTH of the Certificate of Incorporation or owning special memberships may surrender such memberships by giving notice thereof to the Secretary of the Exchange on a form provided by the Exchange. Upon receipt of such notice, the Secretary shall post a notice of proposed surrender of membership on the bulletin board of the Exchange. After such notice has been posted for at least 20 days, and after determining that the membership being surrendered is in good standing, has provided for the orderly transfer of its customers' accounts, if any, and has no outstanding debts or obligations to the Exchange, the Clearing Corporation, or members, the Secretary shall terminate such membership. Notice of each such termination shall be mailed to all members and shall be posted on the bulletin board of the Exchange. Following such termination, the individual or organization surrendering its membership shall cease to have any of the rights [or], privileges or obligations of membership.

(b) No Change

(c) No Change

(d) Leased Memberships. (i) The owner of a transferable regular membership in good standing that is not subject to disciplinary proceedings under Chapter XVIII of the Rules may lease such membership to an individual or organization, provided the lessee is approved for membership in accordance with the Rules of the Exchange. Lease agreements, which must be approved by the Exchange in accordance with Rule 3.6, shall include provisions covering (A) the duration of the lease arrangement; (B) the consideration to be paid by the lessee; (C) the assignability of the respective interests of the lessee and lessor in such lease agreement; and (D) as between the parties, which party shall exercise the voting rights of the membership and which party shall provide the funds necessary to satisfy all applicable Exchange dues, fees and other charges. Any division of rights and responsibilities between lessor and lessee shall not affect the obligation of the lessor to pay all amounts due the Exchange in accordance with its applicable Rules. The Exchange shall recog-

nize the lessee as having the right to exercise all voting rights with respect to the membership, provided that the lease agreement may provide for the lessor to exercise voting rights through the use of a proxy as provided for in Section 5.2 of Article V of the Constitution.

(ii)³ The lease of a regular membership or the reversion of a previously leased membership of any class to the lessor upon termination of the lease agreement shall not become effective until there has been deposited with the Secretary of the Exchange an amount equal to the weighted average of all membership sales of the same class as the leased membership that took place during the ninety days immediately preceding the date on which, in the case of a lease, the lessee is approved for membership or in the case of a reversion to a lessor, the lease terminates (or if no such sales took place during such ninety day period, then an amount equal to the price at which the last prior sale of the same class of membership took place) or an acceptable Letter of Guarantee from a Clearing Member for such amount, which amount shall be applied to claims of creditors of the previous lessee which arose in the course of that previous lease arrangement or of the lessor as though it were proceeds of the sale of a membership for the purposes of Rule 3.15 hereof.

(iii) No Change

(iv) No Change

(v) *Special memberships shall not be leaseable, except that on the effective date of his special membership the original owner of a special membership may lease such membership to an individual or organization who has been his lessee on the Midwest Stock Exchange, Incorporated, continuously from July 18, 1978. The lease arrangement shall be subject to the provisions of subparagraphs (i) through (iv) of this paragraph (d). The sale of a special membership which is subject to a lease arrangement shall terminate that lease arrangement.*

CHAPTER VI—DOING BUSINESS ON THE EXCHANGE FLOOR LIMITATION ON DEALING

Rule 6.5 No regular member shall bid, offer, purchase or write (sell) on the Exchange any security other than an option contract that is currently open for trading in accordance with [Rule 5.5] the provisions of Chapter V. No special member shall bid, offer, purchase, or write on the Exchange any security other than an option contract relating to one of the underlying

³This text reflects a recent unrelated amendment to Section 3.16(d)(ii) made effective upon filing pursuant to the provisions of Section 19(b)(3) of the Act in File No. SR-CBOE-78-32.

securities listed in a guideline under this Rule 6.5 (MSE Options, as that term is defined in Section 2.1(d) of the Constitution) and currently open for trading in accordance with the provisions of Chapter V.

0.1 Special members may bid, offer, purchase, or write on the Exchange option contracts currently open for trading only with respect to the following underlying securities:

Bristol-Meyers Company
Carrier Corporation
Champion International Corporation
Coastal States Gas Corporation
Evans Products Co.
Freeport Minerals Company
Corning Glass Works
Hughes Tool Co.
Litton Industries, Inc.
Middle South Utilities, Inc.
Northwest Industries, Inc.
Owens-Illinois, Inc.
Ralston Purina Co.
Revlon, Inc.
Rockwell International Corp.
Safeway Stores, Incorporated

CHAPTER IX—DOING BUSINESS WITH THE PUBLIC

RULE 9.1 EXCHANGE APPROVAL

An individual regular member or any special member may not transact business with the public. A regular member organization may transact business with the public after an application, submitted on a form prescribed by the Exchange, has been approved by the Membership Committee. Approval to transact business with the public shall be based on a member organization's meeting the general requirements set forth in this Chapter and the net capital requirements set forth in Chapter XIII of the Rules, and such approval may be withdrawn if any of the requirements cease to be met.

[FR Doc. 79-2-22 Filed 1-18-79; 8:45 am]

[8010-01-M]

[Release No. 34-15494; File No. SR-MSE-78-30]

MIDWEST STOCK EXCHANGE, INCORPORATED

Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on December 21, 1978, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

THE MIDWEST STOCK EXCHANGE'S STATEMENT OF THE TERMS OF SUBSTANCE OF THE PROPOSED RULE CHANGE

The Midwest Stock Exchange, Incorporated ("Midwest") and the Chicago Board Options Exchange, Incorporated ("CBOE") have entered into an agreement dated August 15, 1978 (the "Agreement"), to combine the options markets of the two exchanges. (A copy of the Agreement has been filed as an exhibit to the Form 19b-4A). The Agreement contemplates the possibility that the transaction might occur in two stages: first, a relocation of Midwest's options market so as to be physically adjacent to CBOE's trading floor (the "Relocation") on the terms and conditions set forth in Article II, pp. 3 to 12, of the Agreement; and second, a full combination of the two options markets such that Midwest ceases to have responsibility for or connection with an options market, the options listed on Midwest become listed on CBOE and the Midwest options members become special members of CBOE (the "Combination"), on the terms and conditions set forth in Article III, pp. 13 to 19, of the Agreement.

The two-stage approach was agreed to in recognition that the Combination involved amendments to the rules of both exchanges, approval of which could take six or more months from the date of the Agreement, whereas some important benefits might be gained considerably earlier through a mere physical move of the Midwest options market without the necessity for rule amendments. If this filing, not only the proposed amendments of Midwest's rules necessary for accomplishing the full Combination but also Midwest's request for separate approval of the Relocation are presented as a proposed rule change, pursuant to a suggestion of the Staff, even though the Relocation itself does not require formal rule amendments. Concurrently herewith CBOE is also filing a proposed rule change covering both the formal amendments to its rules needed to accomplish the Combination and its request for approval of the Relocation. In order to avoid unnecessary duplication in these filings, CBOE and Midwest have prepared a joint memorandum (the "Joint Memorandum") which is attached to each filing as Exhibit 3 and incorporated by reference at various places in response to the appropriate items of the Form.¹

¹ Although both CBOE and Midwest are in full accord with the basic arguments and conclusions expressed in the "Joint Memorandum" it should be understood that statements specifically relating to Midwest's past experience, expectations, reasons, etc., are those of Midwest and that statements specifically relating to CBOE's plans, reasons, etc., are those of CBOE.

For all the reasons set forth herein and in the Joint Memorandum, Midwest hereby requests that its filing and the concurrent filing of CBOE be processed on the most expeditious schedule possible (with minimum intervals between dates of filing, publication of notices, deadline for comments, and the Commission's final action) so that approval of the full combination may be possible by not later than March 16; in that case the parties would forego the two-stage approach and therefore separate consideration of the relocation (Stage I) would be unnecessary. If, however, it presently or in the course of consideration of this filing appears that approval of the full Combination (Stage II) is likely to be more prolonged for any reason, Midwest hereby requests that Stage I be separately considered and approved as expeditiously as possible so that the Relocation may occur at the earliest possible date in view of the important (even though partial) benefits that can be achieved thereby, as set forth herein and in the Joint Memorandum.²

To facilitate the Commission's consideration of the filing on the foregoing basis, the reasons, benefits and statutory justifications for the full Combination are set forth under appropriate headings herein and in the Joint Memorandum, with separate comments where appropriate with regard to the Relocation considered separately.

The formal amendments to Midwest's rules necessary for the implementation of the Combination are as follows:

PROPOSED CONSTITUTIONAL AMENDMENTS

Additions Italicized [Deletions Bracketed]

ARTICLE I—No CHANGE

ARTICLE II

[Types of Memberships]

Sec. 1. There shall be three types of memberships:

a. Midwest Stock Exchange Memberships (also hereinafter referred to as "equity memberships without options privileges").

b. Midwest Stock Exchange Memberships With Options Privileges (also hereinafter referred to as "equity memberships with options privileges").

² If at all possible, CBOE and Midwest would like to complete the Relocation by not later than the weekend of March 24 in the event that approval of the full Combination appears not to be possible by March 16. As a practical matter the parties (i) will need an interval of approximately sixty days between approval of the Relocation and its actual effectuation and (ii) will want to avoid moving during any weekend related to expiration of any option series.

c. Midwest Options Memberships (also hereinafter referred to as "options-only memberships").

A Midwest Stock Exchange Membership may be converted into a Midwest Stock Exchange Membership With Options Privileges any time up to and including December 31, 1979, by the payment of a fee as determined by the Board of Governors.

A Midwest Options Membership may be converted into a Midwest Stock Exchange Membership With Options Privileges upon the payment of a fee, as determined by the Board of Governors, at any time up to and including December 31, 1979. Upon conversion, such Midwest Options Membership will be cancelled.

Except as otherwise provided, the words "membership" or "member" when not preceded by the words equity or options shall include all three types of memberships. The words "equity membership" (or member) unless followed by the words "with options privileges" or "without options privileges" shall include both types of equity memberships (or members). The words "options memberships" (or member) unless preceded by the words, "Midwest," shall include both the equity memberships (or member) with options privileges and the options-only memberships (or member).

In those section of the By-Laws or in those Rules that are specifically designated as applicable to equity trading or equity members, the word member shall mean only equity members. In those sections of the By-Laws or in those rules specifically designated as applicable to options trading or options members, the word member shall mean only options members.]

NUMBER AND OWNERSHIP OF MEMBERS

Sec. [2.] 1 [(a)] The number of equity memberships in the Exchange shall not exceed 465 [635]. [Of such memberships, 200 may be issued only upon conversion of a Midwest Options Membership as provided in Sec. 1 of this Article. At December 31, 1979, any of the 200 memberships so reserved that have not been issued, will be cancelled.]

(b) The number of Midwest Options Memberships shall not exceed 2-0. The number of Midwest Options Memberships authorized herein shall be reduced by the number of such memberships converted to equity memberships as provided in Sec. 1 of this Article.]

[(c)] Memberships may be owned by individuals, partnerships and corporations, under such conditions and qualifications as shall be prescribed in the Rules of the Exchange (these and all other Rules of the Exchange adopted

by the Board of Governors being hereinafter referred to as the "Rules").

RIGHTS AND PRIVILEGES OF MEMBERSHIP

Sec. [3.] 2 (a) [Equity members have full rights and privileges with respect to equity trading on the Exchange but are not to be entitled to the rights and privileges of options trading unless also options members.]

(b) Options members have full rights and privileges with respect to options trading on the Exchange but are not to be entitled to the rights and privileges of equity trading unless also equity members.

(c) Options-only members have no right to vote in any election for Governors of the Exchange or any other elected official, trustee or person authorized under the Constitution of the Exchange or upon any amendments to the Constitution or any other matter which may be submitted to a vote of the members of the Exchange or in any other matter whatsoever, except:

(1) Options-only members may vote with respect to the selection of one individual to serve on the Board of Governors.]

[(2)(i)] [The consent of a majority of options-only members shall be necessary for effecting or validating any amendment, alteration or repeal of any provision of the Certificate of Incorporation or the By-Laws of the Exchange which adversely affects the rights of options-only members upon dissolution, final liquidation or winding up of the affairs of the Exchange to which such members may be entitled. However, any amendment of the provisions of the Certificate of Incorporation or by By-Laws of the Exchange which authorizes (a) any additional classes of membership which have no rights upon dissolution, final liquidation or winding up of the Exchange, or such rights as are expressly subordinate to the rights of the equity members and the options-only members to receive the distributions as provided in Sec. 2 (a) and (b) of Article IX of the Constitution of the Exchange, and (b) additional members of any existing classes of memberships, shall not be deemed to affect adversely the rights of the options-only members upon dissolution, final liquidation or winding up of the Exchange.]

(ii) In any merger or consolidation of the Exchange or any sale, lease or conveyance of all or substantially all of its assets which would materially adversely affect the rights of options-only members upon dissolution, final liquidation or winding up of the Exchange, or of the corporation or entity resulting from such merger or consolidation, the options-only members shall be entitled to vote thereon together with the equity members of the Exchange as a single class.

(3) Options-only members may vote with respect to any matters upon which voting rights are granted by the Board of Governors.]

[(d)] Unless the owner of a membership has been approved by and is in good standing with the Exchange as provided in the Rules, such owner shall have no right to exercise any right or privilege of membership, to hold himself or itself out for any purpose as a member or otherwise affiliated with the Exchange, or to deal on or with the Exchange on any basis other than as a non-member, except as otherwise specifically provided in the Rules. When used in the Certificate of Incorporation, Constitution and Rules, unless the context otherwise requires, the terms "member," "member firm," "member corporation" and "member organization" refer exclusively to persons and organizations approved by and in good standing with the Exchange.

NOMINEES AND VOTING DESIGNEES

Sec. [4.] 3 A member firm or member corporation (hereinafter referred to as a "member organization") owning a membership in the Exchange shall designate in writing filed with the Secretary of the Exchange:

(a) A nominee [(or in the case of an equity membership with options privileges, nominees as provided in the Rules)] to represent and act for it in all matters pertaining to the Exchange (except for those matters upon which the vote, consent or similar formal expression of the member organization is required or permitted or in connection with meetings or the obtaining of any such consent or similar formal expression) and business conducted by such member organization on the Exchange; a nominee of a member organization shall be one of its general partners or its Chairman of the Board, Vice-Chairman of the Board, President, one of its Vice-Presidents or, with the approval of the Board of Governors, another person affiliated with such member organization; and,

(b) A voting designee to represent and act for the member organization with respect to any matter upon which the vote, consent or similar formal expression of the member organization is required or permitted and in connection with all meetings of members and the obtaining of any such consent or similar formal expression; a voting designee of a member organization shall be one of its general partners or its Chairman of the Board, Vice-Chairman of the Board, President or one of its Vice-Presidents.

The nominee(s) and voting designee may be the same or different persons, provided that the voting designee must be a general partner, the Chairman or Vice-Chairman of the

Board, the President or a Vice-President of a member organization and the [a] nominee may be one of such persons or, with the approval of the Board of Governors, another person affiliated with the member organization. Designations of nominees and voting designees of member organizations and any changes thereof shall be subject to the approval of the Exchange. Except as specifically provided otherwise, the word "member" wherever used in the Certificate of Incorporation, Constitution and Rules shall include and also mean the nominee of a member organization but shall not include the voting designee if a different person.

Old Sec. 4. becomes Sec. 5 with no change in text.

Old Sec. 5. becomes Sec. 6 with no change in text.

ARTICLE III

No change, except as follows:

MEMBERS OF THE BOARD OF GOVERNORS

Sec. 2. The Board of Governors shall be composed of the Chairman of the Board, the Vice Chairman of the Board, the President and 21 [22] Governors. The Chairman and Vice chairman of the Board and at least a majority of the 21 [22] Governors shall be members, general partners of member firms or officers of member corporation (such Governors sometime hereinafter referred to as "member Governors"), and at least six Governors (other than the President) shall be unaffiliated with the Exchange or any broker or dealer in securities (such Governors sometimes hereinafter referred to as "non-member Governors"). The Chairman, Vice chairman and President shall serve one year terms. The members of the Board of Governors [elected by the Equity members of the Exchange in accordance with Article IV of the Constitution] (other than the Chairman of the Board, the Vice Chairman of the Board and the President) shall be divided into classes; there shall be seven Governors in class I, seven Governors in Class II and seven Governors in Class III. At least two members of each class [I, II, & III] shall be non-member Governors. The Term of the Class I Governors elected at the first annual meeting of the Exchange shall expire at the annual meeting of the Exchange in 1974, the term of the Class II Governors then elected shall expire at the annual meeting of the Exchange in 1975, and the term of the Class III Governors then elected shall expire at the annual meeting of the exchange in 1976, or thereafter in each case when their respective successors are elected and qualified. [With respect to the Class I, II and III Governors,] at the annual meeting of

the Exchange held in 1974 and at each annual meeting held thereafter, seven Governors, at least a majority of whom are member Governors and at least two of whom are non-member Governors, shall be elected to succeed those whose terms then expire. The Governors so elected shall be identified as being of the same class as the Governors they succeed and shall be elected for a term expiring at the third succeeding annual meeting of the Exchange or until their respective successors in each case are thereafter elected and qualified. [In addition, there shall be a member Governor elected by the options-only members. Such Governor shall be elected in accordance with Section 22(b) of Article IV of the Constitution for the one year term or portion thereof expiring at the annual meeting of the Exchange in 1978 or thereafter when a successor is elected and qualified. Such governor shall thereafter be elected in accordance with the provisions of Part II of Article IV of the Constitution for one year terms commencing with the conclusion of the annual meeting of the Exchange that follows such election.]

ARTICLE IV

PART I

MEETINGS OF [EQUITY] MEMBERS, NOMINATIONS AND ELECTIONS

PLACE OF MEETINGS

Sec. 1. Meetings of [equity] members of the Exchange shall be held at such place, within or without the State of Delaware, as the Board of Governors may designate prior to the giving of notice of such meeting, but if no such designation is made, then at the principal business office of the Exchange.

ANNUAL MEETING

Sec. 2. The annual meeting of the Exchange shall be held on the second Monday in January each year, unless such day be a holiday, when the meeting shall be held on the next day following which is not a holiday. At each annual meeting there shall be elected a Chairman and a Vice-Chairman of the Board, to hold office for one year, not less than the required number of Governors to fill expiring terms and any vacancies in unexpired terms and three members of the Nominating Committee to act in connection with the following annual meeting.

NOMINATING COMMITTEE

Sec. 3. There shall be a Nominating Committee composed of three [equity] members elected at each annual meeting of the Exchange from among [equity] members, general partners of [equity] member firms and officers of [equity] member corporations who do

not hold any office in the Exchange. Any vacancy upon the Nominating Committee shall be filled by the remaining members of the Nominating Committee from among persons who would have been eligible for election to such position at the preceding annual meeting. No member of the Nominating Committee in any year shall be eligible for election to any office or position in the Exchange for the ensuing year nor shall he serve as a member of the Nominating Committee for two successive years.

REPORTING OF NOMINATING COMMITTEE

Sec. 4(a). After consulting with the President and the Chairman of the Board with respect to the current developments and needs of the Exchange which should be considered in connection with nominations not later than 30 days preceding each annual meeting, the Nominating Committee shall report to the Secretary nominations to be voted on at the annual meeting as follows:

(i) A Chairman of the Board and a Vice Chairman of the Board, each to serve for one year;

(ii) Seven Governors, at least a majority of whom shall be member Governors, and at least two of whom shall be non-member Governors to serve for a term of three years;

(iii) That number of Governors required to fill any vacancies on the Board of Governors to serve for any unexpired terms. Any person nominated to fill a vacancy on the Board of Governors shall be of the same category (from the Chicago area or elsewhere, member or non-member) as the Governor he is nominated to succeed;

(iv) Three members of the Nominating Committee to act in connection with the next following annual meeting;

Sec. 4(b). The Nominating Committee shall make its nominations so as to accomplish the following:

(i) Having the 15 member Governors in Classes I, II and III consist of eight from the Chicago area (at least two of whom shall be active on the Floor of the Exchange) and seven from elsewhere in the United States or Canada, selected with a view to providing, over time, representation on the Board to all geographical areas in which there are member organizations which support and significantly contribute to the strength and growth of the Exchange; provided that, in the event that the number of non-member Governors of the Exchange exceeds six, the number of member Governors from each area (the Chicago area and elsewhere) shall be proportionately reduced (the number of member Governors not from the Chicago area being subject to the first reduction).

(ii) Having a Chairman of the Board, a Vice Chairman of the Board and member Governors who, if affiliated with member organizations, occupy senior management positions having substantial responsibility in such member organizations.

(iii) Having persons on the Board of Governors and the Nominating Committee who are interested in and knowledgeable about the various aspects of Exchange operations and of the securities business and the activities of the Midwest Clearing Corporation and the Service Corporation.

LIMITATION ON SERVICE

Sec. 5. No Governor [in Class I, II and III] who has served all or part of two consecutive terms as Governor (excluding terms expiring at the first annual meeting of the Exchange) shall be eligible for election as a Governor of the Exchange except after an interval of at least one year. This disqualification shall not apply to [any person who upon completion of one or more terms as a Class I, II or III Governor shall become] the Chairman or Vice Chairman of the Board or the President. [The Governor chosen by the options-only members in accordance with the provisions of Part II of this Article shall be eligible to serve six consecutive one-year terms. Such Governor will not be eligible to serve as a Governor after six consecutive one-year terms except after an interval of at least one year.]

Sec. 6. No change.

NOMINATIONS BY [EQUITY] MEMBERS

Sec. 7. [Equity] members may nominate other candidates for the same office or offices as the candidates nominated by the Nominating Committee. Such nominations shall be by written petition which shall designate the candidate by name and office and shall be signed by the equity members so nominating. The petition must be filed with the Secretary at least 20 days prior to the annual meeting. A petition shall not be valid unless signed by not less than 10 [equity] members. No [equity] member may endorse more than one candidate for the same office, excepting candidates for members of the Board of Governors and of the Nominating Committee, in which case as many candidates as there are offices to be filled may be endorsed. In case of any nomination of a candidate for election to the Board of Governors pursuant to this Section 7, the election of member Governors from the Chicago area, member Governors from elsewhere in the United States or Canada and non-member Governors shall be separate so that the candidate or candidates so nominated will be opposing only the candidate or candidates of the same

category nominated by the Nominating Committee.

PROCEDURE OF ANNUAL MEETINGS

Sec. 8. Annual meetings shall be conducted in the following manner:

(a) The Secretary of the Exchange and two [equity] members appointed by the Chairman of the Board shall constitute a committee to conduct the election held at the annual meeting of the Exchange. The Committee shall have authority to decide all questions pertaining to the election (except tie votes) and its decision shall be final.

(b) At each annual meeting each [equity] member shall be entitled to one vote for each Governor, officer and committee member to be elected, which may cast in person or by proxy. Proxies shall be [equity] members or officers of the Exchange.

(c) Promptly after the expiration of the time within which nominations may be made by petition, the Secretary shall mail to each [equity] member a notice of the election, and a ballot containing the names of all candidates listed under the offices for which they have been severally nominated and a proxy card. Candidates nominated by the Nominating Committee and those nominated by petition shall be so designated on the ballot. An envelope marked "For Ballot Only" and a copy of this article of the Constitution, or instructions for voting based thereon, shall be enclosed with the notice. Each member desiring to vote by proxy shall mark his ballot and seal the same in the envelope marked "For Ballot Only." The envelope containing the ballot shall not be marked in any way to identify the member voting. He shall sign the proxy card and mail or deliver it, accompanied by the envelope containing his marked ballot, to the proxy designated in the proxy card. At the annual meeting such proxy shall deliver the proxy card to the Secretary (who shall file the proxy card and check the name of the member so voting on the voting list) and shall vote by placing the envelope containing the ballot in the ballot box. Voting in person shall be by secret ballot deposited in the ballot box by the member so voting. The execution of the proxy card or the deposit of the ballot in the ballot box by a voting designee of a member organization shall constitute a representative by such voting designee that he is duly authorized to vote on behalf of such member organization and that such vote is not contrary to instructions received by him from such member organization.

(d) No Change.

SPECIAL MEETINGS OF [EQUITY] MEMBERS

Sec. 9. Special meetings of [equity] members, for purpose or purposes,

unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the President or by the Chairman of the Board at the direction of Board of Governors and shall be called by the Secretary at the written request of 25 [equity] members stating the purpose or purposes of the proposed meeting.

Sec. 10. Unless otherwise prescribed by statute or by the Certificate of Incorporation or Constitution notice of each annual or special meeting of [equity] members, stating the date, time and place thereof and the purpose or purposes for which such meeting is called, shall be given to each member entitled to vote thereat not more than 30 days and at least 10 days before the date of the meeting. Only matters stated in the notice of a meeting of members shall be brought before such meeting. Any [equity] member desiring that any matter be brought before an annual meeting of members shall so notify the Secretary at least 35 days prior to the date of such meeting, and the consideration of such matter shall be stated in the notice of such meeting as one of the purposes of such meeting.

QUORUM

Sec. 11. A majority of the [equity] members, when present in person or represented by proxy shall constitute a quorum at all meetings of [equity] members for the transaction of business except as otherwise provided by statute, the Certificate of Incorporation or the Constitution.

VOTING BY [EQUITY] MEMBERS

Sec. 12. When a quorum is present at any meeting, a majority of members present in person or represented by proxy shall decide any question properly brought before such meeting, unless the question is one upon which by express provision of statute, the Certificate of Incorporation or the Constitution a different vote is required, in which case such express provision shall control. Voting on any question brought before any meeting of [equity] members shall be in accordance with the procedure provided by the Constitution for the election conducted at each annual meeting of the Exchange.

ACTION BY [EQUITY] MEMBERS WITHOUT A MEETING

Sec. 13. Any corporate action which might properly be brought before a meeting of [Equity] members upon which a vote of [equity] members is required or permitted may be taken without a meeting without prior notice and without a vote, with the written consent of [equity] members having not less than the minimum number of votes that would be neces-

sary to authorize or take such action at a meeting at which all [such] members having a right to vote thereon were present and voted; provided that prompt notice be given to those members who have not consented in writing to the taking of corporate action without a meeting by less than unanimous written consent.

Sec. 14. No change.

[PART II]

[Meetings, Nominations and Elections—Options—Only Members]

Sec. 15. Meetings of options-only members shall be held at such place as the Board of Governors may designate prior to the giving of notice of such meeting, but if no such designation is made, then at the principal business office of the Exchange.

ANNUAL MEETING

Sec. 16. Annual meetings of options-only members will be held on the first Monday in October of each year commencing in 1977, unless such day shall be a holiday, in which case the meeting will be held on the next day following which is not a holiday. At each such annual meeting there shall be elected one member for the Midwest Stock Exchange Board of Governors, three members of an Options Nominating Committee to act in connection with the next following annual meeting and one options-only member to preside at the next annual meeting of options-only members and any special meetings convened prior to the next annual meeting. If the member designated to preside at the next annual meeting shall be unable to preside at such meetings or at any special meetings, such presiding officer may designate another options-only member as a replacement.

OPTIONS NOMINATING COMMITTEE

Sec. 17. There shall be an Options Nominating Committee composed of three options-only members elected at each annual meeting of options-only members from among options-only members, general partners of member firms owning options-only memberships and officers of member corporations owning options-only memberships who do not hold any other office in the Exchange. Any vacancy upon the Options Nominating Committee shall be filled by the remaining members of the Nominating Committee from among persons who would have been eligible for selection to such position at the preceding annual meeting. No member of the Options Nominating Committee in any year shall be eligible for election to any office or position in the Exchange for the ensuing year nor shall he serve as a member of the Options Nominating Committee for two successive years.

REPORTING OF OPTIONS NOMINATING COMMITTEE

Sec. 18. After consulting with the President and Chairman of the Exchange with respect to current developments which should be considered in connection with nominations and no later than 30 days preceding each annual meeting of options-only members, the Options Nominating Committee shall report to the Secretary nominations to be voted on at the annual meeting as follows:

(a) A nominee to be placed in nomination for election to the Board of Governors of the Exchange by the options-only members.

(b) Three members of the Options Nominating Committee to act in connection with the next following annual meeting of options-only members.

(c) A member to preside at the next following annual meeting of options-only members and any intervening special meetings.

RECOMMENDATIONS OF CANDIDATES

Sec. 19. At any time prior to the filing of the report of the Options Nominating Committee with the Secretary of the Exchange, any options-only member may recommend candidates for any office to the Committee, either in writing or in person. The Options Nominating Committee shall hold at least two open meetings for the purpose of receiving recommendations as to candidates from the options-only members and member organizations.

NOMINATIONS BY OPTIONS-ONLY MEMBERS

Sec. 20. Options-only members may nominate other candidates for the same office as the candidates nominated in accordance with Section 18 of this Article. Such nominations shall be by written petition which shall designate the candidate by name and office and shall be signed by the members so nominating. The petition must be filed with the Secretary at least 20 days prior to the annual meeting of options-only members. A petition shall not be valid unless signed by not less than 10 options-only members. No options-only member may endorse more than one candidate for the same office, exception candidates for members of the Options Nominating Committee, in which case as many candidates as there are offices to be filled may be endorsed.

PROCEDURES OF ANNUAL MEETINGS

Sec. 21. Annual meetings of the options-only members shall be conducted in the following manner:

(a) The Secretary of the Exchange and two options-only members ap-

pointed by the Chairman of the Board shall constitute a committee to conduct the election held at the annual meeting of the options-only members. The Committee shall have authority to decide all questions pertaining to the election (except tie votes) and its decision shall be final.

(b) At each such annual meeting each options-only member shall be entitled to one vote for each position or committee member to be elected, which may be cast in person or by proxy. Proxies shall be options-only members or officers of the Exchange.

(c) Promptly after the expiration of the time within which nominations may be made by petition, the Secretary shall mail to each options-only member a notice of the election, and a ballot containing the names of all candidates listed under the offices for which they have been severally nominated and a proxy card. Candidates nominated by the Options Nominating Committee and those nominated by petition shall be so designated on the ballot. An envelope marked "For Ballot Only" and a copy of this Article of the Constitution, or instructions for voting based thereon, shall be enclosed with the notice. Each options-only member desiring to vote by proxy shall mark his ballot and seal the same in the envelope marked "For Ballot Only." The envelope containing the ballot shall not be marked in any way to identify the member voting. He shall sign the proxy card and mail or deliver it, accompanied by the envelope containing his marked ballot, to the proxy designated in the proxy card. At the annual meeting of the options-only members, such proxy shall deliver the proxy card to the Secretary (who shall file the proxy card and check the name of the member so voting on the voting list) and shall vote by placing the envelope containing the ballot in the ballot box. Voting in person shall be by secret ballot deposited in the ballot box by the member so voting. The execution of the proxy card or the deposit of the ballot in the ballot box by a voting designee of a member organization shall constitute a representation by such voting designee that he is duly authorized to vote on behalf of such member organization and that such vote is not contrary to instructions received by him from such member organization.

(d) Upon completion of the vote, the Committee shall open the ballot box and the envelopes containing the ballots. The ballots shall be counted by the Committee and the candidate or candidates receiving the largest number of votes shall be declared to have been elected. Tie votes shall be decided by secret ballot of the Board of Governors at its first meeting fol-

lowing the election at which the tie occurs.

SPECIAL MEETINGS

Sec. 22(a) Special meetings of options-only members, for any purpose or purposes, unless otherwise prescribed by statute or by the Certificate of Incorporation, may be called by the President, by the Chairman of the Board at the direction of the Board of Governors or by the options-only member elected to preside at the annual meeting of options-only members, and shall be called by the Secretary at the written request of 25 options-only members stating the purpose or purposes of the proposed meeting.

(b)(1) An initial special meeting of options-only members shall be held, at a date to be determined by the Chairman of the Board, prior to the initiation of options trading, to elect one member of the Board for the term expiring at the annual meeting of equity members in 1978, the Options Nominating Committee to act in connection with the initial annual meeting of options-only members, and the member who will preside at the initial special meeting and initial annual meeting of options-only members. Nominations for such officers and committee memberships shall be made from the floor of the meeting. An options-only member will be entitled to nominate one candidate for each of the offices or committee memberships to be filled. Each member present, in person or by proxy shall be entitled to one vote for each of the offices or committee memberships to be filled. Voting shall be by secret ballot deposited in the ballot box by the member or a member's proxy so voting. The execution of a proxy card, as provided in paragraph (b)(2) of this section or the deposit of the ballot in the ballot box by a voting designee of a member or organization shall constitute a representation by such voting designee that he is duly authorized to vote on behalf of such member organization and that such vote is not contrary to instructions received by him from such member organization.

(2) The Secretary shall provide notice of the initial special meeting in accordance with Sec. 23 of this Article. A proxy form will be provided with such notice enabling the member to name any other options-only member to vote on behalf of the member at such meeting.

NOTICE

Sec. 23. Unless otherwise prescribed by statute or by the Certificate of Incorporation or Constitution notice of each annual or special meeting of options-only members, stating the date, time and place thereof and the pur-

pose or purposes for which such meeting is called, shall be given to each member entitled to vote thereat not more than 30 days and at least 10 days before the date of the meeting. Only matters stated in the notice of a meeting of options-only members shall be brought before such meeting. Any member desiring that any matter be brought before an annual meeting of options-only members shall so notify the Secretary at least 35 days prior to the date of such meeting, and the consideration of such matter shall be stated in the notice of such meeting as one of the purposes of such meeting.

QUORUM

Sec. 24. A majority of the options-only members when present in person or represented by proxy, shall constitute a quorum at all meetings of options-only members for the transaction of business except as otherwise provided by statute, the Certificate of Incorporation or the Constitution.

VOTING BY OPTIONS-ONLY MEMBERS

Sec. 25. When a quorum is present at any meeting, a majority of options-only members present in person or represented by proxy shall decide any questions properly brought before such meeting, unless the question is one upon which by express provision of statute, the Certificate of Incorporation or the Constitution a different vote is required, in which case such express provision shall control. Voting on any question brought before any meeting of options-only members shall be in accordance with the procedure provided by the Constitution for the election conducted at each annual meeting of the exchange.

ACTION BY OPTIONS-ONLY MEMBERS WITHOUT A MEETING

Sec. 26. Any corporate action which might properly be brought before a meeting of options-only members upon which a vote of options-only members if required or permitted may be taken without a meeting, without prior notice and without a vote, with the written consent of options-only members having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all such members having a right to vote thereon were present and voted; provided that prompt notice be given to those members who have not so consented in writing to the taking of corporate action without a meeting by less than unanimous written consent.

TERM "MEMBER" INCLUDES VOTING DESIGNEE

Sec. 27. The word "member" wherever used in this Article IV shall include

and also mean the "voting designee" of a member organization but shall not include or mean the "nominee" of a member organization.]

ARTICLE V—No CHANGE

ARTICLE VI—No CHANGE

ARTICLE VII

BUSINESS CONDUCT

SUMMARY SUSPENSION

Sec. 1—No Change.

Sec. 2. The Exchange shall have the authority to discipline any member organization violating any provision of the Constitution or Rules or the By-Laws or Rules of the Midwest Clearing Corporation, or Midwest Securities Trust Company [or the Options Clearing Corporation] as provided in the Rules. Discipline may be by censure, fine, suspension, expulsion or as the Board of Governors may determine. The Exchange, as and to the extent provided in the Rules, shall have regulatory and disciplinary jurisdiction over partners of member firms; officers, directors and principal stockholders of member corporations; employees of members and member organizations; subsidiaries of member organizations; parent firms and principal officers and subsidiaries of parent firms. As and to the extent provided in the Rules, the disciplinary authority of the Exchange over any person or organization occupying a status described by this section shall continue after the termination of such status with respect to acts or omissions occurring prior to such termination. Disciplinary proceedings shall be in accordance with the Rules.

ARTICLE VIII

EXCHANGE CONTRACTS AND CLEARING CORPORATION[S]

EXCHANGE CONTRACTS

Sec. 1. All contracts pertaining to securities listed or admitted to unlisted trading privileges on the Exchange between member or member organizations for the purchase, sale, borrowing, loaning or hypothecation of such securities, or for the borrowing, loaning or payment of money in connection with a transaction in such securities, whether occurring on the Floor[s] of the Exchange or elsewhere, shall be Exchange contracts, unless made subject to the rules of another exchange. Contracts pertaining to other securities may be made Exchange Contracts by agreement of the parties.

TERMS AND CONDITIONS

Sec. 2. The provisions of the Certificate of Incorporation; Constitution and of the Rules shall be a part of the

terms and conditions of all Exchange Contracts and the By-Laws and the Rules of the Midwest Clearing Corporation and [the Options Clearing Corporation] shall be a part of the terms and conditions of every contract which is to be cleared or settled through the such Midwest Clearing Corporation[s] and all such contracts shall be subject to the exercise by the Board of Governors and the [appropriate] clearing corporation of the powers with respect thereto vested in them by the Certificate of Incorporation, Constitution and Rules of the Exchange and by the By-Laws and Rules of [either] the Midwest for the [appropriate] clearing corporation[s], respectively.

DELIVERY AND PAYMENT

Sec. 3. On every Exchange Contract delivery and payment shall be made through the Midwest Clearing Corporation [or Options Clearing Corporation] as required by the By-Laws and Rules of the Midwest Clearing Corporation [or Options Clearing Corporation], unless it is otherwise mutually agreed by the parties to the contract, or the Midwest [appropriate] Clearing Corporation, either in the particular instance or in pursuance of its By-Laws and Rules, refuses to act in the matter.

A party to an Exchange Contract who is not a clearing member of the Midwest Clearing Corporation [or Options Clearing Corporation] shall cause the transaction to be cleared and settled for him or it by a clearing member of the Midwest [appropriate] Clearing Corporation; however, such non-clearing member having both the purchase and selling orders of a proposed transaction completed on the Exchange without the services of a clearing member, provided it is duly reported to the Exchange and the Midwest [appropriate] Clearing Corporation.

ARTICLE IX

DISSOLUTION AND LIQUIDATION

DISSOLUTION OF EXCHANGE

Sec. 1. The affirmative vote of at least three-quarters of the [equity] members shall be required in order to dissolve the Exchange; in all other respects, the procedure to propose and vote upon dissolution shall be as required by the General Corporation Law of Delaware.

LIQUIDATION OF ASSETS

Sec. 2. After payment of all obligations of the Exchange, any remaining assets shall be sold and the net proceeds distributed in aliquot parts to the persons and organizations owning memberships at the time of the vote to dissolve the Exchange irrespective of whether such persons and organiza-

tions were entitled to vote on such dissolution [in the following manner]:

[a.] [Equity memberships will be entitled to equal distributions until each such member has received \$13,500 for each membership owned less any indebtedness due to the Exchange, any unpaid fees, fines, dues, assessments or other charges.]

[b.] [If there should be any funds or assets remaining after the \$13,500 payment (or provision therefor) to equity members, such remaining funds shall be distributed equally to the persons and organizations owning options-only memberships until each such member has received \$10,000 for each membership owned, less any indebtedness due to the Exchange, any unpaid fees, fines, dues, assessments or other charges.]

[c.] [If there should be any funds or assets remaining after the \$10,000 payment (or provision therefor) to options-only members, then such remaining funds or assets shall be divided equally among all memberships and distributed to all owners of memberships in aliquot parts.]

[d.] [Neither the consolidation or merger of the Exchange nor the sale, lease or conveyance of all or a part of its assets shall be deemed a final liquidation, dissolution or winding up of the affairs of the Exchange for the purpose of the foregoing provisions.]

As stated in the Introduction Statement, the general purpose of this proposed rule change is to effect a combination of the options markets of the COBE and Midwest. The business reasons in support of the combination are set forth in Part II, pp. 6-16, of the Joint Memorandum (Exhibit to Form 19b-4A) and are incorporated herein by reference. The public benefits that would be gained from the combination are set forth in Part III, pp. 17-20, of the joint Memorandum and also incorporated herein by reference.

The purpose of the proposed Relocation step is to make possible the prompt achievement of certain of the benefits to be gained from the full Combination, in the event that the Commission's consideration of the full Combination becomes unduly prolonged. The benefits to be gained from the Relocation are set forth at page 20 of the Joint Memorandum and are incorporated herein by reference.

The specific purpose of the proposed amendments to Midwest's rules is to eliminate all references to Midwest's organization, operation and regulation of an options market. This is accomplished by simply deleting from Midwest's rules those rules with respect to options that have been adopted since November 15, 1976, when the Commis-

sion approved Midwest's establishment of an options market.

With respect to the Combination, the proposed amendments to Midwest's rules would effect the termination of Midwest's operation and regulation of an options market. As such, the provisions of Section 6(b)(1)-(4), (6) and (7) of the act are not applicable. However, insofar as the proposed amendments reflect Midwest's judgment as to the best interests of its members and the public, they are designed "to protect investors and the public interest" in accordance with Section 6(b)(5) of the act. (See Parts I and II of the Joint Memorandum with respect to Midwest's business reasons for the transactions contemplated by the proposed rule changes and the public benefits to be gained therefrom.)

During the Relocation, Midwest will continue to oversee and regulate its options market in full compliance with its obligations under the Act. See Part III, pp. 17-20, of the Joint Memorandum with regard to the upgrading of Midwest's surveillance capabilities upon the Relocation.

The Agreement contemplates the possibility that the Relocation would take place prior to the effective date of the Combination, with CBOE taking over certain of the responsibilities for the operation of the Midwest options markets at that time. Part IV, pp. 20-22, of the Joint Memorandum discusses CBOE's market and regulatory capacity. Given CBOE's present capacity and its current and planned programs for expansion, Midwest is confident that CBOE can readily accommodate the Midwest options market.

The Midwest Stock Exchange, Incorporated has neither solicited nor received any comments.

The Midwest Stock Exchange, Incorporated believes that no burdens have been placed on competition.

Within 35 days of the date of publication of this notice in the FEDERAL REGISTER, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organizations consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. The Commission encourages those submitting comments on the proposed rule change to address (i) whether the proposed action is an expansion or mate-

rial alteration of an existing options program within the meaning of the options moratorium³ and (ii) whether the proposed action imposes any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.⁴ Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted within 30 days of the date of this publication.

Dated: January 12, 1979.

By the Commission.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2023 Filed 1-18-79; 8:45 am]

[8010-01-M]

[Release No. 34-15497; File No. SR-NSCC-78-13]

NATIONAL SECURITIES CLEARING CORPORATION

Self-Regulatory Organizations

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended ("the Act") by Pub. L. No. 94-29, 16 (June 4, 1975), notice is hereby given that on January 2, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

TEXT OF PROPOSED RULE CHANGE

Amend Rule 11, Section 7 of the SCC Division of National Securities Clearing Corporation (the Corporation) as follows: (italics indicate new material and brackets indicate deletions)

Rule 11. Sec. 7. (a) In the event a Member has a Long Position in a CNS Security, the Member (the "originator") may demand immediate delivery thereof by filing, at or before the time specified in the Procedures, with the Corporation a Notice of Intention to Buy-In in the form prescribed by the Procedures. *For the purposes of this Section of these Rules and Section VI (K) and IX of the Procedures, the term "listed security(ies)" shall be deemed*

to mean a security(ies) traded on the New York Stock Exchange, Inc. and/or The American Stock Exchange, Inc., and the term "OTC security(ies)" shall be deemed to mean a security(ies) traded other than on The New York Stock Exchange, Inc. or The American Stock Exchange, Inc. The originator may be given priority in the manner prescribed by the Procedures, in respect of the allocation by the Corporation of securities covered by the Notice of Intention to Buy-In in the settlement on the business day after the Notice of Intention to Buy-In is received by the Corporation and if the securities are not allocated to the originator in that settlement, in the settlement on the second business day after the Notice of Intention to Buy-In is received by the Corporation.

(b) In the event that less than all the securities covered by the Notice of Intention to Buy-In are received by the originator prior to the time specified in the Procedures, the Corporation shall as promptly as possible, but not later than the business day after the Notice of Intention to Buy-In is filed with the Corporation, deliver to the Member or Members, determined in accordance with the priorities specified in the Procedures, Retransmittal Notices specifying the total amount called for in the Notice of Intention to Buy-In which has not been received by the originator pursuant to said paragraph (a) (the "remaining securities") and demanding delivery from each such Member of a specified quantity of securities determined in accordance with the Procedures.

(c) Prior to the execution of a Buy-In of either a listed security or an OTC security, the originator must accept and pay for any portion or all the remaining securities delivered to the originator. [and if] If the originator of a Notice of Intention to Buy-In a "listed security" does not so receive all the remaining securities at the opening of business on the business day after which the Corporation delivers Retransmittal Notices pursuant to paragraph (b) of this Section, the originator may order the purchase of the portion remaining undelivered in the manner specified in the Procedures. *Extensions of the execution date for a Buy-In of a "listed security" will not be granted by the Corporation.*

(d) In the event that a Notice of Intention to Buy-In is presented and sufficient securities are not delivered as provided in paragraph (b) of this Section and subsequently the originator does not order the purchase of the remaining securities, a charge may be levied against the originator in the amount of \$250.]

(d) If the originator of a Notice of Intention to Buy-In for an "OTC security" does not so receive all the re-

maining securities by the time specified in the Procedures, the originator may execute the Buy-In in the market of his choice and the originator must be prepared to defend the price at which the Buy-In is executed relative to the current market at the time of the Buy-In.

(e) Members who received Retransmittal Notices, which are the result of a Notice of Intention to Buy-In for a position in "listed securities" and do not deliver securities sufficient to satisfy such, shall assume liability for the loss, if any, which occurs as a result of the Buy-In.

(f) Members who received deliver security orders pursuant to the Procedures as a result of a Notice of Intention to Buy-In for a position in "OTC securities" and do not deliver securities sufficient to satisfy such, shall assume liability for the loss, if any, which occurs as a result of the Buy-In.

(g) Since Buy-Ins create the highest priority in the CNS Allocation System, to protect against improper use of the Buy-In Procedure, the Corporation, in its discretion, may levy a charge in the amount of \$250 against the originator of a Buy-In in a listed security, who fails to order the purchase of securities representing the undelivered portion of the Buy-In request, if the Corporation determines that such failure to order or failure to execute was an abuse of the Buy-In Procedures.

Amend Section VI. K. of the SCC Division Procedures as follows:

K. Recording of CNS Buy-Ins

LISTED SECURITIES

A member having a Long Position at the end of any day may submit to the Corporation a Notice of Intention to Buy-In (Buy-In Notice) specifying a quantity of securities not exceeding such Long Position which it intends to buy/in (Buy-In Position). For the purpose of this section, the day the Buy-In Notice is submitted is referred to as N, and N+1 and N+2 refer to the succeeding days. Each day commences in the evening and includes an evening allocation of securities and a daytime allocation. The Buy-In Position is given high priority for allocation through N+2.

NOTE: Same day and next day Buy-Ins against CNS positions are not permitted.

If a Buy-In Position remains unfilled after the evening allocation on N+1, the Corporation issues Retransmittal Notices on the morning of N+1 to Members with the oldest Short Positions. Age is defined as the number of consecutive days during which the Member has been short, irrespective of quantity. Retransmittal Notices are issued in an aggregate quantity at least equal to the Buy-In Position. In no case will the Buy-In Liability of a Member exceed the Buy-In Position or

³See Securities Exchange Act Release No. 14878 (June 22, 1978).

⁴15 U.S.C. 78f(b)(8) and Form 19b-4A.

the total Short Position of the Member. If several Members have Short Positions with the same age, all such Members are issued Retransmittal Notices, even if the total of their Short Positions exceeds the Buy-In Position.

The quantity specified on each Member's retransmittal notice is its Buy-In Liability.

A Member's Buy-In Liability may be satisfied by the actual settlement of the Short Position up to the completion of the evening allocation on N+2. If a deposit of securities is required to satisfy the Short Position, that deposit should be made prior to the Designated Depository evening deposit cutoff time on N+1. Going from a Short Position to a flat or Long Position due to Settling Trades, stock dividends, or other activity on N+2 does not free a Member from Buy-In Liability. If the Buy-In Position is not satisfied at the end of the evening cycle on N+2, the Buy-In may be executed. See Section IX for execution procedures.

If a Member satisfies its Short Position during the daytime cycle on N+2, and the Buy-In is, in fact, executed on that day, the Member's Buy-In Liability will not be satisfied.

OTC SECURITIES

Submission of OTC Buy-Ins. The Clearing Member with a long CNS position in an OTC issue would submit a Notice of Intention to Buy-In to the Clearing Corporation on or after the evening of Settlement day.

OTC Buy-In Retransmittals. If the Clearing Member's long position is not filled during the night cycle processing on N+1 (note: night cycle processing precedes day cycle), retransmittal Buy-In Notices will be sent to the oldest short Clearing Member(s) the following morning (N+1).

OTC Buy-In Receive and Deliver Security Orders. If the long position is not filled during the day cycle on N+1, at the end of that day's CNS processing, the Corporation will be substituted in the CNS system for the long Clearing Member and a receive security order will be issued to the long Clearing Member with the Corporation as the deliver side. At the same time, using a separate NSCC account, the Corporation will be substituted for the one or more short Clearing Members, who have received the retransmittal notices on the morning of N+1 and who have not, during the day cycle processing, covered their short positions by deliveries. The short Clearing Members will receive a deliver security order with the Corporation as the receive side. Deliver security orders will require physical delivery to the Corporation unless the Corporation waives such requirement.

Satisfaction of OTC Buy-Ins. If short Clearing members deliver the securities to the Corporation, the Corporation will redeliver the securities to the buying-in Clearing Member in satisfaction of the deliver security order and the entries substituting the Corporation in the CNS system will be reversed. Absent delivery by the short Clearing Member, if the Corporation's long position in the CNS system is allocated the securities, the Corporation will deliver the securities to the buying-in Clearing Member, cancel any remaining short Clearing Members' deliver security orders not needed to satisfy the Buy-In and re-establish these as shorts in the CNS system.

Extension of Time for OTC Buy-Ins. Extensions of time for execution will be granted by the Corporation under the following conditions:

1. *Non-Clearing Member Originated Buy-In.* The execution date for an OTC Buy-In submitted by a Clearing Member to the Corporation, which results from a non-Clearing Member originated Buy-In, which has been extended pursuant to 859(g) of the NASD's Uniform Practice Code (UPC), would be the extended date (i.e., seven calendar days from the original execution date prior to extension). This execution date must be indicated on the Buy-In Intent Notice as well as the fact that the Buy-In is a UPC transmittal. This date will also be indicated on the retransmittal notice and any receive or deliver orders issued as a result of Buy-In Intent Notices. Further extensions (i.e., extensions for transfer or transit) would not be given.

2. *Clearing Member Originated Buy-In.* A short Clearing Member who has received a retransmittal notice as the result of a Clearing Member originated Buy-In may take a seven (7) calendar day extension due to transit or transfer consistent with the UPC. Upon request, certificate numbers will be furnished by the short Clearing Member requesting the extension. If the securities are in transfer and due to the transfer agent, transfer is delayed, the Corporation may grant an additional seven (7) calendar days. If the short Clearing Member cannot take the extension but retransmits a Clearing Member originated Buy-In to a non-Clearing UPC Member and the UPC broker takes a UPC transfer or transit delay, the short Clearing Member can pass the extension back to the Corporation who will extend the execution date for the same period of time.

Amend Section IX of the SCC Division Procedures as follows:

IX. Execution of Buy-Ins

A. CNS System

A Member who has submitted a Buy-In Notice under subsection K of Section VI and not received the Buy-In Position shown on his Notice by the

end of the evening cycle on N+2, unless extensions have been granted, may instruct the Corporation to buy-in the remaining position by delivering a Buy-In Order to the Corporation prior to time therefor on N+2 specified by the Corporation.

Members who receive Retransmittal Notices and do not satisfy them (Subject Members) assume liability for the loss, if any, which occurs as a result of the Buy-In.

LISTED SECURITIES

The Buy-In Order is executed by the Corporation in such marketplace and through such agents as it shall elect. The quantity bought-in is pro-rated among the Subject Members.

N.B. If the Buy-In Order is not executed on N+2, the Buy-In Order will not be executed thereafter, and it will be necessary for the originator to recommence the Buy-In Procedure in order to have his Long Position bought-in.

When a Buy-In Order has been executed, the quantity bought-in will be removed from the Long Position of the originating Member and the contract money will be credited to his account by journal entry. The Short Positions of the Subject Members will be reduced by the portion of the quantity bought-in allocated to each, and the appropriate portion of the contract money will be debited to their accounts, by journal entry. These journal entries will be processed the evening the Buy-In Order is executed and will affect the CNS records on the following day and be reported in the Miscellaneous Activity Report for such day.

NOTE: At the time the originator submits a Buy-In Order to the Corporation under the CNS System, the Buy-In Order should contain instructions for execution on a cash, next day or regular way ex-CNS basis (Special Trade).

OTC SECURITIES

Execution of the Buy-In will be performed by the originator of the Buy-In, either Clearing Member or UPC broker. The short Clearing Member's Buy-In liability would be fixed on the day he receives the retransmittal notice (N+1). Any security delivery orders which have not been completed and on which a Buy-In is executed will be the liability of the failing to deliver Clearing Member. The long Clearing Member must report a Buy-In Execution price to NSCC along with any profit or loss. NSCC will debit and credit the accounts of the Clearing Members involved in the Buy-In. In the event all or part of the long Clearing Member's Buy-In requirement is not met through execution, on the day after the established execution date, the receive and deliver orders issued on the evening of

N+1 will be voided and the respective positions re-established in CNS. (In the event of a partial execution, this will be on a pro-rata basis.) At the same time, the remaining positions established in the NSCC Buy-In account in CNS will be cancelled.

BALANCE ORDER SYSTEMS

A member (the originator) holding a receive balance order in respect of which securities are not delivered by the time on the Settlement Date specified by the Corporation may cause such securities to be bought-in; provided, however, that the Buy-In shall not be effected prior to the third business day following the Settlement Date.

The originator submits to the Member holding the deliver balance order (the Subject Member) a Buy-In Notice, attaching a copy of his receive balance order thereto and specifying the proposed execution date and the quantity of securities, not exceeding the quantity specified in the receive balance order, which he intends to buy-in (Buy-In Position). The Buy-In Notice shall be delivered not later than the time specified by the Corporation at least two business days before the proposed execution of the buy-in.

An originator who has not received the Buy-In Position shown on his Buy-In Notice by the time specified by the Corporation on the business day of the proposed execution of the buy-in may buy-in the Buy-In Position in such market as he shall elect. In the event the buy-in is not executed on the day proposed, the Buy-In Notice shall expire at the close of business such day.

The originator must be prepared to defend the price at which the buy-in is executed relative to the current market at the time of the buy-in. Upon the execution of a Buy-In Order, the Subject Member shall be liable for any damages which may accrue to the originator. All claims for such damages shall be made promptly.

If the balance order is for warrants, rights, convertible securities or other securities which have been called for redemption or are due to expire or on which a call or expiration date is impending or which is subject to a tender or exchange offer or other event which will expire, and the last day on which the securities must be delivered or surrendered (the "expiration date") is the Settlement Date for the balance order or any day after the Settlement Date, the Member holding the receive balance order may deliver a notice to the contra party by the time specified by the Corporation on the business day preceding the expiration date (a Liability Notice). If a Liability Notice is so delivered to the contra party, and

the contra party fails to deliver the securities on expiration date, the contra party shall be liable for any damages which may accrue thereby. All claims for such damages shall be made promptly.

Receive and deliver instructions issued upon the removal of eligible securities from the CNS system (see Section VII (D)) shall be deemed to be balance orders for the purpose of this subsection B.

Extensions of Time for OTC Buy-Ins. Extensions of time for execution will be granted by the Corporation under the following conditions:

Clearing Member Originated Buy-In. A short Clearing Member who has received a buy-in notice from a Clearing Member for a balance order issued by the Corporation may taken a seven (7) calendar day extension due to transit or transfer consistent with the UPC. Upon request, certificate numbers will be furnished by the short Clearing Member requesting the extension. If the securities are in transfer and due to the transfer agent, transfer is delayed, the Corporation may grant an additional seven (7) calendar days. If the short Clearing Member cannot take the extension but retransmits a Clearing Member originated Buy-In to a non-Clearing UPC Member and the UPC broker takes a UPC transfer or transit delay, the short Clearing Member will advise the Corporation which will extend the execution date for the same period of time.

STATEMENT OF BASIS AND PURPOSE

The basis and purpose of the foregoing proposed rule change is as follows:

The proposed rule change permits certain aspects of the operation of Buy-Ins of securities transactions executed in the over-the-counter market (OTC transactions) to be accomplished in the SCC Division in a similar manner as these operations were formerly accomplished in the Corporation's NCC Division. When the SCC Division Rules were amended by filing SR-NSCC-77-10 (at Release No. 34-15142), operational features of the NCC Division and of the Corporation's ASECC Division were made available in the SCC Division. The differences in procedures between buy-ins in the SCC Division and buy-ins in the NCC Division were not reconciled at that time.

Current SCC procedures, for example, do not allow for a "short" broker to receive an extension of the execution date of the buy-in under any circumstances. Such extensions were available under NCC rules and currently are available under the Uniform Practice Code of the National Association of Securities Dealers, Inc.

Pursuant to current SCC Division procedures, buy-ins are executed by

the Corporation, which would employ an agent broker to perform any such trade execution. NCC Division rules provided that buy-ins were executed by the "long" broker who initiated the buy-in (subject to the requirement that such broker be able to defend the price obtained upon execution). Additionally, a shorter time period imposed for buy-in liability is provided in the SCC Division than was provided in the NCC Division.

Several potential inequities could result if the proposed rule change is not adopted. For example, if a short SCC Division Member retransmits a Clearing Member originated buy-in to a UPC non-Clearing Member, to whom he is long, the short UPC non-Clearing Member can prevent the execution against himself for seven or even fourteen days because of transfer or transit, yet the short Clearing Member cannot prevent the execution against himself and, accordingly, would be liable for the full costs of execution by the buy-in originator.

Additionally, under the present rules, if a buy-in is received by a Clearing Member from a UPC non-Clearing Member outside the system, he must execute the buy-in in the system against a Short Clearing Member who owes him the stock even though the Long Clearing Member may never be executed against by the UPC non-Clearing Member who originated the buy-in.

Accordingly, the proposed rule change adopts certain limited procedures for by-ins, regarding OTC transactions only, which will be in conformity with provisions of the Uniform Practice Code in the same manner as NCC Division Rules formerly provided. The specific provisions of the proposed rule change are: the availability of buy-in extensions for transfer or transit delays, execution of the OTC buy-in by the initiating long broker (subject to his requirements to justify the execution price) and technical conforming changes to the CNS accounts of the long and short brokers who initiate and receive OTC Buy-In Notices so as to allow the substantive changes to operate in the SCC Division CNS system as well as in the SCC Division Balance Order System.

The proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions for which the Corporation is responsible by continuing existing appropriate Buy-In procedures for transactions in securities executed in the over-the-counter market.

Comments concerning the proposed rule change were not solicited by NSCC.

NSCC does not perceive that the proposed rule change would constitute a burden on competition.

NSCC has requested the Commission to exercise its authority under Section 19(b)(2) of the Act to approve the proposed rule change prior to the thirtieth day after the date of publication of this notice in the *FEDERAL REGISTER*. Section 19(b)(2) of the Act requires the Commission to find good cause for so doing and to publish its reasons for so finding. NSCC believes that accelerated treatment is necessary because of the significant exposure which SCC Division participants face until the rule change can become effective.

With 35 days of the date of publication of this notice in the *FEDERAL REGISTER*, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted within twenty-one days after the date of this publication.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: January 15, 1979.

GEORGE A. FITZSIMMONS,
Secretary.

[FR Doc. 79-2024 Filed 1-18-79; 8:45 am]

[7035-01-M]

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 241, Rule 19, 55th Revised
Exemption No. 901]

ABERDEEN & ROCKFISH RAILROAD CO., ET AL.

Exemption Under Mandatory Car Service Rules

To all railroads:

It appearing, That certain of the

railroads named below own numerous 50-ft. plain boxcars; that under present conditions, there are substantial surpluses of these cars on their lines; that return of these cars to the owners would result in their being stored idle; that such cars can be used by other carriers for transporting traffic offered for shipments to points remote from the car owners; and that compliance with Car Service Rules 1 and 2 prevents such use of these cars, resulting in unnecessary loss of utilization of such cars.

It is ordered, That, pursuant to the authority vested in me by Car Service Rule 19, 50-ft. plain boxcars described in the Official Railway Equipment Register, I.C.C.-R.E.R. No. 409, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM", and bearing reporting marks assigned to the railroads named below, shall be exempt from provisions of Car Service Rules 1, 2(a), and 2(b).

Aberdeen & Rockfish Railroad Co.
Reporting Marks: AR
Camino, Placerville & Lake Tahoe Railroad Co.
Reporting Marks: CPLT
City of Prineville
Reporting Marks: COP
The Clarendon & Pittsford Railroad Co.
Reporting Marks: CLP
Duluth, Missabe & Iron Range Railway Co.
Reporting Marks: DMIR
East Camden & Highland Railroad Co.
Reporting Marks: EACH
Genesee & Wyoming Railroad Co.
Reporting Marks: GNWR
Greenville & Northern Railway Co.
Reporting Marks: GRN
Lake Superior & Ishpeming Railroad Co.
Reporting Marks: LSI
Lenawee County Railroad Co., Inc.
Reporting Marks: LCRC
Louisiana Midland Railway Co.
Reporting Marks: LOAM
Louisville & Wadley Railway Co.
Reporting Marks: LW
Louisville, New Albany & Corydon Railroad Co.
Reporting Marks: LNAC
Manufactures Railway Co.
Reporting Marks: MRS
Middletown & New Jersey Railway Co., Inc.
Reporting Marks: MNJ
Missouri-Kansas-Texas Railroad Co.
Reporting Marks: BKT-MKT
New Orleans Public Belt Railroad
Reporting Marks: NOPB
Oregon & Northwestern Railroad Co.
Reporting Marks: ONW
Oregon, Pacific & Eastern Railway Co.
Reporting Marks: OPE
Pearl River Valley Railroad Co.
Reporting Marks: PRV
Peninsula Terminal Co.
Reporting Marks: PT
Providence & Worcester Co.
Reporting Marks: PW
Raritan River Railroad Co.
Reporting Marks: RR
Sacramento Northern Railway
Reporting Marks: SN

The Arcata and Mad River Rail Road Company and Atlanta & Saint Andrews Bay Railway Company deleted.

St. Lawrence Railroad
Reporting Marks: NSL
Sierra Railroad Co.
Reporting Marks: SERA
Terminal Railway, Alabama State Docks
Reporting Marks: T ASD
The Texas Mexican Railway Co.
Reporting Marks: TM
Tidewater Southern Railway Co.
Reporting Marks: TS
Toledo, Peoria & Western Railroad Co.
Reporting Marks: TPW
Vermont Railway, Inc.
Reporting Marks: VTR
WCTU Railway Co.
Reporting Marks: WCTR
Youngstown & Southern Railway Co.
Reporting Marks: YS
Yreka Western Railroad Co.
Reporting Marks: YW

Effective January 2, 1979, and continuing in effect until further order of this Commission.

Issued at Washington, D.C., December 26, 1978.

INTERSTATE COMMERCE
COMMISSION,
ROBERT S. TURKINGTON,
Agent.

[FR Doc. 79-2059 Filed 1-18-79; 8:45 am]

[7035-01-M]

[Notice No. 10]

ASSIGNMENT OF HEARINGS

JANUARY 16, 1979.

Cases assigned for hearing, postponement, cancellation or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the Official Docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

MC 32882 (Sub-96F), Mitchell Bros. Truck Lines, now assigned for hearing on March 13, 1979, (9 days), at Los Angeles, California in a hearing room to be later designated.
MC 102616 (Sub-942F), Coastal Tank Lines, Inc., now assigned for hearing on January 16, 1979, at Louisville, Kentucky is postponed indefinitely.
MC 107012 (Sub-274F), North American Van Lines, Inc., now assigned February 7, 1979, at Washington, D.C., is postponed indefinitely.
MC 105045 (Sub-83F), R. L. Jeffries Trucking Co., Inc., now assigned under Modified Procedure is canceled and application dismissed.
MC 87689 (Sub-13), Inter-City Truck Lines, Limited, now assigned February 12, 1979 at Helena, Montana is canceled and re-assigned to February 12, 1979 (1 week) at

Great Falls, Montana and will be held at Conference Rm., No. 1 O'Haire Manor, One Avenue South & 7th St.

MC 116915 (Sub-52F), Eck Miller Transportation Corp., now assigned May 8, 1979 at Birmingham, Alabama is canceled and application dismissed.

MC 144604F, John Haley, DBA J & R Auto Transport, now assigned February 21, 1979 at Kansas City, Missouri is canceled and application dismissed.

MC 114457 (Sub-399F), Dart Transit Co., A Corporation, now assigned for hearing on February 12, 1979, at New Orleans, Louisiana and will be held in Fifth Circuit Court of Appeals, East Courtroom 223.

MC 144469F, Ole South Dixieland Tours, Ltd., now assigned for hearing on February 7, 1979, at Natchez, Mississippi and will be held in City Hall Council Chamber.

MC 2908 (Sub-24F), Capital Motor Lines, dba Capital Trailways, now assigned February 12, 1979, at Montgomery, Ala., is postponed to March 19, 1979, (1 week), at Montgomery, Ala., in a hearing room to be later designated.

MC 138144 (Sub-30F), Fred Olson Co., Inc., now assigned February 28, 1979, at Chicago, Ill., is postponed to March 21, 1979 (3 days), at Chicago, Ill., in a hearing room to be later designated.

MC 139193 (Sub-74F), Roberts & Oake, Inc., now assigned February 13, 1979, at New Orleans, La., is postponed indefinitely.

MC 141550 (Sub-5F), Hoppy Lines, Inc., now assigned for continued hearing on February 21, 1979, (1 day), at Los Angeles, California in Room No. 324, U.S. Courthouse, 312 North Spring Street.

MC 109780 (Sub-76F), Trailways, Inc., now assigned for hearing on February 22, 1979 (2 days), at Los Angeles, California in Room No. 324, U.S. Courthouse, 312 North Spring Street.

FD-28910F, Denver & Rio Grande Western Railroad Company—Discontinuance of Passenger Trains Nos. 17 and 18 (The "Rio Grande Zephyr" Between Grand Junction, Co., and Salt Lake City, Ut., now assigned for hearing on February 26, 1979, (2 days), at Salt Lake City, Utah in a hearing room to be later designated.

FD-28910F, Denver & Rio Grande Western Railroad Company—Discontinuance of Passenger Trains Nos. 17 and 18 (The "Rio Grande Zephyr" Between Grand Junction, Co., and Salt Lake City, Ut., now assigned for hearing on February 28, 1979, (1 day), at Helper, Utah in a hearing room to be later designated.

FD-28910F, Denver & Rio Grande Western Railroad Company—Discontinuance of Passenger Trains Nos. 17 and 18 (The "Rio Grande Zephyr" Between Grand Junction, Co., and Salt Lake City, Ut., now assigned for continued hearing on March 1, 1979 (1 day), at Grand Junction, Colorado in a hearing room to be later designated.

FD-28910F, Denver & Rio Grande Western Railroad Company—Discontinuance of Passenger Trains Nos. 17 and 18 (The "Rio Grande Zephyr" Between Grand Junction, Co., and Salt Lake City, Ut., now assigned for continued hearing on March 2, 1979 (1 day), at Denver, Colorado in a hearing room to be later designated.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2060 Filed 1-18-79; 8:45 am]

[7035-01-M]

FOURTH SECTION APPLICATIONS FOR RELIEF

JANUARY 16, 1979.

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 February 5, 1979.

FSA No. 43654, Eurobridge Lines' No. 1, intermodal rates on general commodities in containers, between rail carriers' terminals at U.S. Pacific Coast ports and ports in Europe and on the Mediterranean Sea, by way of U.S. Atlantic Coast ports, in its Tariffs No. 2 and 3, I.C.C. No. 2 and 3, respectively effective February 4, 1979. Grounds for relief—water competition.

H. G. HOMME, Jr.,
Secretary.

[FR Doc. 79-2061 Filed 1-18-79; 8:45 am]

[7035-01-M]

[Amt. No. 1 to Revised ICC Order No. 14 under Service Order No. 1344]

MICHIGAN NORTHERN RAILWAY CO. AND SOO LINE RAILROAD CO.

REROUTING OF TRAFFIC

Upon further consideration of Revised I.C.C. Order No. 14 (Michigan Northern Railway Company and Soo Line Railroad Company), and good cause appearing therefor:

It is ordered,

Revised I.C.C. Order No. 14 is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* This order shall expire at 11:59 p.m., January 17, 1979, unless otherwise modified, changed or suspended.

Effective date. This amendment shall become effective at 11:59 p.m., January 10, 1979.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. A copy of the amendment shall be filed with the Director, Office of the Federal Register.

Issued at Washington, D.C., January 10, 1979.

INTERSTATE COMMERCE
COMMISSION,
JOEL E. BURNS,
Agent.

[FR Doc. 79-2062 Filed 1-18-79; 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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[6712-01-M]

1

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, January 17, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following item has been deleted:

Agenda, Item No., and Subject

Complaints and Compliance—1—Application for review of a letter by the Broadcast Bureau stating that a proposed 2½-hour auction program would violate the Commission's policy as to program-length commercials.

Additional information concerning this item may be obtained from the FCC Public Information Office, telephone (202) 632-7260.

Issued: January 15, 1979.

[S-117-79 Filed 1-17-79; 10:34 am]

[6712-01-M]

2

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, January 17, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following item has been deleted:

Agenda, Item No., and Subject

Common Carrier—3—GTE acquisition of Telenet.

Additional information concerning this item may be obtained from the FCC Public Information Office, telephone (202) 632-7260.

Issued: January 16, 1979.

[S-118-79 Filed 1-17-79; 10:34 am]

[6740-02-M]

3

JANUARY 17, 1979.

FEDERAL ENERGY REGULATORY COMMISSION.

TIME AND DATE: 10 a.m., January 24, 1979.

PLACE: 825 North Capitol Street NE., Washington, D.C. 20426, Room 9306.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

NOTE.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth F. Plumb, Secretary, telephone (202) 275-4166.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda. However, all public documents may be examined in the Office of Public Information.

POWER AGENDA—242ND MEETING, JANUARY 24, 1979, REGULAR MEETING

CAP-1. Docket No. ER79-89, Missouri Public Service Co.

CAP-2. Docket No. ER79-96, Ohio Power Co.

GAS AGENDA—242ND MEETING, JANUARY 24, 1979, REGULAR MEETING

CAG-1. Docket No. RP72-134 (PGA79-2), Eastern Shore Natural Gas Co.

CAG-2. Docket No. RP76-30, Texas Gas Pipe Line Corp.

CAG-3. Docket No. CP78-494, United Gas Pipe Line Co.

CAG-4. Docket No. CP73-329 (PGA79-1), Chattanooga Gas Co.

CAG-5. Docket No. OR79-1, Williams Brothers Pipeline Co.

CAG-6. Docket No. R-386, Peninsula Gas Co.

CAG-7. Docket No. CP77-508, Northern Natural Gas Co.

CAG-8. Docket No. CP78-4, Transcontinental Gas Pipeline Corp.

CAG-9. Docket No. CP77-58, Texas Gas Transmission Corp.

CAG-10. Docket No. CP79-26, Consolidated Gas Supply Corp., Equitable Gas Co.

Docket No. CP79-85, Texas Eastern Transmission Corp.

CAG-11. Docket No. CP78-369, El Paso Natural Gas Co.

CAG-12. Docket No. CP76-36, Equitable Gas Co.

CAG-13. Docket No. CP77-112, Panhandle Eastern Pipe Line Co.

CAG-14. Docket No. CP61-92, El Paso Natural Gas Co.

CAG-15. Docket No. CP79-12, Western Transmission Corp.

CAG-16. Docket No. CP79-71, Natural Gas Pipeline Co. of America.

CAG-17. Docket No. CP79-20, Southern Natural Gas Co.

CAG-18. Docket No. CP79-50, El Paso Natural Gas Co.

MISCELLANEOUS AGENDA—242ND MEETING, JANUARY 17, 1979, REGULAR MEETING

CAM-1. Draft Final Rule by ERA Relating to the Pricing of Certain Crude Oil.

CAM-2. Secretary of Energy's Proposed Amendments to Mandatory Canadian Crude Oil Allocation Regulations.

CAM-3. Docket No. RA79-5, Sabre Refining Inc.

CAM-4. Docket No. RA79-10, Milltown Skeelgas Inc.

CAM-5. Mississippi River Transmission Corp.

CAM-6. Alpena Power Co.

POWER AGENDA—242ND MEETING, JANUARY 24, 1979, REGULAR MEETING

ER-1. Docket No. ER79-84, Southern Co. Services, Inc.

ER-2. Docket No. ER79-92, and ER79-93, New England Power Co.

ER-3. Docket No. ER79-90, Central Kansas power Co.

ER-4. Docket No. ER79-88, Georgia Power Co.

ER-5. Docket No. ER77-521, Arizona Public Service Co.

ER-6(A). Docket No. ER78-19 (Phase I) and ER78-81, Florida Power & Light Co.

ER-6(B). Docket Nos. ER78-325, ER78-376 and ER78-19, et al., Florida Power & Light Co.

ER-7. Docket No. ER76-285 (Phase II), Public Service Co. of New Hampshire.

ER-8. Docket No. E-7704, The Electric and Water Plant Board of the City of Frankfort, Kentucky v. Kentucky Utilities Company, Docket No. E-7669, Public Service Co. of Indiana, Docket No. E-7937, Indianapolis Power & Light Co. Docket No. E-8053, Kentucky Utilities Co.

ER-9. Docket No. EL78-32, New York State Electric & Gas Corp.

ER-10. Docket NO. E-8855, ER76-90, ER76-854, and ER77-84, Boston Edison Co.

GAS AGENDA—242ND MEETING, JANUARY 24, 1979, REGULAR MEETING

I. PIPELINE RATE MATTERS

- RP-1. Docket No. RP79-20, Alabama-Tennessee Natural Gas Co.
 RP-2. Docket No. RP79-21, Tennessee Natural Gas Lines, Inc.
 RP-3. Docket No. RP79-22, Consolidated Gas Supply Corp.
 RP-4. Docket No. RP73-43 (PGA No. 79-1 and TT 79-2), Mid-Louisiana Gas Co.
 RP-5. Docket No. RP76-136, and RP77-26, Transcontinental Gas Pipe Line Corp.

II. PRODUCER MATTERS

- CI-1. Docket No. RI78-18, Natural Gas Pipeline Co. of America.

III. OIL PIPELINE RATE MATTERS

- OR-1. Docket No. OR78-6, Powder River Pipeline Corporation and the Crude Company, Complaints, v. Amoco Pipeline Company, Defendant.

MISCELLANEOUS AGENDA—242ND MEETING, JANUARY 24, 1979, REGULAR MEETING

- M-1. Docket NO. RM79-3, Interim Regulations Implementing the Natural Gas Policy Act of 1978.
 M-2. Docket No. RM79-3, Regulations Implementing the Natural Gas Policy Act of 1978. Docket No. RM79-4, Amendments to the Commission's Regulations Relating to Independent Producer Filing Requirements.
 M-3. Annual Reports Pursuant to Part 276 of the Interim Regulations Under NGPA and Proposed Changes to the Filing Requirements.
 M-4. Docket No. RM79- , Treatment of Refunds Under Purchased Gas Adjustment Clauses.
 M-5. Docket No. RM78-17, Procedures for Review by the Federal Energy Regulatory Commission of Adjustment Request Denials by the Secretary of Energy.
 M-6. Interim Rules on 314 of NGPA, Offers and right of First Refusal.
 M-7. Staff Recommendations on the Revenue Act of 1978 Which Reduces the Statutory Corporate Federal Income Tax Rate From 48% to 46%.
 M-8. Docket No. RM79- , Treatment of Certain Production Related Costs for Gas to be Transported Through the Alaska Natural Gas Transportation System.
 M-9. Docket No. 79- , Certification of Pipeline Transportation Agreements for Certain High-Priority Uses.
 M-10. Docket No. RM77-22, Rate of Interest on Amounts Subject to Refund.
 M-11. Docket NO. RM79- , Certain Sales of Natural Gas by Intrastate Pipelines.
 M-12. Docket No. RM79-7, Final Regulation Allowing Jurisdictional Pipelines With a PGA Clause in Effect on January 1, 1979, Which Includes a Deferred Account, to Include in Their PGA Rate Adjustment, One Time, Certain Estimated Changes in Purchased Gas Cost due to Implementing the Natural Gas Policy Act of 1978.

KENNETH F. PLUMB,
Secretary.

[S-129-79 Filed 1-17-79; 3:55 pm]

[6720-01-M]

4

FEDERAL HOME LOAN BANK BOARD.

TIME AND DATE: 9:30 a.m., January 24, 1979.

PLACE: 1700 G Street NW., sixth floor, Washington, D.C.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION:

Franklin O. Bolling, 202-377-6677.

MATTERS TO BE CONSIDERED:

- Consideration of Regulation Regarding a 100 Mile Restriction on Branching.
 Consideration of Regulation Regarding the Farmers' Home Administration Rural Housing Program (Guaranteed Loans).
 Consideration of Regulation Regarding Optional Federal Association By Laws and Federal Home Loan Bank Policy Statement on Retirement Ages.
 Consideration of Application for Bank Membership—Banco Financiero de Ahorro de Ponce, Ponce, P.R.
 Consideration of Proposed Acquisition of Home Savings & Loan Association, Reno, Nevada by United States Leasing International, Inc., San Francisco, Calif.
 Consideration of Merger of Bloomfield Federal Savings & Loan Association, Bloomfield, Nebr., into First Federal Savings & Loan Association of Lincoln, Lincoln, Nebr.
 Consideration of Voluntary Termination of Insurance of Accounts and Withdrawal from Bank Membership—Seaboard Savings & Loan Association, Washington, N.C.
 Consideration of Voluntary Termination of Insurance of Accounts and Withdrawal from Bank Membership—Robeson Savings & Loan Association, Lumberton, N.C.
 Consideration of Association Request for Extension of Time—Peninsula Savings & Loan Association, South San Francisco, Calif.
 Consideration of Application for Bank Membership and Insurance of Accounts—Newport-Balboa Savings & Loan Association, Newport Beach, Calif.
 Consideration of Request for Extension of Time—Onie B. Granville, et al., Inglewood, Calif.
 Consideration of Renewal of Federal Savings & Loan Advisory Council Charter.
 No. 211, January 17, 1979.

[S-128-79 Filed 1-17-79; 3:09 pm]

[6210-01-M]

5

FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, January 24, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

SUMMARY AGENDA

Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed extension of the Monthly Survey of Six-Month Money Market Time Deposits (FR 2042).
2. Proposed revision of the Report of Certain Eurodollar Transactions (FR 2011).
3. The Board's Annual Report to Congress for 1978 on The Equal Credit Opportunity Act.

DISCUSSION AGENDA

1. Proposed statement to be presented to the Senate Committee on Banking, Housing and Urban Affairs regarding simplification of the Truth in Lending Act.
2. Proposed regulation prescribing certain exceptions for interlocking relationships that would otherwise be prohibited by Title II of the Financial Institutions Regulatory and Interest Rate Control Act.
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: January 16, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.

[S-112-79 Filed 1-17-79; 9:43 am]

[6750-01-M]

6

FEDERAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, January 23, 1979.

PLACE: Room 432, Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

NONADJUDICATIVE MATTERS

- (1) Approval of minutes on nonadjudicative matters considered meeting of November 29, December 14, 1978, and January 9, 1979.
- (2) Consideration of possible courses of action in the Advertising Substantiation Program.

ADJUDICATIVE MATTERS UNDER PART 3 OF THE RULES OF PRACTICE

Discussion of Coca-Cola Bottling Company of New York, Inc. Docket No. 8992.

CONTACT PERSON FOR MORE INFORMATION:

Ira J. Furman, Office of Public Information, 202-523-3830. Recorded Message: 202-523-3806.

[S-114-79 Filed 1-17-79; 9:43 am]

[6750-01-M]

7

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Thursday, January 25, 1979.

PLACE: Room 532, (open); Room 540 (closed) Federal Trade Commission Building 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO PUBLIC

(1) Oral Argument in American Home Products Corporation, et al., Docket 8918.

PORTIONS CLOSED TO THE PUBLIC

(2) Executive Session to Discuss Oral Argument in American Home Products Corporation, et al., Docket 8918.

CONTACT PERSON FOR MORE INFORMATION:

Ira J. Furman, Office of Public Information, 202-523-3830. Recorded Message: 202-523-3806.

[S-115-79 Filed 1-17-79; 9:43 am]

[7020-02-M]

8

[USITC SE-79-4]

UNITED STATES INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Monday, January 22, 1979.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Emergency meeting—less than ten days' prior notice, open to the public.

MATTERS TO BE CONSIDERED:

1. Further consideration of the report in Investigation 332-87 (U.S. Western Steel Market).

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-113-79 Filed 1-17-79; 9:43 am]

[7020-02-M]

9

[USITC SE-79-5]

UNITED STATES INTERNATIONAL TRADE COMMISSION.

TIME AND DATE: 10 a.m., Tuesday, January 30, 1979.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

PORTIONS OPEN TO THE PUBLIC

1. Agenda.
2. Minutes.
3. Ratification.
4. Petitions and complaints, if necessary.
6. Slow cookers (Inv. 337-TA-42)—vote.
7. Any items left over from previous agenda.

PORTIONS CLOSED TO THE PUBLIC

5. Status report on Investigation 332-101 (MTN Study), if necessary.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-119-79 Filed 1-17-79; 11:20 am]

[6720-01-M]

10

NATIONAL NEIGHBORHOOD RE-INVESTMENT CORPORATION.

FIRST ANNUAL MEETING

Pursuant to the Provisions of the Neighborhood Reinvestment Corporation Act (Title VI of Housing and Community amendments of 1978, P.L. 95-557), notice is hereby given of the annual meeting of the National Neighborhood Reinvestment Corporation.

TIME AND DATE: 2 p.m., January 24, 1979.

PLACE: Board Room, sixth floor, 1700 G Street NW., Washington, D.C.

STATUS: Open Meeting, Board of Directors.

CONTACT PERSON FOR MORE INFORMATION:

Myra Peabody, telephone 202-377-6392.

AGENDA:

- Call to Order and Remarks of the Chairman.
- Review of Minutes, December 21, 1978 Meeting.
- Election of the Vice Chairman.
- Designation of the Executive Committee.
- Approval of the Audit Committee.
- Appointment of Auditors.
- Appointment of General Counsel.

Executive Director's Report.
Treasurer's Report.
Other Business.

No. 2, January 17, 1979.

DONNIE L. BRYANT,
Secretary.

[S-120-79 Filed 1-17-79; 1:53 pm]

[4910-58-M]

11

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 11 a.m., Wednesday, January 17, 1979 [NM-79-3].

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED: A majority of the Board has determined by recorded vote that the business of the Board required that the following item be discussed on this date and that no earlier announcement was possible:

Discussion of the Director of the Bureau of Accident Investigation's memorandum of January 15, 1979, relative to the United Air Lines Flight 173 accident at Portland, Oregon on December 28, 1978.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-121-79 Filed 1-17-79; 2:07 pm]

[7590-01-M]

12

NUCLEAR REGULATORY COMMISSION.

TIME AND DATE: January 23 and 25, 1979.

PLACE: Commissioners' Conference Room, 1717 H Street NW., Washington, D.C.

STATUS: Open and closed.

MATTERS TO BE CONSIDERED:

TUESDAY, JANUARY 23; 9:30 A.M.

1. Initial briefing on major issues in siting and licensing legislation (approximately 1½ hours, public meeting).
2. Briefing on the shipment of HEU to Romania (approximately 1 hour, public meeting).

THURSDAY, JANUARY 25; 9:30 A.M.

1. Briefing on final program plan for the NRC fiscal year 1979 budget (approximately 1 hour public meeting).
2. Discussion of proposed authorization hearing testimony in February (approximately 1½ hours, public meeting).

THURSDAY, JANUARY 25; 1:30 P.M.

1. Discussion of decision in S-3 rulemaking (approximately 1 hour, public meeting).
2. Discussion of personnel matter (approximately 3 hours, closed, exemption 6).

CONTACT PERSON FOR MORE INFORMATION:

Walter Magee, 202-634-1410.

ROGER M. TWEED,
Office of the Secretary.

JANUARY 16, 1979.

[S-116-79 Filed 1-17-79; 10:34 am]

[7910-01-M]

13

THE RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, January 23, 1979; 10 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C.

STATUS: Matters 1 through 3 are open to public observation. Matters 4 and 5 are closed to public observation. Matters 6 and 7 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting held January 16, 1979, and other Board meetings, if any.
2. Determination of excessive profits and issuance of final opinion: H. P. Foley Co., fiscal year ended March 31, 1969.
3. Determination of excessive profits: Kaiser Aerospace & Electronics Corp., fiscal year ended December 31, 1972.
4. Findings of excessive profits and issuance of proposed opinion: Dow Corning Corp., fiscal years ended October 31, 1967, 1968, and 1969.
5. Court of Claims case: *Norris Industries, Inc. v. United States*, Ct. Cl. No. 449-75.
6. Approval of agenda for meeting to be held February 6, 1979.
7. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: January 16, 1979.

GOODWIN CHASE
Chairman.

[S-122-79 Filed 1-17-79; 2:47 pm]

[7910-01-M]

14

THE RENEGOTIATION BOARD.

DATE AND TIME: Thursday, January 25, 1979; 1:30 p.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED:

Kings Point Industries, Inc. (Consolidated), fiscal years ended April 30, 1969, 1970, and 1971; and Victory Enterprises, Inc., fiscal years ended September 30, 1969, 1970, and 1971; T. S. Lankford & Sons, Inc., fiscal years ended June 29, 1969 and June 27, 1970.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: January 17, 1979.

GOODWIN CHASE
Chairman.

[S-123-79 Filed 1-17-79; 2:47 pm]

[7910-01-M]

15

THE RENEGOTIATION BOARD.

DATE AND TIME: Tuesday, January 30, 1979; 10 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C.

STATUS: Matter 1 is open to public observation. Matter 2 is closed to public observation. Matters 3 and 4 are not applicable for status.

MATTERS TO BE CONSIDERED:

1. Approval of minutes of meeting held January 23, 1979, and other Board meetings, if any.
2. Court of Claims case: *Cooper-MacDonald, Inc.*, Ct. Cl. No. 88-75.
3. Approval of agenda for meeting to be held February 13, 1979.
4. Approval of agenda for other meetings, if any.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: January 17, 1979.

GOODWIN CHASE,
Chairman.

[S-124-79 Filed 1-17-79; 2:47 pm]

[7910-01-M]

16

THE RENEGOTIATION BOARD.

DATE AND TIME: Wednesday, January 31, 1979; 9:30 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Tedyne Industries, Inc., SII to the Ryan Aeronautical Co., fiscal years ended October 31, 1967 and 1968; fiscal year ended December 31, 1968.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: January 17, 1979.

GOODWIN CHASE
Chairman.

S-125-79 Filed 1-17-79; 2:47 pm]

[7910-01-M]

17

THE RENEGOTIATION BOARD.

DATE AND TIME: Wednesday, February 14, 1979; 9:30 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C. 20446.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Dow Corning Corp., fiscal years ended December 31, 1970, 1971, 1972, and 1973.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: January 17, 1979.

GOODWIN CHASE,
Chairman.

[S-126-79 Filed 1-17-79; 2:47 pm]

[7910-01-M]

18

THE RENEGOTIATION BOARD.

DATE AND TIME: Friday, February 16, 1979; 9:30 a.m.

PLACE: Conference Room, 4th floor, 2000 M Street NW., Washington, D.C.

STATUS: Closed to public observation.

MATTER TO BE CONSIDERED: Rex Precision Products, Inc., fiscal year ended November 30, 1974.

CONTACT PERSON FOR MORE INFORMATION:

Kelvin H. Dickinson, Assistant General Counsel-Secretary, 2000 M Street NW., Washington, D.C. 20446, 202-254-8277.

Dated: January 17, 1979.

GOODWIN CHASE,
Chairman.

[S-127-79 Filed 1-17-79; 2:47 pm]

[8010-01-M]

19

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.,

DATE PREVIOUSLY ANNOUNCED: Thursday, January 11, 1979.

CHANGES IN THE MEETING: Additional item to be considered.

The following additional item was considered by the Commission at the open meeting on Monday, January 15, 1979, at 10 a.m.:

Consideration of proposed Rules 9b-3, 9b-4(A) and 9b-4(B) under the securities Exchange Act of 1934, regarding trading rotations in exchange-traded options and options exchange closing hours.

Chairman Williams and Commissioner Loomis, Evans, Pollack, and Karmel determined that Commission business required consideration of this matter and that no earlier notice thereof was possible.

JANUARY 15, 1979.

[S-110-79 Filed 1-17-79; 9:43 am]

[8010-01-M]

20

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 January 22, 1979, in Room 825, 500 North Capitol Street, Washington, D.C.

Closed meetings will be held on Tuesday, January 23, 1979, at 10 a.m. and on Thursday, January 25, 1979, after the 2:30 p.m. open meeting. Open meetings will be held on Wednesday, January 24, 1979 at 10 a.m. and on Thursday, January 25, 1979 at 2:30 p.m.

The Commissioners, their legal assistants, the Secretary of the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, the items to be considered at the closed meetings may be considered pursuant to one or more of the exemptions set forth 5 in 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, Pollack, and Karmel determined to hold the aforesaid meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, January 23, 1979, will be:

Access to investigative files by Federal, State or self-regulatory authorities.
Amicus participation.
Chapter X
Formal orders of investigation.
Freedom of Information Act appeal.
Institution of criminal contempt proceeding.

Institution and settlement of administrative proceeding of an enforcement nature.
Litigation matters.
Settlement of administrative proceeding of an enforcement nature.
Subpoena enforcement action.

The subject matter of the closed meeting scheduled for Thursday, January 25, 1979, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Wednesday, January 24, 1979, at 10 a.m., will be:

1. Consideration of whether to: (1) issue a release adopting amendments to Forms S-1 and S-8 under the Securities Act, Rule 20a-2 under the Investment Company Act, and Forms N-1 and N-2 under the Securities Act and the Investment Company Act which would require disclosures to investors about brokerage placement policies and practices, relating to Section 28(e) of the Securities Exchange Act, and (2) incorporate similar disclosure requirements where investment managers have certain discretionary authority over clients' accounts into Rule 204-3 (the "brochure rule") and revised Form ADV under the Investment Advisers Act, which are before the Commission for simultaneous adoption. For further information, please contact Sidney L. Cimmet at (202) 755-0211.

2. Consideration of whether to adopt new Rule 204-3 (the "brochure rule") under the Investment Advisers Act of 1940 (the "Act"); Amended Rules 204-1 and 204-2, Revised Form ADV and New Annual Form ADV-S under the Act; Revised Schedules A-D of Forms ADV and BD under the Securities Exchange Act of 1934 (the "Exchange Act"); and Revised Schedules E-G. For further information, please contact Eric Thompson at (202) 755-3507.

3. Consideration of whether to issue a temporary order, pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934, extending for a period of twelve months the Commission's temporary approval of the joint industry plan governing the implementation and operation of the consolidated quotation system. For further information, please contact Andre Weiss at (202) 755-8970 or Brandon Becker at (202) 755-8749.

The subject matter of the open meeting scheduled for Thursday, January 25, 1979, at 2:30 p.m., will be:

Oral argument on an appeal by Robert A. Podesta, from the initial decision of an administrative law judge.

FOR FURTHER INFORMATION, CONTACT:

Michael P. Rogan at (202) 755-1638.

JANUARY 16, 1979.

[S-111-79 Filed 1-17-79; 9:43 am]

FRIDAY, JANUARY 19, 1979

PART II



**DEPARTMENT OF
HOUSING AND
URBAN
DEVELOPMENT**

**Office of the Assistant
Secretary For Community
Planning and
Development**



**INNOVATIVE GRANT—
FISCAL YEAR 1979**

Competitive Solicitation

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[4210-01-M]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for
Community Planning and Development

[Docket No. N-79-908]

INNOVATIVE GRANT—FISCAL YEAR 1979

Competitive Solicitation

AGENCY: Department of Housing
and Urban Development.

ACTION: Notice regarding Innovative
Grant competition—Solicitation for
Fiscal Year 1979.

SUMMARY: HUD is inviting proposals from units of general local government for Innovative Grants to: (1) assist low- and moderate-income residents to remain in neighborhoods which are in the process of revitalization, or (2) provide opportunities for low- and moderate-income residents to move outside cities, if they so desire, on an areawide, intergovernmental basis. An applicant may submit a proposal which addresses either (1) or (2). *If both (1) and (2) are to be addressed by one applicant, separate applications must be submitted.*

FOR FURTHER INFORMATION CONTACT:

Robert L. Blake, Director, Secretary's Fund Division, Office of Policy Planning, Room 7138, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Telephone number: (202) 755-6092. Program information kits are available upon request.

DATE: Applications are due by May 7, 1979.

GENERAL INFORMATION

Many factors such as increased property taxes, property acquisition by public and private entities, and the lack of adequate housing opportunities often force low- and moderate-income residents to move involuntarily out of neighborhoods undergoing revitalization. Further, when low- and moderate-income residents prefer to move out of a metropolitan area adequate and affordable housing with reasonable access to employment opportunities, as well as supportive social and commercial services, is often not available.

The President, in his March 27, 1978 message to the Congress on National Urban Policy, called for a new partnership, involving all levels of government, citizens and the private sector, aimed at making cities more healthy and improving the lives of people who live in them. In announcing the policy, the President indicated that it represents

a comprehensive, long-term commitment to the Nation's urban areas.

The President identified five guiding principles of the urban policy as: (1) combining the resources of Federal, State, and local governments to conserve and strengthen cities and communities; (2) increasing access to opportunity for the disadvantaged; (3) simplifying and improving programs and policy at all levels of government; (4) flexibility in responding to the needs of communities; and (5) involving citizens in the efforts to meet the social and economic needs of their communities.

In accordance with the President's urban initiatives, HUD Secretary Patricia Roberts Harris has authorized a new competitive solicitation for Innovative Grants with special focus on public and private neighborhood revitalization activities causing displacement and relocation of low- and moderate-income households and the accompanying need for expanded housing opportunities on a neighborhood, as well as an areawide, intergovernmental basis for persons of low and moderate income.

For the purposes of this program notice, the following definitions will apply:

(1) The phrase "neighborhoods undergoing revitalization" refers to any specifically delineated geographic sector of a locality where public and/or private reinvestment is causing, or has the potential to cause, significant displacement and relocation of the households currently residing in the subject neighborhood.

(2) The term "displacement" refers to any direct or indirect action, whether publicly or privately initiated, which forces or encourages low- and moderate-income households to move.

(3) The term "relocation" refers to any move, voluntary or involuntary, as a result of publicly or privately caused displacement and the reestablishment of the household and/or business at a new location with appropriate financial or other assistance.

PROPOSAL OBJECTIVES

HUD will consider for funding, on a competitive basis, proposals for Innovative Grants which relate to either one of the following subject purposes:

(1) To assist low- and moderate-income residents of neighborhoods undergoing revitalization to remain in the neighborhood, if they so desire, by improving neighborhood as well as individual housing resources. The assistance proposed should include a strategy for the use of Innovative Grant funds and other Federal, State, local and private assistance to minimize or avoid actions causing, or with the potential to cause, displacement and the subsequent relocation of neighbor-

hood residents. If displacement is unavoidable and relocation is necessary, applicants must submit a plan for permanent and/or temporary relocation. This plan must contain a timetable which describes why, how, when and where relocation will take place and what steps will be taken to minimize hardship upon the residents. For permanent relocation, this assistance must include provision of housing which is (a) decent, safe and sanitary, (b) within their financial means and (c) as feasible, in locations which will include amenities which are an improvement over those in existence in the subject neighborhoods and areas. The plan must also insure that appropriate relocation assistance will be provided to displaced residents pursuant to the provisions of the Uniform Relocation Act of 1970 as applicable, but must not duplicate any services already being provided to such residents under the 1970 Uniform Relocation Act by the applicant or other public entity.

(2) To provide opportunities for low- and moderate-income residents of neighborhoods undergoing revitalization to move outside cities, if they so desire, to improved housing on an areawide, intergovernmental basis. The assistance proposed should include a strategy to insure that such moves will be coordinated in a manner as to foster neighborhood diversity, stability and expanded housing opportunities. The applicant must submit a plan with a timetable which describes why, how, when and where relocation is anticipated and what steps will be taken to minimize hardship on the residents. The plan must insure that counseling and other appropriate relocation assistance will be provided to the residents. This assistance must include provision of housing which is (a) decent, safe and sanitary, (b) within their financial means and (c) as feasible, in locations which will include amenities and supporting social and commercial services which are an improvement over those in existence in the subject neighborhoods and areas. The relocation assistance must not duplicate any services already being provided to such residents under the provisions of the Uniform Relocation Act of 1970.

SUPPLEMENTARY INFORMATION

The Innovative Grant Program is authorized by Section 107(a)(4) of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 et seq.). The program funds projects which are untried, unique or advance the state of the community development art or which meet special needs. This notice informing eligible applicants of requirements for propos-

als is published pursuant to 24 CFR 570.406(b)(3)(i).

Eligible applicants are units of general local government as defined in the Community Development Block Grant regulations at 24 CFR 570.3(v). Proposals must be submitted by the Chief Executive of the Unit of general local government and must contain the certifications required by 24 CFR 570.307 with the exception of (d) and (f). Proposed activities must meet the eligibility requirements of 24 CFR Part 570, Subpart C and in addition, the applicant must certify that citizens likely to be affected by the proposed project, particularly low- and moderate-income persons, have been provided an opportunity to comment on the proposal.

It should be noted particularly that the Office of Management and Budget Circular A-95 must be followed as well as the provisions of the Uniform Relocation Act of 1970. Certifications, state and sub-state agency A-95 comments and additional supportive information as required by this notice and 24 CFR 570.406 must accompany the proposal and will not be accepted after May 7, 1979. Failure on the part of the applicant to comply with any one of these requirements will be sufficient cause for disqualification.

AWARD OF GRANT:

Grants of up to two years duration from the date of grantee signature on the grant agreement will be awarded on the basis of the following selection criteria:

1. The extent to which the proposal represents innovative approaches and techniques towards solving the urban problems identified in categories (1) or (2) under *Proposal Objectives*;

2. The extent to which the identified problem is common to a substantial number of communities and the extent to which the proposed approach can be adapted and replicated in a significant number of other communities;

3. If category (1) as described under *Proposal Objectives* is the objective of the applicant, the extent to which the proposed project avoids displacement of low- and moderate-income residents and small businesses;

4. If relocation is anticipated the specificity, completeness, and potential effectiveness of the relocation plan;

5. If category (2), as described under *Proposal Objectives* is the focus of the applicant, the extent to which the ac-

tivities are areawide and intergovernmental must be explicit in the proposal;

6. The overall technical merit of the proposed project;

7. The assurance of timely public and private resource commitments to the project including commitments to continue the process described after completion of the proposed Innovative Grant;

8. The adequacy of the proposed plan for managing and evaluating the project; and

9. The financial and staff capacity of the applicant to effectively implement a project of the type and scope proposed.

APPLICATION REQUIREMENTS:

Applications for Innovative Grants shall include all of the following required submissions:

1. A brief letter of transmittal containing the signature of the Chief Executive and the designated project leader who will be primarily responsible for execution of the project;

2. Standard Form 424;

3. A one-page abstract of the project summarizing the proposed activities;

4. A project narrative statement describing:

(a) The nature of the problem including a description of the physical economic and social characteristics of the project sites;

(b) The goals and objectives of the project;

(c) The proposed solution;

(d) Evidence of firm financial and staff resource commitments, both public and private, to be used;

(e) The management plan including a description of the professional experience and management capacity of key project personnel including those in cooperating agencies and organizations;

(f) The tasks to be carried out;

(g) The plan for evaluation including measurable planning and program criteria; and

(h) Other information necessary to describe the applicant's proposed project and to address the selection criteria described under *Award of Grants*.

5. A proposed budget clearly showing by line item, the expenditure of HUD and other public and private funds on HUD Form 7067;

6. The certifications required by 24 CFR 570.307 except (d) and (f);

7. Evidence of coordination with approved Housing Opportunity Plans for the applicant unit(s) of general local

government as appropriate;

8. Cooperation agreements for multi-jurisdictional applications as appropriate;

9. Certification that the applicant agrees to comply with Innovative Grant reporting requirements which include at a minimum, quarterly and final project reports containing findings, conclusions and a description of progress towards achievement of project goals and objectives;

10. Certification that the applicant agrees to designate appropriate representatives to attend required meetings and conferences for Innovative Grant recipients.

APPLICATION SUBMISSION PROCEDURES

Proposals must be delivered or postmarked no later than May 7, 1979. The original plus two copies of the proposal shall be submitted to the Office of Policy Planning, Room 7138, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410. Simultaneously, one informational copy of the proposal shall be sent to the HUD Regional Administrator and one complete copy with attachments shall be sent to the Area Office serving the jurisdiction of the applicant.

APPLICANT NOTIFICATION

All applicants will be notified by mail of the final results of the competition after selections are made. Applications which do not meet all the requirements specified above by the deadline date will be returned and will not be considered in the competition. HUD reserves the right to decline to fund any or all proposals received under this solicitation if they are not deemed of sufficient quality and relevance to the objectives specified in this notice.

In connection with the environmental review of the notice, a Finding of Inapplicability has been made under HUD Handbook 1390.1, 38 FR 19183. A copy of the Finding is available for inspection in the Office of Rules Docket Clerk, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410.

Issued at Washington, D.C., December 21, 1978.

ROBERT C. EMBRY,
Assistant Secretary for Community Planning and Development

[FR Doc. 79-2064 Filed 1-18-79; 8:45 am]

[The page contains extremely faint, illegible text, likely bleed-through from the reverse side. The text is organized into several paragraphs across the page, but no specific content can be discerned.]

**FRIDAY, JANUARY 19, 1979
PART III**



**DEPARTMENT OF
THE TREASURY**

Internal Revenue Service



INCOME TAX

**Investment Credit Employee Stock
Ownership Plans (TRASOP's); Final
and Temporary Regulations and
Proposed Rulemaking**

Revenue Ruling 79-13

[4830-01-M]

Title 26—Internal Revenue

CHAPTER I—INTERNAL REVENUE
SERVICE, DEPARTMENT OF THE
TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7590]

PART 1—INCOME TAX; TAXABLE
YEARS BEGINNING AFTER DECEMBER
31, 1953Requirements for Taxpayers Electing
11-Percent Investment Credit

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations together with temporary regulations; request for comments on temporary regulations.

SUMMARY: This document provides final and temporary regulations relating to investment credit employee stock ownership plans ("TRASOP's"). Changes in the applicable tax law were made by the Tax Reduction Act of 1975 ("1975 TRA") and the Tax Reform Act of 1976 ("1976 TRA"). These final and temporary regulations are intended to provide guidance for the public in complying with the law. They affect all employees who participate in TRASOP's and employers who establish TRASOP's. This document does not reflect changes made by the Revenue Act of 1978.

DATE: Written comments on the temporary regulations and requests for a public hearing must be delivered or mailed by March 20, 1979. The regulations are generally effective for taxable years ending after January 21, 1975.

FOR FURTHER INFORMATION
CONTACT:

Thomas Rogan of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3589).

SUPPLEMENTARY INFORMATION:

BACKGROUND—1975 TRA MATTERS

On July 30, 1976, the Internal Revenue Service published proposals in the FEDERAL REGISTER to amend the Income Tax Regulations (26 CFR Part 1) under section 46(a) of the Internal Revenue Code of 1954 and section 301 (d) of the 1975 TRA (41 FR 31828).

By a notice published in the FEDERAL REGISTER on October 19, 1976, the public was invited to comment orally or in writing not only upon issues addressed in the proposals, but also upon issues addressed by section 803(h) of the Tax Reform Act of 1976 (90 Stat. 1590) and by the Conference Report of the Committee of Conference on H.R. 10612 (H.R. Rep. No. 94-1515, 94th Cong., 2d Sess. 539-542 (1976)). A public hearing was held on November 12, 1976.

After consideration of all comments, some of the proposals are revised and adopted as final regulations under this Treasury decision. Others are re-proposed elsewhere in today's FEDERAL REGISTER. However, most of the re-proposed provisions also appear as temporary regulations in this document.

The final regulations change the 1975 TRA proposals both substantively and structurally. Certain provisions are added. Others are restructured or deleted. However, many changes are designed solely to simplify the final regulations. Therefore, no substantive inference should be drawn solely from the fact that a particular proposal is either deleted or restructured.

1976 TRA MATTERS

Other provisions appearing as temporary regulations in this document amend the regulations to conform them to amendments made by section 803(b)(2), (c), (d), (h), and (j) of the 1976 TRA. The same notice of proposed rule making published elsewhere in today's FEDERAL REGISTER that contains re-proposals under the 1975 TRA provisions unaffected by the 1976 TRA also proposes that these 1976 TRA temporary amendments be adopted as final regulations. A separate document noting the adoption of these provisions as temporary regulations under 26 CFR Part 9, Temporary Regulations under the Tax Reduction Act of 1975, also appears in today's FEDERAL REGISTER.

INTEGRATION OF FINAL AND TEMPORARY
REGULATIONS

The final and temporary regulations in this Treasury decision are published together as integrated provisions under 26 CFR Part 1, Income Tax Regulations. This format enables the public to see more clearly the effect of the 1976 TRA amendments on the 1975 TRA. Also, it facilitates the use of these regulations until the temporary provisions are superseded by final provisions.

It has been the practice in the past to publish temporary Internal Revenue Service regulations separately from final regulations both in the FEDERAL REGISTER and in the Code of Federal Regulations. Therefore, a separate document published elsewhere in today's FEDERAL REGISTER makes it clear that certain provisions in this Treasury decision under 26 CFR Part 1 are in fact adopted and effective only as temporary regulations under 26 CFR part 9. The following table shows which of these provisions relate to unamended 1975 TRA provisions and which relate to 1975 TRA provisions amended by the 1976 TRA. All of these temporary provisions are italicized in this Treasury decision.

[4830-01-C]

- 1d -

TABLE OF ITALICIZED PROVISIONS

TEMPORARY REGULATIONS (26 CFR Part 9) INTEGRATED
IN FINAL REGULATIONS (26 CFR Part 1)

<u>§ 1.46-8</u>	<u>Subject</u>	<u>Provision relates to</u>	
		<u>1975 TRA</u>	<u>1976 TRA</u>
(b) (4) (i) (last sentence)	Employer securities, general definition		x
(b) (8)	Compensation		x
(c) (1) (i)	Procedures for additional credit, applicable year, general rule	x	
(c) (1) (ii)	Carryover option		x
(c) (1) (iii)	Increased credit	x	
(c) (1) (iv)	Illustration	x	x
(c) (8) (i)	Funding a TRASOP, in general	x	x
(c) (8) (ii)	Cash transfers	x	
(c) (8) (iii)	Valuation	x	x
(c) (8) (iv)	Cash reserve	x	x
(c) (8) (v)	Conditional funding		x
(c) (8) (vi)	Certain benefit offset mechanisms	x	
(c) (9) (iv)	Claiming additional credit, redeterminations increasing credit	x	
(d) (2)	Formal plan requirements, plan year	x	
(d) (5) (last sentence)	Debts and expenses of TRASOP		x
(d) (6) (iv) (last sentence)	Allocation of TRASOP securities, compensation considered	x	

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TABLE I (continued)

(d) (6) (ix)	Treatment of certain plan terminations	x
(d) (6) (xii)	Accounting for amounts withheld by employer or paid by plan as start-up or administrative expenses	x
(d) (7) (last sentence)	Nonforfeitability	x
(e) (6)	Operational plan requirements, start-up expenses	x
(e) (7)	Administrative expenses	x
(e) (8) (i) (last three sentences)	TRASOP qualification under section 401 (a), permanence	x
(e) (8) (iii)	Income distribution	x
(e) (9) (vii)	Reductions in investment credit, withdraw TRASOP securities	x
(e) (9) (viii)	Prior distribution rule	x
(e) (9) (ix)	Illustration	x
(f)	Section 301 (f) withdrawals	x
(h) (4)	Failure to comply, definition x	

INCLUSION OF STATUTORY MATERIAL AND CROSS-REFERENCE TABLE

Section 301(d) of the 1975 TRA and amendments under the 1976 TRA are consolidated in § 1.46-7 of the regulations. Also, section 301 (e) and (f), as added by the 1976 TRA, is included. Because this material is not available in consolidated form and does not appear in the Code, it is added to the regulations for the convenience of the public. The regulations also contain a cross-reference table indexing and coordinating §§ 1.46-7 and 8. Regulations under section 301(e) will be proposed at a later date.

DISCUSSION OF ISSUES

1. SPECIAL VALUATION RULES (FINAL REGULATIONS)

As suggested in the comments, the final regulations clarify in two respects the operation of the 20-day average valuation rule. First, the regulations state that the 20-day average takes into account closing prices only for trading days on which a transaction involving a publicly traded TRASOP security has occurred. Second, the 20-day average rule does not apply unless a transaction occurs on at least 10 of the 20 trading days during the 20-day period.

Under this clarification, the 20-day average rule requires a degree of active trading. Also, it applies in the case of a TRASOP security that is publicly traded for less than 20 days if the active trading requirement is met.

2. TRASOP FUNDING (TEMPORARY REGULATIONS)

The temporary regulations revise the procedural requirements for obtaining an additional credit to conform with the 1976 TRA amendments relating to TRASOP funding.

The term "applicable year" is used in the regulations to establish a reference point for a particular year's qualified investment. As a general rule, funding is geared to the year when a qualified investment is made. However, for taxable years beginning after December 31, 1976, in which a qualified investment is made, funding may be geared to each taxable year in which a credit carryover is claimed for the qualified investment.

The regulations identify the earliest time for funding a TRASOP with respect to each year's qualified investment. They also establish a priority rule for taking into account TRASOP securities that may be contributed for either of two taxable years.

3. IRREVOCABILITY OF TRASOP ELECTION (FINAL REGULATIONS)

Some comments suggest that a TRASOP election should be revocable by amended return. The proposals

would have permitted revocation with the Commissioner's consent. Rather than follow the suggestion of the comments, the final regulations forbid all revocations after the last day for funding the TRASOP by eliminating revocation with the Commissioner's consent. The irrevocable election represents a commitment to employees by the employer that would be inappropriate for the Commissioner to reverse.

4. MAINTENANCE OF CASH RESERVE (TEMPORARY REGULATIONS)

The temporary regulations contain a provision permitting a plan to maintain a limited cash reserve fund when cash is transferred to the plan instead of TRASOP securities. The fund is limited to the amount of cash needed for cash distributions in lieu of fractional securities or for the payment of certain start-up and administrative expenses.

5. EFFECT OF BENEFIT OFFSET ARRANGEMENTS (FINAL REGULATIONS)

Revenue Ruling 76-259, 1976-2 C.B. 111, permits benefits under qualified defined contribution plans to offset accrued benefits under qualified defined benefit plans in certain circumstances. However, the Revenue Ruling does not take into account the Senate Finance Committee Report on the Tax Reduction Act of 1975, which requires TRASOP contributions to be "added on" to the benefits of other plans. See S. Rep. No. 94-36, 94th Cong., 1st Sess. 59 (1975); 1975-19 I.R.B. 94. Therefore, the final regulations add a rule that a TRASOP is underfunded to the extent that TRASOP securities are used in a defined benefit plan offset arrangement.

6. PRIORITY OF INVESTMENT CREDITS (FINAL REGULATIONS)

As requested by the comments, the final regulations make it clear that, with respect to a particular year's qualified investment, the basic ten-percent investment credit is claimed before any additional credit for TRASOP's.

7. CREDITS INCREASED BY REDETERMINATIONS (TEMPORARY REGULATIONS)

A question unanswered in the proposals was how to account for increases in the additional credit caused by a redetermination. The temporary regulations now provide that the increase is generally treated as an unused credit carryover.

8. DEDUCTIBILITY OF UNUSED CARRYOVERS (FINAL REGULATIONS)

The comments question whether a TRASOP contribution for which no credit is claimed during the 7-year car-

ryover period is deductible at the expiration of the carryover period. The final regulations provide that such contributions are deductible for the year in which the carryover period expires.

9. PLAN YEAR (TEMPORARY REGULATIONS)

Technical Information Release (TIR) 1413, 1975-50 I.R.B. 16, questions and answers relating to ESOP's, provides that, in the case of a single employer plan, a TRASOP's plan year must be identical to the taxable year during which the qualified investment is made. (See question and answer R-5.) The proposals were silent on this point. The temporary regulations now simply provide that the plan year of a TRASOP must begin with or within the employer's taxable year.

10. TIMING OF ALLOCATIONS (FINAL REGULATIONS)

The comments suggest that the regulations should clearly state for what plan year TRASOP allocations must first be made. The final regulations adopt this suggestion. They now provide that TRASOP allocations must begin with the plan year beginning with or within the taxable year for which the election is made.

11. COMPENSATION CONSIDERED FOR ALLOCATIONS (TEMPORARY REGULATIONS)

Many comments ask what compensation must be taken into account for the purpose of allocating TRASOP securities. The 1976 TRA adopts the concept of compensation in section 415 of the Code, as contained in the proposals. The temporary regulations now make it clear that this compensation must include total compensation of participants while employed, not just while participating, in a particular plan year.

12. SECTION 415 AND ALLOCATIONS (FINAL REGULATIONS)

Section 415 deals with limitations on benefits and contributions under qualified plans. The final regulations clarify the effect of section 415 on TRASOP's and other plans. They require TRASOP securities to satisfy section 415 before allocations are made to other defined contribution plans.

Also, the regulations provide a first-in-first-out rule for releasing unallocated TRASOP securities from a suspense account.

13. TREATMENT OF UNALLOCATED AMOUNTS ON PLAN TERMINATION (TEMPORARY REGULATIONS)

The temporary regulations contain a new provision requiring the withdrawal upon plan termination of TRASOP securities that are unallocated because

of the application of section 415. These securities are treated as amounts withdrawn from the plan as a result of recapture.

14. PASSTHROUGH RIGHTS (FINAL REGULATIONS)

The passthrough of voting rights remains a requirement for TRASOP securities under the final regulations. However, the requirement for the passthrough of other rights is deleted. The regulations continue to prohibit voting rights unexercised by participants to be exercised by a fiduciary. However, they permit proxy solicitations.

15. INFORMATION STATEMENTS FOR EXERCISE OF VOTING RIGHTS (FINAL REGULATIONS)

The proposals required that participants be supplied with the same information statements supplied to security holders in general prior to their exercising voting rights passed through to them under the plan. The comments suggest that this obligation rest not with the plan fiduciary, but with the employer. The final regulations adopt this suggestion.

16. CONTROLLED GROUP OF CORPORATIONS (FINAL REGULATIONS)

The comments raise questions concerning TRASOP's and members of a controlled group of corporations or an affiliated group filing a consolidated return.

The final regulations make it clear that a member of a controlled group may obtain an additional credit under the proper circumstances without having actual employees. Other principles generally applicable to members of a controlled group having a plan qualified under section 401(a) would apply to a plan that is a TRASOP, whether or not qualified under section 401(a).

General principles relating to members of a controlled group of corporations apply in cases involving employers filing a consolidated return involving an additional credit.

17. TREATMENT OF CERTAIN START-UP AND ADMINISTRATIVE EXPENSES (TEMPORARY REGULATIONS)

The temporary regulations provide rules for taking certain start-up and administrative expenses into account under a TRASOP. The regulations also give retroactive effect to these rules. They allow the plan to treat past expenses as if they were amounts reducing the corporation's additional credit because of a recapture in the first taxable year after publication of this Treasury decision.

18. INCOME DISTRIBUTION (TEMPORARY REGULATIONS)

The temporary regulations permit passthrough of dividends to all TRASOP participants who have been allocated employer securities. The provision is substantially identical to one that applies under § 54.4975-11(f)(3) to qualifying employer securities held by an ESOP.

19. REDUCTIONS IN INVESTMENT CREDIT (FINAL REGULATIONS)

The final regulations clarify a number of questions raised in comments regarding reductions in the investment credit by recapture or redemption. Although it is clear under the regulations that the 10-percent credit must be claimed first before an additional credit can be claimed, the regulations also make it clear that the converse is not true when a claim is later reduced. On the contrary, to minimize the unraveling effect of investment credit reductions on established TRASOP's, the regulations generally require the ratable reduction of the 10-percent credit and the additional credit.

Also, the regulations provide rules for determining the date on which a reduction in the additional credit occurs. They provide further that this reduction must be taken into account in the earliest year possible under the applicable method available under the plan.

20. TERMS FOR WITHDRAWING TRASOP SECURITIES (TEMPORARY REGULATIONS)

The temporary regulations prohibit the withdrawal of TRASOP securities on recapture unless, when the securities are acquired by the plan, there is a plan provision permitting the withdrawal. However, this provision has prospective effect only. In the case of securities acquired before publication of this Treasury decision, they may not be withdrawn unless, when the securities are withdrawn, there is a plan provision permitting the withdrawal.

21. PRIOR DISTRIBUTION RULE (TEMPORARY REGULATIONS)

The temporary regulations contain a provision that protects later distributees from having plan assets drained off by earlier distributions followed by recaptures. The rule limits the extent to which a participant's account can be reduced by treating any previously distributed TRASOP securities as if the distribution had not occurred. It also restricts the use of recaptured amounts in decreasing future contributions.

22. SECTION 301(f) RULES (TEMPORARY REGULATIONS)

The temporary regulations spell out the requirements for withdrawing assets from the plan under section 301(f) of the 1975 TRA. They make it clear that asset segregation is merely a bookkeeping requirement. Also, they permit withdrawals for taxable years beginning before October 4, 1976, if all these years' assets are accounted for in the aggregate apart from the separate accounts for later years.

23. CONVERTIBLE EMPLOYER SECURITIES (FINAL REGULATIONS)

Under the proposals, a convertible employer security had to be convertible at a "reasonable conversion ratio."

As suggested in the comments, the final regulations refine the "reasonable conversion ratio" concept. This is done by providing that a convertible employer security must be convertible at a price no greater than the value of the common stock into which it is convertible when the convertible security is acquired.

24. DIVIDEND RIGHT RESTRICTIONS (FINAL REGULATIONS)

As suggested in the comments, the provision in the proposals relating to restrictions on dividend rights is modified. Under the final regulations, the "unrestricted dividend right" requirement is eliminated. In its place is a provision permitting dividend restrictions to which at least 50 percent of the employer's common stock is subject. Also, any dividend restriction is permitted if the same percentage of each outstanding class of common stock is acquired by the TRASOP at any time.

25. SHAREHOLDER ATTRIBUTION (FINAL REGULATIONS)

The comments note the absence of ownership attribution provisions under the 10-percent shareholder test for an employer security. In addressing this problem, the final regulations incorporate the constructive ownership rules of section 318.

26. DEFINITION OF FAILURE TO COMPLY (TEMPORARY REGULATIONS)

The temporary regulations revise the definition of failure to comply. They identify three all-inclusive classes of defects that apply to formal and operational plan deficiencies. Each class of defect triggers the operation of a specific formula for determining the amount involved.

27. CORRECTION OF FORMAL PLAN DEFECTS (FINAL REGULATIONS)

Instead of providing general transitional rules and retroactive amendment provisions, the final regulations

state that the provisions relating to correction are applicable when a plan fails to meet a formal plan requirement of the regulations. Thus, to be a TRASOP, a plan's failure to satisfy the regulations must be corrected within the correction period.

**28. EXTENSION OF CORRECTION PERIOD
(FINAL REGULATIONS)**

Under the final regulations, the provisions of the Foundation Excise Tax Regulations (§ 53.4941(e)-1) relating to the extension of the correction period are incorporated by reference.

**29. GOOD FAITH EFFORT TO COMPLY
(FINAL REGULATIONS)**

The final regulations make it clear that compliance with TIR 1413 is a good faith effort to comply with the regulations.

**30. CONTINUING FAILURE TO COMPLY
(FINAL REGULATIONS)**

Where the prior proposals were silent, the final regulations now provide that a number of separate failures to comply may occur if a failure to comply in a particular year goes uncorrected for more than one year. However, a cumulative civil penalty ceiling equal to 100 percent of the additional credit applies in such cases. This rule encourages correction when less than the maximum amount of civil penalty is involved initially, for example, when the failure to comply involves a formal plan defect.

**31. AMOUNT INVOLVED (FINAL
REGULATIONS)**

The final regulations change the structure of the prior proposals relating to the definition of "amount involved". Any amount involved now falls within one of three categories to which an objective formula applies for determining the amount. Uncertainty as to the amount involved under the prior proposals is removed.

**32. ESOP PROVISIONS (FINAL
REGULATIONS)**

The final regulations incorporate by reference provisions applicable to ESOP's under §§ 54.4975-7 (b) and -11. These provisions relate to the definition of "publicly traded", to rights of first refusal, and to put options. See the preamble to Treasury Decision 7506 (42 FR 44388) for a discussion of these provisions.

**GUIDELINES AND PROCEDURES
SUPERSEDED**

Questions and answers published in Technical Information Release (TIR) 1413 on November 4, 1975, contain guidelines relating to the 11-percent investment credit. The final and temporary regulations under this Treas-

ury decision supersede those questions and answers that have not already been superseded. (See preamble to Treasury Decision 7506 (42 FR 44388).) They also supersede section 4.01 of Rev. Proc. 75-48 (1975-2 C.B. 583), election of 11-percent credit.

DRAFTING INFORMATION

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulation, both on matters of substance and style.

**ADOPTION OF AMENDMENTS TO THE
REGULATIONS**

Accordingly, 26 CFR Part 1 is amended by adding §§ 1.46-7 and 1.46-8 after § 1.46-6:

§ 1.46-7 Statutory provisions; plan requirements for taxpayers electing additional investment credit, etc.

As amended by sections 802(b)(7), and 803 (c), (d), and (e) of the Tax Reform Act of 1976 (90 Stat. 1520), section 301 (d), (e), and (f) of the Tax Reduction Act of 1975 (89 Stat. 38) provides as follows:

Sec. 301. Increase in investment credit.

(d) Plan requirements for taxpayers electing additional credit. In order to meet the requirements of this subsection—

(1) Except as expressly provided in subsections (e) and (f), a corporation (hereinafter in this subsection referred to as the "employer") must establish an employee stock ownership plan (described in paragraph (2)) which is funded by transfers of employer securities in accordance with the provisions of paragraph (6) and which meets all other requirements of this subsection.

(2) The plan referred to in paragraph (1) must be a defined contribution plan established in writing which—

(A) Is a stock bonus plan, a stock bonus and a money purchase pension plan, or a profit-sharing plan,

(B) Is designed to invest primarily in employer securities, and

(C) Meets such other requirements (similar to requirements applicable to employee stock ownership plans as defined in section 4975(e)(7) of the Internal Revenue Code of 1954) as the Secretary of the Treasury or his delegate may prescribe.

(3) The plan must provide for the allocation of all employer securities transferred to it or purchased by it (because of the requirements of section 46(a)(2)(B) of the Internal Revenue Code of 1954) to the account of each participant (who was a participant at any time during the plan year, whether or not he is a participant at the close of the plan year) as of the close of each year in an amount which bears substantially the same proportion to the amount of all such securities allocated to all participants in the plan for that plan year as the amount of compensation paid to such participant (disregarding

any compensation in excess of the first \$100,000) bears to the compensation paid to all such participants during that year (disregarding any compensation in excess of the first \$100,000 with respect to any participant). Notwithstanding the first sentence of this paragraph, the allocation to participants' accounts may be extended over whatever period may be necessary to comply with the requirements of section 415 of the Internal Revenue Code of 1954. For purposes of this paragraph, the amount of compensation paid to a participant for a year is the amount of such participant's compensation within the meaning of section 415(c)(3) of such Code for such year.

(4) The plan must provide that each participant has a nonforfeitable right to any stock allocated to his account under paragraph (3), and that no stock allocated to a participant's account may be distributed from that account before the end of the eighty-fourth month beginning after the month in which the stock is allocated to the account except in the case of separation from the service, death, or disability.

(5) The plan must provide that each participant is entitled to direct the plan as to the manner in which any employer securities allocated to the account of the participant are to be voted.

(6) On making a claim for credit, adjustment, or refund under section 38 of the Internal Revenue Code of 1954, the employer states in such claim that it agrees, as a condition of receiving any such credit, adjustment, or refund—

(A) In the case of a taxable year beginning before January 1, 1977, to transfer employer securities forthwith to the plan having an aggregate value at the time of the claim of 1 percent of the amount of the qualified investment (as determined under section 46 (c) and (d) of such Code) of the taxpayer for the taxable year, and

(B) In the case of a taxable year beginning after December 31, 1976—

(i) To transfer employer securities to the plan having an aggregate value at the time of the claim of 1 percent of the amount of the qualified investment (as determined under section 46 (c) and (d) of such Code) of the employer for the taxable year,

(ii) Except as provided in clause (iii), to effect the transfer not later than 30 days after the time (including extensions) for filing its income tax return for a taxable year, and

(iii) In the case of an employer whose credit (as determined under section 46 (a)(2)(B) of such Code) for a taxable year beginning after December 31, 1976, exceeds the limitations of paragraph (3) of section 46(a) of such Code—

(I) To effect that portion of the transfer allocable to investment credit carrybacks of such excess credit at the time required under clause (ii) for the unused credit year (within the meaning of section 46(b) of such Code), and

(II) To effect that portion of the transfer allocable to investment credit carryovers of such excess credit at the time required under clause (ii) for the taxable year to which such portion is carried over.

For purposes of meeting the requirements of this paragraph, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the plan, used to purchase employer securities.

(7) Notwithstanding any other provisions of law to the contrary, if the plan does not

meet the requirements of section 401 of the Internal Revenue Code of 1954—

(A) Stock transferred under paragraph (6) or subsection (e)(3) and allocated to the account of any participant under paragraph (3) and dividends thereon shall not be considered income of the participant or his beneficiary under the Internal Revenue Code of 1954 until actually distributed or made available to the participant or his beneficiary and, at such time, shall be taxable under section 72 of such Code (treating the participant or his beneficiary as having a basis of zero in the contract).

(B) No amount shall be allocated to any participant in excess of the amount which might be allocated if the plan met the requirements of section 401 of such Code, and

(C) The plan must meet the requirements of sections 410 and 415 of such Code.

(8)(A) Except as provided in subparagraph (B)(iii), if the amount of the credit determined under section 46(a)(2)(B) of the Internal Revenue Code of 1954 is recaptured or redetermined in accordance with the provisions of such Code, the amounts transferred to the plan under this subsection and subsection (e) and allocated under the plan shall remain in the plan or in participant accounts, as the case may be, and continue to be allocated in accordance with the plan.

(B) If the amount of the credit determined under section 46(a)(2)(B) of the Internal Revenue Code of 1954 is recaptured in accordance with the provisions of such Code—

(i) The employer may reduce the amount required to be transferred to the plan under paragraph (6) of this subsection, or under paragraph (3) of subsection (e), for the current taxable year or any succeeding taxable years by the portion of the amount so recaptured which is attributable to the contribution to such plan,

(ii) Notwithstanding the provisions of paragraph (12), the employer may deduct such portion, subject to the limitations of section 404 of such Code (relating to deductions for contributions to an employee's trust or plan), or

(iii) If the requirements of subsection (f)(1) are met, the employer may withdraw from the plan an amount not in excess of such portion.

(C) If the amount of the credit claimed by an employer for a prior taxable year under section 38 of the Internal Revenue Code of 1954 is reduced because of a redetermination which becomes final during the taxable year, and the employer transferred amounts to a plan which were taken into account for purposes of this subsection for that prior taxable year, then—

(i) The employer may reduce the amount it is required to transfer to the plan under paragraph (6) of this subsection, or under paragraph (3) of subsection (e), for the taxable year or any succeeding taxable year by the portion of the amount of such reduction in the credit or increase in tax which is attributable to the contribution to such plan, or

(ii) Notwithstanding the provisions of paragraph (12), the employer may deduct such portion subject to the limitations of section 404 of such Code.

(9) For purposes of this subsection, the term—

(A) "Employer securities" means common stock issued by the employer or a corporation which is a member of a controlled group of corporations which includes the

employer (within the meaning of section 1563(a) of the Internal Revenue Code of 1954, determined without regard to section 1563(a)(4) and (e)(3)(C) of such Code) and with voting power and dividend rights no less favorable than the voting power and dividend rights of other common stock issued by the employer or such controlling corporation, or securities issued by the employer or such controlling corporation, convertible into such stock, and

(B) "Value" means the average of closing prices of the employer's securities, as reported by a national exchange on which securities are listed, for the 20 consecutive trading days immediately preceding the date of transfer or allocation of such securities or, in the case of securities not listed on a national exchange, the fair market value as determined in good faith and in accordance with regulations issued by the Secretary of the Treasury or his delegate.

(10) The Secretary of the Treasury or his delegate shall prescribe such regulations and require such reports as may be necessary to carry out the provisions of this subsection and subsections (e) and (f).

(11) If the employer fails to meet any requirement imposed under this subsection or subsection (e) or (f) or under any obligation undertaken to comply with the requirement of this subsection or subsection (e) or (f), he is liable to the United States for a civil penalty of an amount equal to the amount involved in such failure. The preceding sentence shall not apply if the taxpayer corrects such failure (as determined by the Secretary of the Treasury or his delegate) within 90 days after notice thereof. For purposes of this paragraph, the term "amount involved" means an amount determined by the Secretary or his delegate, but not in excess of 1 percent of the qualified investment of the taxpayer for the taxable year under section 46(a)(2)(B) and not less than the product of one-half of one percent of such amount multiplied by the number of months (or parts thereof) during which such failure continues. The amount of such penalty may be collected by the Secretary of the Treasury in the same manner in which a deficiency in the payment of Federal income tax may be collected.

(12) Notwithstanding any provision of the Internal Revenue Code of 1954 to the contrary, no deduction shall be allowed under section 162, 212, or 404 of such Code for amounts transferred to an employee stock ownership plan and taken into account under this subsection.

(13) (A) As reimbursement for the expense of establishing the plan, the employer may withhold from amounts due the plan for the taxable year for which the plan is established, or the plan may pay, so much of the amounts paid or incurred in connection with the establishment of the plan as does not exceed the sum of 10 percent of the first \$100,000 that the employer is required to transfer to the plan for that taxable year under paragraph (6) (including any amounts transferred under subsection (e)(3)) and 5 percent of any amount in excess of the first \$100,000 of such amount.

(B) As reimbursement for the expense of administering the plan, the employer may withhold from amounts due the plan, or the plan may pay, so much of the amounts paid or incurred by the employer during the taxable year as expenses of administering the plan as does not exceed the smaller of—

(i) The sum of 10 percent of the first \$100,000 and 5 percent of any amount in excess of \$100,000 of the income from dividends paid to the plan with respect to stock of the employer during the plan year ending with or within the employer's taxable year, or

(ii) \$100,000.

(14) The return of a contribution made by an employer to an employee stock ownership plan designed to satisfy the requirements of this subsection or subsection (e) (or a provision for such a return) does not fail to satisfy the requirements of this subsection, subsection (e), section 401(a) of the Internal Revenue Code of 1954, or section 403(c)(1) of the Employee Retirement Income Security Act of 1974 if—

(A) The contribution is conditioned under the plan upon determination by the Secretary of the Treasury that such plan meets the applicable requirements of this subsection, subsection (e), or section 401(a) of such Code.

(B) The application for such a determination is filed with the Secretary not later than 90 days after the date on which the credit under section 38 is allowed, and

(C) The contribution is returned within one year after the date on which the Secretary issues notice to the employer that such plan does not satisfy the requirements of this subsection, subsection (e), or section 401(a) of such Code.

(e) *Plan requirements for taxpayers electing additional one-half percent credit.*

(1) *General rule.* For purposes of clause (ii) of section 46 (a)(2)(B) of the Internal Revenue Code of 1954, the amount determined under this subsection for a taxable year is an amount equal to the sum of the matching employee contributions for the taxable year which meet the requirements of this subsection.

(2) *Election; basic plan requirements.* No amount shall be determined under this subsection for the taxable year unless the corporation elects to have this subsection apply for that year. A corporation may not elect to have the provisions of this subsection apply for a taxable year unless the corporation meets the requirements of subsection (d) and the requirements of this subsection.

(3) *Employer contribution.* On making a claim for credit, adjustment, or refund under section 38 of the Internal Revenue Code of 1954, the employer shall state in such claim that the employer agrees, as a condition of receiving any such credit, adjustment, or refund attributable to the provisions of section 46 (a)(2)(B)(ii) of such Code, to transfer at the time described in subsection (d)(6)(B) employer securities (as defined in subsection (d)(9)(A)) to the plan having an aggregate value at the time of the transfer of not more than one-half of one percent of the amount of the qualified investment (as determined under subsections (c) and (d) of section 46 of such Code) of the taxpayer for the taxable year. For purposes of meeting the requirements of this paragraph, a transfer of cash shall be treated as a transfer of employer securities if the cash is, under the plan, used to purchase employer securities.

(4) *Requirements relating to matching employee contributions.*

(A) An amount contributed by an employee under a plan described in subsection (d) for the taxable year may not be treated as a matching employee contribution for that taxable year under this subsection unless—

(i) Each employee who participates in the plan described in subsection (d) is entitled to make such a contribution.

(ii) The contribution is designated by the employee as a contribution intended to be used for matching employer amounts transferred under paragraph (3) to a plan which meets the requirements of this subsection, and

(iii) The contribution is in the form of an amount paid in cash to the employer or plan administrator not later than 24 months after the close of the taxable year in which the portion of the credit allowed by section 38 of such Code (and determined under clause (ii) of section 46 (a)(2)(B) of such Code which the contribution is to match) is allowed, and is invested forthwith in employer securities (as defined in subsection (d)(9)(A)).

(B) The sum of the amounts of matching employee contributions taken into account for purposes of this subsection for any taxable year may not exceed the value (at the time of transfer) of the employer securities transferred to the plan in accordance with the requirements of paragraph (3) for the year for which the employee contributions are designated as matching contributions.

(C) The employer may not make participation in the plan a condition of employment and the plan may not require matching employee contributions as a condition of participation in the plan.

(D) Employee contributions under the plan must meet the requirements of section 401 (a)(4) of such Code (relating to contributions).

(5) A plan must provide for allocation of all employer securities transferred to it or purchased by it under this subsection to the account of each participant (who was a participant at any time during the plan year,

whether or not he is a participant at the close of the year) as of the close of the plan year in an amount equal to his matching employee contributions for the year. Matching employee contributions and amounts so allocated shall be deemed to be allocated under subsection (d)(3).

(f) *Recapture.*

(1) *General rule.* Amounts transferred to a plan under subsection (d)(6) or (e)(3) may be withdrawn from the plan by the employer if the plan provides that while subject to recapture—

(A) Amounts so transferred with respect to a taxable year are segregated from other plan assets, and

(B) Separate accounts are maintained for participants on whose behalf amounts so transferred have been allocated for a taxable year.

(2) *Coordination with other law.* Notwithstanding any other law or rule of law, an amount withdrawn by the employer will neither fail to be considered to be nonforfeitable nor fail to be for the exclusive benefit of participants or their beneficiaries merely because of the withdrawal from the plan of—

(A) Amounts described in paragraph (1), or

(B) Employer amounts transferred under subsection (e)(3) to the plan which are not matched by matching employee contributions or which are in excess of the limitation of section 415 of such Code.

nor will the withdrawal of any such amount be considered to violate the provisions of section 403 (c)(1) of the Employee Retirement Income Security Act of 1974.

[Sec. 301 (d) of the Tax Reduction Act of 1975 (89 Stat. 38) as amended by sec. 802 (b)(7) and sec. 803 (c) and (e) of the Tax Reform Act of 1976 (90 Stat. 1520); sec. 301

(e) and (f) of the Tax Reduction Act of 1975 as added by sec. 803 (d) of the Tax Reform Act of 1976]

§ 1.46-8 Requirements for taxpayers electing additional one-percent investment credit (TRASOP's).

(a) *Introduction.*—(1) *In general.* A corporation may elect under section 46(a)(2)(B) of the Code to obtain an additional investment credit for property described in section 46(a)(2)(D). This section provides rules for electing to have the provisions of section 46(a)(2)(B) apply and for implementing an employee stock ownership plan under section 301(d) of the Tax Reduction Act of 1975 ("1975 TRA"). The plan must meet the formal requirements of paragraph (d), and the operational requirements of paragraph (e), of this section. An additional credit may be obtained for the periods described in section 46(a)(2)(D). Unless otherwise indicated, statutory references in this section are to the Internal Revenue Code of 1954.

(2) *Reports.* The returns required by section 6058 (a) must be filed on behalf of a plan established under paragraph (c)(7) of this section, whether or not the plan is qualified under section 401(a).

(3) *Cross-references.* The following table indicates where in this section provisions appear relating to each provision of section 301 (d) and (f) of the 1975 TRA.

[4830-01-C]

Section 301	§ 1.46-8	SUBJECT
(d) (1)	(c) (7) (i) (c) (8) (i)	Establishing a TRASOP, in general Funding a TRASOP, in general
(2) (A) (B) (C)	(c) (7) (ii) (d) (3) (d) (1)	Type of plan Investment design Plan requirements, in general
(3)	(c) (6) (b) (8)	Allocation Compensation, definition
(4)	(d) (7) (d) (9)	Nonforfeitability Distributions
(5)	(d) (8)	Voting rights
(6)	(c)	Procedures for additional credit
(7) (A) (B) (C)	(c) (7) (ii) (e) (3) (e) (3)	Taxability, non-401 (a) TRASOP Allocations under 401 (a) Section 410 and section 415 requirements
(8)	(e) (9)	Reductions of investment credit
(9) (A) (B)	(b) (4) (f) (b) (7)	Employer securities, definition Employer securities, requirements Value, definition
(10)	(a) (2)	Reporting requirements
(11)	(h)	Failure to comply
(12)	(c) (10)	Deductibility
(13)	(e) (6) and (7)	Reimbursement for expenses
(14)	(c) (8) (v) and (d) (7) (i)	Contingent contributions
(f)	(d) (7), (e) (8) (vii), (f)	Withdrawals of TRASOP securities

(4) *Temporary regulations.* There is need for immediate guidance with respect to certain provisions contained in this section. For this reason, they are not issued with notice and public procedure under subsection 553 of Title 5 of the United States Code. Accordingly, until superseded by final regulations, the following provisions in this section are deemed effective only as temporary regulations under § 9.2, Temporary Income Tax Regulations under the Tax Reduction Act of 1975:

- (i) The last sentence of paragraph (b)(4)(i);
- (ii) Paragraph (b)(8);
- (iii) Paragraph (c) (1), (8), and (9) (iv);
- (iv) Paragraph (d)(2);
- (v) The last sentences of subparagraphs (5) and (6)(iv) of paragraph (d);
- (vi) Paragraph (d)(6) (ix) and (xii);
- (vii) The last sentence of paragraph (d)(7);
- (viii) Paragraph (e) (6) and (7);
- (ix) The last three sentences of paragraph (e)(8)(i);
- (x) Paragraph (e)(8)(iii) and (9)(vii), (viii), and (ix);
- (xi) Paragraph (f); and
- (xii) Paragraph (h) (4).

(b) *Definitions.* When used in this section, the terms listed below have the indicated meanings:

(1) *TRASOP.* A "TRASOP" is an employee stock ownership plan that meets the requirements of section 301 (d) of the 1975 TRA. See § 1.46-7. It is a type of plan described in paragraph (d)(1) of this section and may, but need not, be an ESOP under § 54.4975-11 of this chapter (Pension Excise Tax Regulations).

(2) *Additional credit.* An "additional credit" is the additional one-percent investment credit under section 46(a)(2)(B)(i).

(3) *Employer.* An "employer" is a corporation that establishes a TRASOP.

(4) *Employer securities.*—(i) *In general.* "Employer securities" are common stock, and securities convertible into common stock, of the employer or of a corporation that is a member of a controlled group of corporations including the employer. Employer securities must meet the requirements of paragraph (g) of this section. *Membership in a controlled group for purposes of this section is determined under section 414(b) of the Code.*

(ii) *Pre-1977 employer securities.* In addition, employer securities acquired by a TRASOP before January 1, 1977, include common stock, and securities convertible into common stock, of a corporation in control of the employer within the meaning of section 368(c).

(iii) *Caution.* An employer security under this section is not necessarily a qualifying employer security as defined in section 407(d)(5) of the Em-

ployee Retirement Income Security Act of 1974 (ERISA) or section 4975 (e)(8). Moreover, sections 406, 407, and 408 of ERISA in certain cases in effect limit the acquisition of qualifying employer securities as defined in section 407(d)(5) of ERISA.

(5) *TRASOP securities.* "TRASOP securities" are employer securities that—

(i) Are transferred to a TRASOP, or acquired with cash transferred to a TRASOP, to obtain an additional credit, and

(ii) Except as provided under paragraph (g) (4) and (5) of this section or as required by applicable law, are subject to no other put, call, or other option, or buy-sell or similar arrangement while held by the plan.

(6) *Publicly traded.* The term "publicly traded" has the meaning specified in § 54.4975-7(b)(1)(iv) of this chapter.

(7) *Value.*—(i) *In general.* With respect to the transfer of TRASOP securities by a corporation to a TRASOP or the acquisition of TRASOP securities with cash transferred by a corporation to a TRASOP, "value" means fair market value determined in good faith and based on all relevant factors as of the date of transfer or acquisition of the TRASOP securities. If the plan acquires TRASOP securities from other than a disqualified person within the meaning of section 4975(e) (2), a good faith determination of value includes a determination of fair market value based on an appraisal independently arrived at by a person who customarily makes such appraisals and who is independent of any person from whom the TRASOP securities are acquired.

(ii) *Twenty-day average rule.* A special 20-day average valuation rule applies to certain publicly traded securities transferred by a corporation to a TRASOP. It does not apply to securities acquired with cash transferred by a corporation to a TRASOP. Under the special rule, the term "value" refers to an average of daily closing prices for a security, as reported on any national securities exchange or as quoted on any system sponsored by a national securities association, over the 20 consecutive trading days immediately preceding the date on which a corporation files a claim for an additional credit. The average is based on the closing prices for each day when the security is in fact traded during the 20-day period. However, the special rule does not apply unless the security is in fact traded for at least 10 of the 20 days.

(iii) *20-day-average transitional exception.* If a TRASOP security is transferred before March 20, 1979, the plan may value the security on the basis of the 20 consecutive trading

days preceding the date on which the security is transferred or the date as of which the security is allocated to a participant's account.

(8) *Compensation.* "Compensation" means "participant's compensation" under section 415(c)(3). However, except for purposes of applying section 415, compensation must be determined for a plan year, not a limitation year.

(c) *Procedures for additional credit.*—(1) *Applicable year.*—(i) *General rule.* With respect to a qualified investment, the "applicable year" of a corporation is the taxable year in which the investment is made.

(ii) *Carryover option.* A corporation may consistently determine the applicable years for all qualified investments made in taxable years beginning after December 31, 1976, under the following option: The first applicable year is the year the qualified investment is made or, if later, the first taxable year for which any additional credit is claimed for that qualified investment. If there is an investment credit carryover from the first applicable year, each taxable year to which any part of the additional credit for that qualified investment is carried over is also an applicable year.

(iii) *Increased credit.* A taxable year in which a corporation's additional credit is increased because of a redetermination is also an applicable year. See paragraph (c)(9)(iii) of this section.

(iv) *Illustration.* To illustrate the application of paragraph (c)(1) (i) and (ii) of this section, assume that a calendar year corporation makes a qualified investment in 1977 and that 1977 is not an unused credit year described in section 46(b)(1). If the general rule is applied, 1977 generally is an applicable year. However, if 1977 is an unused credit year, under section 46 (b)(1), if the corporation carries over its entire investment credit for 1977 to 1978, and if the corporation does not treat 1977 as an applicable year, then 1978 is an applicable year. If part of the investment credit is carried over further to 1979, the year 1979 is also an applicable year.

(2) *Time and manner of electing.* A corporation with a qualified investment must elect to be eligible for an additional credit by attaching a statement of election—

(i) To its income tax return, filed on or before the due date including extensions of time, for its first applicable year with respect to a qualified investment, or

(ii) In the case of a return filed before December 31, 1975, to an amended return filed on or before December 31, 1975.

(3) *Statement of election.* The statement of election must contain the name and taxpayer identification

number of the corporation. Also, it must declare in the following words, or in words having substantially the same meaning, that:

(i) The corporation elects to have section 46(a)(2)(B)(i) of the Internal Revenue Code of 1954 apply; and

(ii) The corporation agrees to implement (or continue to implement, as appropriate) a TRASOP and to claim the additional credit as required by § 1.46-8 of the Income Tax Regulations.

(4) *Separate election.* A separate election must be made for each taxable year's qualified investment to obtain an additional credit for that qualified investment. If a corporation does not make a timely election to obtain an additional credit for a taxable year, it may not subsequently make the election on an amended return or otherwise.

(5) *No partial election.* An election to obtain an additional credit applies to a corporation's entire qualified investment for a taxable year. Thus, a corporation may not elect to obtain a partial additional credit for any year's qualified investment. However, the partial disallowance of an additional credit will not result in an election being treated as a partial election. Also an election by a member of a controlled group of corporations that applies only to the electing member's qualified investment is not a partial election.

(6) *No revocation of election.* After the time for electing the additional credit has expired for a taxable year, a corporation may not revoke its election for that year.

(7) *Establishing a TRASOP—(i) In general.* A corporation electing to obtain an additional credit must establish a TRASOP with accompanying trust on or before the last day for making the election regardless of when in fact the election is made. A TRASOP is considered to be in existence on a particular date if it meets the requirements of § 1.410(a)-2(c)(1). A new plan need not be established if an existing plan qualifies as a TRASOP, or is amended to meet the requirements of this section, on or before the last day for making the election. The requirements of this section are not satisfied merely by establishing and crediting a separate "TRASOP" account on the corporation's books.

(ii) *Type of plan.* A TRASOP need not meet the requirements of section 401(a). However, it must be a stock

bonus plan, a combination stock bonus plan and money purchase pension plan, or a profit-sharing plan under § 1.401-1(b)(1) of this chapter. See section 301(d)(7)(A) of the 1975 TRA for the tax consequences relating to a TRASOP that does not meet the requirements of section 401(a). See also Title I of ERISA for additional provisions applicable to a TRASOP as an employee pension benefit plan under section 3(2) of ERISA.

(8) *Funding a TRASOP—(i) In general.* A corporation electing to obtain an additional credit must fund its TRASOP by transferring TRASOP securities or cash to it no later than 30 days after the applicable last day. That day is the last day for electing the additional credit. However, in the case of an investment credit that was carried over and claimed in a subsequent applicable year by reason of paragraph (c)(1)(ii) of this section, that day is the last day (including extensions) for filing its income tax return for the subsequent applicable year. TRASOP securities may be transferred to a plan at any time during the applicable year, but not before the first day of an applicable year. If TRASOP securities are transferred to the plan within the permissible time period after the close of the applicable year, they are treated as transferred during that applicable year first until all TRASOP securities required by this paragraph (c) for that applicable year are transferred to, and taken into account under, the TRASOP. Thus, for example, assume that a calendar-year corporation claims an additional credit of \$5,000 for 1978, an applicable year under the TRASOP. The corporation also expects to be able to claim an additional credit of \$10,000 for 1979. TRASOP securities transferred between January 1, 1979, and October 15, 1979, must be taken into account under the plan for 1978 before they are taken into account for 1979.

(ii) *Cash transfers.* A corporation may transfer cash to the TRASOP instead of TRASOP securities only if the TRASOP uses the cash to acquire TRASOP securities no later than 30 days after the time for funding the TRASOP.

(iii) *Valuation.* The value of the TRASOP securities for an applicable year must equal one percent of the corporation's qualified investment for that year. However, if paragraph (c)(1)(ii) of this section is followed by a corporation, the value of TRASOP

securities for an applicable year must equal the amount of additional credit claimed for that year.

(iv) *Cash reserve.* The value of TRASOP securities acquired with cash transferred by a corporation may be reduced by two items. The first item is an amount not more than the value of fractional shares allocable to participants entitled to receive an immediate distribution at the time of the transfer. The second item is start-up expenses and administrative expenses to the extent permitted under section 301(d)(13) of the 1975 TRA and paragraph (e)(6) and (7) of this section.

(v) *Conditional funding.* The funding of a TRASOP may be conditional if the TRASOP satisfies the provisions of section 301(d)(14) of the 1975 TRA. For purposes of section 301(d)(14), an investment credit is considered to be allowed on the date the election for the applicable year is made under paragraph (c)(2) of this section.

(vi) *Certain benefit offset mechanisms.* A TRASOP will be deemed to be unfunded to the extent that TRASOP securities are used to offset benefits under a defined benefit plan.

(9) *Claiming additional credit—(i) In general.* Section 46(a)(3) subjects the amount of investment credit earned with respect to a taxpayer's qualified investment for a taxable year to a limitation based on the corporation's tax liability.

(ii) *Unused credit year.* Section 46(a)(1) provides a first-in-first-out rule for the investment credit in a taxable year. Section 46(b)(1) provides for the carryback and carryover of unused credits. If less than all of a taxpayer's credit earned for a taxable year is allowed, the 10 percent credit determined under section 46(a)(2)(A) for a particular year is allowed first. Any portion of the additional credit for a taxable year that is not allowed may be carried back or carried over to the extent permitted by section 46(b)(1). However, an additional credit which is allowed for a taxable year is not reduced by a carryback to that year of an unused credit from a succeeding taxable year.

(iii) *Example.* paragraph (c)(9)(ii) of this section is illustrated by the following example:

Example. A calendar-year corporation begins operation and establishes a TRASOP in 1975. The facts and treatment relating to the corporation's qualified investments and investment tax credits for 1975 and 1976 are as follows:

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<u>Facts:</u>	<u>1975</u>	<u>1976</u>
1. Qualified investment	\$500,000	\$500,000
2. Credits earned		
a. 10% credit	50,000	50,000
b. Additional credit	5,000	5,000
c. Carryover of additional credit from prior year line 5		3,000
3. Sec. 46 (a) (3) limitation	52,000	47,000
<u>Treatment of credits:</u>		
4. Credits allowed		
a. Carryover of additional credit		3,000
b. Current 10% credit	50,000	44,000
c. Current additional credit	2,000	0
5. Unused credits		
a. 10% credit	0	6,000
b. Additional credit	3,000	5,000

Thus, in 1975 the section 46 (a) (3) limitation (\$52,000) is applied first to allow all of the 10 percent investment credit (\$50,000). Accordingly only \$2,000 of the additional credit earned is allowed in 1975 and \$3,000 of the additional credit is carried forward to 1976. In 1976, section 46 (a) (1) requires that this \$3,000 of additional credit is allowed first, and then only \$44,000 of the 10 percent credit earned in 1976 is allowed since the section 46 (a) (3) limitation for that year is \$47,000. The unused credits from 1976 cannot be carried back since 1975, the only prior year, is an unused credit year.

(iv) *Redeterminations increasing credit.* If a corporation's allowable additional credit is increased because of a redetermination, the increase is treated as if it were an unused credit carryover for purposes of paragraph (c)(1)(ii) and (c)(8)(i) of this section. Thus, for example, assume that a calendar-year corporation claims an additional credit of \$100,000 in 1978 because of a qualified investment in that year. In 1980 the additional credit is redetermined to be \$110,000. With respect to the 1978 qualified investment, 1980 is also an applicable year to the extent of \$10,000. The corporation must fund the TRASOP with this \$10,000 under paragraph (c)(8) of this section. For purposes of this subdivision (iv), the date of the increase is determined under paragraph (e)(9)(iii) of this section as if it were the date of a reduction.

(10) *Deductions at expiration of carryover period.* Under paragraph (c)(1)(ii) of this section, a corporation that uses no additional credit in the year of a qualified investment may nonetheless treat the year in which the qualified investment is made as the first applicable year. If the 7-year carryover period under section 46(b)(1)(B) expires before the corporation uses the entire additional credit with respect to the qualified investment, contributions attributable to the unused credit are deductible, subject to the limitations of section 404(a), as if made in the taxable year when the carryover period expires.

(d) *Formal plan requirements—(1) In general.* To be a TRASOP, a plan must meet the formal requirements of this paragraph (d).

(2) *Plan year.* To be a TRASOP, a plan must specify a plan year that begins with or within the corporation's taxable year.

(3) *Designed to invest primarily in employer securities.* To be a TRASOP, a plan must state that it is designed to invest primarily in employer securities. A TRASOP intended to qualify as an ESOP under § 54.4975-11 must state that it is designed to invest primarily in employer securities that are qualifying employer securities.

(4) *Separate accounting.* To be a TRASOP, a plan must state that TRASOP securities are to be accounted for separately from other contributions to the plan.

(5) *Debts and expenses of the TRASOP.* To be a TRASOP, a plan must state that TRASOP securities cannot be used to satisfy a loan made to the TRASOP or be used as collateral for a loan made to a TRASOP. However, if the plan so provides, to the extent permitted under section 301 (d) (13) of the 1975 TRA and paragraph (e) (6) and (7) of this section, certain amounts may be used for the TRA-

SOP's start-up expenses and administrative expenses.

(6) *Allocation of TRASOP securities—(i) General rules.* To be a TRASOP, a plan must provide for the allocation of TRASOP securities under section 301 (d) (3) of the 1975 TRA and this subparagraph (6).

(ii) *Timing.* TRASOP securities are allocated as of the last day of the plan year beginning with or within the appropriate applicable year.

(iii) *Participants.* Each employee who is a participant at any time during the plan year for which allocation is made must receive an allocation as of the end of that year even though not then employed by the employer. However, to receive allocations, employees must satisfy the minimum participation requirements of the plan (for example, 1000 hours of service).

(iv) *Compensation considered.* Compensation in excess of \$100,000 must be disregarded in making these allocations. If the plan has a lower stated ceiling on compensation (from \$0 to \$100,000), compensation in excess of this ceiling must likewise be disregarded. Also, allocations must be based on a participant's compensation while actually employed, not just while actually participating, in any year.

(v) *Section 415 priority rule.* If a TRASOP security is not allocated to a participant's account because of section 415 and section 301 (d) (3) of the 1975 TRA, no other amount may be allocated for that participant under any defined contribution plan. This subdivision (v) applies to a TRASOP even when, under section 415 (f) (1) (B), the TRASOP is treated along with an employer's other defined contribution plans as one plan for purposes of section 415.

(vi) *Unallocated amounts.* Under section 301(d) (3) of the 1975 TRA, TRASOP securities unallocated to participants' accounts because of section 415 must be allocated proportionately to the accounts of other participants until the addition to the account of each participant reaches the limits of section 415.

(vii) *Suspense account.* If, after these allocations, TRASOP securities remain unallocated, they must be held in an unallocated suspense account under the TRASOP. Any income produced by these securities must also be held in the account. A plan with such an account will not fail to qualify under section 401 (a) merely because of the account. In each successive year (whether or not an applicable year), the unallocated assets are released from this account for allocation on a first-in-first-out basis. They are then allocated to the participants' accounts proportionately under paragraph (d) (6) (i)-(vi) of this section for each later year until no TRASOP securities

remain unallocated. Value for this allocation is determined under paragraph (b)(7) of this section by treating the date as of which allocation occurs as either the date of transfer or, if the special 20-day average rule is otherwise applicable, the date on which the corporation files a claim for an additional credit.

(viii) *Escrow account.* A TRASOP may provide for the establishment of an escrow account instead of a suspense account. The escrow account must satisfy paragraph (d) (6) (vii) of this section. The beneficiary of the escrow account is to be the TRASOP. The corporation may establish the escrow account and contribute stock or cash to it. In such a case, the escrow agent must transfer assets to the plan each year equal to the amount to be allocated proportionately under paragraph (d) (6) (i)-(vi) of this section. Assets held in an escrow account are plan assets.

(ix) *Treatment of certain plan terminations.* To be a TRASOP, a plan must provide that, if a plan terminates because the corporation ceases to exist, unallocated amounts described in paragraph (d) (6) (vi) of this section must be allocated to the extent possible under section 415 for the year of termination. The remaining unallocated amounts must then be withdrawn. These unallocated amounts are treated as recaptured under all the rules of paragraph (e) (9) (vii) of this section except its last sentence. Section 301 (f) (2), but not (1), of the 1975 TRA applies to this withdrawal.

(x) *No integration.* Under section 301 (d) (3) of the 1975 TRA, no TRASOP may be integrated, directly or indirectly, with contributions or benefits under Title II of the Social Security Act or any other State or Federal law.

(xi) *Fractional securities.* Under section 301 (d) (3) of the 1975 TRA, participants' accounts are to be allocated fractional securities or fractional rights to securities.

(xii) *Accounting for amounts withheld by employer or paid by plan as start-up or administrative expenses.* An employer may withhold certain start-up and administrative expenses from TRASOP securities due the plan. Also, a plan may reduce amounts to be allocated to the extent that certain plan assets are used to reimburse the employer, for example for salaries of employees providing services to the plan, or to pay fees directly to independent contractors for expenses. These expenses do not reduce the amount of additional credit claimed and are not allowable as expenses in computing taxable income. Additional rules concerning these expenses are in paragraph (e) (6) and (7) of this section.

(7) *Nonforfeiture.* To be a TRASOP, a plan must state that each participant has a nonforfeitable right to allocated TRASOP securities. For purposes of this section, forfeitures described in section 411 (a) (3) are not permitted. However, amounts shall not fail to be considered to be nonforfeitable if the plan provides for their return to the corporation—

(i) *In the case of conditional contributions, under section 301 (d) (14) of the 1975 TRA, and*

(ii) *In the case of investment credit recapture or an event deemed to be a recapture, under section 301 (f) of the 1975 TRA.*

(8) *Voting rights—(i) Provision for pass-through.* To be a TRASOP, a plan must state that each participant is entitled to direct a designated fiduciary how to exercise any voting rights on TRASOP securities allocated to the account of the participant. The plan need not permit participants to direct the voting of unallocated TRASOP or other securities held by the trust. It may authorize the designated fiduciary to exercise voting rights for unallocated securities.

(ii) *Notification by the employer.* To be a TRASOP, the plan must obligate the corporation to furnish the designated fiduciary and participants with notices and information statements when voting rights are to be exercised. The time and manner for furnishing participants with a notice or information statement must comply with both applicable law and the corporation's charter and by-laws as generally applicable to security holders. In general, the content of the statement must be the same for plan participants as for security holders in general.

(iii) *Fractional securities.* To be a TRASOP, the plan must allow the participants to vote any fractional securities or fractional rights to securities. This requirement is met if the designated fiduciary votes the combined fractional securities or rights to the extent possible to reflect the direction of the participants holding them.

(iv) *Unexercised voting rights.* To be a TRASOP, the plan may not permit the designated fiduciary to exercise voting rights which a participant fails to exercise. However, the plan may permit the solicitation and exercise of participants' voting rights by management and others under a proxy provision applicable to all security holders.

(9) *Distributions—(i) In general.* To be a TRASOP, a plan must permit the distribution of allocated TRASOP securities only as provided under section 301(d)(4) of the 1975 TRA. Also, under § 1.401-1(b)(1)(i) of this chapter, to the extent that a TRASOP is a money purchase pension plan, it can only provide for a distribution in the case of separation from service, death, or dis-

ability. No TRASOP may provide for the distribution of TRASOP securities upon plan termination within the 84-month holding period. For purposes of section 301(d)(4) of the 1975 TRA, the 84-month holding period begins on the date as of which TRASOP securities are allocated.

(ii) *Certain fractional securities.* A stock bonus TRASOP may distribute cash instead of fractional securities.

(e) *Operational plan requirements—(1) General rule.* To be a TRASOP, a plan in operation must meet the requirements of this paragraph (e). However, the provisions under paragraph (e)(8) of this section apply only to TRASOP's qualified under section 401(a).

(2) *Compliance with plan provisions.* To be a TRASOP, a plan must operate in compliance with its provisions.

(3) *Compliance with certain Code provisions.* To be a TRASOP, a plan must meet the requirements of section 301(d)(7) of the 1975 TRA. Thus, whether or not it is qualified under section 401(a), a TRASOP must meet the requirements of section 401(a) with respect to allocations, section 410 with respect to participation, and section 415 with respect to limitations on contributions and benefits. However, these requirements are modified by paragraph (d)(6) of this section, relating to allocations and section 415.

(4) *Employee contributions.* Under a TRASOP, the receipt of benefits attributable to TRASOP securities must not depend on contributions by participants. If a corporation has a plan in existence which requires employee contributions, a portion of the plan may be a TRASOP if employee contributions are not required with respect to that portion of the plan.

(5) *Controlled group of corporations, etc.* Whether or not a TRASOP is qualified under section 401(a), all employees who by reason of section 414 (b) and (c) are treated as employees of an electing corporation are treated as employed by the corporation in determining whether the plan satisfies the requirements of sections 301(d)(7) (B) and (C) of the 1975 TRA. A member of a controlled group under paragraph (b)(4)(i) of this section with a qualified investment but with no actual employees may obtain an additional credit even though the only participants in the corporation's TRASOP are actually employed by another member of the controlled group.

(6) *Start-up expenses—(i) In general.* For purposes of this section, the term "start-up expense" means any ordinary and necessary amount of a non-recurring nature paid or incurred by the corporation or by the plan in connection with the establishment of a TRASOP under paragraph (c)(7) of

this section. Thus, for example, start-up expenses may include expenses relating to: the drafting or amending of plan documents to establish a TRASOP under section 301 (d) or (e) of the 1975 TRA, the seeking of agency approval for these documents and related transactions, the obtaining of shareholder approval for establishing a TRASOP, and the registering of securities for initial funding of a TRASOP.

(ii) *Treatment of start-up expenses.* Start-up expenses may be withheld by the employer, from amounts that would otherwise be due the plan under paragraph (c)(8) of this section, to the extent that these amounts are known by the employer when funding first occurs for an applicable year. To the extent that these amounts are not withheld by the employer, the plan may pay remaining amounts from plan assets within a reasonable time after the amounts are known by the plan.

(iii) *Ceiling on start-up expenses.* Reimbursement for start-up expenses is limited to a ceiling. This ceiling is the sum of 10 percent of the first \$100,000 that an employer is first required to transfer under paragraph (c)(8) of this section for an applicable year and 5 percent of that amount in excess of \$100,000. If this first year is an unused credit year from which there is a carryover, amounts required to be transferred in subsequent years for claiming carryovers from this first year are considered in determining this ceiling. Thus, for example, assume that a calendar-year corporation first earns an additional credit in 1977 of \$9,000 and that \$3,000 of this amount is claimed on the income tax return for 1977, for 1978 and for 1979. The corporation's ceiling on start-up expenses is \$300 when its 1977 return is filed. The ceiling increases to \$600 when its 1978 return is filed and to \$900 when its 1979 return is filed, with the claiming of an additional \$3,000 credit for each of the three years.

(iv) *Special rule for taxable years ending before January 1, 1977.* Special treatment is available for expenses paid or incurred before January 1, 1977, that were not taken into account in the manner provided by section 301(d)(13) of the 1975 TRA. These expenses may be withdrawn under paragraph (e)(9)(vii) of this section as reductions in the corporation's additional credit caused by a recapture. This withdrawal may only be made during the first taxable year ending after March 20, 1979. It is subject to the ceilings of section 301(d)(13) of the 1975 TRA. Expenses previously deducted by a corporation must be reduced on a timely-filed amended return by the amount of this withdrawal.

(7) *Administrative expenses—(i) In general.* For purposes of this section,

the term "administrative expense" means any amount, other than a start-up expense, paid or incurred by the corporation or by the plan that is ordinary and necessary in maintaining the TRASOP. Thus, for example, administrative expenses may include expenses relating to: the compensating of plan fiduciaries and administrators, the leasing of office space and equipment, the reproducing and mailing of information to participants and beneficiaries, and the filing of reports, returns, and amendments relating to a TRASOP. Paragraph (e)(6)(ii) and (iv), relating to treatment of start-up expenses and to a special rule for taxable years ending before January 1, 1977, also applies to administrative expenses.

(ii) *Ceiling on administrative expenses.* Reimbursement for administrative expenses under paragraph (e)(6)(ii) of this section is limited to the smaller of two amounts for each plan year. The first amount is \$100,000. The second amount is the sum of 10 percent of the first \$100,000 of dividend income paid with respect to TRASOP securities held by the plan during the plan year ending with or within the corporation's taxable year and 5 percent of any such dividend income in excess of \$100,000.

(8) *TRASOP qualification under section 401(a)—(i) Permanence.* A TRASOP is not required to be a qualified plan under section 401(a). However, to meet the requirements of section 401(a), a TRASOP must be a permanent plan, as described in §1.401-1(b)(2) of this chapter. Under section 401(a)(21), a plan will not fail to be considered permanent merely because the amount of employer contributions under the plan is determined solely by reference to the amount of additional credit claimed under this section. Thus, for example, it will not fail to be considered permanent merely because employer contributions are not made for a year for which an additional credit is not available by reason of no qualified investment for which an additional credit can be obtained. Section 401(a)(21) applies only to the extent the TRASOP is funded with TRASOP securities and cash in lieu of TRASOP securities.

(ii) *Partial discontinuance of contributions.* A plan that meets the requirements of section 401(a) may receive contributions of TRASOP securities as well as other contributions. If the other contributions continue on a permanent basis, the plan's qualification under section 401(a) will not be adversely affected merely because TRASOP securities cease to be contributed to it.

(iii) *Income distribution.* Income paid with respect to employer securities acquired by a TRASOP may be dis-

tributed at any time after receipt by the plan to participants on whose behalf such securities have been allocated without adversely affecting the qualified status of the plan under section 401(a). (See the last sentence of section 803(h), Tax Reform Act of 1976.) However, under a TRASOP that is a stock bonus or profit-sharing plan, income held by the plan for a 2-year period or longer must be distributed under rules generally applicable to stock bonus and profit-sharing plans qualified under section 401(a).

(9) *Reductions in investment credit—(i) General rule.* Certain reductions in a corporation's investment credit result from either a recapture under section 47 of the corporation's investment credit or a redetermination of the allowable credit. If these reductions are taken into account under a TRASOP, the plan may only use one or more of the methods described in paragraph (e) (9) (v), (vi), and (vii) of this section for taking into account these reductions. Thus, for example, more than one method is permitted upon a recapture with respect to a qualified investment made in a particular year. However, the method described in paragraph (e) (9) (vii) of this section applies only to a recapture and not to a redetermination.

(ii) *Ratable reduction.* A reduction is allocated ratably between the 10-percent credit and the additional credit. Thus, for example, if a calendar-year corporation claims a \$33,000 investment credit for 1976, including a \$3,000 additional credit, and \$11,000 of the total credit is recaptured in 1978, the \$3,000 additional credit is reduced by \$1,000. This subdivision (ii) does not apply to a reduction solely of the additional credit as could occur, for example, in the case of a redetermination caused by a mathematical error in computing the additional credit or in the case of a recapture caused by a bad faith failure to comply under paragraph (h) of this section.

(iii) *Date of reduction.* A reduction in investment credit occurs under this paragraph (e) (9) on the earliest of these dates: (A) The date an income tax return (or an amended return) is filed reflecting the reduction; (B) the date a judicial determination affecting the amount of the reduction becomes final; and (C) the date specified in a closing agreement made under section 7121 is approved by the Commissioner. For purposes of this subdivision (iii), a judicial determination becomes final at the time prescribed in §1.547-2 (b) (1) (ii) or (iii), relating to personal holding company tax.

(iv) *Year for taking reduction into account.* A reduction in investment credit must be taken into account in the earliest year or years possible under the applicable method begin-

ning no later than the year in which the date of the reduction falls.

(v) *Decrease future contributions.* The reduction may be taken into account as a decrease in the value of TRASOP securities to be transferred to the plan.

(vi) *Deduct under section 404.* On the date of the reduction, the reduction may be treated as an amount paid to the TRASOP for purposes of, and as a deduction to the extent allowed under, section 404.

(vii) *Withdraw TRASOP securities.* If an additional credit allowed for a taxable year is recaptured, the corporation may withdraw from the plan TRASOP securities transferred to, or acquired by, the plan for claiming that year's credit. If the plan has converted these securities into other assets, the withdrawal may be of these other assets. In either case, the withdrawal must only be from assets segregated under paragraph (f)(2) of this section and must be first from assets accounted for in an unallocated suspense account for the particular year. The amount of assets actually withdrawn bears the same proportion to the amount of assets subject to withdrawal as the amount of additional credit recaptured bears to the amount of additional credit claimed. Thus, for example, if the assets subject to withdrawal consist of 300 shares of one class of employer stock and one-third of the additional credit is recaptured, 100 shares of the stock are withdrawn. However, if the current value of the assets subject to withdrawal exceeds the dollar amount of the additional credit claimed, assets may be withdrawn only to the extent that their current value does not exceed the dollar amount of the recaptured portion of the additional credit. Thus, for example, if the 300 segregated shares in the prior example have a current value of \$9,000 and the dollar value of the additional credit claimed is \$4,500, when one-third of the additional credit is recaptured, only 50 shares, not 100 shares, are withdrawn. Current value is determined under paragraph (b)(7) of this section by treating the withdrawal date as either the date of transfer or, if the special 20-day average rule is otherwise applicable, the date on which the corporation files a claim for an additional credit. Withdrawals from an individual's account for the year with respect to which recapture occurs must bear the same ratio to the total amount withdrawn for that year as the individual's TRASOP account balance for that year bears to the total TRASOP account balance for that year. In the case of a TRASOP security acquired after March 20, 1979, the corporation may not withdraw it or assets into which it has been converted unless the plan meets the requirements

of paragraph (d)(7)(ii) of this section when the plan acquires the TRASOP security.

(viii) *Prior distribution rule.* If a TRASOP distributes an amount allocated with respect to an investment credit for a taxable year and the credit for that year is later recaptured, withdrawals may not reduce participants' accounts below the level to which they would have been reduced had the prior distribution not occurred. Recaptured amounts above this level may only be deducted under paragraph (e)(9)(vi) of this section. They may not be used to decrease future contributions under paragraph (e)(9)(v).

(ix) *Illustration.* Paragraph (e)(9)(viii) of this section operates as follows:

Example. For 1977, a calendar-year corporation claims an additional credit of \$10,000. The corporation's TRASOP meets the requirements of section 301(f) of the 1975 TRA. Each of 10 participants under the plan for that year receives an equal allocation of 10 shares valued at \$1,000. In 1978, one participant terminates employment and receives a distribution of 10 shares. In 1979, a recapture reduces the 1977 additional credit by \$2,000. If the 10 shares had not been distributed, 20 shares would be available for withdrawal, 2 shares from each participant's account. Since 9 participants remain from 1977, only 18 shares are available for withdrawal (2 shares $\times$ 9 remaining participants). If these 18 shares are withdrawn, the corporation may take into account 2 shares by deducting their value under paragraph (e)(9)(vi) of this section.

(f) *Section 301(f) withdrawals.* (1) In general. No assets may be withdrawn by a corporation under section 301(f) of the 1975 TRA unless the assets are either TRASOP securities or plan assets into which TRASOP securities have been converted ("withdrawal assets"). Withdrawal assets must meet the segregated accounting requirements of this paragraph. The physical segregation of assets is not required.

(2) *Segregated accounting.* The segregated accounting requirements are that—

(i) *Withdrawal assets must be segregated from other plan assets on a taxable-year-by-taxable-year basis; and*

(ii) *Separate accounts must be maintained on a taxable-year-by-taxable-year basis for each participant on whose behalf withdrawal assets are allocated.*

(3) *Aggregate plan year accounting.* Withdrawal assets for taxable years beginning before October 4, 1976, also meet the segregated accounting requirements if they are aggregated and accounted for in one separate account apart from withdrawal assets in separate accounts for later taxable years.

(g) *Requirements for employer securities.* (1) *General rules.* The term "employer security" does not include stock rights, warrants and options. An employer security that is not common stock must at all times be immediately convertible into common stock that is an employer security at a conversion price which is no greater than the fair market value of that common stock at the time the plan acquires the security.

(2) *Common stock.* (i) *In general.* To be an employer security, common stock must meet certain voting power and dividend right requirements. For purposes of this paragraph (g), stock held by the TRASOP is not treated as outstanding.

(ii) *Dividend right limitations.* If dividend rights are subject to a limitation, then at least 50 percent of the fair market value of the employer's outstanding common stock at the time the common stock is transferred must be subject to the same limitation. However, common stock that satisfies paragraph (g)(3)(ii) of this section is not subject to this subdivision (ii).

(3) *Voting power and dividend rights.* To be an employer security, common stock must have voting power and dividend rights which, when taken together, are "no less favorable" than the voting power and dividend rights of any other common stock issued by the employer. Common stock which meets one of the following tests is "no less favorable".

(i) *Ten-percent shareholder test.* The stock is part of, or identical to, a class of outstanding stock of which at least 50 percent is not owned by 10-percent shareholders. For this purpose, a 10-percent shareholder is one who owns at least 10 percent of the outstanding shares in a class, including shares constructively owned under section 318.

(ii) *Substantial proportionality test.* More than one class of common stock is outstanding and an identical percentage of shares from each class is transferred to the TRASOP.

(iii) *Voting power test.* The stock is part of, or identical to, the existing class of stock having the greatest number of votes per unit of fair market value. For example, assume there are only two classes of common stock, Class A and Class B. Their fair market values per share are \$1 and \$.50, respectively, and the owner of each share of each class is entitled to one vote per share. Thus, Class B has 2 votes per \$1 and Class A has 1 vote per \$1. Accordingly, the Class B stock has the greater number of votes per unit of fair market value.

(4) *Right of first refusal.* TRASOP securities may, but need not, be subject to a right of first refusal. However, whether or not the plan is an ESOP, any such right must meet the

requirements of § 54.4975-7(b)(9) of this chapter.

(5) *Put option.* A TRASOP security that is transferred to a TRASOP after September 30, 1976, must be subject to a put option if it is not publicly traded when distributed or if it is subject to a trading limitation when distributed. The provisions of § 54.4975-7(b) (10)-(12) and § 54.4975-11(a)(3) of this chapter apply to such securities, whether or not the plan is ESOP.

(6) *Change of employer security status.* In general, a transaction changing the status of a corporation as an employer, or as a member of a controlled group of corporations including the employer, adversely affects the status as employer securities of common stock and securities held by a plan ("old employer securities"). However, common stock and securities ("new employer securities") substituted for old employer securities are treated as if they were the old employer securities if—

(i) The plan is not terminated;

(ii) The transaction causing the change in status of the old employer securities does not result in a recapture under section 47 of any investment credit underlying the transfer to, or acquisition by, the plan of the old employer securities;

(iii) The old employer securities and the new employer securities are of equal value at the time of the transaction changing the status of the old employer securities; and

(iv) The new employer securities otherwise meet the requirements of this section.

(h) *Failure to comply.* (1) *General rule.* (i) *Effect of failure.* If a corporation elects under paragraph (c) (2)-(5) of this section to obtain an additional credit and fails to comply with respect to that credit at any time, it is liable to the United States for a civil penalty equal to the amount involved in the failure to comply. If the corporation fails to comply with respect to an additional credit during the 84-month period described in section 301(d)(4) of the 1975 TRA, it also is not entitled to any portion of that credit. A separate failure to comply occurs for each taxable year in which a failure continues to exist.

(ii) *Illustration of continuing failure's effect.* Assume that in 1975 an additional credit is allowed and a failure to comply occurs in 1975 with respect to that credit. Assume also that in 1976 the 1975 failure continues uncorrected, another additional credit is allowed, and a failure to comply occurs with respect to the 1976 credit. Under these circumstances, on the last day of 1976 three separate failures to comply exist: (a) The 1975 failure with respect to the 1975 credit, (b) the 1976 failure with respect to the 1976 credit, and (3)

the 1976 failure with respect to the 1976 credit.

(2) *Assessment and collection.* The civil penalty must be assessed and collected in the same manner in which a deficiency in the payment of Federal income tax is assessed and collected.

(3) *Exception.* If a failure to comply is corrected within the correction period described in paragraph (h) (5) of this section—

(i) The corporation is not liable for a civil penalty; and

(ii) If the corporation establishes that at the time of the failure a good faith effort to comply was made, its additional credit is not disallowed.

(4) *Failure to comply (penalty classifications)—(i) In general.* An electing corporation fails to comply if a defect described in paragraph (h) (4) (ii)-(iv) of this section occurs with respect to an additional credit allowed for a particular taxable year. The characterization of the defect in this subparagraph (4) determines the amount involved under paragraph (h) (8) of this section for the purpose of assessing the civil penalty.

(ii) *Funding defect.* A funding defect occurs if a corporation or its TRASOP fails to satisfy the requirements of paragraph (c) (8) or (9) of this section, relating to funding a TRASOP and claiming an additional credit.

(iii) *Special operational defect.* A special operational defect occurs if a TRASOP fails in operation to satisfy the requirements described in paragraph (d) (5)-(9) of this section, relating to debts and expenses of a TRASOP, allocation of TRASOP securities, nonforfeiture, voting rights, and distributions or paragraph (e) (3) of this section, relating to compliance with certain Code provisions.

(iv) *De minimis defect.* A de minimis defect occurs if a corporation or its TRASOP fails to satisfy any requirement of this section other than those enumerated either in paragraph (h) (4) (i) and (iii) of this section or in paragraphs (a) (2) and (c) (2)-(5) of this section. A failure to comply under this subdivision (iv) may be formal or operational in nature.

(5) *Failure to comply (correction rules classifications)—(i) In general.* If for an electing corporation a defect described in paragraph (h) (4) of this section occurs, the procedure for correcting the failure to comply depends upon whether the failure is classified as a "formal" failure or an "operational" failure under this subparagraph (5).

(ii) *Formal failure to comply.* Formal failures are corrected by retroactive amendment. If a formal plan requirement is not met, the plan must be retroactively amended by no later than the expiration of the correction period under paragraph (h) (6) of this section.

A plan fails to meet a formal plan requirement of paragraph (d) of this section if, for example, it does not state, as required by paragraph (d) (3) of this section, that it is designed to invest primarily in employer securities.

(iii) *Operational failure to comply.* Operational failures are corrected by undoing the defective transaction and by making the plan and the participants whole. If the value of TRASOP securities transferred to the TRASOP is less than the amount of the additional credit, the corporation must make up any resulting funding deficiency within the correction period. This is done, for example, by contributing additional TRASOP securities plus an amount equal to the dividends or interest that would have been paid between the time that the TRASOP securities should have been transferred and the actual time of the transfer. The contribution of additional TRASOP securities is based on their value under paragraph (b) (7) of this section as of the date by which they were required to be transferred to the plan. These further contributions are subject to the deduction limits of section 404. An electing corporation fails to meet an obligation undertaken under this section if, for example, it fails to comply with paragraph (c) (8) of this section.

(6) *Correction period—(i) In general.* For purposes of this paragraph (h), the "correction period" begins when the failure to comply occurs and ends 90 days after receipt by the corporation of a notice of deficiency under section 6212 with respect to the civil penalty and the investment credit.

(ii) *Extensions of correction period.* Extensions of the correction period are determined under § 53.4941 (e)-1 (d) (2) (i), (ii), and (iv) of this chapter (Foundation Excise Tax Regulations). For this purpose, a failure to comply is treated as an act of self-dealing, the corporation is treated as a foundation, and a civil penalty is treated as a tax under section 4941 (a) (1).

(7) *Good faith.* The corporation has the burden of establishing under paragraph (h) (3) (ii) of this section that it made a good faith effort to comply. For example, if a corporation shows that it has made a good faith effort to establish the fair market value of the employer securities transferred to the TRASOP, it may be entitled to the additional credit even if, on later examination of the return, it is determined that more securities should have been transferred. For purposes of this paragraph (h) (7), reasonable reliance on Technical Information Release 1413 (1975-50 I.R.B. 16), questions and answers relating to ESOP's, is a good faith effort to comply.

(8) *Amount involved—(i) In general.* The amount involved in a failure to comply is an amount described in this subparagraph (8). A maximum amount and a minimum amount are determined with respect to an additional credit allowed for a particular taxable year.

(ii) *Maximum amount involved.* Notwithstanding any other rule in this paragraph (h), all amounts involved with respect to an additional credit allowed for a particular taxable year may not exceed the amount of that credit.

(iii) *Minimum amount involved.* The minimum amount is $\frac{1}{2}$ of one percent of the additional credit times the number of full months, or parts of full months, during which the failure to comply exists. "Full month" has the meaning assigned in § 1.1250-1 (d) (4) (Realty depreciation recapture).

(iv) *Funding amount involved.* The amount involved for a funding defect is the greater of the minimum amount involved or the amount required to place the plan in the position it would have been in if no funding defect had occurred.

(v) *Special operational amount involved.* The amount involved for a special operational defect is the maximum amount involved.

(vi) *De minimis amount involved.* The amount involved for a de minimis defect is the minimum amount involved.

(Sec. 301 (d) (2) (C) of the Tax Reduction Act of 1975 and sec. 7805 of the Internal Revenue Code of 1954 (89 Stat. 38, 68A Stat. 917 (26 U.S.C. 7805).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: January 5, 1979.

DONALD C. LUBICK,
Assistant Secretary of the
Treasury.

[FR Doc. 79-1620 Filed 1-15-79; 8:45 am]

[4830-01-M]

[T.D. 7589]

PART 9—TEMPORARY INCOME TAX REGULATIONS UNDER THE TAX REDUCTION ACT OF 1975

Certain Provisions for TRASOP's

AGENCY: Internal Revenue Service, Treasury.

ACTION: Temporary regulations.

SUMMARY: This document notes the temporary effect of certain provisions relating to investment credit employee stock ownership plans ("TRASOP's") that are integrated with final Income Tax Regulations. Changes in the applicable tax law were made by the Tax

Reduction Act of 1975 ("1975 TRA") and the Tax Reform Act of 1976 ("1976 TRA"). The document affects all employees who participate in TRASOP's and employers who establish TRASOP's. This document does not reflect changes made by the Revenue Act of 1978.

DATE: The regulations are generally effective for taxable years ending after January 21, 1975.

FOR FURTHER INFORMATION CONTACT:

Thomas Rogan of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3589) (not a toll-free number).

SUPPLEMENTARY INFORMATION:

INTEGRATION OF FINAL AND TEMPORARY REGULATIONS

It has been the practice in the past to publish temporary Internal Revenue Service regulations separately from final regulations both in the FEDERAL REGISTER and in the Code of Federal Regulations. However, the temporary regulations noted in this document are published together with final regulations as integrated provisions under 26 CFR Part 1, Income Tax Regulations (published elsewhere in

this Part III of today's FEDERAL REGISTER) in a separate Treasury decision. This integrated format enables the public to see more clearly the effect of the 1976 TRA amendments on the 1975 TRA. Also, it facilitates the use of both the temporary and the final regulations until the temporary provisions are superseded by final provisions.

The publication of this document makes it clear that the temporary provisions published in an integrated format with final regulations elsewhere in today's FEDERAL REGISTER under 26 CFR Part 1 are in fact adopted and effective only as temporary regulations under 26 CFR Part 9.

IDENTIFICATION AND DISCUSSION OF TEMPORARY PROVISIONS

See preamble to T.D. 7590 published elsewhere in this Part III of today's FEDERAL REGISTER for a table identifying temporary provisions appearing in 26 CFR Part 1 and for a discussion of major issues.

DRAFTING INFORMATION

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in

developing the regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 9 is amended by inserting in the appropriate place the following new section:

§ 9.2 Temporary TRASOP requirements for 1-percent additional investment credit.

The provisions listed in § 1.46-8 (a) (4) (i)-(xii) (Income Tax Regulations) are deemed effective only as temporary regulations under this section.

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

(Sec. 301 (d) (2) (C) and (10) of the Tax Reduction Act of 1975 and sec. 7805 of the Internal Revenue Code of 1954 (89 Stat. 38, 68A Stat. 917 (26 U.S.C. 7805).)

JEROME KURTZ,
Commissioner of Internal Revenue.

Approved: January 5, 1979.

DONALD C. LUBICK,
*Assistant Secretary of
the Treasury.*

[FR Doc. 79-1621 Filed 1-15-79; 8:45 am]

[4830-01-M]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR Part 1]

[EE-4-78]

INCOME TAX**Certain Provisions for TRASOP's**

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: In the Rules and Regulations portion of this FEDERAL REGISTER, the Internal Revenue Service is issuing temporary income tax regulations relating to investment credit employee stock ownership plans ("TRASOP's"). This notice of proposed rulemaking for final income tax regulations requests comments on these temporary regulations. These provisions would affect all employees who participate in TRASOP's and all employers who establish TRASOP's. The provisions do not reflect changes made by the Revenue Act of 1978.

DATE: Written comments and requests for a public hearing must be delivered or mailed by March 20, 1979.

ADDRESS: Send comments and requests for public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T [EE-4-78], Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:

Thomas Rogan of the Employee Plans and Exempt Organizations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, D.C. 20224 (Attention: CC:LR:T) (202-566-3589).

SUPPLEMENTARY INFORMATION:**IDENTIFICATION AND DISCUSSION OF TEMPORARY PROVISIONS**

See preamble to T.D. 7590 published elsewhere in this Part III of today's FEDERAL REGISTER for a table identifying temporary provisions appearing in 26 CFR Part 1 on which comments are requested by this notice and for a discussion of major issues.

COMMENTS AND REQUESTS FOR A PUBLIC HEARING

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably six copies) to the Commissioner of Internal Revenue. All comments will be available for

public inspection and copying. A public hearing will be held upon written request to the Commissioner by any person who has submitted written comments. If a public hearing is held, notice of the time and place will be published in the FEDERAL REGISTER.

DRAFTING INFORMATION

The principal author of this regulation was Thomas Rogan of the Employee Plans and Exempt Organizations 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.

PROPOSED AMENDMENTS TO THE REGULATIONS

The proposed amendments to 26 CFR Part 1 are as follows:

1. The temporary regulations described in § 1.46-8(a)(4) (i)-(xii) and published in italics in T.D. 7590 are adopted as final regulations. These provisions appear in today's FEDERAL REGISTER. See FR Doc. No. 79-1620.
2. Section 1.46-8(a)(4) is deleted.

JEROME KURTZ,
Commissioner
of Internal Revenue.

[FR Doc. 79-1622 Filed 1-15-79; 8:45 am]

**FRIDAY, JANUARY 19, 1979
PART IV**



**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, Wage
and Hour DivisionMINIMUM WAGES FOR FEDERAL AND
FEDERALLY ASSISTED CONSTRUCTION

General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued

subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 224-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Government Contract Wage Standards, Division of Wage Determinations, Wash-

ington, 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.

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.

Florida		
FL78-1064	.....	Aug. 4, 1978.
Georgia		
GA77-1104	.....	Aug. 26, 1977.
Idaho		
ID78-5120	.....	Sept. 8, 1978.
Illinois		
IL78-2106; IL78-2109; IL78-2111;	.....	Oct. 20, 1978.
IL78-2112; IL78-2122.	.....	
IL78-2123	.....	Oct. 27, 1978.
IL78-2166	.....	Dec. 8, 1978.
Louisiana		
LA79-4001	.....	Jan. 5, 1979.
Massachusetts		
MA78-2079; MA78-2081; MA78-	.....	Sept. 22, 1978.
2082; MA78-2086; MA78-2087;	.....	
MA78-2088; MA78-2089; MA78-	.....	
2090.	.....	
Nevada		
NV78-5010	.....	Mar. 10, 1978.
New Jersey		
NJ78-3047	.....	June 16, 1978.
New Mexico		
NM78-4021	.....	May 5, 1978.
NM79-4021	.....	Jan. 5, 1979.
Oklahoma		
OK77-4037	.....	Feb. 18, 1977.
Texas		
TX78-4080	.....	Aug. 4, 1978.
TX79-4007; TX79-4010	.....	Jan. 5, 1979.

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.

Massachusetts		
MA78-2155(MA79-2001)	.....	Nov. 3, 1978.
Mississippi		
MS78-1034(MA79-1002)	.....	Apr. 14, 1979.

CANCELLATION OF GENERAL WAGE
DETERMINATION DECISIONS

General Wage Determination Decision No. MS77-1054 DeSoto County, Mississippi is cancelled. Agencies with building construction projects pending in this County should utilize the project determination procedure by submitting form SF-308. See Regulations Part 1 (29 CFR), § 1.5. Contracts for which bids have been opened shall not be affected by this notice, and consistent with 29 CFR 1.7 (b)(2), the incorporation of Decision No. MS77-1054 in contract specifications, the opening of bids for which is within ten (10) days of this notice, need not be affected.

Signed at Washington, D.C., this 12th day of January 1979.

DOROTHY P. COME,
Assistant Administrator,
Wage and Hour Division.

[4510-27-C]

MODIFICATIONS P. 1

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
Decision No. FL78-1064 - Mod. # 2 (43 FR-34661 - August 4, 1978) Brevard and Volusia (excluding Cape Canaveral, Kennedy Space Flight Center, Patrick Air Force Base, and Melabar Radar Site), Hillsborough, Indian River, Manatee, Pinellas, Polk, St. Lucie, Sarasota, Seminole Counties, Florida.					
Omit: Painters, structural steel	9.75				
Add: Painters, spray	9.75				
DECISION #ID78-5120 - Mod. #4 (43 FR 40176 - September 8, 1978) Statewide Idaho					
Change: Boilermakers: Beneviah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties Remaining Counties	\$12.76 12.56	\$1.00 1.00	\$1.00 1.00		.03 .03
Electricians: Beneviah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties: Electricians Cable Splicers	14.62 15.02	.83 .83	3% + .40 3% + .40		.02 .02
Painters: Ada, Adams, Boise, Canyon, Elmore (except Mt. Home Air Force Base), Cam, Gooding County (western third of County including City of Bliss), Idaho County (south of 46th Parallel), Owyhee, Payette, Valley, Washington Counties: Painters and Tapers Elmore County (Mt. Home Air Force Base): Painters and Tapers	9.54 10.54	.56 .56	.40 .40		
Roofers: Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Franklin, Fremont, Jefferson, Madison, Oneida, Power, Teton Counties	9.95	.65	.40		

MODIFICATIONS P. 2

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
Decision #IL78-2106 - Mod. #3 (43 FR 49167 - October 20, 1978) Fulton, Hancock, McDonough, and Schuyler Counties, Illinois					
CHANGE: CARPENTERS: McDonough Co. & Eastern 1/3 of Hancock Co. Carpenters & Soft Floor Layers Millwrights & Piledrivermen	11.76 12.26	.75 .75			.05 .05
Decision #IL78-2109 - Mod. #2 (43 FR 49175 - October 20, 1978) Bureau, LaSalle, Livingston, Marshall, Putnam, and Woodford Counties, Illinois					
CHANGE: CARPENTERS: Remainder of Livingston County Carpenters & Soft Floor Layers Millwrights & Piledrivermen	11.76 12.26	.75 .75			.05 .05
Decision #IL78-2111 - Mod. #2 (43 FR 49179 - October 20, 1978) Logan, Mason and Menard Counties, Illinois					
CHANGE: CARPENTERS: Logan County Carpenters & Soft Floor Layers Millwrights & Piledrivermen	11.15 11.65	.45 .45	.80 .80		.06 .06
Decision #IL78-2112 - Mod. #1 (43 FR 49182 - October 20, 1978) McLean County, Illinois					
CHANGE: CARPENTERS: Carpenters & Soft Floor Layers Millwrights & Piledrivermen	11.76 12.26	.40 .40	.75 .75		.05 .05

MODIFICATIONS P. 3

DECISION #1178-2122 - Mod. #2 (43 FR 49186 - October 20, 1978) Peoria & Tazewell Counties, Illinois	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
CHANGE: CARPENTERS: Residential Tazewell County and Remainder of Peoria County	11.76	.40	.75			.05
Commercial Tazewell County and Remainder of Peoria County	11.76	.40	.75			.05
Carpenters & Soft Floor Layers Millwrights & Piledrivers	12.26	.40	.75			.05
Decision #1178-2123 - Mod. #2 (43 FR 50308 - October 27, 1978) Henderson, Henry, Knox, Mercer, Rock Island, Stark & Warren Counties, Illinois						
CHANGE: CARPENTERS: Knox, Henderson, & Warren Cos.: Carpenters & Soft Floor Layers Millwrights & Piledrivers	11.76 12.26	.40 .40	.75 .75			.05 .05
Decision #1178-2166 - Mod. #2 (43 FR 57767 December 8, 1978) Kankakee County, Illinois						
CHANGE: CARPENTERS: Carpenters, Millwrights, Soft Floor Layers & Piledrivers Building Construction over \$200,000	11.88	.65	.80			.01
Residential Construction \$200,000 or less	8.32	.65	.80			.01

MODIFICATIONS P. 4

DECISION #LA79-4001 - Mod. #1 (44 FR 1634 - January 5, 1979) Statewide Louisiana	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
CHANGE: Electricians: Zone 8 - Electricians Cable splicers Lathers - Zone 9 Line Construction: Zone 5: Linemen & equipment ops. Cable splicers Groundmen	\$11.95 12.20 9.40		3% 3%			1/2% 1/2% .01
	11.95 12.20 607JR		3% 3% 3%			1/2% 1/2% 1/2%

DECISION NO. MA78-2079 Mod. #3 (43 FR 43155 - September 22, 1978 (Barnstable County, Massachusetts)	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Change:					
Elevator Constructors	\$12.02	.895	.69	b+c	.03
Elevator Constructors' Helpers	70%JR	.895	.69	b+c	.03
Elevator Constructors' Helpers (Prob.)	50%JR	.895	.69	b+c	.03
Laborers (Building):					
Laborers; carpenter tenders; wrecking laborers	8.50	.60	.80		.10
Jackhammers op., pavement breakers; asphalt rakers; carbide core drilling ma- chine, chain saw op.; pipe- layer; Barco type jumping tampers; laser beam; concrete pump; mason tender; mortar tar mixers; ride-on motoriz- ed buggy, fence & beam rail erectors & plasterer's ten- ders	8.75	.60	.80		.10
Air track; block pavers, tam- pers curb setters	9.00	.60	.80		.10
Blasters; powdermen	9.25	.60	.80		.10
Open air caisson; cylindrical work & boring crew					
Laborer; Top man	8.50	.60	.80		.10
Helper	8.62	.60	.80		.10
Bottom Man	9.25	.60	.80		.10
Driller	9.37	.60	.80		.10
Lathers	10.05	.65	.55		.01
Painters:					
Brush, roller, steel on ground	9.25	.80			
Sandblasting, Chipping hammer, power brush	12.75	.80	.65		
Structural Steel	12.50	.80	.65		
Spray	10.60	.80	.65		
Steel Spray	13.85	.80	.65		
Sandblasting, Chipping ham- mers, power tools on steel	14.00	.80	.65		
Paperhangers and vinyl in- stallers	9.75	.80	.65		
Tapers	9.35	.80	.65		

DECISION NO. MA78-2079 Cont'd	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Piledrivermen	11.20	.85	1.00		
Roofers:					
Roofers, Kettlemen & water-proofers	9.45	.60	.20		
Mechanic on shingle work	7.61	.60	.20		
Laborers:					
Heavy and Highway Construction					
Class I	8.50	.60	.80		.10
Class II	8.75	.60	.80		.10
Class III	9.00	.60	.80		.10
Class IV	9.25	.60	.80		.10
Truck Drivers:					
Class I	8.515	.75	.80	a+b	
Class II	8.665	.75	.80	a+b	
Class III	8.715	.75	.80	a+b	
Class IV	8.815	.75	.80	a+b	
Class V	8.915	.75	.80	a+b	
Class VI	9.165	.75	.80	a+b	
Class VII	9.415	.75	.80	a+b	

MODIFICATIONS P. 7

DECISION NO. WA78-2081 Cont'd	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Painters (Cont'd)					
Spray	\$10.60	.80	.65		
Sandblasting, Chipping					
Hammer, power brush	10.75	.80	.65		
Paperhangers & vinyl installer	9.75	.80	.65		
Tapers	9.35	.80	.65		
Steel	12.50	.80	.65		
Steel Spray	13.85	.80	.65		
Remainder of County:					
Brush taper	10.96	.82	1.20		.04
Steel (new & repaint steel)	13.08	.82	1.20		.04
Spray, sandblasting	11.96	.82	1.20		.04
Repaint & Alteration	9.26	.82	1.20		.04
Filedrivermen	11.20	.85	1.00		.10
Plasterers' Tenders	8.75	.60	.80		
Roofers:					
Remainder of County:					
Journeyman and mechanics	9.45	.75	.30		
Mechanic on shingle work	7.61	.75	.30		
Sheet metal workers:					
Remainder of County	11.63	1.16	1.45		.08
Laborers (Heavy & Highway)					
Class I	8.50	.60	.80		.10
Class II	8.75	.60	.80		.10
Class III	9.00	.60	.80		.10
Class IV	9.25	.60	.80		.10
Truck Drivers (Building, Heavy and Highway Construction)					
Class I	8.515	.75	.80	a+b	
Class II	8.665	.75	.80	a+b	
Class III	8.715	.75	.80	a+b	
Class IV	8.815	.75	.80	a+b	
Class V	8.915	.75	.80	a+b	
Class VI	9.165	.75	.80	a+b	
Class VII	9.415	.75	.80	a+b	

DECISION NO. MA78-2082 - MOD. #1 (43 FR 43169 - September 22, 1978) Essex County, Massachusetts	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Change: Carpenters & Soft Floor Layers: Amesbury, Boxford, Georgetown, Groveland, Haverhill, Newbury, Newburyport, Rowley, Salisbury, W. Newbury, Lynn, Lynnfield Nahant, Saugus and Swampscott, Andover, Lawrence, Methuen, N. Andover and W. Andover N. Andover, Lawrence, Methuen, N. Andover, & W. Andover	\$11.05 11.05 10.10	.90 .90 1.00	1.00 1.00 1.00			.07 .07 .
Remainder of County Electricians: Lynn, Lynnfield, Nahant, Saugus and Swampscott	12.23	.75	3 1/2 1.55			.07
Remainder of County: Electrical contractors over \$30,000	10.80 12.02 70 1/2 JR	.92 .895 .895	3 1/2 .26 .69 .69	a+b a+b		.02 .03 .03
Elevator constructors Elevator constructors' helpers Elevator constructors' Helpers (Prob.)	50 1/2 JR 11.15	.895 .77	.69 .69	a+b		.03 .03
Glaziers Laborers (Building): Laborers, carpenters tenders wrecking laborers Jackhammer ops; pavement breakers; asphalt rakers; carbide core drilling ma- chines; chain saw ops; pipe- layers, barco type jumping tampers, laser beam ops, concrete ops., mason tenders, mortar mixers, rideon moto- rized buggy ops, dence beam rail erectors & plasterers tenders	8.50	.60	.80			.10
	8.75	.60	.80			.10

DECISION NO. MA78-2082 Cont'd	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Laborers Cont'd Air track, block paver, rammers, curb setters Blaster, powdermen Open air caisson, cylindrical work and boring crew: Laborers, top man Helper Bottom man	9.00 9.25 8.50 8.62 9.25 9.37	.60 .60 .60 .60 .60 .60	.80 .80 .80 .80 .80 .80			.10 .10 .10 .10 .10 .10
All Miller, including demoli- tion, repair and alteration of any existing structure which is tended for repdomi- nantly residential use: Laborers Millwrights Painters: Remainder of County: New Construction: Brush and Tapers Sandblasters and spray Steel (new & repaint-steel) Repain: BRUSH Spray and Sandblasting Piledrivermen Plumbers and Steamfitters: Lynn, Lynnfield, Nahant, Saugus and Swampscott: Plumbers Steamfitters Remainder of County Roofers: Haverhill and Lawrence Sheet metal workers	6.38 11.30 10.96 11.96 13.08 9.26 10.26 11.20	.60 .90 .82 .82 .82 .82 .82 .85	.80 1.00 1.20 1.20 1.20 1.20 1.20 1.00			.10 .10 .04 .04 .04 .04 .04 .04
	12.45 12.61 10.55	1.02 .94 1.65	1.28 1.45 .62			.05 .07 .05
	7.65 11.63	.70 1.16	1.55 1.45			.05 .08
Laborers: Heavy & Highway: Class I Class II Class III Class IV	8.50 8.75 9.00 9.25	.60 .60 .60 .60	.80 .80 .80 .80			.10 .10 .10 .10

MODIFICATIONS P. 11

MODIFICATIONS P. 12

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
Truck Drivers					
Class I	.75	.80	a+b		
Class II	.75	.80	a+b		
Class III	.75	.80	a+b		
Class IV	.75	.80	a+b		
Class V	.75	.80	a+b		
Class VI	.75	.80	a+b		
Class VII	.75	.80	a+b		

DECISION NO. MAY8-2082 Cont'd

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
DECISION NO. MAY8-2086 - MOD. #2 (43 FR 43189 - September 22, 1978) Middlesex County, Massachusetts					
Change: Bricklayers: Reading, North Reading and Wakefield Veneer Plastering All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use: Acton, Ashby, Ayer, Bedford, Billerica, Boxboro, Carlisle, Chelmsford, Dracut, Dunstable, Ft. Devens, Groton, Littleton, Lowell, North Acton, Pepperell, Shirley, South Acton, Tewksbury, Townsend, Tyngsboro, West Acton, Westford, and Willmington Newton Veneer Plasterers All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use: Bricklayers: Belmont, Burlington, Concord, Lexington, Lincoln, Stoneham, Sudbury, Waltham, Weyland, Weston, Winchester and Woburn Carpenters & Soft Floor Layers: Ashby, Ayer & entire boundaries of Ft. Devens which are the towns of Lunenburg, Shirley, Lancaster, & Howard, Groton, Pepperell, Shirley Center; entire boundaries of Shirley, Industrial School, Townsend, W. Groton, & W. Townsend	.65 .65	1.40 1.40			.12 .12
	.90 10.75 8.60	.70 1.40 1.40			.09 .12 .12
	.75	1.00			.09
	.65	1.00			.07

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DECISION NO. MA78-2086 Cont'd	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
Carpenters & Soft Floor Layers Cont'd						
All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use:						
Carpenters:						
Bedford, Concord, Dover, Lincoln, Natick, Newton, Sudbury, Waltham, Watertown, Wayland, Weston, Acton, Billerica, Boxboro, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford	9.14 11.05					
Remainder of County						
Cement Masons:						
Bedford, Burlington, Lowell, Billerica, Tyngsboro, Westford, Tewksbury, Acton, Littleton, Dracut, Wilmington, Dunstable, Chelmsford, and Carlisle	10.40	.90	.70			.02
Electricians:						
Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford and Wilmington	10.95	1.00	34.60			.02
Electricians Cont'd:						
All work including demolition, repair and alteration of any existing structure which is intended for predominantly residential use:						
Electricians:						
Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford, Ashland, Hopkinton, Hudson, Marlboro and Stow	9.31 11.07	.85	34.30			.02
Remainder of County						
Elevator Constructors	12.23	8%	54.30			.01
Elevator Constructors Helpers	12.02	.895	54.55			.07
Elevator Constructors Helpers (Prob.)	70%JR	.895	.69	a+b		.03
Glaziers	50%JR	.895	.69	a+b		.03
Labors (Building):	11.15	.77	.69			.03
Laborers, Carpenters' tenders; Wrecking laborers; Jackhammer operator; Pavement breaker; Asphalt rakers; Carbide core drilling machine; Chain saw operators; Pipe layers; Barco type jumping tappers; Laser beam operators; Concrete pump operators; Mason tenders; Mortar mixers; ride-on motorized buggy; Fence and beam rail erectors	8.50	.60	.80			.10
Air track operators; Block pavers; Rammers; Curb setters	9.00	.60	.80			.10
Blasterers; Powdermen	9.25	.60	.80			.10
Open air caisson; Cylindrical work and boring crew: Laborer and top man	8.50	.60	.80			.10
Helper	8.62	.60	.80			.10
Driller	9.37	.60	.80			.10

DECISION NO. MA78-2086 Cont'd

DECISION NO. MA78-2086 Cont'd

Carpenters & Soft Floor Layers Cont'd

All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use:

Carpenters:

Bedford, Concord, Dover, Lincoln, Natick, Newton, Sudbury, Waltham, Watertown, Wayland, Weston, Acton, Billerica, Boxboro, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford

Remainder of County

Cement Masons:

Bedford, Burlington, Lowell, Billerica, Tyngsboro, Westford, Tewksbury, Acton, Littleton, Dracut, Wilmington, Dunstable, Chelmsford, and Carlisle

Electricians:

Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford and Wilmington

Electricians Cont'd:

All work including demolition, repair and alteration of any existing structure which is intended for predominantly residential use:

Electricians:

Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Littleton, Lowell, Tewksbury, Tyngsboro, Westford and Wilmington

Ashland, Hopkinton, Hudson, Marlboro and Stow

Remainder of County

Elevator Constructors

Elevator Constructors Helpers

Elevator Constructors Helpers (Prob.)

Glaziers

Labors (Building):

Laborers, Carpenters' tenders;

Wrecking laborers;

Jackhammer operator; Pavement

breaker; Asphalt rakers;

Carbide core drilling machine;

Chain saw operators; Pipe

layers; Barco type jumping

tappers; Laser beam operators;

Concrete pump operators; Ma-

son tenders; Mortar mixers;

ride-on motorized buggy;

Fence and beam rail erectors

Air track operators; Block

pavers; Rammers; Curb setters

Blasterers; Powdermen

Open air caisson; Cylindrical

work and boring crew:

Laborer and top man

Helper

Driller

DECISION NO. WA78-2086 Cont'd	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Laborers Cont'd					
All work, including demolition, repair and lateration of any existing structure which is intended for predominantly residential use:					
Laborers	7.01	.60	.80		.10
Lathers:					
Remainder of county	10.70	1.00	.55		.03
Millwrights	11.30	.90	1.00		.10
Painters:					
Arlington, Belmont, Cambridge					
Malden, Medford, Melrose, Somerville, Stoneham, Wakefield, Winchester, Woburn, Reading, North Reading:					
New Construction:					
Brush	10.96	.82	1.20		.04
Sandblasting, Spray	11.96	.82	1.20		.04
Steel	13.08	.82	1.20		.04
Repaint Alterations, Residential:					
Brush	9.26	.82	1.20		.04
Sandblasting, Spray	10.26	.82	1.20		.04
Steel	12.08	.82	1.20		.04
Piledrivermen	11.20	.85	1.00		
Plasterers' Tenders	8.75	.60	.80		.10
Plumbers:					
All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use:					
Acton, avar (except portion lying west of the Greenville Branch of the Boston & Main RR), Bedford, Billerica, Boxboro, Burlington, Carlisle, Chelmsford, Dracut, Dunstable, Graniteville, Hudson, Littleton, Lowell, Peppercell, Tewksbury					

DECISION NO. MA78-2086 Cont'd	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
Plumbers (Cont'd)					
Tyngsboro, Westford and Wilmington	9.79	1.10	.60		.02
Ashby, Ayer (portion lying west of the Greenville Branch of the Boston and Main RR), Ft. Devens, Groton, Shirley and Townsend	10.42	.80	.65	.42	.05
Ashland, Belmont, Concord, Framingham, Holliston, Hopkington, Lexington, Lincoln, Marlboro, Maynard, Natick, Sherborn, Stow, Sudbury, Waltham, Wayland, and Weston	12.22	1.23	.85		.05
All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use:					
Ashland, Belmont, Concord, Framingham, Holliston, Hopkington, Lexington, Lincoln, Marlboro, Maynard, Natick, Sherborn, Stow, Sudbury, Waltham, Wayland and Weston	9.75	1.23	.85		.05
Arlington, Cambridge, Everett, Malden, Medford, Melrose, Newton, North Reading, Reading, Somerville, Stoneham, Wakefield, Watertown, Winchester and Woburn	12.45	1.02	1.28		.05
Sheet Metal Workers	11.63	1.16	1.45		.08
Steamfitters:					
Acton, Arlington, Cambridge, Everett, Malden, Medford, Melrose, Newton, North Reading, Reading, Somerville, Stoneham, Wakefield, Watertown, Winchester and Woburn	12.61	.94	1.45		.07

MODIFICATIONS P. 18

	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
DECISION NO. MA78-2087 - MOD. #1 (43 FR 43197 - September 22, 1978) Norfolk County, Massachusetts					
Change:					
Bricklayers, Cement Masons, Plasterers & Stonemasons:					
Dover, Needham & Wellesley	\$ 10.75	.65	1.40		.12
Veneer Plasterers	8.60	.65	1.40		.12
Cement Masons:					
Brookline & Milton	11.15	1.15			.20
Electricians:					
Electrical contracts	12.15	62	72	22	.52
\$50,000 or over	12.23	.75	324.55		.07
Remainder of County	12.02	.895	.69	424.46	.025
Elevator Constructors	702JR	.895	.69	424.46	.025
Elevator Constructors Helpers					
Elevator Constructors Helpers (Prob.)	502JR	.895	.69	424.46	.025
Glaziers:					
Remainder of County	11.15	.77	.69		.03
Laborers (Building):					
Laborers, carpenter tenders, wrecking laborers	8.50	.60	.80		.10
Jackhammer op., pavement breaker, asphalt rakers, carbide core drilling ma- chine, chain saw op., pipe- layer, barco type jumping tamper, laser beam concrete pump, mason tender, mortar mixer, ride-on buggy, fence and beam rail erectors and plasterers' tenders	8.75	.60	.80		.10
Air track, block paver, rammer, curb setter	9.00	.60	.80		.10
Blasters, powdermen	9.25	.60	.80		.10
Open air caisson, cylindrical work & boring crew:					
Laborer, top man	8.50	.60	.80		.10
Helper	8.62	.60	.80		.10
Bottom men	9.25	.60	.80		.10
Driller	9.37	.60	.80		.10

DECISION NO. MA78-2086 Cont'd

Laborers: (Heavy & Highway):

- Class I
Class II
Class III
Class IV
- Truck Drivers:
Class I
Class II
Class III
Class IV
Class V
Class VI
Class VII

	Basic Hourly Rates	Fringe Benefits Payments				Education end/of Appr. Tr.
		H & W	Pensions	Vacation		
	8.50	.60	.80		.10	
	8.75	.60	.80		.10	
	9.00	.60	.80		.10	
	9.25	.60	.80		.10	
	8.515	.75	.80	a+b		
	8.665	.75	.80	a+b		
	8.715	.75	.80	a+b		
	8.815	.75	.80	a+b		
	8.915	.75	.80	a+b		
	9.165	.75	.80	a+b		
	9.415	.75	.80	a+b		

MODIFICATIONS P. 17

DECISION NO. M478-2087 Cont'd

Lathers
Millwrights
Painters:
Remainder of County:
New Construction
Brush and Taper
Steel
Spray
Repaint, Alterations & Residential
Brush
Steel
Spray and Sandblasting
Piledrivers
Plasterer's Tenders
Plumbers and Steamfitters:
Dover, Medfield, Medway, and Wellesley
Plumbers & Gasfitters:
Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Foxboro, Franklin, Millis, Milton, Needham, Norfolk, N. Weymouth, Norwood, Plainville, Quincy, Sharon, S. Weymouth, Walpole Westwood, Weymouth, & Wrentham
Steamfitters:
Bellingham, Brookline, Canton, Dedham, Foxboro, Franklin, Medway, Milton, Needham, Norfolk, Norwood, Plainville, Quincy, Sharon, Walpole, Westwood & Wrentham

Footnote:

Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly for less than 5 years of service as vacation pay Credit.

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
10.70 11.30	1.00 .90	.55 1.00			.03
10.96 13.08 11.96	.82 .82 .82	1.20 1.20 1.20			.04 .04 .04
9.26 12.08 10.26 11.20 8.75	.82 .82 .85 .60	1.20 1.20 1.00 .80			.04 .04 .10
12.22	1.23	.85			.05
12.45	1.02	1.28			.05
12.61	.94	1.45			.07

DECISION NO. M478-2087 Cont'd

Truck Drivers:

Class I
Class II
Class III
Class IV
Class V
Class VI
Class VII
Laborers (Heavy & Highway):
Class I
Class II
Class III
Class IV

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
8.515 8.665 8.715 8.815 8.915 9.165 9.415	.75 .75 .75 .75 .75 .75 .75	.80 .80 .80 .80 .80 .80 .80	a+b a+b a+b a+b a+b a+b a+b		
8.50 8.75 9.00 9.25	.60 .60 .60 .60	.80 .80 .80 .80			.10 .10 .10 .10

MODIFICATIONS P. 22

MODIFICATIONS P. 27

DECISION #MA78-2088 - MOD #1 (Cont'd)				
Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
CHANGE:				
PAINTERS:				
\$ 9.25	.80	.65		
10.60	.80	.65		
12.50	.80	.65		
9.35	.80	.65		
13.85	.80	.65		
14.00	.80	.65		
9.75	.80	.65		
10.96	.82	1.20		.04
13.08	.82	1.20		.04
11.96	.82	1.20		.04
9.26	.82	1.20		.04
13.08	.82	1.20		.04
10.26	.82	1.20		.04
8.80	.84	.35		.04
11.20	.85	1.00		
PAINTERS:				
Marion, Mattapoisett, Rochester and Wareham:				
Brush, rollers				
Spray				
Steel				
Tapers				
Steel Spray				
Sandblasting, chipping hammers, power tools on steel				
Paperhangers and vinyl installers				
Remainder of County:				
Brush, taper (New construction)				
Steel (New construction)				
Spray and Sandblasting (New construction)				
Brush (repaint, alterations, residential)				
Steel (repaint, alterations, residential)				
Spray (repaint, spray & sand-blasting, residential)				
Sign Painters				
PILED/DRIVERS:				
Remainder of County				
PLASTERERS' TENDERS:				
Hanson, Hingham, Hull, Kingston, Marshfield, Norwell, Pembroke, Plympton, Plympton, Rockland, Scituate, West Bridgewater and Whitman				
ROOFERS:				
Carver, Lakeville, Marion, Mattapoisett, Middleboro, Rochester, Wareham and Hingham				
Roofers and Kettlemen				
Mechanics on shingle work				
SHEET METAL WORKERS:				
Remainder of County				

DECISION #MA78-2088 - MOD #1 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
CHANGE: HEAVY AND HIGHWAY CONSTRUCTION LABORERS Class I Class II Class III Class IV	\$ 8.50 8.75 9.00 9.25	.60 .60 .60 .60	.80 .80 .80 .80			.10 .10 .10 .10
BUILDING, HEAVY AND HIGHWAY CONSTRUCTION TRUCK DRIVERS Class I Class II Class III Class IV Class V Class VI Class VII	8.515 8.665 8.715 8.815 8.915 9.165 9.145	.75 .75 .75 .75 .75 .75 .75	.80 .80 .80 .80 .80 .80 .80	a+b a+b a+b a+b a+b a+b a+b		
OMIT: BRICKLAYERS; CEMENT MASONS and STONEMASONS: All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use: Abington, Bridgewater, Brock- ton, Carver, Duxbury, East Bridgewater, Halifax, Hanover, Hanson, Kingston, Marshfield, Middleboro, Norwell, Pembroke, Plymouth, Rockland, West Bridgewater and Whitman CARPENTERS; SOFT FLOOR LAYERS All work, including demolition, repair and alteration of and existing structure which is intended for predominantly residential use: Remainder of County						

DECISION #MA78-2088 - MOD #1 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
OMIT: ELECTRICIANS: Residential All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use: Remainder of County LABORERS (BUILDING) All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use: Laborers PAINTERS: All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use: Remainder of County PLUMBERS: All work, including demolition, repair and alteration of any existing structure which is intended for predominantly residential use: Abington, Bridgewater, Brock- ton, Carver, Duxbury, East Bridgewater, Halifax, Han- over, Hanson, Kingston, Marshfield, Norwell, Pembroke, Plymouth, Rockland, Whitman West Bridgewater and Whitman						

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DECISION #WA78-2089 - WOD #1 (43 FR 43209 - September 22, 1978 Suffolk County, Massachusetts)	Fringe Benefits Payments				
	Basic Hourly Rates	H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE: CARPENTERS AND SOFT FLOOR LAYERS	\$11.05	.90	1.00		.07
CERAMIC MASONS	11.15	1.15	.60		.20
ELECTRICIANS	12.23	.75	32+1.55		.07
ELEVATOR CONSTRUCTORS	12.02	.895	.69	a+b	.03
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a+b	.03
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR	.895	.69	a+b	.03
GLAZIERS	11.15	.57	.64		.03
LABORERS (BUILDING): Laborers, carpenter tenders, wrecking laborers Jackhammer op., pavement breakers, asphalt rakers, carbide core drilling machine, chain saw op., pipelayer, baro type jumping tampers; laser beam, concrete pump, mason tenders, motorized mixers, ride-on motorized buggy, fence and beam rail erectors Air track, block pavers, rammer curb setter	8.50 8.75 9.00 9.25	.60 .<			

DECISION #MA78-2090 - MOD #1
(43 FR 43214 - September 22, 1978)
Worcester County, Massachusetts

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
CHANGE: BOILERMAKERS, CEMENT MASONS, PLASTERERS AND STONEMASONS: Warren Remainder of County CARPENTERS, SOFT FLOOR LAYERS: Remainder of County ELECTRICIANS: Warren W. Warren Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Phillipston, Westminster, and Winchendon Remainder of County GLAZIERS: Remainder of County LABORERS (BUILDING): Laborers, Carpenter tenders and wrecking laborers Jackhammer operators, Pavement breakers, Asphalt rakers, Carbide core drilling machine, Chain saw operators, Pipelayers, Barco type jumping tampers, Laser beam, Concrete pump, Mason tenders, Mortar mixers, Ride-on motorized buggies, and fence and beam rail erectors and plasterers' tenders Air track, Block pavers, Rammers, Curb setters Blasterers and powdermen Open air caisson and cylindrical work and boring crew: Laborer, Topman Helper Bottom men Driller MILLWRIGHTS	\$10.30 10.70 11.30 10.88 11.20 11.07 11.15 8.50	.70 .95 .65 .75 .75 8% .77 .60	.95 1.15 1.00 3 3/4% .30 3 3/4% .70 5 3/4% .30 .69 .80			.06 .02 .07 .03 .02 .01 .03 .10

DECISION #MA78-2090 - MOD #1 (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
CHANGE: PAINTERS Remainder of County: Brush Steel Sandblasting; Spray Repaint PIPEDRIVERS PIPEFITTERS: Remainder of County Pondville PLUMBERS: Hopdale adn Southboro Ashburnham, Athol, Bolton, Fitchburg, Gardner, Harvard, Hubbardston, Lancaster, Leominster, Lunenburg, Petersham, Phillipston, Roxbury, Templeton, Westminster and Winchendon Remainder of County LABORERS Class I Class II Class III Class IV POWER EQUIPMENT OPERATORS: Class I Class II Class III Class IV Class V Class VI Class VII	\$10.96 13.08 11.96 9.26 11.20 11.23 12.61 12.22 10.42 10.83 8.50 8.75 9.00 9.25 10.18 9.98 9.78 9.41 8.58 8.09 7.29	.82 .82 .82 .82 .85 .80 .94 1.23 .80 1.15 .60 .60 .60 .60 .95 .95 .95 .95 .95 .95 .95	1.20 1.20 1.20 1.20 1.00 .45 1.45 .85 .65 .65 .80 .80 .80 .80 .25+.75 .25+.75 .25+.75 .25+.75 .25+.75 .25+.75 .25+.75			.04 .04 .04 .04 .07 .05 .05 .10 .10 .10 .10 .07 .07 .07 .07 .07 .07 .07

MODIFICATIONS P. 30

DECISION #NJ78-3047 - Mod. #4
(43 FR 26235 - June 16, 1978)
Atlantic, Burlington, Camden, Cape May,
Cumberland, Gloucester, Mercer, Monmouth,
Ocean and Salem Counties,
New Jersey

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
12.46	.90	1.05			.08
Change: Asbestos Workers Zone 5 Bricklayers, Stonemasons, Marble Masons, Cement Masons, Plasterers, Tile Layers, and Terrazzo Workers: Zone 1 Bricklayers, Stonemasons, Marble Masons, & Plasterers Cement Masons, Tile Layers, & Terrazzo Workers Zone 3 Electricians & Cable Splicers: Zone 1 Zone 2 Zone 3 Zone 4 Laborers, Building Construction: Zone 3 Laborers Hod carriers, mason tenders, operators of jack hammers, tampers, and electric hammers Zone 5 Laborers Jackhammers Lathers: Atlantic, Cape May, & Cumberland Counties Line Construction: Zone 2 Linemen, Cable Splicers, Truck Drivers, Equipment Operators, & Technicians Groundmen & Winch Operators Zone 3 Linemen Groundmen & Winch Operators Zone 4 Linemen Line Digger Truck Drivers Groundmen Roofers: Zone 4 Composition, Waterproofing, Slate & Asphalt Shingle					
11.20	.75	.80			.04
11.05	.75	.80			.04
11.35	.50	.60			
12.30	7%	3%+1.87			.01
14.01	7%	3%+ .70			.15
12.87	7%	3%+ .75			.05
12.55	7%	3%+1.10			.04
8.65	.40	.65			.07
8.90	.40	.65			.07
8.25	.80	.65			.07
8.50	.80	.65			.07
11.75	.15				.01
14.01	7%	3%+ .70			3/4%
11.21	7%	3%+ .70			3/4%
12.87	7%	3%+ .75			3/4%
10.42	7%	3%+ .75			3/4%
12.55	7%	3%+1.10			3/4%
8.08	7%	3%+1.10			3/4%
9.23	7%	3%+1.10			3/4%
11.62	1.33	.80			

MODIFICATIONS P. 29

DECISION #MA78-2090 - MOD #1 (CONT'D)

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
\$10.18	.95	1.00	a		.07
9.98	.95	1.00	a		.07
9.78	.95	1.00	a		.07
9.41	.95	1.00	a		.07
8.58	.95	1.00	a		.07
8.09	.95	1.00	a		.07
7.29	.95	1.00	a		.07
10.68	.95	1.00	a		.07
CHANGE: HEAVY AND HIGHWAY CONSTRUCTION POWER EQUIPMENT OPERATORS: Class I Class II Class III Class IV Class V Class VI Class VII Class VIII					
8.515	.75	.80	a+b		
8.665	.75	.80	a+b		
8.715	.75	.80	a+b		
8.815	.75	.80	a+b		
8.915	.75	.80	a+b		
9.165	.75	.80	a+b		
9.415	.75	.80	a+b		
BUILDING, HEAVY AND HIGHWAY CONSTRUCTION TRUCK DRIVERS Class I Class II Class III Class IV Class V Class VI Class VII					
\$12.16	.85	\$1.10	.80		.06
12.185	.85	1.10	.80		.06
12.96	.85	1.10	.80		.06
12.01	1.29	2.57	1.65		.07
14.75	.80				
CHANGE: Carpenters: Carpenters Floor Layers Millwrights Ironworkers: Ornamental; Reinforcing; Struc- tural Roofers					

DECISION #NV78-5010 - Mod. #6
(43 FR 10229 - March 10, 1978)
Nevada Test Site including Tono-
pah Test Range in Clark and Nye
Counties, Nevada

DECISION NO. NM78-3047 - Mod. #4

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet Metal Workers:	12.04	1.01	.88		.02
Zone 1					
Soft Floor Layers	10.74	6%	5%+ .50		.02
Zone 2					

DECISION NO. NM78-4021 - Mod. #1
(43 FR 19559 - May 5, 1978)
Statewide, New Mexico

CHANGE:

LABORERS:
Common laborer; carpenter tender;
concrete buggy operator (hand);
concrete workersDECISION NO. NM79-4021 - Mod. #1
(44 FR 1652 - January 5, 1979)
Statewide, New Mexico

OMIT:

BUILDING & RESIDENTIAL LABORERS CLASSIFICATION DEFINITIONS
GROUP V (Laborers (Building)) \$7.36 .53 .67 .05

ADD:

BUILDING & RESIDENTIAL LABORERS CLASSIFICATION DEFINITIONS

GROUP I
UNSKILLED: Building and common laborers, carpenter tenders, concrete workers, chainmen-stakedrivers, concrete buggy operators, heater tender, tool room tenderGROUP II
SEMI-SKILLED: Air power tool operator, asphalt takers, cutting torch operators, demolition, gunite rebound men, fog machine operators, power buggy operators, rodmen, sandblasters (potmen), window washers, wagon, core and diamond driller tenders outside, pumps under 6"GROUP III
MISCELLANEOUS: Concrete burner, cement mason tenders, hodcarriers, mortar mixers, plaster spreader operators, tenders, gunite nozzle men, pipelayers, pumpcrete nozzle menGROUP IV
Powderman & Blasterer

CHANGE:

LABORERS (BUILDING)

Group I
Group II
Group III
Group IV

LABORERS (RESIDENTIAL)

Group I
Group II
Group III

Basic Hourly Rates	Fringe Benefits Payments			
	H & W	Pensions	Vacation	Education and/or Appr. Tr.
\$7.11	.53	.77		.05
7.41	.53	.77		.05
7.71	.53	.77		.05
7.86	.53	.77		.05
5.02	.53	.77		.05
5.32	.53	.77		.05
5.62	.53	.77		.05

MODIFICATIONS P. 33

DECISION NO. OK77-4037 - Mod. #1 (42 FR 10262 - February 18, 1977) Tulsa & Osage Counties, Oklahoma	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
CHANGE: Laborers	\$2.90				
DECISION #TX78-4080 - Mod. #6 (43 FR 35886 - August 4, 1978) Jefferson & Orange Cos., Texas					
Change: Plumbers	\$12.37	.34			.03
DECISION #TX79-4007 - Mod. #1 (44 FR 1679 - January 5, 1979) Armstrong, Carson, Castro, Child- ress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hans- ford, Hartley, Hemphill, Hutch- inson, Lipscomb, Moore, Ochil- tree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Counties, Texas	10.50 10.75 50%JR 60%JR 70%JR	.50 .50 .50 .50 .50	3% 3% 3% 3% 3%		1/2% 1/2% 1/2% 1/2% 1/2%
Change: Line Construction: Lineman: Operator Cable splicer Groundman, 1st 6 months Groundman, 2nd 6 months Groundman, 1 year & over					
DECISION #TX79-4010 - Mod. #1 (44 FR 1681 - January 5, 1979) Wichita County, Texas	10.50 10.75 50%JR 60%JR 70%JR	.50 .50 .50 .50 .50	3% 3% 3% 3% 3%		1/2% 1/2% 1/2% 1/2% 1/2%
Change: Line Construction: Lineman: Lineman operator Cable splicer Groundman, 1st 6 months Groundman, 2nd 6 months Groundman, 1 year & over					

MODIFICATIONS P. 34

DECISION #GA77-1104 - Mod. #2 (42 FR 43322 - August 26, 1977) Banks, Barrow, Bartow, Catoosa, Chattooga, Cherokee, Cobb, Dade, Dawson, Douglas, Elbert, Fannin, Floyd, Forsyth, Franklin, Gilmer, Gordon, Gwinnett, Habersham, Hall, Haralson, Hart, Jackson, Lumpkin, Madison, Murray, Paul- ding, Pickens, Polk, Rabun, Stephens, Towns, Union, Walker, White, and Whitfield Counties, Georgia	Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
		H & W	Pensions	Vacation	
CHANGE: POWER EQUIPMENT OPERATORS: Bulldozer Motor grader/patrol Pans - scraper Shovel	\$ 3.99 4.68 4.00 4.00				

DECISION NO. MA79-2001

STATE: Massachusetts
 DECISION NUMBER: MA79-2001
 SUPERSEDES DECISION NO. MA78-2155 dated November 3, 1978, in 43 FR 51580
 DESCRIPTION OF WORK: Building Construction (excluding single family homes and garden type apartments up to and including 4 stories except Berkshire Co., which including Residential), Heavy and Highway Construction

COUNTIES: See Below*

DATE: Date of Publication

SUPERSEDEAS DECISION

*Berkshire, Franklin, Hampden and Hampshire Counties

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
BUILDING, HEAVY AND HIGHWAY CONSTRUCTION				
BERKSHIRE COUNTY				
ASBESTOS WORKERS	\$10.65	.94	1.25	.01
BOILERMAKERS	11.80	1.05	10%	.02
BRICKLAYERS, CEMENT MASONS, MARBLE MASONS, PLASTERERS, & TILE SETTERS:				
STONE MASONS, TERRAZZO WORKERS				
Tps. of Adams, North Adams, Berkshire, Florida, Savoy, Clarksburg and Williamstown	11.85			
Tps. of Becket, Otis and Sandisfield	10.30	.70	.95	.06
Remainder of County	11.78	.70	.55	
CARPENTERS, SOFT FLOOR LAYERS, & DRYWALL CARPENTERS	10.04	.60	1.00	.04
ELECTRICIANS	10.59	.55	3%+.94	.02
ELEVATOR CONSTRUCTORS	10.45	.745	.29	.02
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.29	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR			
GLAZIERS	9.45	.47	.45	
IRONWORKERS:				
Structural, ornamental and reinforcing:				
Otis and North and East Otis	9.43	.70	1.50	.05
Remainder of County	9.49	.60	.85	.04
LABORERS (BUILDING):				
Laborers, Carpenter tenders and Wrecking laborers	8.50	.60	.80	.10
Jackhammer operator, Pavement breakers, Wagon drills, Asphalt rakers, Carbide core drilling machine, Chain saw operators, Pipelayers, Barco type jumping tampers, Leaser beam operators, Concrete pump operators, Mason tenders, Mortar mixers, Ride-on motorized buggy and Plasterers tenders				

Basic Hourly Rates	Fringe Benefits Payments			Education and/or Appr. Tr.
	H & W	Pensions	Vacation	
LABORERS: (Cont'd)				
Air track; Block pavers; Rammers curb setters	\$ 9.00	.60	.80	.10
Blasterers, Powdermen	9.25	.60	.80	.10
LATHERS:	10.65	.45	.25	.01
Drywall lathers	9.25	.45	.25	.01
LEAD BURNERS	9.25	.35		
LINE CONSTRUCTION:				
Linen	11.42	.70	3%+.50	d
Equipment Operator	10.69	.70	3%+.50	d
Driver Groundmen	8.37	.70	3%+.50	d
MARBLE SETTERS' & TILE SETTERS' HELPERS:				
MILLRIGHTS	8.95	.90	1.00	.10
PAINTERS:	11.30	.88	.55	.05
Brush and Tapers	9.17			
Spray-epoxys & interior dry fogs & materials thinned with anything other than water &/or mineral spirits	12.2267	1.1733	.7333	.0667
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	12.7567	1.1733	.7333	.0667
Swing Stage under 40' Steel	9.357	.88	.55	.05
Swing Stage over 40' Steel	9.67	.88	.55	.05
Sign Painters	8.80	.84	.35	.04
PILEDRIVERS	11.20	.85	1.00	
PLUMBERS and STEAMFITTERS:				
Adams, Clarksburg, Florida, North Adams, Savoy, Williamstown and Northern half of Berkshire, and New Ashford	10.47	.90	.75	.02
Becket, Otis, Sandisfield (Plumbers ONLY)	10.30	1.01	1.10	.10
Becket, Otis, Sandisfield and New Boston (Steamfitters)	11.15	.57	1.45	.03
Remainder of County	10.30	.83	.50	.05
ROOFERS:				
Composition, damp & waterproof Slate, tile and precast concrete	9.215	1.00	2.03	.06
SHEET METAL WORKERS	9.87	1.00	2.03	.08
SPRINKLER FITTERS	10.10	1.09	1.46	.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.	12.08	.65	.95	

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
BUILDING, HEAVY and HIGHWAY CONSTRUCTION FRANKLIN COUNTY	.94 1.05	\$ 1.25 1.08			.01 .02
ASBESTOS WORKERS					
BOILERMAKERS					
BRICKLAYERS, CEMENT MASONS, PLASTERERS, STONE MASONS, MARBLE, TILE, TERRAZZO WORKERS, CAULKER, And CLEANER, POINTER	.70	.95			.06
CARPENTERS & SOFT FLOOR LAYERS: Irving, Warwick, Orange and North Orange (including drywall)	.60	1.00			.07
Remainder of County	.45	1.00			.02
Monroe and Monroe Bridge	.60	1.00			.04
ELECTRICIANS: Hawley, Monroe and Rowe	.55	38+.94			.02
Remainder of County:					
Electrical contracts \$75,000.00 and over	.85	38+.40			.02
Electrical contracts under \$75,000.00	.85	38+.40			.02
Shaft and tunnel work	.85	38+.40			.02
ELEVATOR CONSTRUCTORS	.745	.29	32+a+b		.02
ELEVATOR CONSTRUCTORS' HELPERS	.745	.29	32+a+b		.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)					
GLAZIERS	.47	.45			
IRONWORKERS: Structural, Ornamental and Reinforcing	1.10	1.95			.09
LABORERS: BUILDING Laborers, Carpenter tenders, Wrecking laborer	.60	.80			.10
Asphalt rakers, Carbide core drillers, Chain saw operator, Pipelayers, Jackhammer and paving breakers operators, Barco-type jumping tampers, Laser beam operators, Concrete pump operators, Mason tenders, Mortar mixers, and Ride-on motorized buggy operator and plasterers tenders	.60	.80			.10

Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
LABORERS: (Cont'd)					
Air track operators, Block pavers, Rammers and curb setters	.60	.80			.10
Powdermen and blasterers	.60	.80			.10
Open air caisson, underpinning work and test boring crew:					
Bottom Man	.60	.80			.10
Top Man	.60	.80			.10
Driller	.45	.25			.10
Helper	.45	.25			.01
LATHERS: Drywall lathers	.45	.25			.01
LINE CONSTRUCTION: Linemen	.70	32+.50	d		
Equipment Operators	.70	32+.50	d		
Driver Groundmen	.70	32+.50	d		
MILLWRIGHTS	.90	1.00			.10
PAINTERS: Brush and Tapers	.88	.55			.05
Spray-epoxys & interior dry fogs & materials thinned with anything other than water &/or mineral spirits					
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	1.1733	.7333			.0667
Swing Stage under 40' Steel	1.1733	.7333			.0667
Swing Stage over 40' Steel	.88	.55			.05
FILEDRIVERS	.85	1.00			
PLUMBERS AND STEAMFITTERS: Monroe, Towe and Western part of Charlemont	.90	.75			.02
Orange	.80	.65	.42		.02
Remainder of County	.85	.85			
ROOFERS: Composition, damp waterproof Slate, tile, precast concrete	1.00	2.03			.06
SHEET METAL WORKERS	1.00	2.03			.06
SPRINKLER FITTERS	1.09	1.46			.08
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.	.65	.95			

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LABORERS (Cont'd)	Fringe Benefits Payments				Basic Hourly Rates
	H & W	Pensions	Vacation	Education and/or Appr. Tr.	
Asphalt rakers, carbide core drillers, operators, Saw Operators, Pipelayers, Jackhammer and Paving breaker operator, Barco-type jumping tampers, Laser beams operators and Wagon drill operators, Mason Tenders, Mortar mixers and ride-on motorized buggy operators and plasterers tenders, Air track operator, Block pavers, Rammers and Curb setters, Blasters and Powdermen, Open air caisson, Cylindrical work and boring crew:	.60	.80			8.75
Bottom Man	.60	.80			9.25
Top Man	.60	.80			8.50
Testing Boring:					
Driller	.60	.80			9.37
Helper	.60	.80			8.62
Drywall lathers	.45	.25			10.65
LEADBURNERS	.45	.25			9.25
LINE CONSTRUCTION:	.35				9.25
Linemen	.70	3 1/2% .50			11.42
Groundmen, Driver	.70	3 1/2% .50			8.37
Equipment Operator	.70	3 1/2% .50			10.69
MARBLE, MOSAIC & TERRAZZO WORKERS' HELPERS					8.95
MILLWRIGHTS	.90	1.00			11.30
PAINTERS:					
Brush and Tapers	.88	.55			9.17
Spray-epoxys & interior dry fogs & materials thinned with anything other than water &/or mineral spirits	1.1733	.7333			12.2267
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	1.1733	.7333			12.7567
Swing Stage under 40' Steel	.88	.55			9.357
Swing Stage over 40' Steel	.85	.55			9.67
PILEDRIVERS	1.01	1.10			11.20
PLUMBERS	1.00	2.03			10.30
ROOFERS: Composition, damp and waterproofing	1.00	2.03			9.215
Slate, Tile, Precast Concrete	1.09	1.46			9.87
SHEET METAL WORKERS	.65	.95			10.10
SPRINKLER FITTERS	.57	1.45			12.08
STEAMFITTERS					11.15

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BUILDING, HEAVY and HIGHWAY CONSTRUCTION HAMPTON COUNTY	Fringe Benefits Payments				Basic Hourly Rates
	H & W	Pensions	Vacation	Education and/or Appr. Tr.	
ASBESTOS WORKERS	.94	1.25		.01	\$10.65
BOILERMAKERS	1.05	1.04		.02	11.80
BRICKLAYERS:					
Cement masons, Marble masons, Plasterers, Stone masons, Terrazzo workers, and Tile setters	.70	.95		.06	10.30
CARPENTERS & SOFT FLOOR LAYERS: Holyoke (including drywall)	.45	1.00		.02	10.35
Remainder of County	.60	1.00		.02	10.20
ELECTRICIANS:					
Chester, Holyoke & that portion of Chicopee Township north of the following line:					
Mckinstry Avenue from the Connecticut River to Gratten Street, South on Gratten to Lafayette Street, east on Lafayette to York Street, North on York to Mckinstry, east on Mckinstry to Grady Road & projects to the West over Air Force fence & that area north of Westover field:					
Contracts 75,000 & over	.85	3 1/2% .40		.02	11.26
Contracts under \$75,000	.85	3 1/2% .40		.02	9.10
Shaft & tunnel work	.85	3 1/2% .40		.02	11.76
Remainder of County	.75	3 1/2% .30		.03	10.88
ELEVATOR CONSTRUCTORS	.745	.29	a+b	.02	10.45
ELEVATOR CONSTRUCTORS' Helpers	.745	.29	a+b	.02	70%JR
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)					50%JR
GLAZIERS	.47	.45			9.45
IRONWORKERS:					
Ornamental, Reinforcing and Structural	1.10	1.95		.09	10.80
LABORERS (Building)					
Laborers, Wracking, laborers and carpenter tenders	.60	.80		.10	8.50
Asphalt rakers, Carbide Core Driller Ops., Saw Ops., Pipe-layers, Jackhammer & Paving Breaker Op., Barco-type jumping tampers, Laser Beams op., concrete pump ops., &					

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BASIC Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
BUILDING, HEAVY and HIGHWAY CONSTRUCTION HAMPSHIRE COUNTY					
ASBESTOS WORKERS	.94	1.25			.01
BOILERMAKERS	1.05	10%			.02
BRICKLAYERS, PLASTERERS, CEMENT MASON, STONE MASONS, MARBLE TILE and TERRAZZO WORKERS, CAULKER, CLEANER, POINTERS	.70	.95			.06
CARPENTERS: Amherst, Belchertown, Granby, South Hadley, and Pieham (including drywall)	.45	1.00			.02
Remainder of County	.60	1.00			.02
ELECTRICIANS: Belchertown, Ware Middlefield, Cummington and Plainfield	.75	3%+.30			.03
Remainder of County:	.55	3%+.94			.02
Electrical contractors under \$75,000.00	.85	3%+.40			.02
Electrical contractors \$75,000.00 and over	.85	3%+.40			.02
Shaft and Tunnel Work	.85	3%+.40			.02
ELEVATOR CONSTRUCTORS	.745	.29	a+b		.02
ELEVATOR CONSTRUCTORS' HELPERS	.745	.29	a+b		.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	.47	.45			.10
GLAZIERS	1.10	1.95			.09
IRONWORKERS: Structural, Ornamental and Reinforcing	.60	.80			.10
LABORERS: (BUILDING)					
Laborers, Wrecking laborers, Carpenter and Cement finishers tenders	1.10	1.95			.09
Asphalt rakers, Carbide core driller operators, Chain saw operators, Pipelayers, Jack- hammer and Paving breaker operator, Barco-type jumping tamper, Laser beam operators, Concrete pumps operators and Wagon drill operators, Mason tenders, Mortar mixers, Adn Ride-on motorized buggy operators and plasterer tenders	.60	.80			.10

NOTICES

BASIC Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
	H & W	Pensions	Vacation		
LABORERS: (Cont'd)					
Air track operators, Block pavers, Ramblers and Curb setters	.60	.80			.10
Powdermen and Blasters	.60	.80			.10
Open air caisson, Underpinning work and boring crew: (ENTIRE COUNTY)					
Bottom Man	.60	.80			.10
Top Man	.60	.80			.10
Test Boring:					
Driller	.60	.80			.10
Helper	.60	.80			.10
LATHERS:	10.65	.45			.01
Drywall	9.25	.25			.01
LINE CONSTRUCTION:					
Linenmen	11.42	3%+.50	d		.10
Equipment Operator	10.69	3%+.50	d		.10
Driver Groundman	8.37	3%+.50	d		.10
MARBLE & TILE SPLITTERS HELPERS AND TERRAZZO WORKERS' HELPERS	8.95				
MILLWRIGHTS	11.30	.90			.10
PAINTERS:					
Brush and Tapers	9.17	.88			.05
Spray-epoxys & interior dry fogs & materials thinned with anything water &/or mineral spirits	12.2267	1.1733			.0667
Spray-materials thinned with water &/or mineral spirits, excluding epoxys & interior dry fogs	12.7567	1.1733			.0667
Swing Stage under 40' Steel	9.357	.88			.05
Swing Stage over 40' Steel	9.67	.88			.05
Sign Painters	8.80	.84			.04
PILEDRIVERS	11.20	.85	.32		.04
PLUMBERS and STEAMFITTERS:					
Belchertown, Granby, Huntington, Middlefield, South Hadley, Ware	10.30	1.01	e		.10
Plumbers	11.15	.56	f		.03
Steamfitters	10.95	.85			.02
Remainder of County:					
Plumbers and Steamfitters	9.215	2.03			.05
ROOFERS:	9.87	2.03			.05
Composition, damp, waterproof Slate, tile, precast concrete	10.10	1.09			.08
SHEET METAL WORKERS	12.08	.65			.08
SPRINKLER FITTERS					

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;
E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

- Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
- Holidays: A through F, and the day after Thanksgiving
- Holidays: A through F, Washington's Birthday, Good Friday & Christmas Eve provided the employee has worked 45 full days during the 120 calendar days prior to the holiday and the regular scheduled work days immediately preceding and following the holiday.
- Holidays: A through F, provided the employee has been employed for at least 5 days prior to the holiday and is available for work the day before and after the holiday, plus on floating holiday, Washington's Birthday and Patriots Day.
- Holidays: Independence Day & Labor Day provided the employee has been employed 7 days prior to the holiday for the same employer.
- July 4th and Labor Day - \$.08 per hour employer contribution to make two paid holidays.

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
BUILDING CONSTRUCTION						
POWER EQUIPMENT OPERATORS:						
Class I	\$10.18	.95	1.00	a		.07
Class II	9.98	.95	1.00	a		.07
Class III	9.78	.95	1.00	a		.07
Class IV	9.41	.95	1.00	a		.07
Class V	8.58	.95	1.00	a		.07
Class VI	8.09	.95	1.00	a		.07
Class VII	7.29	.95	1.00	a		.07

CLASSIFICATIONS

Class I: Shovels, Cranes, Hydraulic Cranes 10 ton capacity or over, Draglines, Derricks, Elevators with Chicago Boom, Backhoes, Gradalls, Elevating Graders, Piledriving Rigs, Concrete Road Pavers, three drum hoisting and Trenching Machines, Belt-type Loaders, Front End Loader-5 1/2 yds. or over, Dual Drum Paver, Automatic Grader (i.e. C.M.I.) Combination Back Hoe-loader-3/4 yd. hoe or over

Class II: Rotary Drill (with mounted compressor), Compressor house (3 to 6 compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Grades, Front End Loaders - 4 yds. to 5 1/2 yds., two drum hoists, High Fork Lifts with capacity of 15 feet and over, Scrapers - 21 yds. and over (struck load), Sonic Hammer Console

Class III: Combination Backhoe - Loader - up to 3/4 hoe, Bulldozers, Push Cats, Scraper - up to 21 yds. (struck load) - Self-propelled or tractor drawn, Tire-man, Front End Loaders - up to 4 yds., Asphalt Paver, Asphalt Roller - 10 ton or over, Well Drillers, Mechanics, Welders, Pumpcrete Machines, Concrete Pumps and similar type pumps, Engineer or Fireman on High Pressure Boiler (on job), Self-loading Batch Plant, Well Point, Electric pumps used in well point system, Pumps - 12 inches and over (total discharge), Compressor (one or two) 900 cu. ft. and over, Powered Grease Truck, Automatic Elevators (manually or remote controls), Grout pumps, Boom Truck, Hydraulic Cranes - under 10 ton

Class IV: Asphalt Roller - under 10 ton

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CLASSIFICATIONS CONT'D

CLASS V Single Drum Hoist, Self-Propelled Roller, Self-Propelled Compactors Power Pavement Breakers, Concrete Pavement Finishing Machines, Two Bag Mixers with Skip, McCarthy and similar drills, Batch Plants (not self-loading) Bulk Cement Plants, Self-Propelled Material Spreaders, A Frame Trucks, Fork Lifts up to 15 feet

CLASS VI Compactors (one or two) 315 cu. ft. to 900 cu. ft.. Pumps-4 inches to 12 inches (total discharge), Tractor (without blade or bucket) Drawing Rollers Rubber, Tire Roller, Compactors or other machines used for pulverizing, Grading or Seeding

CLASS VII Compactors (up to 315 cu. ft.), Small Mixers, Pumps (up to 4 inches), Power Heaters, Welding Machines, Conveyors, Oiler, Helpers on Grease Truck, and Grease Trucks with hand greasing equipment

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Holidays: A through F, Veterans' Day and Columbus Day

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HEAVY AND HIGHWAY CONSTRUCTION

POWER EQUIPMENT OPERATORS:

	Basic Hourly Rates	Fringe Benefits Payments				Education and/or Appr. Tr.
		H & W	Pensions	Vacation		
CLASS I	\$10.18	.95	1.00	a	.07	
CLASS II	9.98	.95	1.00	a	.07	
CLASS III	9.78	.95	1.00	a	.07	
CLASS IV	9.41	.95	1.00	a	.07	
CLASS V	8.58	.95	1.00	a	.07	
CLASS VI	8.09	.95	1.00	a	.07	
CLASS VII	7.29	.95	1.00	a	.07	
CLASS VIII	10.68	.95	1.00	a	.07	

CLASSIFICATIONS

CLASS I Shovels, Crawler and Truck Cranes, Derricks, Backhoes, Trenching Machines, Elevating Graders, Belt-type Loaders, Gradalls, Pile Drivers, Concrete Pavers, on site Processin Plant (Engineer in charge), Dragline, Clam Shell, Cableways, Shaft Hoists, Mucking Machines, Front End Loader-5½ yards and over Tower Cranes, Self-propelled Hydraulic Cranes-10 tons and over, Dual Paver, Automatic Graders-Excavator (C.M.I. or equal), Scrapers towing pan or wagon, Tandem Dozers or Push Cats (2 units in tandem), Welder using semi automatic Welding Machine, Shotcrete Machine, Tunnel Boring Machine

CLASS II Rotary Drill (with mounted Compressor), Compressor House 3 to 6 Compressors), Rock and Earth Boring Machines (excluding McCarthy and similar drills), Grader, Front End Loaders-4 yards to 5½ yards, Scraper-21 yards and over (struck Load), Forklifts-7 ft. lift and over or 3 ton capacity and over, Sonic Hammer Console

CLASS III Bulldozer, Push Cats, Scrapers-up to 21 yards (struck load) self-propelled or Tractor Drawn, Self-powered Asphalt Paver, Front End Loaders-up to 4 yards, Mechanics, Welders, Well Driller, Pumpcrete Machine, Engineer or Fireman on High Pressure Boiler (on job), Self-loading Batch Plant (on job), Well point Operators, Electric Pumps used in well Point system, Trenchmen, Pumps-16 inches or over total discharge, Compressors (11 or 2) cu. ft. and over Powered Grease Truck, Asphalt Roller-10 ton and over, Tunnel Locomotives and Dinkys, Grout Pumps, Hydraulic Jacks (jacking pipe, slip forms, etc.), Boom Truck Self-Propelled Hydraulic Cranes up to 10 ton

CLASS IV Asphalt Roller-up to 10 ton

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CLASS V Hoists, Conveyors, Self-powered Rollers and Compactors, Power Pavement Breaker, Self-propelled Material Spreader, Self-powered Concrete Finishing Machine, Two Bag Mixer with skip, McCarthy and similar Drills, Batch Plant (not self-loading), Bulk Cement Plant

CLASS VI Compressor (315 cu. ft. to 900 cu. ft., 1 or 2), Pumps 4" to 16" total discharge, Tractor without blade drawing sheeps-foot roller, Rubber tired roller or other type of compactors including machines for pulverizing and aerating soil

CLASS VII Compressor (up to 315 cu. ft.), Small Mixers with skip, Oilier, Pumps up to 4", Grease Truck, Helper on powered Grease Truck, Power Heaters, Welding Machines, A-Frame Trucks, Forklifts-up to 7 ft. lift and up to 3 ton capacity, Hydro Broom, Parts Man (in repair shop), Power Safety Boat

FOOTNOTES:

- a. Holidays: New Year's Day; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day and Christmas Day

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HEAVY & HIGHWAY CONSTRUCTION					
LABORERS:					
CLASS I	\$ 8.50	.60	.80		.10
CLASS II	8.75	.60	.80		.10
CLASS III	9.00	.60	.80		.10
CLASS IV	9.25	.60	.80		.10

CLASSIFICATIONS

CLASS I
Carpenter tenders, cement finisher tenders, laborers, wrecking laborers

CLASS II
Asphalt rakers, fence and guard rail erectors, laser beam op., mason tender, pipelayer, pneumatic drill op., pneumatic tool op., wagon drill op.

CLASS III
Air track op., block pavers, rammers, curb setters

CLASS IV
Blasters, powdermen

*55.

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BUILDING, HEAVY AND HIGHWAY CONSTRUCTION

TRUCK DRIVERS

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	\$ 8.515	.75	.80	atb	
CLASS II	8.665	.75	.80	atb	
CLASS III	8.715	.75	.80	atb	
CLASS IV	8.815	.75	.80	atb	
CLASS V	8.915	.75	.80	atb	
CLASS VI	9.165	.75	.80	atb	
CLASS VII	9.415	.75	.80	atb	

CLASS I - Station wagons, Panel trucks and pickup truck

CLASS II - Two axle equipment; Helpers on low bed when assigned at the discretion of the employer, warehousemen, Forklift operators

CLASS III - Three axle equipment and Tiresmen

CLASS IV - Four and five axle equipment

CLASS V - Specialized earth moving equipment under 35 tons other than conventional type trucks, Low bed, Vachual, Mechanics, Paving restoration equipment, Mechanics

CLASS VI - Specialized earth moving equipment over 35 tons

CLASS VII - Trailers for earth moving equipment (double hookup)

FOOTNOTES:

- a. One half day's pay each month in which an employee has worked 15 days provided he has been employed for 4 months.

- b. Holidays: A through F, Washington's Birthday, Columbus Day, Veteran's Day and Patriots' Day provided an employee works two days of the calendar week in which the holiday falls.

STATE: Mississippi
 DECISION NUMBER: MS79-1002
 Supersedes Decision No.: MS78-1034 Dated April 14, 1978, in 43-FR-16065
 DESCRIPTION OF WORK: Sewer Line and Water Line Construction

COUNTY: Statewide *See below
 DATE: Date of Publication
 in 43-FR-16065

MS79-1002 (Continued)

FOOTNOTES:

- a. .37 Health & Welfare; .09 Pension; .06 Apprentice Training
 b. .35 Health & Welfare; .35 Pension; .04 Apprentice Training

* COUNTIES:

ZONE I: Alcorn, Benton, Calhoun, Chickasaw, Choctaw, Clay, Itawamba, Lafayette, Lee, Lowndes, Marshall, Monroe, Oktibbeha, Pontotoc, Prentiss, Tippah, Tishomingo Union, and Webster.

ZONE II: Bolivar, Carroll, Coahoma, DeSoto, Grenada, Leflore, Montgomery, Panola, Quitman, Sunflower, Tallahatchie, Tate, Tunica, Washington, and Yalobusha.

ZONE III: Claiborne, Copiah, Hinds, Holmes, Humphreys, Issaquena, Madison, Rankin, Sharkey, Simpson, Warren, and Yazoo.

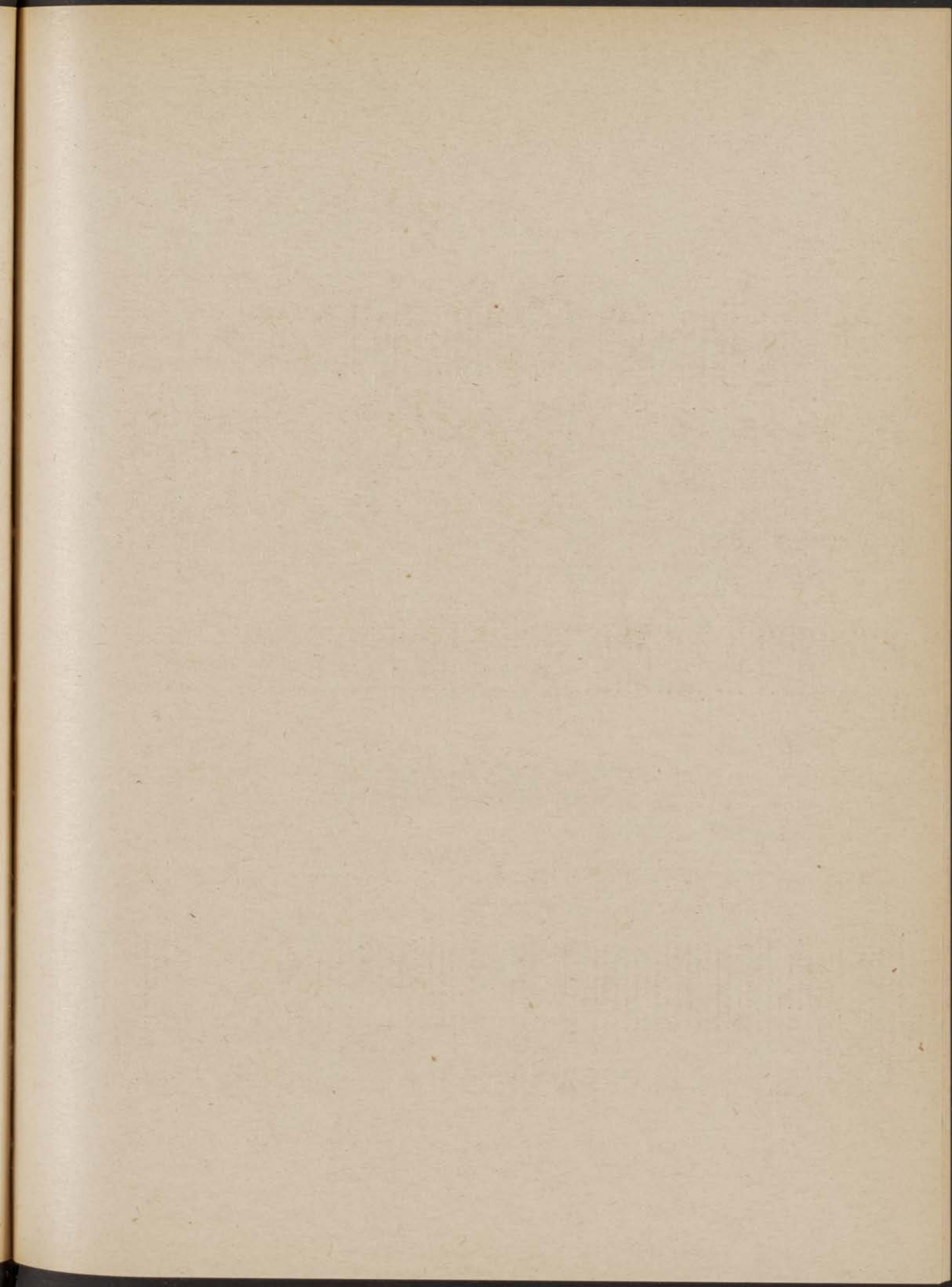
ZONE IV: Attala, Clarke, Jasper, Kemper, Lauderdale, Leake, Neshoba, Newton, Noxubee, Scott, Smith, and Winston.

ZONE V: Adams, Amite, Covington, Forrest, Franklin, Greene, Jefferson, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthall, Wayne, and Wilkinson.

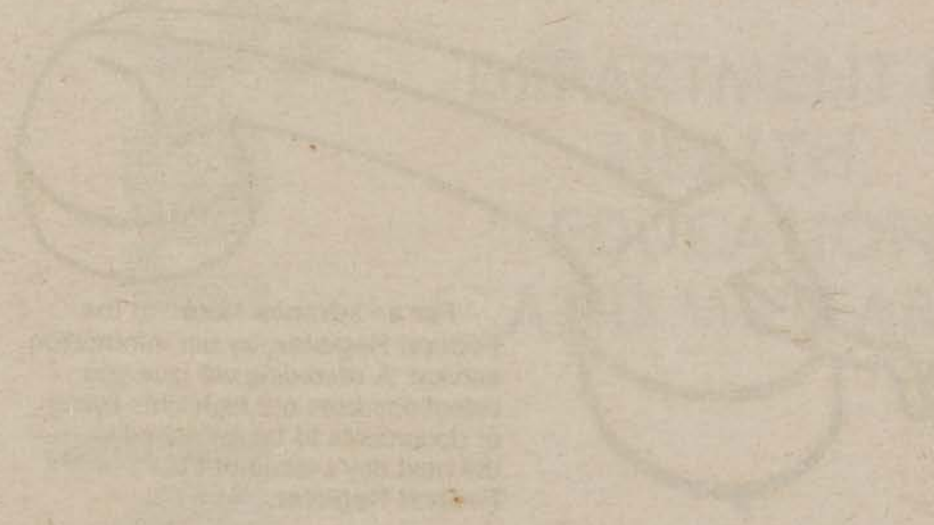
ZONE VI: George, Hancock, Harrison, Jackson, Pearl River, and Stone.

	ZONE I	ZONE II	ZONE III	ZONE IV	ZONE V	ZONE VI
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
Bricklayers	4.53	5.50	4.00	4.50	7.00	5.38
Carpenters & form setters	4.10	2.90	4.00	3.75	3.18	4.50
Cement masons	3.00	8.95+a	8.95+a	7.16	8.95+a	
Chain saw operators		2.90				
Electricians						
Grade checkers						
Ironworkers:						
Structural						
Reinforcing						
Laborers:	4.00		8.10+b	8.10+b	6.00	
Air tool operator			2.90			
Laborers	2.90	2.90	2.90	2.90	3.00	2.90
Mortar mixers	3.25					2.90
Pipefitters	3.00	3.00	3.48	3.15	4.00	4.00
Painters	3.90	2.90	4.50	3.00	4.75	3.50
Truck drivers	2.90					
Welders	4.00				3.33	
POWER EQUIPMENT OPERATORS						
Backhoe	3.97	4.09	4.41	4.00	5.29	5.00
Bulldozer	4.08	4.25	5.00	3.75	4.86	4.25
Concrete finishing machine		6.63				
Crane	5.00	4.75	5.00	4.00	5.50	7.00
Drilling machine	4.00	3.76	4.10		4.10	5.27
Elevating machine		4.25				
Front end loader						
Gradall	3.50	3.50	5.00	4.00		5.00
Mechanic		4.98				
Motor patrol	4.09	4.50	5.58	5.50		4.00
Oilier-greaser	3.50	4.00	4.50	4.55		
Piledriver	4.00	2.90	4.25	4.50	3.38	2.90
Roller		5.00			5.00	
Scraper	3.00		3.50	3.60		
Tractor	4.50	4.25	4.50	4.55	4.00	4.00
Trenching machine	2.90	2.90	4.01	5.00	5.00	4.75
Winch		4.25	4.25			3.35

[FR Doc. 79-1639 Filed 1-18-79; 8:45 am]

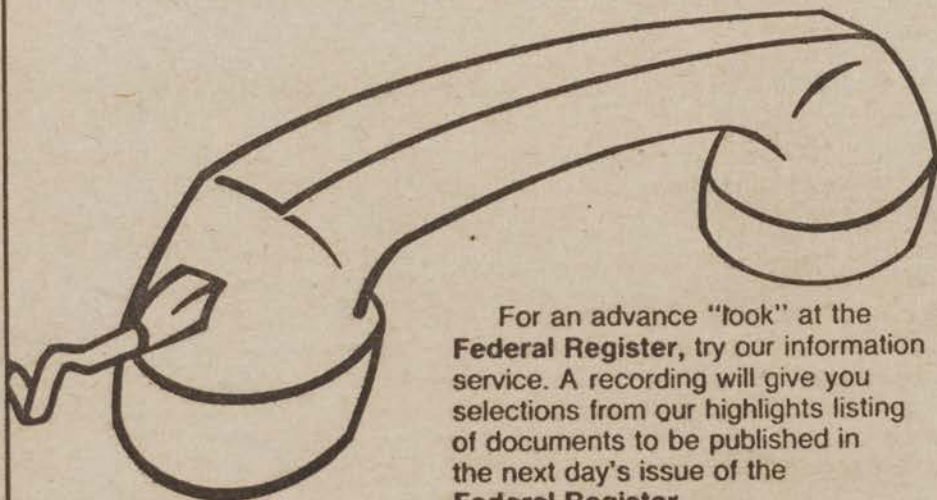


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Legislation
and
Regulation

BOOK 2 OF 2 BOOKS
FRIDAY, JANUARY 19, 1979
PART V



DEPARTMENT OF
HEALTH,
EDUCATION,
AND WELFARE

■
IMPROVING
GOVERNMENT
REGULATIONS

Publication of Semiannual Agenda

[4110-12-M]

**DEPARTMENT OF HEALTH,
EDUCATION, AND WELFARE**

Office of the Secretary

IMPROVING GOVERNMENT REGULATIONS**Semiannual Agenda of Regulations**

AGENCY: Department of Health, Education, and Welfare.

ACTION: Publication of the semiannual agenda of regulations (Improving Government Regulations).

SUMMARY: The President's Executive Order on Improving Government Regulations, Executive Order 12044, requires each Federal agency to publish at least twice a year a list of significant regulations under development. HEW published its first semiannual agenda in the May 30, 1978 **FEDERAL REGISTER**. This semiannual agenda contains: (1) *all* non-FDA regulations being developed within the Department; and (2) FDA regulations classified as "policy significant." The Department plans to publish its next semiannual agenda by June 30, 1979.

ADDRESS: For inquiries or comments related to specific regulations listed in the agenda, the public is encouraged to contact the appropriate responsible individual. Questions or comments concerning the overall agenda should be sent to Rick Cotton, Executive Secretary to the Department of Health, Education, and Welfare, 200 Independence Avenue, S.W., Washington, D.C., 20201.

Dated: January 2, 1979.

JOSEPH A. CALIFANO, Jr.,
Secretary.

TITLE	CLASSIFICATION	STATUTORY BASE	NEED TO REGULATE	DESCRIPTION	*RA	CONTACT
Adult Education (NPRM)	Policy Significant	Adult Education Act, P.L. 91-230, as amended by Education Amend- ment of 1978. P.L. 95-561	Regulations are needed to provide uniform interpre- tation and imple- mentation of the law.	The regulations will expand the current delivery system of adult education and will broaden the outreach of the program.	No	Paul V. Delker, Adult Edu. Prog., Office of Education, 7th & D Sts., S.W., Washington, D.C., (202) 245-2278
Metric Education (NPRM)	Technical	Sec. 403 of P.L. 93- 380, as amended by the Education Amendments of 1978. P.L. 95-561	Need to clarify program purpose, objectives, and funding criteria.	The regulations will estab- lish criteria for evalua- tion of grants to prepare students, parents and other adults to use the metric system.	No	Floyd Davis, Metric Education, Prog., U.S. Office of Education, 831 Riviera Bld., 1832 M. St., N.W. Washington, D.C. 20202 (202) 653-5811
Consumers' Education (NPRM)	Policy Significant	Sec. 811 of P.L. 93- 380, as amended by the Education Amendments of 1978. P.L. 95-561	Need to clarify standards and establish uni- form evaluation criteria.	Develop the capacity of Edu- cation institutions and com- munity agencies to provide consumers' education to persons of all ages.	No	Dustin W. Wilson, Jr., Office of Consumers' Ed., Office of Education 400 Maryland Ave., S.W. Washington, D.C. 20202 (202) 653-5983
Community Education (NPRM)	Policy Significant	Sec. 405 of P.L. 93- 380, as amended by the Education Amendments of 1978. P.L. 95-561	Regulations are needed to clarify the law.	The regulations will expand the scope and responsibili- ties of the present commu- nity education program.	No	Julie Englund, Community Education Program, Office of Education, 7th & D Sts., S.W. Washington, D.C. 20202 (202) 245-0691
Youth Employment (NPRM)	Policy Significant	Sec. 627 of Educa- tion Amendments of 1978. P.L. 95-561	Regulations are need- ed to interpret and clarify the law.	Regulations will establish requirements to prepare children to take their place as working members of society.	No	Sid High, Office of Career Education, U.S. Office of Education, 7th & D Sts., S.W., Washington, D.C. 20202 (202) 245-2335

*RA - Regulatory Analysis (Yes/No)

Basic Skills Improvement Program (R2R) (NPRM)	Policy Significant	Title II & Title IX, Part B, Education Amendments of 1978 (P. L. 95-561)	Law in general terms in the two applicable titles thereby requiring clarification.	Expands National Reading Improvement Act Program affecting all States, LEAs, and many non-public schools.	No	Tom Keyes, Program Officer, Office of Education, 400 Maryland Ave., S.W., Washington, D.C. 20202 (202) 245-2710
Gifted & Talented (NPRM)	Technical	Education Amendments of 1978 (P.L. 95-561)	Required to incorporate changes of Ed. Amendments of 1978 and write in simple English.	Revised the present regulations to provide interested parties, a better understanding of the program.		Dr. Dorothy Sisk, Director, Office of Gifted & Talented, Office of Education 7th & D Sts., S.W. Washington, D.C. 20202 (202) 245-2482
Handicapped Children Early Education Program (NPRM)	Technical	Education Amendments P.L. 94-142	Law in general terms and require clarification to include all age groups. Also write in simple English.	Provides funds for Handicapped children's Early childhood Education.	No	Dr. William Swan, Division of Innovation & Development, BEH, Rm. 3120, Donohoe Bldg. 400 Maryland Ave., S.W. Washington, D.C. 20202 (202) 245-9722
Indian Education Program (NPRM)	Policy Significant	Ed. Amendment of 1978 P.L. 95-561	Law in general terms, needs to clarify existing regulations.	Supports all phases of Indian Education children and adults.	No	Dr. John Tippeconic U.S. Office of Education Rm. 2177, FOB-6 400 Maryland Ave., S.W. Washington, D.C. 20202 (202) 245-8020
Handicapped Media Services (NPRM)	Technical	Ed. Amendment of 1977 P.L. 95-49	Incorporate minor language change and write in simple English.	The regulations govern the administration of programs which provide of a free loan service of captioned films for the deaf and promotes the educational and cultural advancement of handicapped persons through research and the use of media and technology.	No	Barry E. Katz, U.S. Office of Education Rm. 4819, Donohoe Bldg. 400 Maryland Ave., S.W. Washington, D.C. 20202 (202) 472-4640

General Provisions Relating to Student Assistance Program (FINAL)	Policy Significant	Section 497-A of the Higher Education Act of 1965, as amended (P.L. 94-482)	Statute in general terms - implementing provisions need regulation (NPRM pub. 8/10/78)	This regulation will establish fiscal and administrative standards for institutions participating in	No	William L. Moran Chief, Basic Grants Policy Section, OPPD/ BSFA/OE, Rm. 4318, R0B-3 400 Maryland Ave., S.W. Washington, D.C. 20202
1979-1980 Basic Grant Family Contribution Schedule (FINAL)	Technical	Sec. 411(a)(3)(A)(i) of the Higher Education Act of 1965, as amended (P.L. 94-482)	Statute requires the annual publication of the Family Contribution Schedule (NPRM pub. 8/14/78)	The Family Contribution Schedules are the formula used in determining eligibility on the basis of financial need for the Basic Educational Opportunity Grants Program.	No	Same as above
Basic Educational Opportunity Grant Program-Administrative and Technical (FINAL)	Technical	Sec. 411 of the Higher Education Act of 1965, as amended (P.L. 94-482)	New regulations which revise and consolidate existing program regulations and incorporate applicable provisions of the Education Amendments of 1976 and the Middle Income Student Assistance Act (NPRM pub. 5/15/78)	These regulations govern institutional administration of the Basic Grant Program, computation of awards, and all other areas of program administration except the Family Contribution Schedules.	No	Same as above
HEAL (NPRM)	Policy Significant	Title VII, Part C, Subpart 1, PHS Act as amended (P.L. 94-484, P.L. 95-83, P.L. 95-215)	To implement three major provisions of law never regulated before.	This regulation will establish requirements for non-student borrowers, withholding of Federal reimbursement for health services from defaulted HEAL loans for service in health manpower shortage areas.	No	David Bayer, Acting Chief, GSF Branch, BSFA, Rm. 4002, R0B-3, 7th & D Sts., S.W. Washington, D.C. 20202 (202) 245-9717

GSL (503) Interest Benefits & Special Allowance (FINAL)	Policy Significant	Higher Education Act of 1965 as amended (20 U.S.C. 1071-1087-4) (P.L. 94-482)	Regulations required by Sec. 503 of the Education Amendments of 1972 (P.L. 92-318) Implementing changes to current regulations required by the Ed. Amendments of 1976 (P.L. 94-482) Middle Income Student Assistance Act (P.L. 95-566)	This regulation will establish requirements for the GSLP.	No	David Bayer, Acting Chief, GSL Branch BSFA, Rm. 4002, ROB-3 7th & D Sts., S.W. Washington, D.C. 20202 (202) 245-9717
NDSL, CWS, & SEOG (NPRM)	Technical	HEA of 1965 (P.L. 94-482)	Law in general terms implementing instructions needed.	This regulation will change institutional application procedures for the campus-based programs. Public comment has been requested on the NPRM.	No	Tom Butts, Special Assist. to Deputy Commissioner for BSFA, Rm. 4662, ROB-3 7th & D Sts., S.W. Washington, D.C. 20202 (202) 245-0231
NDSL, CWS, & SEOG (FINAL)	Technical	HEA of 1965 (P.L. 94-482)	Need to finalize an Interim Regulation and rewrite in plain English.	The regulations govern the administration of three programs of assistance to students with financial need to achieve the benefits of postsecondary education.	No	Norman Brooks, Acting Chief Policy Section, Campus-Based Branch, BSFA, Rm. 4018, ROB-3 7th & D Sts., S.W. Washington, D.C. 20202 (202) 245-9720

Ethnic Heritage Studies (NPRM)	Technical	The Elementary and Secondary Act of 1965, as amended by the Ed. Amendments of 1972, 1974, and 1978	Technical changes needed in the existing regulations and to simplify and revise the criteria.	This regulation will improve the existing criteria for eligibility and for selection of applicants for grants.	No	Stanley Wilcox, Acting Chief, Ethnic Heritage Studies Branch, U.S. Office of Education Rm. 3913, ROB-3 400 Maryland Ave., S.W. Washington, D.C. 20202 (202) 245-2761
Law School Clinical Experience Program (NPRM)	Policy Significant	Title XI of the HEA of 1965 as amended by P.L. 90-575, 92-318, 94-482	Program was initially authorized for one year (1978). Funds have been appropriated for FY 1979.	This regulation provides rules for establishing and expanding programs in law schools to provide clinical experience to students in the practice of law.	No	Donald Bigelow, Bureau of Higher and Continuing Education, (Rm. 3060) ROB-3, 400 Maryland Ave., S.W., Washington, D.C. 20202 (202) 245-2347
Institutional Eligibility (NPRM)	Policy Significant	HEA of 1965, as amended	To clarify procedures currently used by the Agency to determine the eligibility of postsecondary institutions. These procedures are being used but they have not been published.	This regulation will establish the procedures that the Commissioner of Education uses to determine the eligibility status of postsecondary institutions.	No	John R. Proffitt, Director of Eligibility and Agency Evaluation, BCE, U.S. Office of Education, Rm. 3030, ROB-3, Washington, D.C. 20202 (202) 245-9873
Criteria for Recognition of National Accrediting Bodies and State Approval Agencies (NPRM)	Policy Significant	Veterans Readjustment Assistance Act of 1952, plus 23 other statutory authorities including P.L. 92-318	Simplify and revise the criteria.	This regulation will establish the Commissioner's procedures for selecting nationally recognized accrediting agencies who are reliable authorities concerning the quality of education or training offered by educational institutions or programs they evaluate.	No	Same as above

Title I, ESEA Evaluation (FINAL)	Policy Significant	P.L. 93-380 as amended by P.L. 95-561	Law requires Commissioner to mandate evaluation models and standards.	This regulation establishes models and standards for the evaluation of Title I projects.	May Not Be Decided	Dr. Judith Burnes, OPBE, U.S. Office of Education, Rm. 3049, 400 Maryland Ave., S.W., Washington, D.C. 20202 (202) 245-8364
National Diffusion Network (NPRM)	Policy Significant	Ed. Amendments of 1978 P.L. 95-561	Law requires program changes.	These regulations govern the selection of projects and establish criteria for awards.	No	Dr. Andrew M. Leiby, Office of Education Rm. 3616, ROB-3 400 Maryland Ave., S.W., Washington, D.C. 20202 (202) 245-9582
Arts Education (NPRM)	Policy Significant	The Arts Education Act of 1978	Required by law to broaden eligibility requirements.	These regulations govern the selection of all grantees and some contractors establish eligibility requirements, and criteria.	No	Dr. Harold Arberg, Office of Education Rm. 3728, Donohoe Bldg. 400 Maryland Ave., S.W., Washington, D.C. 20202 (202) 472-7793
Education Division General Provisions Regulations (NPRM)	Policy Significant	P.L. 92-318 as amended by Ed. Amendments of 1978 - P.L. 95-561	Recodification under Operation Common Sense and to implement Ed. Amendments of 1978.	These regulations govern all fiscal and administrative requirements for the Education Division programs.	No	Dr. Marcel DuVall, Office of Education 400 Maryland Ave., S.W., Rm. 508, Reporters Bldg., Washington, D.C. 20202 (202) 472-7773
Women's Educational Equity Act Program (NPRM)	Policy Significant	Women's Educational Equity Act of 1978	Implement the law establishing criteria and priorities.	These regulations will establish criteria and priorities for financial assistance to provide educational equity for women in the U.S.	No	Dr. Mary Jane Smalley, Women's Program Staff Office of Education Rm. 2147, FOB-6 400 Maryland Ave., S.W., Washington, D.C. 20202 (202) 245-2181

Law-Related Education (NPRM)	Policy Significant	Education Amendments of 1978, P.L. 95-561	Law requires the Commissioner to award grants and contracts to pro- vide law-related education programs.	Purpose is to encourage SEAs and LEAs and other public and non-profit agencies, organiza- tions, and institutions to provide law-related education programs.	No	Mr. Steven Winnick Office of Education 400 Maryland Ave., S.W. Rm. 4091 Washington, D.C. 20202 (202) 245-8953
Bilingual Education (INTERIM FINAL)	Policy Significant	Education Amendments of 1978, P.L. 95-561	To implement re- quirements emanat- ing from Pub. L. 95-561.	The interim regulation esta- blish criteria to determine English language proficiency levels of eligible children, provide parental participa- tion, information for provi- sion of training under a basic program, pre-inservice training, and repayment or work criteria to fellowship recipients, and evaluation criteria.	No	Ms. Barbara J. Wells Office of Education 400 Maryland Ave., S.W. Rm. 421, Reporters Bldg. Washington, D.C. 20202 (202) 447-9273
Bilingual Education (NPRM)	Policy Significant	Same as above	To implement the law.	Will establish standards and procedures for eligibility requirements, definitions, program requirements, evalua- tion procedures, and use of funds.	No	Same as above
Education Hearing Board (NPRM)	Policy Significant	Commissioners policy and The Education Amendments of 1978 P.L. 95-561	Extend the juris- diction of the Title I ESEA Audit Hearing Board and implement require- ments of the law.	These proposed regulations establish an Education Hear- ing Board to provide impera- tive administrative proce- dures for resolution of adverse monetary audit find- ings for State-administered programs.	No	Dr. David Pollen Office of Education 400 Maryland Ave., S.W. Rm. 4051 Washington, D.C. 20202 (202) 245-7836

SAFA - School Construction Amendments Sec. 10 (NPR3)	Policy Significant	P.L. 81-815, as amended	A Departmental decision requires regulatory changes to implement new program priorities.	Regulations to determine LEAs ability to provide suitable free public education and change priorities to include major renovation or new construction to meet life safety and accessible to handicapped standards.	No	Dr. William W. Chase Office of Education 400 Maryland Ave., S.W. Rm. 2067 Washington, D.C. 20202 (202) 245-8412
SAFA - Technical Amendments-Maintenance and Operation (FINAL)	Policy Significant	P.L. 81-874, as amended	To incorporate changes recommended by GAO and others to improve administration of the program	These regulations incorporate certain requirements governing the awarding of Federal assistance to school districts enrolling certain categories of children receiving free public education in areas affected by Federal assistance. They will establish uniform determination of eligibility for those who work on Federal property.	No	Mr. William Stomer Office of Education 400 Maryland Ave., S.W. Rm. 2107-A Washington, D.C. 20202 (202) 245-8427
Library Services and Construction Act Amendments (FINAL)	Technical	P.L. 95-123	Required by Law.	Establish rules for matching Federal funds, change base year for maintenance of effort requirements for handicapped; and add emphasis to major urban resource libraries.	No	Mrs. Elizabeth H. Hughey Office of Education 400 Maryland Ave., S.W. Rm. 3119-B, ROB-3 Washington, D.C. 20202 (202) 472-5150
Correction Education (NPRV)	Policy Significant	Correction Education Demonstration Project Act of 1978, Title III, Secs. 371-374 of Part J of the Education Amendments of 1978, P.L. 95-561	Statute is very general. Implementing institutions needed.	These regulations will establish application eligibility and requirements and selection criteria for applicants for support under the Act.	No	James Spillane, U.S. Office of Education Rm. 2047, ROB-6 400 Maryland Ave., S.W. Washington, D.C. 20202 (202) 245-7292

<u>TITLE</u>	<u>CLASSIFICATION</u>	<u>STATUTORY BASE</u>	<u>NEED TO REGULATE</u>	<u>DESCRIPTION</u>	<u>*RA</u>	<u>CONTACT</u>
Indochina Refugee Children Assistance Act (NPRM)	Policy Significant	The Education Amend- ments of 1978, Title XIII, Part C, Sec. 1331	Provision of educational services to Indochinese refugee children and guidance for SEA program administration	These regulations will establish requirements for LEA's and SEA's regarding educa- tional services for Indochinese refugee children.	No	James H. Lockhart Director, INTF HEM/OE FOB-6, Rm. 2189 400 Maryland Ave., S.W. Washington, D.C. 20202 (202) 245-3081
Educational Improvement, Resources, and Support (NPRM)	Policy Significant	Amendment to Title IV of the Elementary and Secondary Education Act of 1965 (P.L. 95-561)	The statute sets general policy; major important provisions need regulation. Also, the Department has set new policies which require modification of the regulations.	The regulation will establish requirements for State administration of programs for acquisition of instructional materials and school library resources; for the improvement in local educational practices; and for guidance, counseling, and testing.	No	Louise V. Sutherland School Media Resources Branch, Bureau of Elementary and Secondary Education, USOE, 400 Maryland Avenue, S.W., Washington, D.C. 20202, (202) 245-2488

TITLE	CLASSIFICATION	STATUTORY BASE	NEED TO REGULATE	DESCRIPTION	RA	CONTACT
Financial Assistance for Environmental Education Projects (NPRM)	Technical	The Environmental Education Act (P.L. 91-516, as amended by P.L. 93-278 and Title III, P.L. 95-561	Law provides general policy, implementing instructions are needed. Department has set a new policy which requires revision of regulations for purposes of simplification.	These regulations will describe the requirements for the award of grants for environmental education projects.	No	Sylvia Wright Program Officer Office of Environmental Education U.S. Office of Education F08-6, Room 2025 400 Maryland Avenue, S.W. Washington, D.C. 20202 (202) 245-9231
Administration of Education Programs and Duties of the State Educational Agency (ESEA, Title V-A) (NPRM)		Policy Significant	Education Amendments of 1978	Law in general terms implementing instructions needed	This regulation will govern the program for consolidated administration of ESEA Titles I and IV	No David G. Phillips Division of State Educational Assistance Programs, OE, 400 Maryland Ave., SE, Washington, DC 20202, (202) 245-2495
Strengthening State Educational Agency Management (ESEA, Title V-B) (NPRM)		Policy Significant	Education Amendments of 1978	Law in general terms, implementing instructions needed	This regulation will govern a grant program to strengthen the leadership and management roles of SEAs	No

<u>TITLE</u>	<u>CLASSIFICATION</u>	<u>STATUTORY BASE</u>	<u>NEED TO REGULATE</u>	<u>DESCRIPTION</u>	<u>FA</u>	<u>CONTACT</u>
Emergency School Aid (NPRM)	Policy Significant	The Education Amendments of 1978 (P.L. 95-561)	Law in General terms; implementing instructions needed	This regulation will clarify the status and establish program standards for issuing grant awards	No	L. Ann Benjamin Program Analyst Equal Education Opportunity Program Rm. 2011- 400 Maryland Ave. S.W. Washington, D.C. (202) 245-8230
Special Assistance to State Education Agencies (NPRM)	Policy Significant	No Statute	No Law Program Authorized in FY 79 Budget request to Congress	These regulations will set out criteria for awarding SEA Grants for FY '79	No	E. F. Jackson Program Analyst Equal Educational Program Rm. 2011- 400 Maryland Ave. S.W., Washington, D.C. 20202 (202) 245-8230
Programs for Children With Special Educational Needs (NPRM)	Policy Significant	Title I, Elementa- ry and Secondary Education Act.	Some parts of law are general-others require regulations	These programs provide no supplemental financial assistance to: (a) Local educational agencies for projects designed to meet the special educational needs of educationally deprived children in low- income areas; (b) State agencies to meet the special educational needs of handicapped, neglected or delinquent children; and (c) State Education Agencies to meet the special educational needs of mifra- tory children.		Dr. John Stachle 400 Md. Ave., S.W. (Room 3642 Rob3) Wash. D.C. 20202

<u>TITLE</u>	<u>CLASSIFICATION</u>	<u>STATUTORY BASE</u>	<u>NEED TO REGULATE</u>	<u>DESCRIPTION</u>	<u>#RA</u>	<u>CONTRACT</u>
Follow Through (NPRM)	Policy Significant	The Economic Opportunity Amendments of 1978 (P.L. 95-568)	The Department is considering major change in policy and is requesting public comment on proposal	This regulation will establish criteria for a second genera- tion of Follow Through projects and sponsors.	No	Fred Bresnick Program Coord- inator Division of Follow Through 400 Maryland Ave., S.W. (Room) - Rm. 3624 Washington, D.C. 20202 (202) 245-2501

TITLE	CLASSIFICATION	BASE	REGULATE	DESCRIPTION	*RA	CONTACT
Biomedical Sciences (NPRM)	Policy Significant	Education Amendments of 1978 (P.L. 95-561)	Law in general terms implement- ing instructions needed	Program assist target No youth to prepare and to pursue a course of study leading to one of the biomedical professions or occupations.		Simon McNeely Senior Program Coordination Officer/BESE/SLEP 400 Md. Ave., SW Washington, D.C. 20202 (202) 245-8407
Health Education Program (NPRM)	Policy Significant	Education Amendments of 1978 (P.L. 95-561)	Law in general terms implementing instructions needed	The proposed regu- lations would govern the awarding of grants to State and local educational agencies which are designed to establish and support programs of health education in elementary and secondary schools	No	Simon McNeely Senior Program Coordination Officer/BESE/ SLEP 400 Md. Ave., SW Washington, D.C. 20202 (202) 245-8407

Assistance for Maintenance and Operation and School Construction in Areas Affected by Federal Activities (NPRM)	Policy Significant	Education Amendments of 1978 (P.L. 95-561)	Statute specifically requiring regulations; the statute sets general policy, major provisions need regulation; the Department has set new policies which require new or modified regulations. The regulations govern reports, membership, average daily attendance, employment conditions of certain school personnel, nonpublic education of a handicapped child, children who live on Indian lands, elective school boards and payments in States that equalize expenditures among local educational agencies.	Mr. William L. Stormer Director, Division of School Assistance in Federally Affected Areas, Room 2107, 400 Maryland Ave., S.W. Washington, D.C. 20202 Telephone (202) 245-8427
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STATUTORY
BASE

CLASSIFICATION

CONTACT

FRA

DESCRIPTION

NEED TO
REGULATE

Preschool Partnership
Programs
(NPRM)

Policy significant

Education Amendments
of 1978

Dr. Ernest A. Crider
or
Miss Beryl Parke
Parent/Early
Childhood and
Special Programs
Staff, DESE, OE
Room 2083
400 Md. Avenue, S.W.
Wash., D.C. 20202
202/245-8118

Regulations will establish
requirements for partici-
pation in parent/early
childhood pilot projects

No

Population Education
(NPRM)

Policy significant

Education Amendments
of 1978

As Above

Regulations will establish
requirements for partici-
pation in a program
population education in
elementary and secondary
schools

No

Special Grants
for Safe Schools
(NPRM)

Policy significant

ESEA Title IX, Part D,
P.L. 89-10, as amended
by The Education
Amendments of 1978.

No

The regulations will define
terms, establish selection
criteria, emphasize program
direction, and limit amount
of funds for equipment and
remodeling.

Robert L. Thomas
Educator Program
Specialist,
Division of State
Educational
Assistance Program
400 Maryland, Ave.
S.W. (Pm.3010, R07)
Washington, D.C.
20202
(202) 245-2605

CLASSIFICATION	BASE	REGULATE	DESCRIPTION	*RA	CONTACT
Title I, ESEA Migrant (SPRM)	Education Amendments of 1978 (P.L. 95-561)	Statute spe- cifically requires Reg- ulations	These regulations establish State and local advisory councils, adjust summer count of children, coordinate migrant education acti- vities, reorder priority of services for currently pre-migratory children, establish a review pro- cedure for State applica- tion standards, establish circumstances under which the Commissioner will by- pass or reallocate a State's funds.	NO	John D. Ridgway Education Prog Specialist U.S. Office of Education 7th & D Streets, S.W. Washington, D.C. 20202

SOCIAL SECURITY ADMINISTRATION

NOTICES

4193

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Reorganization and Updating of Reg. No. 1	Policy Significant	Privacy Act of 1974, (Pub. L. 93-579)	Strong public interest in SSA's rules on disclosing information from its records	Provides for disclosure of information from social security records under the Social Security Act, the Freedom of Information Act, the Privacy Act, and other related statutes.	No	Mr. Armand Eresisto Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-5551
Totalization Agreements	Policy Significant	Social Security Amendments of 1977 (Pub. L. 95-216)	Law in general terms, implementing instructions needed.	Implements a provision that authorizes the President to enter into bilateral agreements with other countries to provide for coordination between the social security system of the United States and other countries. Permits each country to establish entitlement to and amount of benefits based on a combination of a person's periods of coverage under social security systems of both countries.	No	Mr. John Mueller, Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7337
New Methods for Computing Benefit Amounts	Technical	Social Security Amendments of 1977 (Pub. L. 95-216)	Required to publish definition of "average of the total wages," and need for complex provisions to be explained in layman's language.	Explains the decoupling provisions of the Social Security Amendments of 1977 whereby a worker's basic benefit amount is computed from his earnings as a ratio of the total earnings of all workers. Explains the amended provisions for computing minimum benefit amounts and cost-of-living increases and recomputing the basic benefit.	No	Mr. Jack Schenker Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-6785
Reduction of Benefits to Maximum	Technical	Social Security Amendments of 1977 (Pub. L. 95-216)	To complement regulations on "New Methods for Computing Benefit Amounts."	Provides a new formula for determining the maximum monthly benefit that a family can receive.	No	Mr. Jack Schenker Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-6785

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Reduced Benefits for Spouses Receiving Government Pensions	Policy Significant	Social Security Amendments of 1977 (Pub. L. 95-216)	To explain to the public a controversial provision of the Social Security Amendments of 1977.	Explains the pension offset provision whereby a spouse's social security benefit will be offset, or reduced by the amount of a public pension to which he or she is eligible. There is an exception—offset does not apply to spouses who are eligible for a public pension anytime before December 1982 and who meet the social security requirements that were in effect in January 1977 (i.e., an applicant for husband's or widower's benefits must have met a one-half support requirement).	No	Mr. Jack Schacter Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-6135
The Retirement Test: The Elimination of the Monthly Test, and the Age at Which the Retirement Test no Longer Applies	Policy Significant	Social Security Amendments of 1977 (Pub. L. 95-216)	Law does not provide specificity for implementation	Implements a provision which permits payment of monthly benefits because of low earnings in a month only at the time of initial retirement. Thereafter, the right to payments depends on earnings in a year.	No	Ms. Clara F. ... Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235
Effects of Annual Wage Reporting	Policy Significant	Social Security Amendments of 1977 (Pub. L. 95-216)	The Social Security Amendments of 1977 require that we publish a definition of "the average of the total wages." This definition is used when we determine whether the amount of a person's income subject to social security taxes must be increased.	Reflects a change granting military wage credits for compensation other than cash. Changed from a monthly amount to an annual amount to conform to new annual reporting of wages.	No	Mr. Arment ... Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-5351

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Recovery of Overpayments; Extension of Recovery Period	Technical	Secs. 204 and 205 of the Social Security Act.	Regulations prepared to preclude statutory amendment proposed by a Senator. Interim regulations published to alleviate public relations problem in State of Oregon	Liberalizes the period for recovery of an overpayment by removing the present 3-year time limitation in which overpayments must be recovered.	No	Mr. Marvel Cacer Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7463
Reference Changes to Reflect Transfer and Recodification of Medicare Regulations	Technical	Secs. 205(a), 1102, and 1362 of the Social Security Act.	Cross references to be changed due to reorganization.	Modifying various references to 20 CFR Part 405 to reflect the redesignation of those regulations to 42 CFR Part 405 and which make the Health Care Financing Adm. rulings binding on all SSA components.	No	Mr. Phil Parre Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7452
State and Local Government Wage Reporting Requirements; Annual Basis	Policy Significant	An Act to amend the Social Security Act to expedite the holding of hearings under titles II, XVI, and XVII by establishing uniform review procedures under such titles, and for other purposes (Pub. L. 94-202)	This change will make all wage reports due annually. We currently have different schedules for private and State employers.	These regulations change the States' obligation for filing wage reports from one each quarter to one each year. This will reduce SSA's and the States' processing times.	No	Mr. Armand P. Patisio Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-5551
State and Local Coverage-- Frequency with Which States Should Deposit Social Security Contributions	Policy Significant	Sec. 218(e) of the Social Security Act	This change to the deposit schedule will increase substantially the amount of interest income to the social security trust funds.	These regulations would require States to pay their FICA contributions 15 days after the end of each month rather than 45 days after each quarter. This speedup in collections will add millions of dollars per year to the trust funds.	No	Mr. Armand P. Patisio Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-5551

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Guidelines for Adjudicating Disability Claims in Which Vocational Factors Must Be Considered	Policy Significant	Secs. 205, 223, 1102, 1614, and 1631 of the Social Security Act, as amended	Consolidating and incorporating these policies into the regulations will serve to make clearer to claimants and their representatives how disability is determined where vocational factors must be considered.	Expand existing regulations to include additional detailed criteria for the evaluation of claims based on disability (under Titles II and XVI of the Social Security Act) in which a determination of disability cannot be made on medical severity alone or on the ability to do past work. Provides rules for evaluating age, education, and work experience in these kinds of disability claims.	No	Mr. William Zietzer Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7415
Disability Insurance Supplemental Security Programs Substantial Gainful Activity--Guidelines for 1978	Policy Significant	Secs. 223 and 1614 of the Social Security Act	The Social Security Act directs the Secretary to prescribe SGA criteria by regulations.	Increases the dollar amounts for determining whether a person's earnings show the ability to perform SGA for calendar years 1978 and 1979 and later.	No	Mr. James MacDonald Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7312
Revised Medical Criteria for the Determination of Disability	Policy Significant	Secs. 205(a), 1102, & 1614(a) of the Social Security Act.	Update present Listing to reflect medical advances and diagnosis and treatment that have occurred since last published Listing in 1968.	Revises the medical evaluation criteria currently used in the SSI and social security disability programs which describe the level of severity deemed sufficient to prevent a person from engaging in any gainful work activity. Recognizes medical advances both in treatment and in methods used to evaluate severity of particular impairments.	No	Mr. Harry Clark Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7455
Eligibility of Individuals Residing in Publicly Operated Community Residences Serving No More Than 16 Residents	Technical	Unemployment Compensation Amendments of 1976 (Pub. L. 94-566)	Rules are needed to define what is and what is not a publicly operated community residence serving 16 or fewer residents.	Provides that the term "public institution" does not include publicly operated community residences which serve no more than 16 residents. Also defines what are and are not publicly operated community residences which serve no more than 16 residents.	No	Mr. Santer Williams Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7341

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Evidence of Permanent Residence in the United States Under Color of Law	Policy Significant	Sec. 1614(a)(1) (B) of the Social Security Act	To provide undocumented aliens another way to establish permanent residence in the United States under color of law	Provides that aliens who have continuously resided in the United States since before January 1, 1970 will be presumed to be permanently residing in the United States under color of law for purposes of eligibility for SSI payment.	No	Mr. Sander W. Ickman Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7341
Filing Date for Applications Based on Oral Inquiry	Policy Significant	Secs. 1102, 1611, and 1631 of the Social Security Act.	Under current regulations persons who make an oral inquiry about their eligibility for SSI benefits and are advised they are ineligible and therefore do not file an application cannot claim retroactive benefits if it is later found they were eligible. These regulations will protect such persons from losing benefits.	Specifies when the date of an oral inquiry is considered the filing date of an application for supplemental security income benefits.	No	Mr. Cliff Terry Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7519
Reductions of SSI Payments to Individuals in Substandard Institutions	Policy Significant	Unemployment Compensation Amendments of 1976 (Pub. L. 94-566)	Regulations will implement sec. 1616(a)(4) of the Social Security Act by setting forth method SSA will use for penalty reduction of SSI payments.	Prescribes the method of reducing SSI benefits payable to persons residing in facilities that do not meet approved State standards.	No	Ms. Virginia Helian Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-6629

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Amount of Benefits; Computation of Certain Benefits Under Title XVI; Essential Persons	Technical	Unemployment Compensation Amendments of 1976 (Pub. L. 94-566)	Secretarial decision to delete from regulations all benefit amounts which previously re- flected cost-of- living increases.	Deletes tables of increased benefit amounts from existing regulations. Reference is made to basic statutes and to notices in the Federal Register to ascertain current benefit amounts.	No	Mr. Marval Cezar Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7463
Unearned Income, One-Third Reduction for Living in Another Person's Household	Policy Significant	Sec. 1612 of the Social Security Act.	Rules are needed to describe when the one-third reduction applies and when it does not apply.	Provides that the standard payment amount for an eligible individual (or couple) who lives in another person's household and receives support and maintenance from such person will be reduced by one-third. The actual value of such support and maintenance is not established.	No	Mr. Sander Wiksten Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7461
Medical and Social Services Which Are Not Income	Policy Significant	Sec. 1612 of the Social Security Act	To fulfill sec. 1612(b)(6) of the Social Security Act.	Excludes from the SSI definition of income certain medical and social services. This means those furnished in conjunction with any governmental or nongovernmental assistance program based on need.	No	Mr. Henry Lerner Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7461
Exception to the One-Third Reduction Provision and Income and Resources Exclusion When An Individual is Affected by a Major Disaster	Policy Significant	Major Disasters Presidentially declared. (Pub. L. 94- 331, Pub. L. 94-955, and Pub. L. 95-171)	Required by statute to be reflected in regulations.	Provides additional exclusions in determining countable income and resources for payments of SSI benefits when an individual is affected by a Presidential declared major disaster.	No	Mr. Henry Lerner Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7461
Replacement of Damaged or Lost Excluded Resources	Policy Significant	Sec. 1613 of the Social Security Act	These regulations apply to non- Presidentially declared disasters and parallel the major disaster statutes.	Excludes from income and resources, assistance received from any source for the repair or replacement of certain damaged, lost, or stolen property.	No	Mr. Henry Lerner Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7461

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Exclusion from Resources of the Property Essential to Self Support	Policy Significant	Social Security Amendments of 1972 (Pub. L. 92-603) and Internal Revenue Code of 1954-- Distilled Spirits Stamp (Pub. L. 94-569)	Current regulations merely provide that property essential to self-support shall be excluded from resources but value limitations do not provide. These regulations provide the necessary guidelines.	Provides guidelines for determining property essential to self-support is excluded from countable resources under the SSI program. Also provides that even if income-producing property is associated with the home, the home (including land appertaining to it and buildings on the land) is excluded as a resource regardless of its value or use.	No	Mr. John Mader Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7337
Evaluating Resources on the Basis of Equity and Increasing Dollar Limit on Certain Excluded Resources	Policy Significant	Sec. 1613 of the Social Security Act	Secretarial decision to regulate.	Increases the reasonable value of household goods and personal effects from \$1,500 to \$2,000 and the value of an automobile from \$1,200 to \$2,000. Values within these amounts will not affect eligibility for SSI payments. Also provides for evaluating resources on the basis of equity in the resource rather than its current market value.	No	Mr. Henry Lerner Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7411
Permitting Individuals Applying for or Receiving SSI to File for Food Stamps in Social Security Offices	Policy Significant	Food and Agriculture Act of 1977 (Pub. L. 95-113)	Food and Agriculture Act of 1977 in general terms. SSA needs regulations for instructions	Describes SSA's authority (with the concurrence of the Department of Agriculture) to obtain information from individuals solely for food stamp purposes.	No	Ms. Dorothy Price Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-5551
Pass Along Provisions of Federal Supplemental Security Income Benefit Cost-of-Living Increases to State Supplementary Recipients with Limitation on State Cost for Hold-Harmless States	Policy Significant	Food Stamp Distribution to AFDC Families (Pub. L. 94-585)	Law is not specific enough to be entirely self-effectuating.	Implement provisions of sec. 1618 of the Social Security Act by interpreting the statute to include those beneficiaries who receive only State supplementation and to provide guidelines for related State agreements.	No	Ms. Clara Pechall Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7153

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Social Security Number Issuances	Policy Significant	Social Security Amendments of 1972 (Pub. L. 92-603)	These regulations are necessary to protect the integrity of the social security number by exercising all means available to SSA to curtail the abuse and misuse of the social security number.	Requires that all applicants for social security numbers submit documentary evidence of identity, age, and citizenship or alien status. Also requires that all applicants for duplicate social security number cards submit sufficient evidence to establish their identity.	No	Mr. Phil Berre Office of Policy and Regulations 6401 Security Bldg. Baltimore, Md. 21235 301-594-7452
Quality Control System; Incentive Adjustment for Quality Control in Federal Financial Participation in the AFDC Program	Policy Significant	Social Security Amendments of 1977 (Pub. L. 95-216)	To provide methods for calculating payments to States to improve quality control system.	Provides for incentive payments to States for reducing their AFDC error rate below 4 percent.	No	Mr. Sean Hurley Office of Family Assistance Rm. 4111 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-247-5111
Aid to Families with Dependent Children; Fiscal Disallowance for Erroneous Payments	Policy Significant	Sec. 403 of the Social Security Act	Policies will affect all States and must be published in regulations in order to be binding.	Provides States administering AFDC programs with a fiscal incentive for reducing AFDC quality control error rates.	No	Mr. Sean Hurley Office of Family Assistance Rm. 4111 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-247-5111
Standards of Personnel Administration (AFDC)	Policy Significant	Sec. 403 of the Social Security Act	To provide personnel standards that States must abide by.	Revise and recodify policies related to financial assistance programs provided under the Social Security Act. It is necessary to recodify those now administered by SSA, formerly administered by the now defunct SRS.	No	Miss Anna M. ... Office of Family Assistance Rm. 4111 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-247-5111

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Disregard of Income Earned by Youth (AFDC)	Technical	Youth Employment and Demonstration Act of 1977 (Pub. L. 95-93)	Rules are needed to exclude income provided by this statute.	Beginning August 5, 1977, earnings received by a youth under Part C of the Comprehensive Employment Act of 1973, shall be disregarded in determining the family's eligibility for, and amount of, any benefit based on need and funded by Federal or federally assisted programs.	No	Mrs. Juanita Henderson Office of Family Assistance Rm. 4111 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-245-0203
Protective, Vendor, and Two-Party Payments for Dependents (AFDC)	Policy Significant	An Act to extend certain Social Security Act provisions and for other purposes (Pub. L. 95-171)	To implement sec. 3 of Pub. L. 95-171 which increases from 10% to 20% the Federal matching funds available to States for the number of individuals for whom protective, vendor, and two-party payments can be made in any month.	Increases from 10 to 20 percent the Federal matching of funds for protective and two-party payments in State AFDC cases. Two-party payment checks require endorsement by the individual and the provider of care.	No	Mr. Clifford Wolbridge Office of Family Assistance Rm. 4111 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-245-6117
Section 1115(b) Demonstration Projects	Policy Significant	Social Security Amendments of 1977 (Pub. L. 95-216)	Regulations will provide policy information needed by States in developing projects, and will inform AFDC recipients and the organizations that represent them of requirements to be met by States and Federal government.	Provide necessary details, instructions, and policy for State implementation of experimental pilot and demonstration projects administered by SSA. The purpose is to improve methods and techniques of providing AFDC payments and to promote work incentive.	No	Ms. Virginia Cohen Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-6112

Title	Classification	Statutory Base	Need to Regulate	Description	PA	Contact
Need and Amount of Assistance; Methods for Budgeting Income (AFDC)	Policy Significant	Sec. 402 of the Social Security Act, as amended	To clarify policies for States to measure income of financial assistance applicants.	Provide a clarification of the budgeting methods which States may use in determining financial eligibility for AFDC payments.	No	Mrs. Constance Katz Office of Family Assistance Rm. 4111 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-245-0922
Factors Specific to AFDC Continued Absence of Parent-Prisoner	Policy Significant	Secretarial commitment made to Senator Eastland	To revise policy so that certain families can receive AFDC payments.	Where parent-prisoner returns home in evenings, and does uncompensated public work by day, child is deprived of support for AFDC purposes.	No	Miss Joyce Fernandez Office of Family Assistance Rm. 4111 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-245-0922
Access to Wage Record Information Under AFDC	Policy Significant	Social Security Amendments of 1977 (Pub. L. 95-216)	These rules state specific requirements to be met by the States in requesting and using wage information.	States must request and use wage information from State unemployment compensation agency or SSA at specified periods; must maintain certain automated files; must maintain certain safeguards; must maintain statistical records.	No	Miss Helen Hamilton Office of Family Assistance Rm. 4111 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-245-1677
Old-Age, Disability Dependents' and Survivors' Insurance Benefits	Policy Significant	Secs. 202, 205, 216, and 223 of the Social Security Act	Incorporates pertinent provisions of P.L. 95-216 and recent court decisions affecting interpretation of certain provisions of the Act.	Describes the requirements for becoming entitled to benefits under Title II of the Act.	No	Mr. Ray Worley Office of Policy and Regulations 6401 Security Bldg. Baltimore, Md. 21235 301-594-5744
Filing Date of Applications and Other Forms	Technical	Secs. 205 and 1102 of the Social Security Act	To provide public with clearer regulations and to implement sec. 332 of the Social Security Amendments of 1977.	Recodifies SSA's requirements for filing applications for RSDHI and SSI benefits.	No	Mr. James McDonald Office of Policy and Regulations 6401 Security Bldg. Baltimore, Md. 21235 301-594-7346

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Maintenance and Revision of Records of Wages and Self-Employment Income	Technical	Secs. 205 and 1112 of the Social Security Act	To provide public with clearer regulations.	Recodifies SSA's rules on earnings records.	No	Mr. James MacDonald Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7316
Employment-Wages-Self-Employment Income	Technical	Title II of the Social Security Act, as amended.	This subpart is being rewritten under "Operation Common Sense."	This regulation will, in simpler terms, define the types of work that are included or excluded for social security purposes.	No	Mr. Dave Smith Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7321
Rights and Benefits Based on Disability and Determination of Disability or Blindness	Policy Significant	Secs. 205, 223, 1102, 1614, and 1631 of the Social Security Act as amended.	These regulations are being rewritten to meet the Department's "Operation Common Sense" standards.	These regulations include the rules for determining disability under Title II and determining disability and blindness under Title XVI of the Social Security Act. These regulations are being rewritten to make them clearer and easier to understand, to remove provisions that are obsolete and rarely applicable, and to examine the policies and consider additions, revisions, and clarifications.	No	Mr. William Ziegler Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7415
Procedures, Payments of Benefits, Determinations, Appeals, and Representation of Parties	Policy Significant	Secs. 205, 1102 and 1631 of the Social Security Act	These subparts are being rewritten under "Operation Common Sense."	Explains the administrative review process and procedures relating to claimant representation.	No	Mr. Phil Ebert Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7452

Title	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Income and Exclusions; Supplemental Security Income Program	Policy Significant	Sec. 1612 of the Social Security Act.	To provide the public with clearer regulations.	Explains how we consider income under the supplemental security income program and the amount of individual benefits.	No	Mr. Sander Weisman Office of Policy and Regulations 6401 Security Blvd. Baltimore, Md. 21235 301-594-7341
Financial Assistance Programs	Policy Significant	Titles I, IV-A, X, XIV, and XVI (AABD) of the Social Security Act	Simplify and reorganize current regulations to reflect 1977 HEW reorganization and related delegations of authority.	Will combine into one Part existing general rules and procedures on administration of financial assistance programs.	No	Mr. Larry Love Office of Family Assistance Rm. 4411 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-245-0932
Date When Assistance Begins	Policy Significant	Sec. 206.10(a) (6) of the Social Security Act	The regulation will bring about consistency and increase uniformity among States and equality for applicants because entitlement to assistance will begin at the same time regardless of residence.	This regulation provides that the date of entitlement of assistance must be the first of the month in which the application is received.	No	Miss Alice Stewart Office of Family Assistance Rm. 4411 Switzer Bldg. 330 C Street, S.W. Washington, D.C. 20201 202-245-1692

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

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Title	Type	Classification	Statutory Base	Need to Regulate	Description	1/ RA	Contact
Grants for Community Mental Health Centers	F	Policy Significant	P.L. 94-63 P.L. 95-83	Required by statute	Establish requirements for grants & applications for grants under the CMC Act. It includes requirements for the development, submission, and approval of State plans.	No	Lindsley Williams OPDA/NIMH 5600 Fishers Lane Rockville, MD. (301) 443-3175
Formula Grants for Drug Abuse Prevention Functions	F	Policy Significant	P.L. 92-255 Section 409	Required by statute	Authorizes formula grants to States to assist them in the preparation & admin. of plans for planning, establishing, conducting, & coordinating projects for the development of more effective drug abuse prevention functions in carrying out projects under and otherwise implementing the plans; and in evaluating the results of implementation plans.	No	Nancy Soulen OD/NIDA 5600 Fishers Lane Rockville, MD. (301) 443-1644
Grants to States for Alcohol Abuse & Alcoholism Prevention, Treatment & Rehabilitation Services & National Alcohol Research Centers (Interdisciplinary research grants)	IF	Policy Significant	P.L. 95-26 & P.L. 94-371	Required by statute	Authorizes the designation of National Alcohol Research Centers for the purpose of long-term interdisciplinary research into alcoholism & other alcohol problems and to make grants to such Centers (not to exceed \$1,000,000 to any one Center in a year).	No	Susan Farrell Legislative Services NIAAA 5600 Fishers Lane Rockville, MD. (301) 443-4375

ALCOHOL, DRUG ABUSE, AND MENTAL HEALTH ADMINISTRATION

Grants to States for Alcohol Abuse and Alcoholism Prevention, Treatment, & Rehabilitation Services & National Alcohol Research Centers (Grants for Uniform Alcoholism & Intoxication)	NPRM	Policy Significant	P.L. 94-371 Section 310	Required by statute	Authorizes special grants to States which have adopted the basic provisions of the Uniform Alcoholism & Intoxication Treatment Act. The Uniform Act requires that alcoholism be viewed as an illness to be treated by community health & social service agencies and that public intoxication be approached as a public health problem rather than a crime.	Susan Farrell Legislative Service, NIAAA 5600 Fishers Lane Rockville, Md. (301) 443-4375
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<u>Title</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>RA</u>	<u>Contact</u>
Specifications for Medical Examinations of Underground Coal Miners -- Amendments to Transfer Criteria (42 CFR Part 37) (Final)	Technical	Sec. 203 of the Federal Coal Mine Health and Safety Act, as amended by the Federal Mine Safety and Health Act of 1977	To implement new policies on transfer criteria.	Revises the medical conditions under which coal miners will be allowed to transfer to less dusty areas of coal mines.	No	Mr. Harlan Amandus, Chief, Examination Processing Branch, Division of Respiratory Disease Studies, National Institute for Occupational Safety and Health, Center for Disease Control, 944 Chestnut Ridge Rd., Morgantown, West Va. 26505, 304-923-7306.
Grants for Advancement of Health in Coal Mining (42 CFR Part 55); Requests for Health Hazard Evaluations (42 CFR Part 85); and Occupational Safety and Health Investigations of Places of Employment (42 CFR Part 85a) (NPRM)	Technical	Federal Mine Safety and Health Act of 1977	To implement changes in NIOSH research responsibilities under the Federal Mine Safety and Health Act of 1977.	Amends existing regulations to reflect research responsibilities given to the National Institute for Occupational Safety and Health, Center for Disease Control, under the Federal Mine Safety and Health Act of 1977.	No	Ms. Mary Flint, Regulations Specialist, National Institute for Safety and Health, Center for Disease Control, 5600 Fishers Lane, Room 8-11, Rockville, Md. 301-443-3745.
Respiratory Protective Devices -- Use of Approved Devices (30 CFR Part 11) (Final)	Technical	Secs. 202 and 204 of the Federal Coal Mine Health and Safety Act, as amended by the Federal Mine Safety and Health Act of 1977	To establish an extended use date for respirators resulting from policy changes.	Extends the period during which use of certain self-contained breathing apparatus approved under the former Bureau of Mines approval program is allowed.	No	Mr. Robert Schutz, Chief, Testing and Certification Branch, Division of Safety Research, National Institute for Occupational Safety and Health, Center for Disease Control, 944 Chestnut Ridge Rd., Morgantown, W. Va. 26505, 304-923-7331.

<u>Title</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>RA</u>	<u>Contact</u>
Grants for Disease Control (42 CFR Part 51b)(Final)	Technical	Secs. 317 and 318 of the Public Health Service Act	To implement changes made by several public laws enacted since existing regulation was issued.	Revises requirements for grants to State and local government agencies to assist them in meeting costs of disease control programs.	No	Dr. J. Donald Millar, Director, Bureau of State Services, Center for Disease Control, Atlanta, Ga. 30333, 404-329-3771, or FTS: 236-3771
Grants for the Prevention of Lead-Based Paint Poisoning (42 CFR Part 91) (Final)	Technical	Secs. 101, 504, and 505 of the Lead-Based Paint Poisoning Prevention Act	To implement changes made by several public laws which amended the Lead-Based Paint Poisoning Prevention Act.	Revises requirements for grants to support programs in prevention of lead-based paint poisoning in children.	No	Dr. Vernon N. Houk, Director, Environ- mental Health Ser- vices Division, Center for Disease Control, Atlanta, Ga. 30333, 404-282-6645 or FTS: 236-6645
Disinsecting of Aircraft (42 CFR Part 71) (NPRM)	Technical	Sec. 361 of the Public Health Service Act	To implement improved procedural changes for disinsecting aircraft.	Eliminates the require- ment for routine dis- insecting of aircraft on certain international flights landing at air- ports under U.S. control.	No	Mr. Joseph F. Giordano, Director, Quarantine Division, Bureau of Epidemiology, Center for Disease Control, Atlanta, Ga. 30333, 404-326-3674, or FTS: 236-3674

<u>Title</u>	<u>Type</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>RA</u>	<u>Contact</u>
Designation of Health Manpower Shortage Areas	F	Policy Significant	P.L. 94-484 Section 332(b)	Required by statute	To establish criteria for the designation of geographic areas, population groups, medical facilities, and other public facilities, in the States, as health manpower shortage areas	No	Richard Lee Bureau of Health Manpower, HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6764
Programs for the Training of Physician Assistants	F	Policy Significant	P.L. 94-484 Section 701(7)	Required by statute	To prescribe requirements for programs for the training of physician assistants	No	Kenneth Moritsugu Bureau of Health Manpower, HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6424
Grants for Physician Assistant Training Programs	F	Policy Significant	P.L. 94-484 Section 783	Required by statute	To govern grants to public or nonprofit private schools of medicine and osteopathy and other public or nonprofit private entities for projects to plan, develop, and operate or maintain programs for the training of physician assistants	No	Kenneth Moritsugu Bureau of Health Manpower, HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6424
Programs for the Training of Expanded Function Dental Auxiliaries	F	Policy Significant	P.L. 94-484 Section 701(8)(b)	Required by statute	To prescribe requirements for programs for the training of expanded function dental auxiliaries	No	Richard Weaver Bureau of Health Manpower, HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6510

1/ RA - Regulatory Analysis

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Grants for Programs for the F Training of Expanded Function Dental Auxiliaries	Policy Significant	P.L. 94-484 Section 783(a)(2)	Required by statute	To govern grants to schools No of dentistry and other public or nonprofit private entities for projects to plan, develop and operate or maintain programs to train dental students in the organization and management of multiple auxiliary dental team practice	Richard Weaver Bureau of Health Man- power/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6510
Criteria for Payment F of Tuition and other Educa- tional Costs	Policy Significant	P.L. 94-484 Section 711	Required by statute	To establish criteria to No be used in determining allowable increases in tuition and other educational costs for which the Secretary is responsible under the National Health Service Corps Scholar- ship Program, the Indian Health Scholarship Program, and Scholar- ships for First-Year Students of Exceptional Financial Need	Donald C. Parks Bureau of Health Man- power/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6560
Health Professions F Student Loans	Policy Significant	P.L. 94-484 Section 740-744	Required by statute	To implement requirement No for health professions schools to be eligible to participate in the health professions student loan program and for individuals to receive repayment of their eligible loans for service in designated health manpower shortage areas.	John Belin Bureau of Health Man- power/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6310
Traineeships for F Students in Schools of Public Health & Other Graduate Public Health Programs	Policy Significant	P.L. 94-484 Section 748	Required by statute	To set forth requirements No for implementing the Secretary's authority to award grants to schools of public health or non- profit private educational entities to support traineeships for students in the graduate education programs of these entities in public health	Merrill DeLong Bureau of Health Man- power/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6824

NOTICES

HEALTH MANPOWER

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Traineeships for Students in F Graduate Programs in Health Administration; Hospital Administration or Health Policy Analysis and Planning at Public or Nonprofit Private Educational Institutions Other than Schools of Public Health	Policy Significant	P.L. 94-484 Section 749	Required by statute	To set forth requirements No for implementing the Secretary's authority to make grants to public or nonprofit private educational entities (excluding schools of public health) to support traineeships in graduate educational programs of such entities in health admin. hospital admin., or health policy analysis and planning.	Merrill DeLong Bureau of Health Man- power Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6824
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National Health Service F Corps Scholarships	Policy Significant	P.L. 94-484 Section 751	Required by statute	The regs are applicable No to the award of scholar- ships under the National Health Service Corps Scholar- ships Program to students receiving academic training in medicine, osteopathy, dentistry, and other health professions in order to assure an adequate supply of trained health professions to improve the delivery of health services in health manpower shortage areas	Gary Wold Bureau of Health Man- power/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782
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Scholarships for First-Year F Students of Exceptional Financial Need	Policy Significant	P.L. 94-484 Section 758	Required by statute	The regulations given the No award of grants to health professions schools to provide scholarships for full-time first- year students of exceptional need	John Belin Bureau of Health Man- power/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6310
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Health Professions Capitation Grants	IF	Policy Significant	P.L. 94-484 Section 770-772	Required by statute	The regs implement the award of annual grants to schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, and podiatry for the support of the education programs of those schools	No	John Westcott Bureau of Health Man- power/HIRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6564
Special Assurances Required of Schools of Medicine Applying for Health Professions Capitation Grants	F	Policy Significant	P.L. 94-484 Section 771(b)(3)	Required by statute	The regs implement certain requirements for schools of medicine to be eligible for capitation grants	No	Dr. Robert Knouss Bureau of Health Man- power/HIRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6424
Area Health Education Centers	F	Policy Significant	P.L. 94-484 Section 781	Required by Statute	The regs are to establish standards & criteria for the award of contracts and the implementation of the programs	No	Dr. Robert Knouss Bureau of Health Man- power/HIRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6418
Grants for Dental Team Practice	F	Policy Significant	P.L. 94-484 Section 783(a)(3)	Required by statute	The purpose of these programs are: to improve the distribution, supply quality, utilization, and efficiency of health personnel in the health services delivery system and to encourage the regionalization of educational responsibilities of health professions schools	No	Richard Weaver Bureau of Health Man- power/HIRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6510
					These regs give grants to schools of dentistry and other public or nonprofit private entities for projects to plan, develop, and operate and maintain programs to train dental students in the organization & management of multiple auxiliary dental team practice	No	

HEALTH RESOURCES ADMINISTRATION
Health Manpower

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Grants for Residency Training in General Internal Medicine or General Pediatrics	F	Policy Significant	P.L. 94-484 Section 784	Required by statute	The regs define requirements for grants for residency programs in general internal medicine or general pediatrics	No	Kenneth Moritsugu Bureau of Health Manpower/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6424
Grants for Training in Family Medicine	F	Policy Significant	P.L. 94-484 Section 786(a)	Required by statute	The regs assure guidelines for grants to assure the institutionalization of family medicine within the schools of medicine & osteopathy, to encourage student's, through the context of educational programs and through the contact with role model family physician and to pursue careers in family medicine	No	Dr. Robert Knouss Bureau of Health Manpower/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6418
Educational Assistance to Individuals from Disadvantaged Backgrounds	F	Policy Significant	P.L. 94-484	Required by statute Sections 787 & 798	To govern grants to provide educational assistance to individuals from disadvantaged backgrounds to undertake training and education to enter the health professions or allied health professions	No	Kinzo Yamamoto Bureau of Health Manpower/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20783 (301) 436-7230
Grants to Schools of Medicine, Dentistry, Public Health, Osteopathy, Optometry, Podiatry, Pharmacy and Veterinary Medicine for Start-Up Assistance	NPRM	Policy Significant	P.L. 94-484 Section 788(a)	Required by statute	To set forth procedures for awarding grants authorized by the Health Professions Education Act of 1976. Specific grants to provide start-up assistance for initiating new schools of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy & podiatry	No	John Westcott Bureau of Health Manpower/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6564

HEALTH RESOURCES ADMINISTRATION
Health Manpower

Health Professions Financial Distress Grants	IF	Policy Significant	P.L. 94-484 Section 788(b)	Required by statute	To implement the awarding No of grants to assist schools of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, pharmacy and public health in meeting their costs of operation, if they are in serious financial distress, or in meeting accreditation requirements, if they have a special need for assistance in meeting these requirements, & to carry out appropriate opera- tional, managerial, and financial reforms	Donald C. Parks Bureau of Health Man- power/HIRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6560
Grants for Training in Emergency Medical Services	F	Policy Significant	P.L. 94-484 Section 789	Required by statute	To set forth requirements No for grants for training programs in emergency medical services	Daniel Masica Bureau of Health Man- power/HIRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6424
Grants for Graduate Pro- grams in Health Administration	F	Policy Significant	P.L. 94-484 Section 791	Required by statute	To implement the Sec's No authority to make grants to public or nonprofit private educational entities (excluding schools of public health) to support the health admin. and health planning graduate educational programs of such entities	Merrill DeLong Bureau of Health Man- power/HIRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6624

Grants to Develop New Graduate Programs or Expand Existing Programs in Public Health	F	Policy Significant	P.L. 94-484 Section 792	Required by statute	To implement the Sec's authority to make grants to schools of public health & other public or non-profit educational entities for projects to develop new graduate programs or to expand existing programs in biostatistics, epidemiology, health admin., health planning, health policy analysis & planning environmental or occupational health and dietetics & nutrition.	No	Merrill DeLong Bureau of Health Manpower/HRA Center Building 3700 East West Hwy. Hyattsville, Md. 20782 (301) 436-6824
Allied Health Special Project Grants & Contracts	NPRM	Policy Significant	P.L. 94-484 Section 796	Required by statute	To implement the Sec's authority to make grants to a. establish regional or State systems to assure that allied health and nursing personnel needs in the area are met by coordinating & managing allied health & nursing education & training among educational institutions; b. establish or improve recruitment, training and retraining programs for allied health personnel, and c. establish career ladders & advancement programs for practicing allied health personnel.	No	Merrill DeLong Bureau of Health Manpower/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6824
Traineeships for Advanced Training of Allied Health Personnel	F	Policy Significant	P.L. 94-484 Section 797	Required by statute	To set forth requirements for grants to public or private non-profit institutions to meet the costs of traineeships for the advanced training of allied health personnel to a. teach in allied health training programs, or b. serve in administrative or supervisory capacities.	No	Merrill DeLong Bureau of Health Manpower/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6824

<u>Title</u>	<u>Type</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>1/ RA</u>	<u>Contact</u>
State Medical Facilities Plan #632	NPRM	Policy Significant	National Health Planning Act & Resources Development Act of 1974 P.L. 93-641	Statute specs requires regs by 1603(a) of PHS Act, Title XVI of the Act	To provide assistance, loan guarantees with interest subsidies for projects for the 1. modernization of medical facilities; 2. construction of new outpatient medical facilities; 3. instruction of new outpatient medical facilities in areas which have experienced recent rapid population growth and 4. conversion of existing medical facilities to provide new health services	No	Robert Soliz Bureau of Health Planning & Resources Development, HRA Center Bldg 3700 East-West Hwy Hyattsville, Md. 20782 (301) 436-6870
National Guidelines for Health Planning	NPRM	Policy Significant	National Health Planning & Resource Development Act P.L. 93-641	Statute spec requires reg Sec. 1501 of PHS Act	The guidelines of National Health Planning goals with respect to health status, health promotion, & disease prevention, and access to services	No	Office of Assistant Administrator on Planning, Evaluation & Legislation, HRA Center Building Room 10-22 3700 East-West Hwy Hyattsville, Md. 20782 (301) 436-7270

1/ RA - Regulatory analysis

HEALTH RESOURCES ADMINISTRATION
Health Planning

Requirements for Provision of Services to Persons Unable to Pay Therefor and Community Service By Assisted Health Care Facilities	NPRM	Policy Significant	Titles VI & XVI of PHS Act	Statute specs require reg	Establishes requirements for health care facilities assisted by DHEW under Title VI & XVI of PHS Act to fulfill certain assurances that they give in their applications for assistance	No	Colin C. Rorrie, Jr. Ph.D. Acting Director Bureau of Health Planning & Resources Development/HRA Center Building 3700 East-West Hwy Hyattsville, Md. 20782 (301) 436-6850
Loans & Loan Guarantees for Medical Facility Construction and Modernization	NPRM	Policy Significant	National Health Planning & Resources Development Act of 1974 P.L. 93-641	Statute spec requires reg	To provide direct loans to public or private non-profit entities and to guarantee loans made by non-Federal lenders to nonprofit private entities. The loans may be used to modernize medical facilities, construct new outpatient medical facilities, construct new inpatient medical facilities in areas which have expanded rapid population growth or convert existing medical facilities for the provision of new health services.	No	Colin C. Rorrie, Jr. Ph.D. Acting Director Bureau of Health Planning & Resources Development/HRA Center Building 3700 East-West Hwy. Hyattsville, Md. 20782 (301) 436-6850

Health Services Administration

<u>Title</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>*RA</u>	<u>Contact</u>
(F) MCH Referral & Svcs for Blind & Disabled Children receiving SSI Benefits	Technical	Sec. 1615(b) SSA	Implementation Provisions Needed	Regs will provide requirements for services to and referral of blind and disabled children who are SSI beneficiaries and are referred by the Social Security Adm.	No	James J. Corrigan Director, Division of Policy Development, BCHS Rm. 6-17, Parklawn Bldg. 5600 Fishers Lane Rockville, MD 20857
(N) Amendments to MCH-CC Svcs Programs Regulations	"	Title V SSA	"	Regs will implement statutory amendments dealing with reasonable costs and will make clarifying administrative changes	"	"
(F) Projects for training home health personnel	"	Sec. 339(b) PHS Act, P.L. 95-626	"	Regs will provide requirements for projects to train personnel of home health agencies to assure high quality of care	"	"
(F) Project grants for family planning svcs	"	Title X, PHS Act amended by P.L. 95-613	"	Regs will make changes required by P.L. 95-613 adding infertility svcs and svcs for adolescents	"	"

*RA = Regulatory Analysis (Yes/No)

Health Services Administration

Title	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
(N) Health & Nutrition Demonstration Projects/Dept. of Commerce	Technical	Sec. 516 of the Regional Development Act of 1975	Implementation Provisions Needed	Regs will establish requirements for multi-county health & nutrition demonstration projects in economic development regions	No	James J. Corrigan Director, Division of Policy Development, ECMS Rm. 6-17, Parklawn Bldg. 5600 Fishers Lane Rockville, MD. 20857
(F) Assignment of NHSC Personnel	"	Sec. 333, PHS Act	"	Regs will establish requirements for assignment of NHSC personnel to health manpower shortage areas	"	"
(F) Genetic Disease Testing and Counseling Services	"	Title XI of the PHS Act	"	Regs will establish requirements for grants to plan, establish and operate genetic disease testing and counseling programs	"	"

*RA = Regulatory Analysis (Yes/No)

National Institutes of Health						
TITLE	CLASSIFIC.	STATUTORY BASE	NEED TO REGULATE	DESCRIPTION	FA	CONTACT
N Proposed PHS Regs. for NIH, NIAMD--Grants for Comprehensive Centers	Policy Significant	Nat'l. Arthritis Act of 1974 (P.L. 93-640) Nat'l. Diabetes Mellitus Research & Educ. Act (P.L. 93-354) Arthritis, Diabetes, & Digestive Diseases Amend. of 1976 (P.L. 94-562)	The statute sets general policy, major important implementing provisions need regulation.	This reg. covers grants by NIAMD for the support of (1) comprehensive centers for research, training, & info. dissemination concerning diabetes & (2) comprehensive centers for research, training, & info. dissemination concerning arthritis.	No	[Arthritis] Dr. Hausman, Spec. Asst. to Assoc. Dir., NIAMD, NIH, Westwood Bldg., Rm. 403, Bethesda, Md. (301) 496-7495 [Diabetes] Dr. Krueger, Spec. Diabetes Prog. Dir., NIAMD, NIH, Westwood Bldg., Rm. 622, Bethesda, Md. (301) 496-7418
F Protection of Human Subjects--Regs. on Research Involving Children	Policy Significant	Nat'l Research Act (P.L. 93-348)	Statute specifically requires appropriate admin. action by Sec. Sec. has decided to issue regs.	Regs. provide additional protections for subjects of DHEW conducted or supported research involving children	No	Dr. Duncan OPRR, NIH, Westwood Bldg., Rm. 304, Bethesda, Md. (301) 496-7005
N Protection of Human Subjects - Compensation of Human Subjects Injured in DHEW Supported Biomedical & Behavioral Research	Policy Significant	Not specifically required by legis., general authority PHS Act Section 301	The Dept. is considering major changes in policy & is requesting public comment on proposal	Regs. would require instit. applying for DHEW grants or contracts in support of research involving human subjects to provide assurances that they have in force mechanisms to provide compensation for indiv. who suffer injury as a result of their participation as subjects.	No	Dr. McCarthy, Dir. OPRR, NIH, Westwood Bldg., Room 304, Bethesda, Md. (301) 496-7005

National Institutes of Health Section E102	Page 2	CONTACT
SUBJECT	CHARACTER	FA
N Protection of Human Subjects - Regs. on Research Involving Those Instit. as Mentally Disabled	Policy Significant	NO
Dr. Marches, CPH, NIH, Westwood Bldg, Rm. 304, Bethesda, Md. (031) 496-7005	State Specimen - 100. Provide any services appropriate to the animal. Acknowledgments for by Sec. The Sec. 100.000 of has decided to suspend. One of has.	NO Dr. Marches, CPH, NIH, Westwood Bldg, Rm. 304, Bethesda, Md. (031) 496-7005
	NO	NO

Office of Health Maintenance Organizations

<u>Title</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>1/ RA</u>	<u>Contact</u>
F Subpart A - Requirements for a Health Maintenance Organization	Policy Significant	Title XIII of the Public Health Service Act, as amended	Law requires the development of regulations	Defines the health benefits, providers of health services, method of payment, organization and operation of the HMO, and special requirements with respect to titles XVIII & XIX members.	No	H. Earle Belue Regulations Office, OHMO, Park Building, Room 3-32, 12420 Parklawn Drive, Rockville, Md. 20857 301-443-4695
F Subpart B - Federal Financial Assistance: General	do	do	do	Sets forth requirements for the award of grants, loans & loan guarantees to public or nonprofit private entities or private entities (other than nonprofit private entities) for feasibility surveys, planning and initial development costs, and initial operation costs.	No	do

1/ RA - Regulatory analysis (Yes/No)

Health Maintenance Organizations

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<u>Title</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>RA^{1/}</u>	<u>Contact</u>
N Subpart C - Grants for Feasibility Surveys	Policy Significant	Title XIII of the Public Health Service Act, as amended	Law requires the development of regulations	Sets forth requirements for conducting surveys to determine the feasibility of developing and operating or expanding the operation of HMOs.	No	H. Earle Belue Regulations Office, OHMO, Park Building, Room 3-32, 12420 Parklawn Drive, Rock- ville, Md. 20857 301-443-4695
N Subpart D - Grants and Loan Guarantees for Planning & Development Costs	do	do	do	Sets forth requirements for planning and initial development projects or for significant expansion of the membership of, or areas served by, qualified HMOs.	No	do
N Subpart E - Loans & Loan Guarantees for Initial Operating Costs	do	do	do	Sets forth requirements for the award of loans and loan guarantees for initial operating costs of HMOs.	No	do
F Subpart F - Qualification of Health Maintenance Organizations	do	do	do	Sets forth requirements for determining whether an entity is a qualified HMO.	No	do

1/ RA - Regulatory analysis (Yes/No)

<u>Title</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>RA</u> ^{1/}	<u>Contact</u>
N Subpart G - Restrictive State Laws & Practices	Policy Significant	Title XIII of the Public Health Service Act, as amended	Law requires the development of regulations	Sets forth requirements prohibiting States from establishing or enforcing any law which would prevent an entity from doing business as an HMO.	No	H. Earle Belue Regulations Office, OHMO, Park Building, Room 3-32, 12420 Parklawn Drive, Rockville, Md. 20857 301-443-4695
N Subpart H - Employees' Health Benefits Plans	do	do	do	Sets forth requirements for certain employers and States and political subdivisions of States to include in any health benefits plans offered to their employees the option of membership in qualified HMOs.	No	do
N Subpart I - Continued Regulation of HMOs and Other Entities	do	do	do	Sets forth continued compliance requirements for qualified HMOs.	No	do

1/ RA = Regulatory analysis (Yes/No)

<u>Title</u>	<u>Classification</u>	<u>Statutory Base</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>RA¹/</u>	<u>Contact</u>
N (New Regulations on training and technical assistance)	Policy Significant	Title XIII of the Public Health Service Act, as amended	Law requires the development of regulations	To set forth requirements for the development of a training and technical assistance program	No	H. Earle Belue Regulations Office, OHMO, Park Building, Room 3-32, 12420 Parklawn Drive, Rockville, Md. 20857 301-443-4695

N (New Regulations on Construction)	do	do	do	To set forth requirements for the award of loans to public and nonprofit HMOs and for the award of loan guarantees to private HMOs for the acquisition and construction of ambulatory health care facilities	No	do
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1/ RA - Regulatory analysis (Yes/No)

HEALTH CARE FINANCING ADMINISTRATION

* RA - Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	RA	Contact
Recodification of Medicare Regulations Dealing with Hospital Insurance Entitlement, Deductible and Coinsurance Requirements.	NPRM	Technical	Secs. 1811, 1812, and 1813 of the Social Security Act.	Department is revising regulations to make them clear, simple, and up-to-date.	This regulation would propose to clarify, simplify, and update existing regulations pertaining to: (1) entitlement to Medicare hospital insurance for certain groups, and (2) the Medicare inpatient hospital coinsurance, the post-hospital extended care coinsurance, and the blood deductible.	No	John E. Russell, Medicare Bureau HCFA, Room 801 East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21205 301-594-8250.
Prospective Reimbursement for Rural Health Clinics	NPRM	Policy Significant	Secs. 1833(a)(3), 1861(v)(1)(A), and 1902(a)(13) of the Social Security Act.	Department is considering new policy and is requesting public comment on proposals.	This regulation would propose prospective methods for reimbursement of rural health clinics under Medicare and Medicaid.	No	Marty Seclis Medicare Bureau, HCFA Room 801 East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21205 301-594-3315

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Beneficiary Liability for Items or Services excluded from Medicare Coverage.	NPRM	Technical	Sec. 1879 of the Social Security Act.	Department is considering change in policy and is requesting public comments on proposals.	This regulation clarifies that a beneficiary can not be found liable for certain non-covered items or services if he has not been notified in writing that the items or services in question are excluded from medicare coverage.	NO	Mendel S. Kaufman Medicare Bureau 127 East High Rise 6401 Security Blvd Balt. Md. 21235 301-594-9232
Prohibition Against Assignment of Claims	Final	Policy Significant	Secs. 1102, 1814, 1815, 1835, 1870, 1871 of the Social Security Act.	Recent changes in law specifically require regulation.	This regulation specifies criteria and procedures to prohibit providers, physicians, and other suppliers, with certain exceptions, from assigning claims for reimbursement of services to other persons for collection. It also imposes administrative sanctions against providers, physicians, and suppliers who violate this prohibition.	No	John T. Russell Medicare Bureau 1-H-5 Low Rise Bldg. 6401 Security Blvd Balt. MD. 21235 301-594-9595

HCEA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Payments to Foreign Hospitals for Inpatient Services.	NPRM	Technical	Secs. 1814(f)(3) and (4) and 1861(v) of the Social Security Act.	Department is considering changes in policy and is requesting public comment on proposal.	This regulation would propose procedures and criteria for Medicare payments for covered inpatient services furnished to beneficiaries by foreign hospitals.	No	Hugh J. McConville Medicare Bureau 412 East High Rise 6401 Security Blvd. Baltimore, Maryland 21235 - 301-594-9430
Medicare Payments to Indian Health Service (IHS) Hospitals	Final	Policy Significant	Sec. 1880 of the Social Security Act	Law in general terms: implementing instructions needed.	This regulation provides for Medicare payments for services rendered in IHS Hospitals and skilled nursing facilities.	No	John B. Russell Medicare Bureau 1-H-5 Low Rise Bldg. 6401 Security Blvd. Baltimore, Maryland 301-594-8260
Health Maintenance Organization (HMO) Contracts	Final	Technical	Sec. 1876(a)(1) and (j) of the Social Security Act.	Law specifically requires regulations.	This regulation establishes requirements for contracts between the Secretary and HMO's participating in the Medicare program. It governs contract application procedures, denials, terminations, renewals, effective dates, responsibilities of the HMO, rights of the Secretary to inspect and audit the HMO, and changes in ownership of the HMO.	No	Marinos T. Svolos Medicare Bureau 106 East High Rise 6401 Security Blvd. Baltimore, Md. 21235 301-594-9314
Reimbursement-Prepaid Health Plans	Final with comment.	Policy Significant	Secs. 1802 and 1833(a)(1)(A) of the Act.	Law specifically requires regulations.	This regulation would establish principles of reimbursement for health care prepayment plans similar to those applicable to health maintenance organizations.	No	Marinos T. Svolos Medicare Bureau 106 East High Rise 6401 Security Blvd. Baltimore, Md. 21235 301-594-9314

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Elimination of the Combination Method of Apportionment for Providers.	Final	Technical	Sec. 1861(v)(1)(A) of the Social Security Act	Department is considering changes in policy and has requested public comments on the proposed regulation.	This regulation modifies the methodology used to determine a provider's reimbursable costs for services furnished to beneficiaries	No	Hugh J. McConville Medicare Bureau 412 East High Rise 6401 Security Blvd Baltimore, Md. 21235 301-594-9430
Payment for Injections and Negotiated Rates for Laboratory Services.	NPRM	Policy Significant	Secs. 1833(a)(1)(D) and 1833(h) of the Social Security Act	Law specifically requires regulation.	This regulation sets a reasonable charge for injection services and for certain diagnostic laboratory tests.	No	Paul Riesel Medicare Bureau 190 East High Rise 6401 Security Blvd Balt. Md. 21235 301-594-9595
Reopening Reimbursement Determinations.	NPRM	Technical	Sec. 1861(v)(1)(A)(ii) of the Social Security Act.	Law in general terms; implementing instructions needed.	This regulation would propose criteria for reopening certain provider cost reimbursement determinations.	No	Mendel S. Kaufman Medicare Bureau 127 East High Rise 6401 Security Blvd Balt. Md. 21235 301-594-9232
Reduction in Grace Period Days Where Payment is Made for Certain Non-reimbursable Expenses	Final	Technical	Secs. 1153(d) and 1879 of the Social Security Act.	Law specifically requires regulation.	This regulation limits reimbursement to only 1 additional day of service after a Medicare beneficiary or provider receives notice that the services are excluded from Medicare coverage. Payments will be made for up to 2 additional days if time is needed to arrange postdischarge care.	No	Mendel S. Kaufman Medicare Bureau 127 East High Rise 6401 Security Blvd Balt. Md. 21235 301-594-9232

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Transactions: Provider Capital Stock.	Final	Policy Significant	Sec. 1102 of the Social Security Act.	Department is considering changes in policy for the treatment of depreciation and has requested public comments on the proposed regulation.	This regulation establishes rules for purposes of calculating medicare reimbursement, including cases of transfers of corporate stock, mergers and consolidations.	NO	William J. Geller, Medicare Bureau, HCFA, RM-412, EHR., 6401 Security Blvd., Baltimore, MD. 21235, 301-594-9820
Collection of Overpayments to Providers	Final	Policy Significant	Secs. 1102, 1815, 1870, and 1871 of the Social Security Act and Federal Claims Collection Act of 1966.	Department is considering changes in policy and has requested public comments on the proposed regulation.	This regulation authorizes the Secretary or his designee to compromise claims or to suspend or terminate collection action on claims arising from Medicare overpayments.	NO	Raymond M. Sillitp, Medicare Bureau, HCFA, Rm. B-2 Govt Oak Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-9319
Retrospective Adjustment in Payments to Providers in Case of Erroneous Reimbursement Methods.	Final	Technical	Sec. 1861(v)(1)(A)(ii) of the Social Security Act.	Department is considering changes in policy and has requested public comments on the proposed regulation.	This regulation authorizes the Secretary to adjust payment made to Medicare providers under an erroneous method for determining costs.	NO	Lawrence J. Ageloff, Medicare Bureau, HCFA, RM-45 EHR Bldg., 6401 Security Blvd., Baltimore, MD. 21235 301-594-6719
Allowance for Depreciation Based on Asset Costs.	Final	Policy Significant	Secs. 1814(b), 1815, and 1861(v)(1) of the Social Security Act.	Law in general terms; implementing instruction needed.	This regulation clarifies and expands existing policy for determining the useful lives of depreciable assets used in the provision of patient care. The regulation also provides for the proper treatment of gains and losses on the disposal of assets.	NO	Hugh H. McConville, Medicare Bureau, HCFA Room 412 East High Rise 6401 Security Blvd. Baltimore, Md. 21235 301-594-9595.

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Definition of Radiological Services.	NPRM	Policy Significant	Sec. 1833(a)(1) (B) of the Social Security Act.	Department is considering a new policy that requires modified regulations and would request public comments on the proposal.	This regulation broadens the scope of the radiology services for which Medicare will be reimburse at 100 pct. of reasonable charges.	No	Paul Riesel, Medicare Bureau, HCFA, Room 412 East High Rise Bldg., Baltimore, Md. 21235, 301-594-9595
Reimbursement: Internship and Residency Programs.	NPRM	Policy Significant	Secs. 1102, 1861 (b), 1861(v)(1) and 1903 of the Social Security Act.	Department is considering change in policy and is requesting public comment on proposal.	This regulation would propose to eliminate the requirement that a provider's costs be reduced by the amounts of certain grants and donations when calculating the reimbursement allowed under Medicare, Medicaid or the maternal and child health program. These grants and donations are those which support approved internship and residency programs in family practice, general medicine, and general pediatrics.	No	William J. Goeller, Bureau, HCFA, Room 412, East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235, 301-594-9820
Payment for Services of Physicians in Teaching Hospitals, for Physician Costs to Hospitals and Medical Schools and for Volunteer Services.	NPRM	Policy Significant	Secs. 1842(b)(3) and 1861(b)(7)(A) of the Social Security Act.	Law specifically requires regulation.	This regulation proposes criteria under which Medicare would pay reasonable charges for physician services in teaching hospitals or would reimburse teaching hospitals for the reasonable costs of physician services. It would also specify the manner and extent to which payments would be made for certain medical school costs and for services of volunteer physicians	No	Paul Riesel, Medicare Bureau, HCFA, Room 190, East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235, 301-594-9595

HCFR REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
End-Stage Renal Disease Services. Reimbursement for Organ Procurement, Histocompatibility Testing, and Home Dialysis Equipment	Final with comment period	Policy Significant	Sec. 1102, 1814 (b), 1833, 1861 (v)(1), 1871, and 1881 of the Social Security Act.	Recent changes in law specifically require regulation.	The regulation will provide for 100 percent reimbursement for cost of furnishing and maintaining home dialysis equipment, for services furnished by an organ procurement agency or histocompatibility laboratory to obtain and analyze kidneys for transplantation.	No	Hugh McConville Medicare Bureau, HCFA Room 412 East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-9430
End-Stage Renal Disease: Target Rate Reimbursement	NPRM	Policy Significant	Sec. 1881 of the Social Security Act.	Recent changes in law specifically require regulation.	The regulation would establish an optional target rate reimbursement method for providers and facilities approved to furnish home dialysis supplies and equipment, and home self-dialysis support services to Medicare patients.	No	Hugh McConville Medicare Bureau, HCFA Room 412 East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-9430
Incentive Reimbursement for End-Stage Renal Disease (ESRD) Services.	NPRM	Policy Significant	Sec. 1881 of the Social Security Act.	Law in general terms, implementing instructions needed.	The regulation would propose methods and procedures for reimbursing providers and facilities for outpatient renal dialysis services provided to ESRD patients.	No	Hugh McConville Medicare Bureau, HCFA Room 412 East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-9430
Review of Provider Reimbursement Board Decisions	NPRM	Policy Significant	Secs. 1102 and 1878(f)(1) of the Social Security Act.	Law in general terms, implementing instructions needed.	This proposal would specify the criteria and procedures for review of Provider Reimbursement Review Board decisions by the Administrator, HCFA. The amendment is necessary to resolve current confusion concerning the procedures and to comply with the Administrative Procedures Act.	No	Erica L. Gosnell Office of Attorney- Advisor, HCFA Room G-50 Altmeier Bldg. 6401 Security Blvd. Baltimore, Md. 21235 301-594-5132

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Medicare Entitlement Based on End Stage Renal Disease (ESRD)	Revised Final	Technical	Secs. 226A and 1881 of the Social Security Act.,	Recent changes in law specifically require regulation.	The regulations will extend Medicare coverage to ESRD patients who are 65 years of age or older permit coverage to begin earlier for patients who receive renal transplants or training in self dialysis and lengthen the duration of Medicare payments following a renal transplant. Comments received in response to publication of final regulation on September 28, 1978, are being considered to determine if revisions are needed.	NO	John Russell Medicare Bureau HCFA, RM-1-H-5, East High Rise Bldg., Baltimore, MD., 21235 301-594-8260
End Stage Renal Disease (ESRD) Services Networks.	NPRM	Policy Significant	Sec. 1881 of the Social Security Act.	Recent changes in law require implementing instructions.	The proposed regulation would require at least one patient representative on each network coordinating council and executive committee. It would also require disclosure of information when network members or their relatives own or have controlling interest in a renal dialysis facility, or have received compensation in excess of reasonable costs for any services or goods.	NO	Cor Denton, Medicare Bureau, HCFA, RM 1-0-3 East Low Rise Bldg., 6401 Security Blvd., Baltimore, MD, 21235 301-594-9029

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Cost to Related Organizations	NPRM	Policy Significant	Secs. 1102 and 1861(v)(1)(A) of the Social Security Act.	Department is considering change in policy and is requesting public comments on proposals.	These regulations would clarify existing policy on Medicare reimbursement for services, facilities, and supplies furnished to a provider of services by an organization related to a provider by common ownership or control. They will also codify policy now in program instructions in manuals. This revision supplements the NPRM published on August 17, 1978 on reimbursement to shared services organizations.	No	Bruce Oliver Medicare Bureau, HCFA, Room 440, Rise Bldg., East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-8224
Membership on Carrier Boards	NPRM	Policy Significant	Secs. 1102, 1816 (b), 1842(f)(1), 1871, and 1902 (a)(4) of the Social Security Act.	Department is considering change in policy and is requesting public comments on proposals.	Comments received in response to a notice of intent to limit the number of physicians or other persons with financial interest on the boards of directors of fiscal intermediaries and carriers, published on June 23, 1978, are being evaluated. The regulation would be designed to eliminate potential conflicts of interest.	No	Marty Kappert Medicare Bureau, HCFA, Room 256, Rise Bldg., East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-9415
Coverage of End-Stage Renal Disease (ESRD) Services.	Revised Final	Policy Significant	Sec. 1881 of the Social Security Act.	Recent changes in law specifically require regulation.	This regulation defines the specific ESRD services that will be covered and the conditions under which these services must be provided to be reimbursed under Medicare. Comments received in response to publication of final regulation on October 24, 1978 are being considered to determine if revisions are necessary.	No	Hugh McConville Medicare Bureau, HCFA, Room 412 East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-9430

* RA = Regulatory Analysis
(Yes/No)

HCEA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Durable Medical Equipment	NPRM	Policy Significant	Sec. 1833(f) of the Social Security Act.	Recent changes in law specifically require regulation.	This regulation would propose criteria for requiring purchase (on a lease purchase or other basis) of an item of durable medical equipment when purchase would be less costly or more practical than rental. Procedures are proposed for waiving the purchase requirement and co-insurance in specific circumstances.	No	Paul Riesel, Medicare Bureau, HCFA, Room 190 East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-9595
Amendments-Fiscal Intermediaries.	Final	Policy Significant	Secs. 1816 and 1842 of the Social Security Act.	Recent changes in law specifically require regulation.	This regulation recodifies existing regulations dealing with contracts between the Secretary and Medicare fiscal intermediaries. It also specifies standards, criteria, and procedures for determining the efficiency and effectiveness of those intermediaries and for assigning providers to intermediaries.	No	John W. Jansek, Medicare Bureau, HCFA, Room 209, East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-8431
Reopening and Revision Claims Determination Under the Medicare Program.	NPRM	Policy Significant	Secs. 1842(b) (3) and (4) and 1869 of the Social Security Act.	Department is considering change in policy and is requesting public comment on proposals.	This regulation would propose to revise and expand the criteria governing the reopening and revision of Medicare benefit payment determinations.	No	John B. Russell, Medicare Bureau, HCFA, Room 1-R-5, Low Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-8260
Conformance with Professional Standards Review Organization (PSRO) Regulations.	Final with comment period	Technical	Secs. 1152(e), 1154(b), 1155(a)(1), 1158, 1164, and 1165 of the Social Security Act.	Law in general terms; implementing instructions needed.	These regulations will conform Medicare rules to PSRO regulations which govern responsibilities of PSRO's for determining the medical necessity, quality, and appropriateness of health services for which payment may be made under Medicare.	No	Marinos T. Svolos, Medicare Bureau, HCFA, Room 106, East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235 301-594-9314.

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Reasonable Charges-Medical Supplies.	Revised Final	Policy Significant	Secs. 1833(g) and 1842(b)(3) of the Social Security Act.	Department has set new policy and has requested public comment on proposals.	This regulation limits reimbursement under the Medicare and Medicaid programs for medical services, supplies, and equipment that do not generally vary significantly in quality from 1 supplier to another. Payments will be based on the lowest charge levels at which the services are widely and consistently available in a locality. Comments are being considered on final regulation published with comment period on July 26, 1978	NO	Paul Riesel, Medicare Bureau, HCFA Room 190, East High Rise 6401 Security Blvd. Baltimore, Md. 21235 301-594-9595
Cost to Related Organizations: Shared Services	Or Final	Policy Significant	Sec. 1861(v)(1) (A) of the Social Security Act	Department is considering new policy and is requesting public comment on proposals.	The regulation would limit the amount a provider may be reimbursed on the basis of charges when it obtains services from facilities, and supplies from an organization related to the provider by common ownership or control.		Bruce Oliver Medicare Bureau, HCFA Room 440 East High Rise 6401 Security Blvd. Baltimore, Md. 21235 301-594-8224

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Suspension of Physicians and Other Practitioners	Final	Policy Significant	Secs. 1102, 1862, 1866, 1871, and 1902 of the Social Security Act.	Recent changes in law require implementing instructions.	This regulation establishes criteria and procedures for suspending physicians and other practitioners from the Medicaid or Medicare programs after they have been convicted of a crime related to either program.	No	Irwin Cohen, Office of Program Integrity, HCFA, Room 588 East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235, 301-594-5415
Disclosure of Information and Access to Provider Records (Companion of HDS and PHS regulations)	Informal	Policy Significant	Secs. 1124, 1126, 1861, 1866, 1902, 1903, and 2002 of the Social Security Act.	Recent changes in law require implementing instructions.	This regulation specifies criteria and procedures for disclosure by providers of certain information about owners, employees, subcontractors, and suppliers. The regulation also specifies criteria for HEW access to Medicaid provider records.	No	Irwin Cohen, Office of Program Integrity, HCFA, Room 588, East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235, 301-594-5415
Uniform Reporting	MPM	Policy Significant	Secs. 1121, 1861, and 1902 of the Social Security Act.	Recent changes in law require implementing instructions.	Six regulations propose uniform systems that medical institutions which receive payments under the Medicare and Medicaid programs must use for reporting such items as cost of operation, volume of services, reimbursement rates, capital assets, and discharge and bill data.	*	James M. Kaple, Office of Policy, Planning and Research, HCFA, Room 5074, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-245-0697

*Under
Consideration

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Requirements for End Stage Renal Disease (ESRD) Self-Dialysis Units and Services	Revised Final	Policy Significant	Sec. 1881 of the Social Security Act.	Recent changes in law require implementing instructions.	The regulations establish requirements that self-dialysis facilities and units must meet to be approved to provide services to ESRD patients under Medicare. Comments received in response to final regulations published on October 19, 1978, are being considered to determine whether revision is needed.	No	Janet Harryman, Health Standards and Quality Bureau Bureau, HCFA, Room 301, East High Rise Bldg., 6401 Security Bldg., Baltimore, Md. 21235, 301- 594-9712
Conditions for Participation: skilled nursing facilities and intermediate care facilities	NPRM	Policy Significant	Secs. 1102, 1814, 1832, 1833, 1842, 1861, 1862, 1863, 1865, 1866, 1870, and 1871 of the Social Security Act.	Department is considering major changes in policy and is requesting public comment.	The proposed regulation would recodify, revise, and consolidate present regulations governing participation of skilled nursing and intermediate care facilities.	No	Janice Caldwell, Health Standards and Quality Bureau, HCFA, Room 12A-44, Parklawn Bldg., 5600 Fishers Lane Rockville, Md. 20857, 301-443-3346.
Sprinkler Systems for Long Term Care Facilities	NPRM	Policy Significant	Sec. 1102 of the Social Security Act	Department is considering changes in policy and is requesting public comments	Comments are being evaluated that were received in response to NOI issued on November 14, 1978, that requested comments on alternatives for requiring fire extinguishment systems in all skilled nursing and intermediate care facilities.	No	Janice Caldwell, Health Standards and Quality Bureau, HCFA, Room 12A-46, Parklawn Bldg., Rockville, Md. 20857, 301-443-3346

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Professional Standards Review Organizations (PSRO's) Reconsiderations and Appeals	NPRM	Policy Significant	Sec. 1159(a) of the Social Security Act.	Law in general term; implementing instructions needed.	This regulation would propose procedures for the reconsideration of the determinations of PSRO's and the review of such reconsiderations by statewide professional standards review councils.	No	Tony Tirone, Health Standards and Quality Bureau, HCFA, Room 5323, Switzer Bldg., S.W., 330 C Street, Washington, D.C. 20201; 202-245-2185.
Conditions for Renal Transplants	Final	Policy Significant	Secs. 226(g) and 1102 of the Social Security Act.	Department has set new policy which requires modified regulations.	This regulation exempts pediatric hospitals from certain renal transplant center certification requirements. Comments received in response to final regulation published with comment period on Aug. 11, 1978 are being considered to determine whether revision is needed.	No	Janet Hartyma, Health Standards and Quality Bureau, HCFA, Room 301, East High Rise Bldg., 6401 Security Blvd., Baltimore, MD 21235 301-594-9712.
Histocompatibility Testing	NPRM	Technical	Sec. 1861(a)(10) of the Social Security Act.	Department is considering changes in policy and is requesting public comments on proposals.	These regulations would clarify definitions and techniques for histocompatibility testing carried out under the Medicare program for individuals with end-stage renal disease to determine if a donor kidney will be compatible with recipient.	No	Charlotte Conaway, Health Standards and Quality Bureau, HCFA, Room 324, East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235, 301-594-7761.
Avocation of Electrical Requirements	Final	Technical	Sec. 226(g) of the Social Security Act.	Department has set new policy that requires modified regulations.	This regulation revokes requirements for emergency generators and ground fault interrupters in freestanding end-stage renal disease centers because they have proven unnecessary.	No	Robert Moore, Health Standards and Quality Bureau, HCFA, Room 301, East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235, 301-594-9731.

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Chiropractors, Physical Therapists, and Speech Pathologists Technical Amendments.	Final with comment period	Technical	Secs. 1861(r) and 1861(s) of the Social Security Act.	Department is considering new policy and requesting public comment on the regulation	The regulations would conform definitions of physical therapist assistant and speech pathologist to other related regulations; clarify requirements for outpatient physical therapy and speech pathology services provided at a home health agency; and provide independent physical therapists and chiropractors the same appeal procedures currently available to other providers.	No	Stefan Miller, Health Standards and Quality Bureau HCFA, Room 349, East High Rise Bldg., 6401 Security Blvd Baltimore, Md. 21235, 301-594-9746.
Validation of Accreditation Surveys of Hospitals	NPRM	Policy Significant	Secs. 1102, 1861(b), 1864, 1865, and 1871 of the Social Security Act.	Department is considering changes in policy and is requesting public comment on proposals.	The proposed regulation would authorize surveys to validate whether Medicare hospitals that have been accredited by the Joint Commission on Accreditation of Hospitals or the American Osteopathic Association are meeting the specific Medicare statutory and regulatory conditions for participation	No	Janet Hartyman, Health Standards and Quality Bureau HCFA, Room 301, East High Rise Bldg., 6401 Security Blvd Baltimore, Md. 21235, 301-594-9712

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Professional Standards Review Organization (PSRO) Review of Intermediate Care Facilities	NPRM	Policy Significant	Sec. 1135(a) of the Social Security Act.	Recent changes in law require implementing instructions.	These regulations would propose conditions under which PSRO's would assume responsibility from State Medicaid agencies for reviewing the quality and necessity of health care services provided in intermediate care facilities and intermediate care facilities for the mentally retarded.	No	Jane Tebbutt Health Standards and Quality Bureau HCFA, Room 16A-27 Parklawn Bldg., 5600 Fishers Lane Rockville, Md., 20857, 301-443-4985.
Review of Liability	NPRM	Policy Significant	Sec. 1158 of the Social Security Act.	Law in general terms; implementing instructions needed.	This regulation would propose criteria for determining when a patient or provider would not be held liable for knowing that the services were medically unnecessary or otherwise inappropriate before the services have been disapproved by PSRO's for Medicare and Medicaid payments.	No	Jane Tebbutt, Health Standards and Quality Bureau HCFA, Room 16A-27 Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4985
Redesignation of Professional Standards Review Organization (PSRO) in Illinois	Final	Technical	Secs. 1102 and 1152 of the Social Security Act.	Department has set new policy that requires modified regulations.	This regulation redesignates PSRO areas in Illinois in order to transfer Madison and Clinton Counties (currently in Area VIII) and McConough County (currently in Area V) to Area VII.	No	Steven A. Suard Health Standards and Quality Bureau, HCFA Room 13A-19 Parklawn Building 5600 Fishers Lane Rockville, Md. 20857 301/443-6477

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Procedures for Hospital Review by Professional Standards Review Organization (PSRO)	Final	Policy Significant	Secs. 1155 and 1156 of the Social Security Act.	Law in general terms; implementing instructions needed.	These regulations would establish procedures for: (1) PSRO review of hospital services for which payment may be made under the Social Security Act; (2) PSRO delegation of review functions to hospitals; and (3) development and use of norms, criteria, and standards for hospital review.	No	Geraldine Ellis, Health Standards and Quality Bureau, HCFA, Room 16A-27, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857, 301-443-4654.
Confidentiality and Disclosure of Information of Professional Standards Review Organizations (PSRO's)	NPRM	Policy Significant	Sec. 1166(a) of the Social Security Act.	Law in general terms; implementing instructions needed.	These regulations would propose criteria to govern the acquisition, protection, and disclosure of information obtained or generated by PSRO's.	No	Lois Eberhard, Health Standards and Quality Bureau, HCFA, Room 5121, Switzer Bldg., 330 C St., S. W., Washington, D. C. 20201, 202-245-8712

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Extension of Proficiency Exams for Clinical Laboratory Personnel	Final	Policy Significant	Secs. 1861(s)(11) and 1871 of the Social Security Act.	Department is considering new policy which requires new or modified regulations.	This regulation provides for re-opening proficiency examinations for clinical laboratory personnel (technologist, cytotechnologist, and technicians). It eliminates a restriction which prohibited examinations from being given after Dec. 31, 1977.	No	Martha Chetani, Health Standards and Quality Bureau, HCFA, Room 324, East High Rise Bldg., 6401 Security Blvd., Baltimore, Md. 21235, 301-594-7930
Professional Standards Review Organizations (PSRO) Sanctions on Providers and Practitioners	Final	Policy Significant	Sec. 1160 of the Social Security Act.	Law in general terms; implementing instructions needed.	This regulation specifies criteria for invoking sanctions against a health care practitioner or provider who claims payment for services which are medically unnecessary or inappropriate do not meet professionally recognized standards, or are not adequately documented as to medical necessity or quality.	No	Tony Tirone, Health Standards and Quality Bureau, HCFA, Room 5321, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-245-2196.
Funding of Hospital Review by Professional Standards Review Organizations (PSRO's)	NPRM	Policy Significant	Sec. 1861(a) of the Social Security Act.	Law in general terms; implementing instructions needed.	This regulation would propose procedures for reimbursing the cost of hospital reviews by PSRO's.	No	Jack Allen, Health Standards and Quality Bureau, HCFA, Room 5321, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-245-2196

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Safeguards for Patient Funds	Final	Policy Significant	Sec. 1121(m)(1) of the Social Security Act	Recent changes in law require implementing instructions.	This regulation expands standards for protection of personal funds of Medicare and Medicaid patients in skilled nursing facilities and intermediate care facilities.	No	Benjamin Lett, Health Standards and Quality Bureau, HCFA, Room 12A-46, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857, 301-443-2420
Termination of Federal Financial Participation in Long-Term Care Facilities	Final	Policy Significant	Secs. 1102 and 1903 of the Social Security Act.	Department is considering new policy which requires new or modified regulations.	This regulation clarifies the circumstances under which Federal funding will no longer be available to skilled nursing facilities or intermediate care facilities under the Medicaid program. It also covers reconsiderations and administrative hearing provisions in State Medicaid plans for those providers whose certification has been terminated.	No	James Conrad, Health Standards and Quality Bureau, HCFA, Room 303, East High Rise Bldg. 6401 Security Blvd. Baltimore, Md. 21235, 301-594-9743
Conditions of Participation for Hospitals under the Medicare Program	Final	Policy Significant	Sec. 1861(c)(9) of the Social Security Act.	Department is considering significant change in policy and is requesting public comment on proposals.	This regulation would propose revised conditions for participation in Medicare for hospitals. It would simplify the language, and update the requirements to reflect changes in legislation and advances in technology.	No	Mike Spodnik, Health Standards and Quality Bureau, HCFA, Room 9A-45, Parklawn Bldg., 5600 Fisher Lane, Rockville, Md. 20857, 301-443-4935

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Utilization Review	NPRM	Policy Significant	Sec. 1903(g)(1)(c) of the Social Security Act.	Law in general terms; implementing instructions needed.	The regulation would propose revised requirements and procedures for utilization review in health care institutions participating in Medicare and Medicaid programs. These regulations would provide for review of the medical necessity of admissions and continued stays, the appropriateness and quality of patient care, and the effectiveness of utilization of facility and health professional services.	No	Jane Tebbutt, Health Standards and Quality Bureau, HCFA, Room 16A-27, Parklawn Bldg., 5600 Fishers Lane, Rockville, Md. 20857, 301-423-4985
Separate Cost Entities and Distinct Parts	NPRM	Technical	Sec. 1861(e), (f), (g), and (i) of the Social Security Act.	Department is considering major changes in policy and is requesting comments on proposals.	This regulation would propose conditions under which a component which provides typically unskilled care within a hospital may be certified as a provider distinct from the hospital.	No	James Conz, Health Standards and Quality Bureau, HCFA, Room 305, East High Rise Bldg. 6401 Security Blvd. Baltimore, Md. 21235, 301-594-7942

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Public Notice of Changes in the Method or Level of Reimbursement for Health Care Services	Final	Policy Significant	Secs. 1102, 1903(a)(4), and 1902(a)(30) of the Social Security Act.	Department implementing new policy in support of anti-inflation effort.	This regulation requires State Medicaid agencies to give 60 days public notice of any proposed change in the method or level of reimbursement for services produced under the Medicaid program. The intent is to allow the Federal Government in cooperation with the States and the public to evaluate the justification for the changes.	No	Milton Dezube, Medicaid Bureau, HCFA, Room 2631, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-243-8990
Intermediate Care Facilities/Skilled Nursing Facilities Reimbursement Revisions	YPRM	Policy Significant	Sec. 1102 of the Social Security Act.	Law in general terms; implementing instructions needed	This regulation would propose to clarify and expand requirements for State methods of payment for skilled nursing and intermediate care facility services under State Medicaid programs.	No	Milton Dezube Medicaid Bureau, HCFA, Room 2631, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-243-8990
Redesignation of Medicaid Administrative Requirements	Final with comment period	Technical	Sec. 1102 of the Social Security Act.	Redesignation needed to implement organizational changes.	Certain administrative requirements for the Medicaid program are being rewritten to make them more clear and renumbered to move them from 45 CFR Parts 205, 206, and 208 to 42 CFR Chapter IV, Subchapter C, which contains the other Medicaid regulations.	No	Dan Metzger, Medicaid Bureau, HCFA, Room 2618, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-243-0722
Family Planning	Final with comment period	Policy Significant	Secs. 1903(a)(5) and 1905(a)(4)(C) of the Social Security Act.	Department is considering new policy and is requesting public comment on regulation.	This regulation will specify Federal requirements for provision of family planning services under Medicaid. It will specify the types and ranges of services that may be included by the States.	No	Barbara Stultz Medicaid Bureau, HCFA Room 2618 Switzer Building 330 C Street, S.W. Washington, D.C. 20201 202-243-9263

NOTICES

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* RA = Regulatory Analysis
(Yes/No)

HCFE REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contact
Medicaid Utilization Control	Final	Policy Significant	Secs. 1102 and 1903(g) of the Social Security Act	Recent changes in law specifically require regulation.	This regulation specifies requirements for control over the utilization of inpatient institutional services in the Medicaid program. The regulation also specifies requirements States must meet to avoid reduced Federal matching; the content of quarterly reports; and the methods for making reductions of Federal matching.	No	Phil Otto, Medicaid Bureau, HCFE, Room 3513, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-245-6557
Timely Claims Processing	Final	Policy Significant	Sec. 1102 of the Social Security Act	Recent changes in law specifically require regulation.	This regulation adds new requirements for timely processing of certain health care providers' claims under Medicaid for payment (90 percent within 30 days of receipt, 99 percent within 90 days). The new requirements are intended to improve program management, increase provider participation in Medicaid, and aid in preventing and detecting fraud.	No	Milton Dezuze, Medicaid Bureau, HCFE, Room 2628, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-245-8990

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*24	Contact
Assignment of Benefits; Collection of Medical Support Payments	Final	Policy Significant	Sec. 1102 of the Social Security Act	Recent changes in law require implementing instructions.	These regulations specify new procedures (1) allowing States to require Medicaid recipients to assign their right to private insurance payments or other medical support to the States; (2) authorizing child support enforcement agencies to assist in collection of medical support; and (3) prohibiting Federal payment to any Medicaid recipient who is covered by a private health insurance policy having a Medicaid exclusion clause.	No	Arthur Muller, Medicaid Bureau, HCFA, Room 3065, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-245-0384
Medicaid Quality Control Fiscal Disallowances	Final	Policy Significant	Sec. 1102 of the Social Security Act.	Department has set new policy that requires new or modified regulations.	This regulation provides for a reduction in Federal financial participation for erroneous Medicaid expenditures to insure proper use of Federal and State Medicaid funds.	No	Victor Kugajevsky, Medicaid Bureau, HCFA, Room 3064, 330 C St., S.W., Washington, D.C. 20201, 202-245-3346
Medicaid Quality Control Systems: Expansion of Information Requirements.	Revised Final	Policy Significant	Secs. 1102 and 1902(a)(4) of the Social Security Act.	Department has set new policy that requires new or modified regulations.	These regulations expand the Medicaid quality control system for eligibility review to include the extent to which payments for Medicaid services: (a) took account of available medical insurance; and (b) were based on complete and accurate claims. Comments received in response to regulation published on March 31, 1978 are being considered to determine whether a revised regulation should be published.	No	Victor Kugajevsky, Medicaid Bureau, HCFA, Room 3064, 330 C St., S.W., Washington, D.C. 20201, 202-245-3846.

* RA = Regulatory Analysis
(Yes/No)

HCFA REGULATION AGENDA

Title	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	*RA	Contract
State Residency Requirements for Medicaid	Final	Policy Significant	Sec. 1102 of the Social Security Act.	Department is considering changes in policy and has requested public comments on proposal.	This regulation establishes new criteria for determining State residency of applicants for Medicaid benefits.	No	Elizabeth Barnes, Medicaid Bureau, HCFA, Room 2625, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-243-0584.
Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) Penalty	Final	Policy Significant	Sec. 403(g) of the Social Security Act.	Law in general terms; implementing instructions needed.	This regulation specifies standards States are required to meet to insure that EPSDT services are provided to Medicaid eligible individuals under 21. A 1-percent penalty reduction in Federal funding for the aid to families with dependent children program is required if States do not meet the standards.	No	Senora Simpson, Medicaid Bureau, HCFA, Room 4621, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-243-0111.
General Contract Requirements for Medicaid	NPRM	Policy Significant	Secs. 1102 and 1902(a)(4) of the Social Security Act.	Law in general terms; implementing instructions needed.	This regulation proposes requirements to strengthen protections against questions on contract practices and possible program abuse and to remedy ambiguities and omissions in existing regulations.	No	Pat McCarthy, Medicaid Bureau, HCFA, Room 4314, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-243-0786.
Hearing Aid and Eyeglass Reimbursement	NPRM	Policy Significant	Sec. 1102 of the Social Security Act.	Department is considering changes in policy and has requested public comments on proposal.	Comments received in response to a notice of intent that requested suggestions on practical ways to lower the cost and improve the quality of eyeglasses and hearing aids provided to Medicaid recipients.	No	Larry Rima, Medicaid Bureau, HCFA, Room 2613, Switzer Bldg., 330 C St., S.W., Washington, D.C. 20201, 202-243-9264.

HCFA REGULATION AGENDA

Item	Stage of Development	Classification	Statutory Base	Need to Regulate	Description	22	Contact
Fraud in the Medical Assistance Program--Verification of Services	NPRM	Policy Significant	Secs. 1861(k), 1902(a)(30), 1903(g)(1)(C), and 1903(i)(4)	Department is considering new policy and is requesting public comment on proposals.	This regulation would require all States to implement a written verification of services program with Medicaid recipients in order to improve the capability to detect and deter fraud and abuse.	NO	Irvin Cohen Office of Program Integrity, HCFA Room 588 East High Rise Baltimore, Md. 21235 301-594-5415
Withholding Payments to Providers of Services and other Suppliers of Services	NPRM	Policy Significant	Secs. 1102 & 1871	The Department is considering new policy and is requesting public comments on proposals.	This regulation would clarify due process procedures that must be followed when payments to providers, physicians, and suppliers of services under the Medicare program are withheld because of suspected fraud or willful misrepresentation.	NO	Anthony Lovacchio Office of Program Integrity, HCFA Room 532 East High Rise Baltimore, Md. 21235 301-594-9588
Procedures for Recovery of Overpayments and Sanctions: Medicaid Services	NPRM	Policy Significant	Secs. 1102, 1902 (a)(4)(A), and 1902(a)(30)	The Department is considering new policy and is requesting public comments on proposals.	This regulation would set forth State plan requirements for States to establish mechanisms for recovery of overpayments in the case of fraud or abuse under the Medicaid program.	NO	Irvin Cohen Office of Program Integrity, HCFA Room 588, East High Rise, Baltimore, Md. 21235 301-594-5415

ASSISTANT SECRETARY FOR HUMAN DEVELOPMENT SERVICES

<u>Title of Reg.</u>	<u>Classification</u>	<u>Statutory Basis</u>	<u>Need to regulate</u>	<u>Description</u>	<u>FA</u>	<u>Contact</u>
Evaluation Standards NPRM	Technical	Rehabilitation Act (P.L. 93-112) as amended	P.L. 93-112 requires standards; need for accountability	Will establish standards for State VR agency services and operations	No	Kathleen Arneson, Gregory March Office of Regulations & Congressional Relations, RSA Room 3014 Switzer 330 C St. S.W. Washington, D.C. 20201
Section 622 Business Opportunities for Handicapped Individuals NPRM	Policy significant	Comprehensive Rehabilitation Services Amendments of 1978	Law requires regulations within 90 days for this new program	Will provide a framework for implementation of the new program	No	"
Child Day Care Standards 45 CFR Parts 71, 220, 223 NPRM	Major	Economic Opportunity Act of 1968 and Title XX (P.L. 93-647)	Regulate day care	To establish standards for day care "purchase at a minimum, with Title XX funds	Undecided	Preston Bruce Administration of Children, Youth and Families Washington, D.C. 755-7430 Donohue Building
Removal of \$5000 limitation on non-expendable personnel property NPRM	Technical changes	Administrative regulations—no specific statutory base	President's initiative on transportation	This regulation will remove the \$500 limitation on the purchase of motor vehicles when they are used for service delivery or administration of the social services	No	Mrs. Johnnie Brooks, Administration for Public Service, HDS, 245-9415
Changes of WIN sanction period to conform with Court Order Part 224.77 Final	policy significant	402(a)(19) (F) of Soc. Sec. Act	A Court Order changing present regulation	Changes sanction period from stated time to that time individual refuses to participate	No	Sheldon Bloom, Dep. Dir., Office of WIN Program 601 "D" Street, N.W. Room 5100 Washington, D.C. 20211 (202) 376-6377

<u>Title</u>	<u>Classification</u>	<u>Statutory Basis</u>	<u>Need to Regulate</u>	<u>Description</u>	<u>R.A.</u>	<u>Contact</u>
45 CFR Part 1304 Child Abuse and Neglect Prevention and Treatment Program Final	Policy Signifi- cant	PL 95-247 (88 Stat 4 et seq.) as amended by PL 95-265	Recent amendments require changes in regulation. Also need to recodify to meet requirements of Operation Common Sense.	Contains various changes affecting operation of the Child Abuse and Neglect Treatment and Prevention Programs including new authority for service programs in addition to previously authorized research, demonstration, evaluation, training, technical assistance, and State Grants.	No	James Rich, Policy and Program Specialist, Children's Bureau Administration for Children, Youth and Families, 400 6th St., SW Washington, DC 20201 (202) 755-7553

FOOD AND DRUG ADMINISTRATION

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Allergenic Source Material	Rule	PHS Act	To assure safety and identity of source material	This document prescribes additional criteria for source materials used in the manufacture of a final allergenic product. Specific requirements will be required for the propagation and maintenance of molds and certain animals. Inspection and recordkeeping requirements will apply to all manufacturers of Allergenic Products.	No	A. Rothschild Bureau of Biologics, 11400 Rockville, Pike Rockville, Md. 20852 (301) 443-1307
Additional Standards for Insect Venoms	Proposal	PHS Act	To assure safety and identity of source material	This document proposes requirements for source materials used in the manufacture of allergenic products derived from insect venoms.	No	DO
Additional Standards for Source Materials (Pollens)	Proposal	PHS Act	To assure safety and identity of source material	This document proposes requirements for source materials used for manufacture of allergenic products derived from pollens.	No	DO

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Error and Accident Reports	Proposal	PHS Act	To better assess the adequacy of existing regulations.	This document proposes to require licensed and un- licensed blood establish- ments to submit reports to FDA of errors and accidents that are imminent health hazards.	No	DO
Commonality of Blood Labeling	Proposal	PHS Act	To facilitate uniform- ity in blood labeling.	This document proposes to amend the blood labeling regulations as recommended by the American Blood Commission, Committee for Commonality in Blood Banking Automation.	No	DO
Notification of FDA Regarding Adverse Reactions	Proposal	PHS Act	To increase the FDA's effectiveness in regulating biological products.	This document proposes to require that manufacturers notify FDA of reports of adverse reactions from use of their products.	No	DO

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Panel on Review of Bacterial Antigens and Bacterial Vaccines with "No U.S. Standard of Potency"	Rule	PHS Act	To bring products into conformance with current standards of safety and effectiveness.	This document will finalize a proposal, placing the subject products in categories designated as (1) safe and effective and not misbranded, (2) unsafe or ineffective and misbranded, and (3) not within category (1) or (2) above, on the basis that available data are insufficient to classify such products.	No	DO
Panel on Review of Skin Test Antigens	Rule	DO	DO	Do	No	DO
Panel on Review of Allergenic Extracts	Proposal	DO	DO	This document proposes to place the subject products in categories designated as (1) safe and effective and not misbranded, (2) unsafe or ineffective and misbranded, and (3) not within category (1) or (2) above, on the basis that available data are insufficient to classify such products.	No	DO

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Panel on Review of Viral Vaccines and Rickettsial Vaccines	Proposal	PHS Act	To bring products into conformance with current standards of safety and effectiveness.	This document proposes to place the subject products in categories designated as (1) safe and effective and not misbranded, (2) unsafe or ineffective and misbranded, and (3) not within category (1) or (2) above, on the basis that available data are insufficient to classify such products.	No	DO
Panel on Review of Blood and Blood Products	Proposal	DO	DO	DO	No	DO
Panel on Review of Bacterial Antigens and Bacterial Vaccines with U.S. Standard of Potency	Proposal	DO	DO	DO	No	DO

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Antibiotic Certification; Selective testing	rule	Federal Food, Drug and Cosmetic Act	To provide more efficient utilization of the agency's manpower resources and more efficient certification procedures.	Establishes a procedure whereby FDA can eliminate unnecessary duplicative testing in its laboratories	No.	Ms. Mary McEniry, Bureau of Drugs, (HFD-30), 5600 Fishers Lane, Rockville, MD 301-443-3640. ²⁰⁸⁵⁷⁷
Proficiency Testing	proposal	do.	To assure uniformity of results of in vitro dissolution tests among manufacturers.	Requires manufacturers to conduct proficiency testing on their apparatus used in conducting an <u>in vitro</u> dissolution test.	No.	do.
Obligations of Sponsors and Monitors of Clinical Investigations	rule	do.	To provide greater protection of the rights and safety of subjects in clinical investigation and help assure the quality and integrity of the research data used to support the marketing of products regulated by FDA.	Establishes procedures to be followed by a sponsor and a monitor before initiating, and during the course of a clinical investigation involving the use of a drug, medical device, food or color additive, cosmetic, or electronic product.	No.	do.

Significant New Regulations Currently Under Development

By The
Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Obligations of Clinical Investigators	rule	do.	To provide greater protection of the rights and safety of subjects in clinical investigations and help assure the quality and integrity of the research data used to support the marketing of products regulated by FDA.	Clarifies existing regulations governing conduct of persons who conduct clinical investigations on new drug products and extends the regulations to include persons who conduct clinical investigations on medical devices, food or color additives, cosmetics, and electronic products.	No.	do.
Methadone; Revision of Federal Standards	rule	Federal Food, Drug, and Cosmetic Act and Narcotic Addict Treatment Act of 1974.	Experience with methadone program suggests need to revise standards.	Revises the medical standards for methadone treatment programs by allowing the medical director of a program to exercise greater discretion in applying the required basic clinical standards (for example, on staffing patterns, criteria for admission, and frequency of urine testing). To be published jointly with The National Institute of Drug Abuse.	No.	do.

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Abbreviated New Drug Applications for Post 1962 Drugs	proposal	Federal Food, Drug, and Cosmetic Act	To reduce unnecessary human testing of drugs.	Proposes to permit the filing of abbreviated new drug applications for post 1962 drugs by establishing criteria for their submission.	No.	do.
GMP Regulations for Large Volume Parenterals	rule	do.	To assure a high quality of manufacturing for these products, which are used in seriously ill patients.	Establishes current good manufacturing practices of a class of parenteral drug products that can be characterized as terminally sterilized, aqueous solutions of 100 ml or more.	No.	do.

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Requirements for designating the manufacturer's name on a drug or drug product's label	rule	do.	To enable interested persons to determine the relationship of the person whose name is on the label to the product.	Specifies the conditions under which a person may be identified on a drug or drug product's label as its manufacturer. This action revoke's the agency's "man-in-the-plant" policy, which has been used to determine who may be identified on a drug or drug product's label as a manufacturer. Also specifies the qualifying phrases with which packers and distributors could be identified on a drug or drug product's label.	No.	do.
Prescription Drug Labeling	rule	do.	To improve the quality of physician labeling of prescription drugs.	Specifies the content and format of physician labeling for human prescription drugs. The rule designates a required format and provides detailed standards on the kind of information that must be included under each of the specific section headings of the format.	No.	do.

Significant New Regulations Currently Under Development

By The
Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Oral Hypo-glycemic Labeling	rule	do.	To update the physician labeling based on current knowledge about these drugs.	Requires additional statements in the labeling of oral hypoglycemics about increased cardiovascular deaths attributed to their use and directs the physician to discuss these risks and alternative therapy with patient.	No.	do.
Ethylene Oxide	rule	do.	Because of possible adverse effects of residues of ethylene oxide and its major reaction products.	Establishes interim residue limits for ethylene oxide and its two reaction products, ethylene chlorohydrin and ethylene glycol, in human and veterinary drug products and medical devices, and maximum daily levels of exposure for drug products where ethylene oxide is used as a sterilant during the manufacturing process.	No.	do.
Fetal Alcohol Syndrome: Required Warning for Drugs Containing Alcohol	proposal	do.	To inform interested persons of the evidence of a causal relationship between alcohol consumption by pregnant women and deformities in their unborn children.	Proposes to require a warning on physician labeling for oral prescription drugs and oral OTC drugs that contain certain amounts of alcohol.	No.	do.

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Oral Hypoglycemic Labeling	rule	do.	To update the physician labeling based on current knowledge about these drugs.	Requires additional statements in the labeling of oral hypoglycemics about increased cardiovascular deaths attributed to their use and directs the physician to discuss these risks and alternative therapy with patient.	No.	do.
Ethylene Oxide	rule	do.	Because of possible adverse effects of residues of ethylene oxide and its major reaction products.	Establishes interim residue limits for ethylene oxide and its two reaction products, ethylene chlorohydrin and ethylene glycol, in human and veterinary drug products and medical devices, and maximum daily levels of exposure for drug products where ethylene oxide is used as a sterilant during the manufacturing process.	No.	do.
Fetal Alcohol Syndrome: Required Warning for Drugs Containing Alcohol	proposal	do.	To inform interested persons of the evidence of a causal relationship between alcohol consumption by pregnant women and deformities in their unborn children.	Proposes to require a warning on physician labeling for oral prescription drugs and oral OTC drugs that contain certain amounts of alcohol.	No.	do.

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
FD&C Yellow No. 5	rule	do.	To inform consumers of the presence of FD&C Yellow No. 5 in drug products.	Requires a label declaration on all foods, drugs, and cosmetics containing FD&C Yellow No. 5.	No.	do.
Revision of Investigational Drug and New Drug Application (IND/NDA) Regulations	proposal	do.	To improve the IND/NDA review process and make the approval of new drugs more efficient.	Proposes to rewrite the IND/NDA regulations to more formally structure the IND phases. This would mean if a drug reaches the NDA stage it should be essentially approvable.	No.	do.

Regulations promulgated by the Food and Drug Administration

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Legal Status of Approved Labeling	proposal	do.	To clarify agency policy in the use of drugs not in accordance with their labeling	Proposes to distinguish between non-labeled and disapproved uses of prescription drugs and the impact of such use in the practice of medicine and in research.	No.	do.
Public Disclosure of Specifications	rule	do.	To ensure that adequate public specifications are available for all drugs.	Provides for the disclosure of specifications submitted to the agency by the manufacturer, unless the specifications serve no regulatory or compliance purpose, and are exempt as trade secrets, and have not previously been publically disclosed.	No.	do.

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Requirements for Pediatric Drug Studies	proposal	do.	To ensure that drugs administered to children have been shown to be safe and effective for that use.	Proposes rules under which new drugs that are likely to be used in children will be required to be shown to be safe and effective in children.	No.	do.
Subject Follow-up Regulations	proposal	do.	To improve the protection of subjects participating in drug research	Proposes to require investigators to maintain a list of names and addresses of subjects who participate in investigational studies to provide a means of contacting the subjects in the event data are obtained indicating the need to contact the subject.	No.	do.
OTC Labeling Standards	proposal	do.	To improve the quality of OTC labeling	Proposes to establish standards for OTC labeling. Sets priorities for placement of required information on labels and in labeling, establishes a format for the direction for use and warning, limits space used for unrequired information, and sets type-size requirements.	No.	do.

Significant New Regulations Currently Under Development

By The
Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Advertising Regulations for Prescription Drug Products	proposal	do.	To improve prescription drug advertising and promotional labeling	Proposes to revise the present regulations to provide clear requirements for modern advertising techniques and to clarify and establish additional requirements for promotional labeling.	No	do.
Policy on Patient Labeling for Prescription Drugs	proposal	do.	To inform patients about the prescription drug products prescribed for them.	Proposes the agency's overall policy on patient labeling for prescription drugs. Contains minimum general requirements for the content, printing specifications, and distribution of labeling and would provide for the availability of guideline labeling to meet the proposed requirements.	Not yet determined	do.

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Umbrella Good Manufacturing Practices (GMP).	Proposal.	Federal Food, Drug, and Cosmetic Act.	To ensure safe manufacturing, processing, packing and holding practices for foods.	This proposal would update and expand the good manufacturing practices regulations for human foods.	No	Mr. Bob Lake, Bureau of Foods (HFF-302), 200 C Street, S.W., Washington, D.C. 20204 (202) 245-1254.
Milk, Cream and Cheese Substitutes.	Regulation.	do	To promote honesty and fair dealing in the interest of consumers.	This regulation would establish standards of identity for milk, cream, and cheese substitutes.	No	do
Smoked Fish GMP.	Proposal.	do	To ensure safe manufacturing practices for smoked fish.	This proposal would revise the GMP regulation for the smoked fish industry.	No	do
Emergency Permit Controls for Acidified Foods, Low Acid Food GMP, Acidified Foods GMP.	Final Regulation.	do	To ensure safe manufacturing, processing, and packing procedures for low acid and acidified foods.	This regulation would establish and revise the specific current food manufacturing processes for acidified and low acid foods respectively.	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Standard of Identity for Concentrated Tomato Juice and Concentrated Tomato Products.	Regulation.	do	To promote honesty and fair dealing in the interest of consumers.	This regulation would establish a standard of identity for tomato juice from concentrate and revise the standards of identity for tomato juice and concentrated tomato products.	No	do
Frozen Strawberry Concent and Percentage Labeling of Sirup and Dry Sweetener Packs.	Regulation.	do	do	This regulation would establish a minimum strawberry content and percentage labeling of sirup and dry sweetener packs for frozen strawberries.	No	do
Orange Juice with Preservatives Identity.	Final Regulation.	do	do	This final regulation would amend the standard of identity for orange juice with preservatives and concentrated orange juice with preservatives.	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Solid Contents Statement on Canned Fruit and Vegetable Products.	Final Regulation.	do	To promote honesty and fair dealing in the interest of consumers.	This final regulation would provide an alternative to drained weight labeling by proposing filled weight labeling requirements.	No	do
Hair Dyes Containing Animal Carcinogen 2, 4TDA, 2NPPD, 2NPAP, and 4COPD.	Proposal.	do	To inform consumers as to the possible dangers regarding these hair dyes.	This document would propose a warning statement on the label of hair dyes containing animal carcinogen 2, 4TDA, 2NPPD, 2NPAP, and 4COPD, if the National Cancer Institute's report confirms that they are carcinogens.	No	do
Hair Dyes Containing Animal Carcinogen 4MWPD.	Final Regulation.	do	do	This final regulation would require a warning statement on the label of hair dyes containing animal carcinogen 4MWPD.	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Bubble Bath Products Warnings.	Final Regulation.	do	To caution the consumers as to possible problems which may occur while using these products.	On January 28, 1977, a notice was published proposing a required caution statement on labels of cosmetic bubble bath products. The caution statement was proposed in light of many consumer complaints of rashes and genito-urinary tract infections. The term "bubble bath product" is defined for the purpose of the regulation.	No	do

NOTICES

4271

CTFA Cosmetic Ingredient Dictionary.	Final Regulation.	do	To provide industry with a uniform nomenclature of cosmetic ingredients.	This final regulation would finalize recognition of the CTFA (Cosmetic, Toiletry, and Fragrance Association, Inc.) Cosmetic Ingredient Dictionary, Second Ed., 1976, as petitioned by the CTFA, as a new source of ingredient names adopted for use in cosmetic ingredient labeling. On the initiative of the Commissioner, the document	No	do
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Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Labeling of Sodium and Potassium Content of Foods.	Proposal.	do	To give the consumers an opportunity to regulate their intake of sodium acid potassium.	also lists several supplements and new editions of other currently recognized compendia which are proposed for adoption. This proposal would amend Section 105.69 ("foods used to regulate sodium-- and potassium-- intake") to change the present mode of declaring sodium content and to add a description of how potassium content is also to be declared. There shall also be a new paragraph in Section 101.17 ("Food labeling warning statements") to provide for warnings regarding potassium content on labels of some salt substitutes.	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Nutritional Quality Guideline for Fruit or Vegetable Type Beverage Products Requiring Vitamin C.	Final Regulation.	do	To provide consistency in added Vitamin C in these beverages and to provide that such additions are nutritively significant.	This final regulation would establish NQS for fruit or vegetable beverage products containing Vitamin C.	No	do
General Principles for the Addition of Nutrients to Food.	Notice.	do	To provide a guideline by which nutrients could be added to foods in a most appropriate pattern and potency.	This notice would clarify a FDA policy concerning the nutrient fortification of food. This policy is expressed as a series of principles which manufacturers are urged to follow if they elect to add nutrients to a particular food or class of foods.	No	do
Label Statements Relating to Infant Foods.	Final Regulation.	do	To give the consumer the opportunity to know the relative proportions or the principal ingredients in foods for infants.	This final regulation would require percentage declaration of ingredients of infant foods.	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
U.S. Recommended Daily Allowance for Manganese.	Proposal.	do	To establish US RDA for manganese so that it can be properly declared as a percentage in foods and supplements.	This proposal would add to the list of US RDA's in Section 101.8(c)(7)(iv) and Section 105.3(b)(1), CFR.	No	do
Revision of Nutrient Specifications for Infant Formulas.	Proposal.	do	To update and clarify the present regulation requirements to reflect current knowledge and, if possible, be consistent with Codex Alimentarius.	This proposal would amend 21 CFR 105.65 ("Infant Foods") to accommodate some changes recommended by the American Academy of Pediatrics in the "standards for (infant) formulas." In this proposal we shall also handle the issue of other nutrients for nutritional adjuncts (e.g., inositol) which are appropriate for addition to infant formulas (and, incidentally, medical foods).	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Specifications for Acceptable Bioavailability of Iron and other nutrients.	Proposal.	do	To assure that iron and other nutrient sub- stances used for nutrient supplement purposes will be nutritionally useful.	The intention of this proposal is to discriminate between acceptable and un- acceptable nutrient source compounds or naturally occurring substances on the basis of the nutrient's ability to be absorbed and biologically utilized as a nutrient. Initial action will be to describe the appro- priate degree of bio- availability for iron which is to be added to food and the method to determine its bioavail- ability separately or from a specific food system.	No	do
Upper Limits of Safe Use for Nutritionally Essential Minerals.	Proposal.	do	To provide for safe use of various minerals added to foods and supplements for nutri- tional purposes.	It is our intention to establish through this proposal upper levels for safe addition of nutri- tionally essential minerals to foods. Examples of these minerals are chromium, manganese, (continued)	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
				molybdenum, nickel, selenium, tin, vanadium, copper and zinc. Safety is partly predicated on the nature of the chemical compound which is the vehicle for the respective mineral. Each can be toxic at amounts which may be used in some foods, especially dietary supplements. Unlimited addition of these substances to foods could lead to chronic toxicity.		
Formulated Food Products Used Under Medical Supervision.	Proposal.	do	To provide assurance that these special foods are adequate and appropriate for their specific intended uses.	It is our intention through this proposal to formally classify these formulated food products as "foods for special dietary use" in Part 105, to provide mandatory as well as optional (but desirable) information in the labeling. This regulation might be designed along	No	do

(continued)

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Upper Limits Generally Recognized As Safe for Vitamins A and D.	Proposal.	do	To provide a realistic and safe limit for the use, in food and supplements, of these two fat-soluble vitamins which, being stored in the body, can accumulate to produce toxic reactions.	It is our intention to establish through this proposal upper levels of Vitamins A and D in dietary supplements that are considered GRAS and require food additive petitions for higher use levels.	No	do
				the lines of Section 105.65 CFR ("Infant foods") although a companion regulation in Subpart C (now "reserved") may be important to describe some special features about the composition and professional literature which would be unique for this class of product. Subpart C might then be titled "Guidelines for quality and labeling."		

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
GRAS-Whey, Whey Products and Hydrogen Peroxide Used in Whey Treatments.	Proposal.	do	To establish safe uses of certain milk proteins.	This proposal would establish common or usual names and affirm the GRAS status for whey and whey products. This is the result of 10 GRAS petitions. These dried whey products have numerous potential uses in food, including sources of milk protein and use as milk solids where not exempted by food standards.	No	do
Use of Chlorine Gas in an Aqueous Solution.	Proposal.	do	To establish safe uses of chlorine as a sanitizing agent.	This proposal would establish GRAS conditions of use for chlorine food sanitizers. This is the result of 12 GRAS petitions for uses of chlorine, hypochlorous acid, and chlorine dioxide as food sanitizing solutions.	No	do
Procedural Regulations for Medical Device Colors.	Proposal.	do	To implement the provisions of the Medical Device Amendments of 1976, as they pertain to color additives.	The Medical Device Amendments were passed in 1976. These proposed regulations for medical devices would amend the color additive regulations to provide for the issuance of regulations	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Proposed Revision of Temporary Tolerances.	Regulation.	do	To update the temporary tolerances for provisionally listed color additives to be consistent with current scientific data.	Listing colors for use in medical devices. Section 81.25 prescribes temporary tolerances for the use of certain provisionally listed color additives pending a decision on their "permanent" listing. These were developed on the basis of early preliminary toxicity data. The proposed revision of this section would change the tolerances for most of the colors in Section 81.25.	No	do
Cholesterol-free Egg Substitute—Petition for Reconsideration.	Proposal.	do	To establish consistency in labeling of cholesterol content of foods.	The broad issue of cholesterol labeling needs to be discussed and a policy established. The issue is one that is undergoing considerable study in the Bureau. This proposal deals with the issue of the term cholesterol-free being used in the name of food products.	No	do

Significant New Regulations Currently Under Development

By The

Food and Drug Administration

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Liquid Protein Products Warning Statement.	Final Regulation.	do	To inform potential consumers of the possible dangers of misuse of liquid protein products.	This tentative final regulation would set forth label warning requirements for protein supplements that may be used in weight reduction or weight maintenance programs.	No	do
Proposal for Common or Usual Name for Diluted Fruit or Vegetable Juice Beverages.	Final Regulation.	do	To provide consistency in the labeling of these beverages especially in respect to juice content.	This final regulation would establish a common or usual name for undiluted fruit or vegetable juice beverages.	No	do
Aflatoxin in Peanuts.	Final Regulation.	do	To prevent avoidable residues of aflatoxins in peanuts and peanut products.	This final regulation would set tolerances for aflatoxin in peanuts.	No	do
Polychlorinated Biphenyls, Proposed Reduction of Tolerance.	Final Regulation.	do	To reduce human exposure to PCB's.	This final regulation will reduce tolerances for PCB's in various foods and feed. It includes proposed reduction of fish tolerance from 5 ppm to 2 ppm.	No	do

Significant New Regulations Currently Under Development

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Infant Food; Junior Food; Toddler Meal.	Final Regulation.	do	To give the consumer the opportunity to know the relative proportions of the principal ingredients in foods for infants.	This final regulation would require percentage declaration of characterizing ingredients as part of the statement of identity. This issue should be resolved as a distinct but related matter to the label statements relating to infant foods.	No	do
Plant Protein— Common or Usual Names for Foods, Vegetable Protein Pro- ducts which Resemble and Substitute for Meats, Seafood, Poultry, Eggs, or Cheese.	Final Regulation.	do	To provide consistency in the labeling and in the nutrient content of vegetable protein substitutes for the 5 major protein foods.	This final regulation would establish common or usual names for vegetable protein products and names and definitions of nutritional equivalence for the 5 major protein foods.	No	do
Interstate Conveyance on Board Food Service Operations.	Proposal.	Public Health Service Act.	To protect against insanitary conditions on interstate conveyances which carry food in interstate commerce.	This proposal would establish sanitation requirements for interstate conveyances carrying food in interstate commerce.	No	do

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Interstate Conveyance Catering Point Sanitation.	Proposal.	Public Health Service Act.	To protect against insanitary conditions revolving around catering operations involved with interstate conveyances carrying food in interstate commerce.	This proposal would establish sanitation requirements for caterers to interstate conveyances carrying food in interstate commerce.	No	do
Food Labeling: Designation of Ingredients re: Nutritive Sweeteners.	Proposal.	Federal Food, Drug, and Cosmetic Act.	To provide flexibility in the labeling of sweeteners without depriving the consumer of information.	This proposal is the result of several petitions requesting some form of exemption for identification of specific sweetening ingredient. The broad issue of ingredient labeling of sweeteners in foods as it relates to health and nutrition is one designated for considerable study in the Bureau of Foods	No	do
Common or Usual Name for Substitutes for Margarine or Butter.	Final Regulation.	do	To provide consistency in the labeling of substitutes for margarine or butter.	This final regulation would identify a name like vegetable oil spread. —pet. oil. The butter industry has called attention to the FTC Act	No	do

(continued)

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Tolerance for Mercury in Fish.	Final Regulation.	do	To provide a more appropriate action level to permit maximum use of fish without increasing human exposure to mercury.	which has requirements for labeling margarine. FDA does not define the low fat products as margarine.	No	do
Areas of Principal Display Panel.	Final Regulation.	do	To provide a more uniform basis for determining size and other labeling requirements.	This final regulation would terminate a proposed regulation and announce the availability of action levels (administrative guidelines) according to new regulations for poisonous or deleterious substances.	No	do
Fruit Flavored Spreads.	Final Regulation.	do	To provide consistency in the	This proposal, which would have revised the definition for the area of the principal display panel which is used for determining type-size and other labeling requirements, is being reconsidered and may be withdrawn.	No	do

(continued)

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Use of Sodium Nitrite in Smoked Fish & Sodium Nitrate in Home Curing Pre-mixes.	Proposal.	do	labeling of substitutes for jellies and preserves.	or usual name regulation for fruit flavored spreads.	No	do
Use of Sodium Nitrite in Smoked Fish & Sodium Nitrate in Home Curing Pre-mixes.	Proposal.	do	Data indicate use of nitrate is not needed and that additional safety data is needed for nitrite.	Two documents are being prepared for this issue: (1) a notice of withdrawal of the November 3, 1972 proposal to eliminate certain uses of nitrates and nitrites, and (2) a new proposal to revoke the use of nitrates and nitrites in smoked fish and pet food and to interim list use of sodium nitrite in smoked fish.	No	do
Proposed Regulations for Lakes (pigments).	Proposal.	do	To establish listing regulations for the use of color additive lakes under the color amendments.	In 1985 a document was published which proposed to list the lakes of the colors. Because of deficiencies in this proposal, we are currently preparing documents to revoke it and request more information on lakes which are now provisionally listed.	No	do

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
FD&C Red 34.	Proposal.	do	New data indicates the need to prohibit the use of FD&C Red 34.	This document proposes to delist FD&C Red 34 from the permanent list of color additives because of possible contamination by a carcinogen.	No	do
Color Certification—Procedures for Non-conforming Batches.	Proposal.	do	To establish regulations which formalize the procedures used in certification of colors.	This proposal would amend the regulations for the certification of color additives to prescribe procedures for the rejection of samples submitted for certification on the basis of analytical response, when the substance causing the response is unidentified.	No	do
Lead Contamination of Food.	Proposal.	do	To clarify FDA's policy regarding lead contamination of food.	This proposal would be an advance notice of proposed rulemaking which will set out FDA's policy regarding lead contamination of food products.	No	do
Labeling of Yellow No. 5 in Foods and Drugs.	Final Regulation.	do	Scientific data demonstrates the need to establish labeling requirements to (continued)	This final regulation would require the labeling of FD&C Yellow No. 5 in foods and ingested drugs containing the color (continued)	No	do

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
			provide for the safe use of FD&C Yellow No. 5.	because of several documented incidences of allergic-type reactions to FD&C Yellow No. 5		
Use of Food Preservative BHT.	Final Regulation.	do	To re-evaluate the safety of all GRAS food ingredients.	This final regulation would establish an interim food additive level for BHT.	No	do
Annatto Extract, Paprika Oleoresin, and Turmeric Oleoresin.	Final Regulation.	do	New data indicates the need to prohibit the use of the solvent for these color additives.	This final regulation would prohibit use of trichloroethylene as a solvent in these color additives.	No	do
Revocation of Use of Morpholine.	Notice.	do	To expand the scope of a previous proposal.	This notice will withdraw the proposal to revoke the use of morpholine, and a new proposal will issue.	No	do
Chloroform in Contact with Food.	Proposal.	do	New data indicates that the use of this substance should be prohibited.	This proposal would delist certain uses of chloroform in food packaging materials.	No	do

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Trichloroethylene.	Final Regulation.	do	New data indicates the need to prohibit the use of the solvent.	This final regulation would prohibit trichloroethylene in human food because it may pose a risk of cancer.	No	do
Safety of Certain Food Ingredients: Sucrose and Corn Sugar.	Proposal.	do	To re-evaluate the safety of all GRAS food ingredients.	Proposal would affirm the GRAS status of sucrose and corn sugars.	No	do
Sensitivity of Method	NPRM	do	To facilitate a determination of the safety of drugs intended for food producing animals	This proposal would establish criteria and procedures for evaluating assays for carcinogenic residue in animal derived food	Yes	do

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Premarket Approval Procedures	Proposal	Federal Food, Drug and Cosmetic Act	Required under Section 515(b)(4)	Provides requirements for submission of pre-market approval applications, including safety and effectiveness requirements for all class III medical devices.	No	Mr. Joseph Mamana Bureau of Medical Devices, 8737 Georgia Ave., Silver Spring, MD 20910 (301) 427-7114
Classification of Preenactment Devices	Proposal	do	Required under Section 513(c), (d)	Classifies all medical devices marketed prior to May 28, 1976, into three regulatory control categories. The classifications are based on the recommendations of 8 expert advisory panels.	No	do
Performance Standards Procedural Regulation	Final Rule	do	Needed to implement Section 516.	Prescribes procedures by which performance standards will be established, developed, and promulgated for all class II medical devices.	No	do

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Banned Device Regulation	Final Rule	do	Needed to implement Section 516.	Provides procedures that FDA can use in banning a medical device that presents a substantial deception or an unreasonable and/or substantial risk of illness or injury.	No	do
Investigational Device Exemptions	Final Rule	do	Required under Section 520(g) (2) (A)	Provides requirements for conducting clinical studies and investigations of medical devices used with human subjects.	No	do
Administrative Restraint Procedures	Final Rule	do	Required under Section 304(g) (1)	Establishes procedures for a 20-30 day administrative detention of medical devices suspected of being adulterated or misbranded.	No	do
Restricted Devices Regulations	Proposal	do	Needed to set forth restricted device standards	Sets forth the criteria for determining which devices are restricted devices	No	do
Mandatory Device Experience Reporting	Proposal	do	To provide FDA with information on devices that are unsafe or ineffective	Sets forth mandatory reporting requirements for manufacturers and distributors for devices that (1) cause or could cause death or injury, or (2) are the subject of a corrective action.	No	do

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
California Application for Exemption from Preemption	Reproposal	do	Response to petition	Responds to California's application for exemption from preemption for its device laws and regulations.	No	do
Applications for Exemption from Preemption for State and Local Hearing Aid Requirements	Final Rule	do	Response to petitions	Responds to 19 State applications for exemption from preemption for hearing aid requirements.	No	do
Procedural Regulation for Medical Device Colors	Proposal	do	Required under Section 706(b)	Amends the color additive regulations to provide for the issuance of regulations listing colors for use in medical devices.	No	Mr. Robert Lake Bureau of Foods 200 C Street, N.W. Washington, D.C. 20204 (202) 245-1254

Significant New Regulations Currently Under Development

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Recommendations Concerning Mammography Screening	NOI	Public Health Service Act	Guidance on when mammography screening is appropriate	Mammography screening of the general population of asymptomatic women has been recommended by various organizations including the American Cancer Society and the American College of Radiology. Because of the potential cancer risks, NIH recently convened an expert committee to review these issues and to develop guidelines for the mammography screening projects being supported by NCI. A Notice of Intent will be published which will seek to obtain information and opinion concerning such questions as the population to be screened, the usefulness of a base-line mammogram, etc. Interim guidelines will also be proposed as part of the Notice. These will be based primarily on the recommendations made by the NIH expert committee.	No	Mr. Michael S. Terpilak Bureau of Radiological Health 5600 Fishers Lane Rockville, MD 20857 301/443-3426
Diagnostic Ultrasound	NOI	do	To get public opinion on risks of diagnostic ultrasound and appropriate action program	Diagnostic ultrasound equipment is being used widely with little evidence of the degree to which human exposure levels may be harmful, especially to the developing fetus. This notice will announce the potential development of standards and/or recommendations related to the manufacture and use of these devices. The guidance, which is included in the notice, will encourage manufacturers to employ the lowest power levels practicable and will caution against unnecessary exposure to patients and subjects.	No	do

Salute and others.

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Nuclear Medicine Quality Assurance of Scintillation Cameras	NOI	do	To minimize radiation exposure while obtaining high quality diagnostic information	Quality assurance procedures, which include quality control procedures, are needed broadly in nuclear medicine to assure maximum benefit from nuclear medical techniques, consistent with obtaining high quality images at minimum cost and minimum radiation dose to the patient. Voluntary recommendations, to be based on BRH technical reports, will be developed in cooperation with representatives of professional, public and private groups that have an interest and knowledge in the field. These recommendations, therefore, would represent a consensus of expert opinion upon which individual practitioners and allied health personnel can rely and would be implemented through educational programs and cooperative activities with professional organizations and State health agencies.	No	do
Recommendations for Diagnostic Examinations	NOI	do	To get public opinion on need and type of action program to narrow range of exposures from diagnostic x-ray procedures	There exists a considerable range in the entrance skin exposure and the resulting organ doses for the same X-ray procedure conducted at different medical facilities and often within the same facility. Radiation exposure recommendations are being investigated that will permit radiologists, radiation protection personnel, and others to evaluate exposure values used in a given facility. Following the analysis of the comments generated by the Notice of Intent, a program decision will be made as to the course of action the Bureau will pursue.	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Recommendation for Routine Chest X-ray Screening for Cardio-pulmonary Disease	NOI	do	To get public opinion on need and content of recommendations concerning use of chest x rays in screening programs	The Bureau is evaluating the use of chest X-ray examinations as part of routine screening programs in the detection of cardiopulmonary disease. Numerous studies have shown that routine chest X-ray screening of asymptomatic persons for certain types of pathology is neither efficacious nor cost effective. The Bureau has prepared a preliminary analysis report evaluating the impact of the Department's 1972 Policy Statement on Routine Chest X-ray Screening.	No	do
National Standards for Medical Radiation Technologists	NOI	do	To get public opinion on present credentialing practices and the need for national standards	This Notice of Intent will be published to announce that the Bureau of Radiological Health will be establishing recommended qualifications for medical radiation technologists. The Notice will solicit professional and public input about existing practices of credentialing, the need for uniform national standards, and possible approaches for ensuring that all medical radiation technologists demonstrate a certain level of competence in conducting medical radiation examinations.	No	do
Phototherapy Recommendations	NOI	do	To minimize risks of ultraviolet radiation exposure in treatment of psoriasis	In this Notice, FDA is announcing that radiation safety guidelines are to be developed and proposed for equipment used as a radiation source (in combination with the drug, psoralen) in the photochemotherapy of psoriasis. Psoriasis is a disfiguring, often incapacitating, disease of the skin	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Recommendation Advocating Use of Improved X-Ray Intensifying Screens	NPRM	do	Reduction of patient exposure by advocating use of high speed x-ray intensifying screens	that affects 1 to 3 pct. of the world's population. Derivatives of the drug psoralen are currently being used, along with an ultraviolet radiation source, to treat this disease. Recent advances in the manufacture of X-ray intensifying screens offer the opportunity for significant reductions in X-ray exposure to patients for many radiological examinations. The new generation of phosphor materials could enable the performance of many radiological examinations with exposure reductions of one-half or more over previous imaging systems without loss of image quality. It is proposed to develop an FDA radiation protection recommendation designed to encourage rapid adoption of these imaging systems. Such a recommendation, supplemented by performance data on the new intensifying screens, could provide the incentive for facilities to use these newer imaging systems sooner than otherwise would occur.	No	do
Recommendation for Utilization of Skull Radiog- raphy Following Trauma	NOI	do	To get public opinion on need and form of action program to elim- inate unnecessary skull radiographs	Literature and several clinical studies support the contention that the number of X-ray examinations of the skull for trauma could be reduced by as much as 40 pct. without adversely affecting the quality of health care. The Bureau has prepared a preliminary analysis of the use of skull radiography following trauma, and is supporting a study to survey several clinical facilities to more adequately	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Advisory Opinions and Recodification	Final Rule	do	Clarification and updating of performance standard for diagnostic x-ray equipment	These amendments will codify various interpretations and advisory opinions under which the Bureau currently operates. In addition, the section on assembly and reassembly of diagnostic X-ray systems and components will be moved from § 1000.16 to § 1020.30(p) in order to incorporate the provisions into the body of the standard.	No	do
Recommendations for State and Local Agencies Concerning Accidental Radioactive Contamination of Human Food and Animal Feeds	NPRM	do	To define levels of dose commitments which necessitate protective actions after a release of radioactive material	The proposed recommendation would consist of Protective Action Guides (PAGs), defined as the projected radiological dose equivalent or dose commitment in individuals in the general population that warrants protective action following a release of radioactive material. The Department of Health, Education, and Welfare was assigned agency responsibility for this task in the FEDERAL REGISTER of December 24, 1975 (40 FR 59494) by the Federal Preparedness Agency, General Services Administration. Within HEW, this function has been delegated to the Commissioner of Food and Drugs.	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Regulatory Standard for Mercury Vapor Lamps	Final Rule	do	To reduce risk of ultraviolet radiation exposure from broken mercury vapor lamps	This Agency has decided to develop a regulatory product safety standard for high intensity mercury vapor discharge lamps. A potential radiation hazard associated with the use of such lamps occurs when the outer bulb of the lamp is broken while the inner arc tube of the lamp continues to operate. This results in the emission of hazardous short wavelength ultraviolet radiation. The injury reports received by this Agency further indicate an acute radiation hazard from broken mercury vapor lamps. The standard is intended to reduce the possibility of such injuries by requiring that some performance safety feature be incorporated into the lamp for general lighting purposes so that the lamp will cease operation within a short period of time following the breakage of the outer envelope. Lamps without such a safety feature shall be limited to restricted uses only. Further, adequate information for the safe use of both types of lamps is also required to be provided to the user.	No	do
Amendments to the Performance Standard for Laser Products	Final Rule	do	Clarification and updating of performance standard for laser products	Administration of the laser standard since it became effective on August 2, 1976, indicates that some provisions of the standard may need to be clarified. These changes would reduce, in most cases, the burden on affected manufacturers without compromising the public health. Changes would be made in the measurement provisions, more flexibility would be permitted in	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Regulatory Standard for Microwave Diathermy	NPRM	do	To reduce unnecessary microwave radiation exposure from microwave diathermy equipment	labeling, and allowance would be made for the unlikelyhood of a potentially dangerous eye exposure to low-level stationary and rapidly scanning laser radiation. The purpose of this standard is to provide general requirements for microwave diathermy products to assure that to the extent that safety and performance can be controlled, microwave diathermy products are effective for their intended use, and the risk of injury to patient and attending personnel is minimized. The proposed standard includes provisions on minimum microwave radiation output to achieve therapeutic heating, limits on microwave leakage, product interlocks and controls, product performance, labeling, warnings and user instructions, and test requirements.	No	do
Recommendation for X-ray Exposure of Women of Child-bearing Age	NPRM	do	To advise physicians on the advisability and methods of minimizing the exposure of pregnant females to diagnostic radiography	The guideline to be proposed will address and explain three particular points in an effort to reduce this risk. It will advise physicians: (a) To ascertain whether their female patients are or could be pregnant, prior to ordering abdominal radiological examinations; (b) to utilize modified or limited studies when possible for female patients who are likely to be or who are definitely pregnant, as a means of reducing fetal exposure; and (c) to use alternative procedures for radiological examinations when appropriate.	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Recommendation for Quality Assurance Programs in Diagnostic Radiology Facilities	Final Rule	do	To reduce unnecessary exposure while improving diagnostic information	The purpose of this publication is to encourage diagnostic radiology facilities to establish their own quality assurance programs with the goals of improving diagnostic image quality and reducing unnecessary patient radiation exposure. The recommendation will also suggest elements which should be included in such programs.	No	do
Amendments to the Diagnostic X-ray Equipment Standard	Final Rule	do	Clarification and updating of performance standard for diagnostic x-ray equipment.	Certain of these amendments will codify various interpretations and advisory opinions under which the Bureau currently operates or will clarify the Bureau's intent concerning provisions of the standard. Other amendments concerning spot-film and fluoroscopic X-ray field limitation were proposed in a June 11, 1975, FEDERAL REGISTER Notice of proposed rulemaking (40 FR 24909). As a result of comments received, these latter amendments were withdrawn for further study and are now being repropounded in a modified form.	No	do
Amendments to Diagnostic X-ray Standard Beam Limitation	Final Rule	do	Clarification and updating of performance standard for diagnostic x-ray equipment	These amendments to the diagnostic X-ray standard would revise and simplify the requirements for Positive Beam Limitation (PBL) contained in § 1020.31(e)(2). In addition, provisions for overriding automatic X-ray field adjustment systems on fluoroscopic X-ray equipment will be addressed and a warning label required. The changes in the PBL requirements would allow more flexibility in the	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Recommendations or Regulations for Radiation Therapy Equipment	NPRM	do	To improve the use of ionizing radiation therapy through enhanced accuracy of dose delivery	conditions under which PBL is required, and should promote more upgrading of old equipment.	No	do
Beam Quality Amendment for Dental X-ray Systems	NPRM	do	Reduction of unnecessary patient exposure in dental radiography	Initiation of a program of quality assurance in therapeutic radiology, principally related to the development of recommendations concerning accurate dose delivery.	No	do
Amendments to the Diagnostic X-Ray Standard Tomographic Systems	NPRM	do	To amend the standard to account for special features of computerized tomographic x-ray systems	The beam quality amendment for dental X-ray systems would reduce patient exposure resulting from the use of low kilovoltage dental X-ray systems.	No	do
Nuclear Medicine Evaluation of Diseases of Thyroid Gland Recommendations	NPRM	do	To lower patient dose in nuclear medicine evaluation of the thyroid gland	Computerized tomographic (CT) x-ray systems are diagnostic x-ray systems which represent a major new technical break-through, not available when the standard was issued. Although some provisions of the standard are appropriate for CT systems, it is recognized that other requirements may not be appropriate for such complex equipment, and that additional requirements may be necessary to assure adequate public health protection.	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Suggested State Regulations	Notice of Availability	do	To provide model regulations to State agencies on a wide range of radiation control subjects	thyroid studies, without compromising clinical information. State radiation control regulations are essential to effective national protection because they provide protection in areas where Federal agencies have no jurisdiction. The Suggested State Regulations for Control of Radiation was first prepared in 1962 and is periodically updated. A model code, offered through this notice, assists the State in developing their regulations and encourage uniform regulations among States to complement Federal regulations (e.g., in areas beyond certain Federal regulatory authority as in the user area). This is a cooperative project of the Conference of Radiation Control Program Directors (representing the State and local agencies), FDA, and other Federal agencies with responsibilities in radiation control (including the Nuclear Regulatory Commission and the Environmental Protection Agency).	No	do
Regulatory Standard for Sunlamps	Final Rule	do	To minimize ultraviolet radiation exposure related to sunlamps and their use	This standard under development since 1975, is intended to allow continued use of a sunlamp product and yet to minimize the danger of injury. This purpose is achieved through the provisions of safety performance criteria in the standard including the limitation of shorter wavelength emissions, more adequate warnings, requirement of special lamp base and a timer to control the duration of the exposure.	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Emergency Radiation Dose Limits for Health and Safety of Ambulance Services, Hospital and Other Health Care Personnel	NPRM	do	To provide recommended radiation dose limits for emergency workers	Interagency responsibilities for Radiological Incident Emergency Response Planning, Fixed Facilities and Transportation Accidents published in the FEDERAL REGISTER (FR 59191) stated that HEW is responsible for issuance of guidance on emergency radiation doses related to health and safety of ambulance services, hospital and other health care personnel, in cooperation with EPA. The guidance will establish dose limits for emergency medical personnel for planned and unplanned lifesaving actions during the transportation and treatment of persons contaminated with radioactivity. Recommendations will be based on a review of national and international standards relevant to this matter. They will be consistent with present radiation risk and effects information and based on the principle of avoiding unnecessary radiation exposure when possible and that any radiation exposure should be balanced by commensurate benefit.	No	do
Recommendations for Post-Treatment Dental Radiographs	NPRM	do	To reduce the use of dental radiography for non-diagnostic purposes	A practice which appears to be on the increase is the requirement for post-treatment dental radiographs by third party carriers as evidence of dental treatment. Proper justification for the application of radiation to humans requires that there be some potential benefit to the individual receiving the examination. Post-treatment radiographs, however, are not always needed for patient management. It is likely that this	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Recommendations on Radioluminous Timepieces	NPRM	do	To reduce radiation exposure from radioluminous timepieces	project will culminate in recommendations stating that post-treatment radiographs should not be taken merely as evidence of treatment. Over the past several decades, radium has been used extensively as the luminizing activator in the paint used on the hands and dials of timepieces available to the consumer public. More recently, tritium and promethium-147 have also come into use for this purpose. Radium constitutes a source of unnecessary radiation exposure that could be significantly reduced or avoided by the use of radionuclides emitting lower energy radiations. The proposed recommendations are directed to the State's radiation control program directors and include the efficacy of the luminescence, the occupational exposure parameters, the dose commitment to the individual and population, alternatives to the use of radium, and radiation warning labeling. Because of the responsibilities of other Federal agencies in this area, involvement in the review and development of these recommendations would also include the Nuclear Regulatory Commission, Consumer Product Safety Commission, U.S. Customs, and the Department of Transportation.	No	do
Policy on Assembly and Reassembly of Diagnostic	NPRM	do	To minimize undesirable economic effects of present policy without	This amendment would revoke or extend the effective date of 21 CFR 1000.16(d) which presently requires that only certified components be	No	do

Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
X-Ray Systems			adversely affecting the public health	installed into diagnostic x-ray systems which are sold and re- assembled after August 1, 1979.		
Radiation Therapy Simulators	NPRM	do	Revision of the performance stand- ard for diagnostic x-ray equipment to account for the special features of radiation therapy simulators	These amendments will codify various interpretations, advisory opinions and variance criteria with respect to radiation therapy simulator systems. They will also bring the standard up to date with new equip- ment and current usage and practices.	No	do
Microwave Ovens	NPRM	do	To codify various compliance policies as part of the per- formance standard for microwave ovens	The purpose of this amendment is to bring the language of the per- formance standard for microwave ovens into conformity with current compliance policy. The specific measuring instrument accuracy would be replaced with a requirement to account for all measurement un- certainties in making compliance measurements.	No	do

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Proposed Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Sterility & Pyrogenicity of Animal Drugs	Notice of Intent	Federal Food, Drug and Cosmetic Act	To assure that all parenteral animal drugs are sterile and free of extrinsic pyrogenic material.	Amends the current good manufacturing practice regulations.	Yes	Robert S. Brigham Bureau of Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857 (301-443-6243) DO
Prohibited Substances; Deodorizer Distillates	Tentative Final Regulation	DO	Deodorizer distillate substances have been found to contain concentrated levels of contaminants which are adulterants when added to animal feed.	The regulation would prohibit the use of deodorizer distillates in animal feed.	No	
Vitamin K in Animal Feeds	Proposal	DO	Question of general recognition of safety exists regarding certain sources of Vitamin K.	Would propose that only certain Vitamin K substances are generally recognized as safe.	No	DO
Copper in Animal Feeds	Final Rule	DO	Use of high levels of copper in swine and poultry feed raise environmental and tissue residue questions.	Limit the maximum amount of copper compounds in poultry and swine feeds to nutritional levels.	No	DO
Animal Drugs in Minor Species	Proposal	DO	To assure the availability of new animal drugs for minor species for which there is little demand and thus little or no economic value to drug manufacturers.	Modifies the safety and effectiveness requirements for new animal drug approval.	No	DO

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Title	State of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Drug Carry-over in Animal Feeds	Notice	DO	To assure safety of animal feeds and to assure safety of food for human consumption, while recognizing the trace quantities of drugs carried over from batch to batch during manufacture of medicated feeds.	FDA will publish action levels on drugs remaining in feed manufactured in accord with good manufacturing practice when such drugs are the result of carryover of trace quantities of the drug from one feed batch to the next.	No	DO
Definitions of Food Type Animals and Animal Feed	Final Rule	DO	To clearly define the various types and classes of food animals and animal feed, and conditions of approval of such feeds, to assure safe and efficacious use of medicated feeds.	Defines the various types of food type animals and the various types and classes of animal feeds. Modifies the conditions of approval of animal feeds.	No	DO
Approval of Supplemental Applications	Final Rule	DO	To permit FDA to approve supplemental new animal drug applications expeditiously.	In certain instances FDA will approve supplemental new animal drug applications without a complete reevaluation of all safety and effectiveness data in the parent application.	No	DO

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Title of Regulation	Stage of Development	Statutory Authority	Need to Regulate	Description	Regulatory Analysis	Contact Person
Good Laboratory Practices	Final Rule	DO	To assure that nonclinical laboratories follow correct practices.	Establishes criteria for good laboratory practices in non-clinical laboratory facilities.	No	DO
Refusal to Approve Applications	DO	DO	To set forth the type of data acceptable for establishing safety and efficacy of new animal drugs.	Update regulations regarding adequate and well controlled investigations of animal drugs.	No	DO
Revision of Requirements for Appearance and Hearing.	Proposal	DO	To provide a procedure in handling and acting on hearing concerning new animal drug matters consistent with such matters involving drugs for human use.	Revises the new animal drug regulations to make them consistent with the human drug regulations concerning content of the notices of opportunity for hearing and circumstances under which an opportunity for hearing will be granted.	No	DO

IV. EXISTING REGULATIONS CURRENTLY UNDERGOING REVIEW AND REVISION WITHIN THE DEPARTMENT

Office of the Secretary

NOTICES

4307

Title of Regulation	Stage of Development	Contact Person	Citation	Summary
1. State plan procedural rules for the Medicaid, Child Support Enforcement, Title XX Social Services programs, as well as social services and financial assistance under Titles I, IV-A, X, XIV, and XVI (AABD) of the Social Security Act. (45 CFR Parts 201 and 213; 45 CFR §§ 204.1, 204.2, 205.5(b)).	Final	Mr. Beverly Dennis; III, HEW, Room 716-E, 200 Indep. Ave., S.W. Washington, D.C. 20201 :(202)245-6648	Titles I, IV-A, IV-D, X, XIV, XVI (AABD), XIX, and XX of the Social Security Act.	These regulations cover State plan processing requirements for providing medical assistance, social services, enforcement of child support, and financial assistance under the Social Security Act. They cover how to submit or amend a State plan; how a claim for Federal funds is allowed; deferred or disallowed; what kinds of Federal reviews are conducted; and various State appeals from Federal decisions.

EXISTING REGULATIONS CURRENTLY UNDERGOING REVIEW AND REVISION WITHIN THE DEPARTMENT

Office of the Secretary

Title of Regulation	Stage of Development	Contact Person	Citation	Summary
1. Federal Interagency Day Care Requirements Regulations.	NPRM	Mr. Ralph Susman, Room 305-F, HEW, 200 Indep. Ave. S.W. Washington, D.C. 20201 (202) 472-5243	Sec. 577(b) of the Community Services Act of 1974 and sec. 2002(a)(9)(B) of title XX of the Social Security Act.	These regulations establish day care standards which will apply to day care services provided under titles XX, IV-B, IV-A, and IV-A/WIN programs. They also establish administrative provisions to carry out the new standards.

OFFICE OF EDUCATION

NOTICES

4309

Title of Regulation	Stage of development	Contact Person	Citation	Summary
1. Title III - Strengthening Developing Institutions	Final	Dr. Anita Allen, Room 3058 ROB-3, 7th and D Sts. S.W. Washington, D.C. 20202 245-9754	Sec. 301-306 of title III of the Higher Education Act of 1965 as amended.	Under the authority of title III of Higher Education of 1965, the Commissioner assists certain institutions of higher education to strengthen their academic quality and administrative capacity. These institutions are called developing institutions.
2. General Provisions for Education Programs.	NPRM	Mr. Richard G. Bull Room 5082 ROB-3 7th & D Sts. S.W. Washington, D.C. 20202 245-8882	Not Applicable	These regulations contain general administrative and fiscal requirements for direct project grants, contracts, and State-administered programs. Their revision is related to the Department's general regulations for the administration of grants.
3. Pt. 177-Guaranteed Student Loan Regulation	Final	Mrs. Patricia Hopson Room 4642 ROB-3 400 Maryland Ave. S.W. Washington, D.C. 20202 472-3390	Pub. L. 95-43 (amendments)	These regulations contain requirements for both loan guarantee programs of State and nonprofit agencies and the Federal insured student loan program.
4. Basic Education Opportunity Grant Regulations	Final	Mr. William Moran Room 4923, ROB-3 400 Maryland Ave. S.W. Washington, D.C. 20202 245-1744	Title IV of the Higher Education Act of 1965, as amended.	These regulations contain technical requirements to define more clearly the administration of the program and to implement the requirements mandated by the Education Amendments of 1976.

OFFICE OF EDUCATION

Title of Regulation	Stage of development	Contact Person	Citation	Summary
5. Health Education Assistance Loan Regulations	Final	Mr. David C. Bayer Room 4642, ROB-3 400 Maryland Ave S.W. Washington, D.C. 20202 472-2765	Health Profession Educational Assistance Act of 1976.	These regulations govern a Federal program of insured loans to graduate students in health professional schools.
6. Education Amendments of 1978	NPRM	Mr. Larry Kozlarsz Room 2129, FOB-6 400 Maryland Ave. S.W. Washington, D.C. 20202 472-7580	Education Amendments of 1978	These regulations govern existing Office of Education programs that are affected by the Education Amendments of 1978. Regulations affected include Title I of the Elementary and Secondary Education Act of 1965 and School Assistance for Federally Affected Areas (SAFA)

FOOD AND DRUG ADMINISTRATION

Title of regulation	Stage of development	Contact person	Citation	Summary
1. Administrative Practices and Procedures Regulations (20 CFR)	NPRM for all parts.	Mr. Ronald J. Wyllie, Chairman, FDA Operation Common Sense Task Force, Food and Drug Administration, 5600 Fishers Lane, Rockville, Md. 20857, 443-3480.	Persons desiring specific citations statutory authority should contact Mr. Ronald J. Wyllie, Administrative Procedures Act, Public Health Service Act.	These regulations govern practices and procedures applicable to all petitions, formal and informal public hearings, and other administrative proceedings and activities.
(a) Pt. 10—Administrative Practices and Procedures.	do	do	do	Do.
(b) Pt. 12—Formal Evidentiary Public Hearing.	do	do	do	Do.
(c) Pt. 13—Public Hearing before a public board of inquiry.	do	do	do	Do.
(d) Pt. 14—Public Hearing before a public Advisory Committee.	do	do	do	Do.
(e) Pt. 15—Public Hearing before the Commissioner.	do	do	do	Do.
(f) Pt. 16—Regulatory Hearing before the Food and Drug Administration.	do	do	do	Do.
(g) Pt. 19—Standards of Conduct and Conflicts of Interest.	do	do	do	Do.
(h) Pt. 20—Public Information.	do	do	do	Do.
(i) Pt. 21—Protection of Privacy.	do	do	do	Do.
2. Food Labeling Regulations (20 CFR pt. 101)	do	do	Persons desiring specific citations to statutory authority should contact Mr. Ronald J. Wyllie, Fair Packaging and Labeling Act, Food and Drug Act.	These regulations contain a variety of key food labeling provisions, including those pertaining to imitation and substitute foods, safe and suitable ingredients, and percentage ingredient labeling.
(a) Subpt. A—General Provisions.	do	do	do	Do.
(b) Subpt. B—Specific Food Labeling Requirements.	do	do	do	Do.

HEALTH CARE FINANCING ADMINISTRATION

Title of Regulation	Stage of Development	Contact Person	Citation	Summary
Medicaid Residency	Final	Ms. Elizabeth Barnes Room 2627 330 C Street, S.W. Washington, D.C. 20201 (202) 245-0534	Title XIX of the Social Security Act	These regulations govern the determination of the State of Residence for Medicaid applicants and recipients.
Conditions of Participation for Hospitals	NPRM	Ms. Janet M. Harryman Room 301 East High Rise Building 6401 Security Blvd. Baltimore, Md. 21235 (301) 594-9712	Titles XVIII & XIX of the Social Security Act	These regulations specify the health and safety requirements that hospitals must meet to participate in the Medicare & Medicaid programs.
3. Conditions of Participation for Skilled Nursing Facilities (SNFs) & Intermediate Care Facilities (ICFs).	NPRM	Ms. Constance A. Conrad Room 300 East High Rise Bldg. 6401 Security Blvd. Baltimore, Maryland 21235 (301) 594-9722	Titles XVIII and XIX of the Social Security Act	These regulations govern the participation of SNFs and ICFs in the Medicare and Medicaid programs.
4. Medicare Entitlement, Deductible & Co-payment Requirements	NPRM	Mr. John B. Russell Room 1-H-5 East Bldg. 6401 Security Blvd. Baltimore, Md. 21235 (301) 594-8260	Title XVIII of the Social Security Act	These regulations govern beneficiaries participation for the Medicare program.

HUMAN DEVELOPMENT SERVICES

Title of Regulation	Stage of Development	Contact Person	Citation	Summary
1. Fair Hearing Regulations	NPRM	Mrs. Johnnie Brooks Administrator for Public Services P.O. Box 1923 Washington, D.C. 20013 (202) 245-9415	42 U.S.C. 1302	These regulations provide procedures for hearings for persons who are denied services or benefits.
2. Child Abuse & Neglect Prevention and Treatment	NPRM	Mr. Douglas Besharov National Center on Child Abuse and Neglect/Children's Bureau, ACYF/HDS, P.O. Box 1182 Washington, D.C. 20013 (202) 755-0587	The Child Abuse Prevention & Treatment Act of 1974, as amended	These regulations contain requirements for grants and contracts for demonstration and service programs and projects.

PUBLIC HEALTH SERVICE

Title of regulation	Stage of development	Contact person	Citation	Summary
1. PHS Grants Regulations. NPRM		Mr. Michael Cummings, Public Health Service, Room 17B-03, 5600 Fishers Lane, Rockville, Md. 20857		These regulations contain provisions for the award of grants under various PHS programs. The Public Health Service is now exploring ways to consolidate all its grants regulations.
(a) Part 51—Grants to States for Comprehensive health planning and public health services, Subpart B.	do	do	do	Do.
(b) Part 51a—Grants for maternal and child health and crippled children services.	do	do	do	Do.
(c) Part 51b—Grants for Communicable Disease Control.	do	do	do	Do.
(d) Part 51c—Protective Grants for Health Services development.	do	do	do	Do.
(e) Part 51d—Grants for service projects for genetic and other diseases.	do	do	do	Do.
(f) Part 51e—Grants for home health services.	do	do	do	Do.
(g) Part 52—Grants for research projects.	do	do	do	Do.
(h) Part 52a—National Heart and Lung Institute Grants for National Research and Demonstration Centers.	do	do	do	Do.
(i) Part 52b—National Cancer Institute Construction Grants.	do	do	do	Do.
(j) Part 52c—Minority Biomedical support program.	do	do	do	Do.
(k) Part 52d—National Cancer Institute clinical cancer education program/Minority Biomedical support program.	do	do	do	Do.
(l) Part 52e—National Heart and Lung Institute.	do	do	do	Do.
(m) Part 53—Grants, loans and loan grantees or construction and modernization of hospitals and medical facilities.	do	do	do	Do.
(n) Part 54—Grants for community mental health centers.	do	do	do	Do.
(o) Part 54a—Grants to States for drug abuse and alcoholism prevention, treatment, and rehabilitation services.	do	do	do	Do.
(p) Part 54b—Grants to States for drug abuse prevention functions.	do	do	do	Do.
(q) Part 55—Grants for advancement of health in coal mining.	do	do	do	Do.
(r) Part 55a—Program grants for coal miners' respiratory clinics.	do	do	do	Do.
(s) Part 56—Grants for emergency medical services systems.	do	do	do	Do.
(t) Part 56a—Grants for emergency medical services systems.	do	do	do	Do.
(u) Part 57—Grants for construction of health research facilities (including mental retardation research facilities), teaching facilities, student loans, education improvement and scholarships, Subparts A-O, I-J, K-M, O-P, R-X and BB.	do	do	do	Do.
(v) Part 59—Grants for family planning services.	do	do	do	Do.
(w) Part 58a—National Library of Medicine grants.	do	do	do	Do.

Mr. George Lewis,
Room 17B-03,
5600 Fishers Lane
Rockville, Md.
20857 (301) 443-6330

SOCIAL SECURITY ADMINISTRATION

NOTICES

4315

Title of Regulation	Stage of development	Contact Person	Citation	Summary
L. Federal Old-Age Survivors and Disability Insurance (20 CFR Part 404)	NPRM	Ms. Eve Hilgenberg 4212 West High Rise Bldg. Room 400 Social Security Administration Baltimore, Md. 21235 (301)934-6695	Title II of the Social Security Act as amended	These regulations implement title II of the Social Security Act. Title II provides benefits to retired or disabled workers, their dependents, and to surviving dependents of workers who have died. The funds to pay these benefits are provided from the Social Security trust funds.
(a) Subpart B - Quarters Coverage and Insured Status	NPRM		do	do
(b) Subpart D - Old-Age Disability. Dependents and Survivors Insurance Benefits. Period of Disability	Final		do	do
(c) Subpart G - Filing of Applications and other forms	Final		do	do
(d) Subpart I - Maintenance and Revision of Records of Wages and Self-Employment Income	Final		do	do
(e) Subpart J - Procedures, Payment of Benefits and Representatives of Parties	NPRM		do	do

SOCIAL SECURITY ADMINISTRATION

Title of Regulation	Stage of Development	Contact Person	Citation	Summary
(f) Subpart K-Employment Wages-Self-Employment Self-Employment Income	NPRM	do	do	do
(g) Subpart N-Veterans	NPRM	do	do	do
(h) Subpart P - Rights and Benefits Based on Disability	NPRM	do	do	do
2. Supplemental Security Income for the Aged Blind, and Disabled (20 CFR Part 416)	NPRM	do	Title XVI of the Social Security Act. These regulations implement title XVI of the Social Security Act. Title XVI provides supplemental security income benefits to aged, blind, and disabled individuals who meet certain income and resources require- ments. The funds to pay these benefits come from the general revenues of the U.S. Treasury.	
(a) Subpart B-Eligibility	NPRM	do	do	do
(b) Subpart C-Applications	NPRM	do	do	do
(c) Subpart I-Determinations of Disability or Blindness	NPRM	do	do	do
(d) Subpart J-Relationship	NPRM	do	do	do

SOCIAL SECURITY ADMINISTRATION.

Title of Regulations	Stage of Development	Contact Person	Citation	Summary
1) Subpart K-Income and Exclusions	NPRM	do	do	do
2) Subpart N-Determinations, Reconsiderations, Hearings, Appeals and Judicial Review	NPRM	do	do	do
3) Subpart O-Representation of Parties	NPRM	do	do	do

Office of Child Support Enforcement

Title of regulation	Stage of development	Contact person	Citation	Summary
1. Child Support Enforcement (45 CFR 232.20 and 45 CFR Chapter III, except for Part 305).	NOM. PRM	Ms. Suzanne Duval, Office of Child Support Enforcement, 330 C St. SW., Washington, D.C. 20201, 472-4510.	Title IV-D of the Social Security Act, as amended.	These regulations implement title IV-D of the Social Security Act. Title IV-D contains provisions for the enforcement of support obligations owed by absent parents to their children, locating parents, establishing paternity, and obtaining child support.

[FR Doc. 79-1013 Filed 1-18-79; 8:45 am]

Registered
Property

FRIDAY, JANUARY 19, 1979
PART VI



**DEPARTMENT OF
THE INTERIOR**
Office of the Secretary

**EMPLOYEE
RESPONSIBILITIES AND
CONDUCT**

Final Rules; Revisions and
Miscellaneous Amendments

[4310-10-M]

Title 43—Public Lands: Interior**SUBTITLE A—OFFICE OF THE
SECRETARY OF THE INTERIOR****PART 20—EMPLOYEE
RESPONSIBILITIES AND CONDUCT****Revision and Miscellaneous
Amendments**

AGENCY: Office of the Secretary of the Interior, U.S. Department of the Interior.

ACTION: Final rules.

SUMMARY: Department of the Interior regulations governing the conduct and responsibilities of regular and special employees of the Department are hereby revised and amended. This revision and amendment involves changes to update organizational position and office titles; deletions to revoke regulations which applied to the Mining Enforcement and Safety Administration; addition of public disclosure requirements imposed by the Outer Continental Shelf Lands Act Amendments (Pub. L. 95-372); addition, by reference, of regulations governing restrictions of financial interests under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95-87); and amendments to Appendices B, C, D, E, and F to this part.

EFFECTIVE DATE: January 19, 1979.

**FOR FURTHER INFORMATION
CONTACT:**

Mr. William L. Kendig, Acting Department Ethics Counselor, U.S. Department of the Interior, Washington, D.C. 20240.

SUPPLEMENTARY INFORMATION:**I. BACKGROUND**

This part is being partially revised and amended to provide Department of the Interior employees with more complete and correct rules for the financial interest statement filings due on February 1, 1979. Later in 1979 this entire part will be completely revised in order to comply with the Ethics in Government Act of 1978 (Pub. L. 95-521). The complete revision of this part will be based on guideline regulations issued by the new Office of Government Ethics under Section 207 of Pub. L. 95-521. Because the guideline regulations will not be ready in time for us to meet our February 1, 1979 annual filing date, and because of new provisions contained in Section 605 of the Outer Continental Shelf Lands Act Amendments of 1978 (Pub. L. 95-372) it is necessary for us to partially revise portions of our existing regulations.

II. REVISIONS

Fifteen changes are being made in 43 CFR Part 20. The changes are presented consecutively in Table of Sections order.

Pub. L. 95-372, Section 605, requires the Secretary of the Interior to establish methods for the filing of written financial statements by officers and employees performing functions or duties under the Outer Continental Shelf Lands Act as amended. Changes numbered 3, 6, 9, and 11 satisfy this legislative requirement. Appendix G is added to these regulations to identify bureaus and offices of the Department, or subunits thereof, performing functions or duties under the Outer Continental Shelf Lands Act, as amended, and to list positions within such bureaus, offices and subunits that have been specifically exempted by the Secretary from the public disclosure requirements of the Act because the positions are nonregulatory and nonpolicymaking.

Section 201(f) of the Surface Mining Control and Reclamation Act (Pub. L. 95-87) places financial restrictions on employees performing duties under the Act. Regulations implementing these restrictions were published in the *FEDERAL REGISTER* as final rules on October 20, 1977 (42 FR 56066-56069). Changes 4 and 9 make these regulations part of our total employee conduct provisions by reference and by statutory citation respectively.

Effective in March 1978 the Mining Enforcement and Safety Administration was transferred from the Department of the Interior to the Department of Labor. Changes 5 and 10 revoke specific prohibitions relating to this office.

Changes 5 also excepts Office of Water Research and Technology employees from specific prohibitions extended by regulation to Office of the Secretary organizations. This exception is adopted because of the specific program functions conducted by the Office and because employees of the Office are not directly responsible for substantially affecting or setting Departmentwide policies.

Change number 8 moves one paragraph of general provisions for clarity of understanding. The remaining changes (1, 2, 7, 12, 13, 14 and 15) update pertinent office names, position titles and lists of positions required to file special financial interest statements.

Because Part 20 consists of rules of agency organization, procedure and practice, adoption of the revised Part 20 through the rulemaking procedure prescribed in 5 U.S.C. 553 is not required and the revised Part 20 is accordingly adopted without resort to that procedure. In accordance with the policy expressed in 5 U.S.C. 553

and the Department's policy on rule-making procedures, interested persons may, however, submit written comments, suggestions, data or arguments concerning the revised Part 20 to the Inspector General, U.S. Department of the Interior, Washington, D.C. 20240. All such comments received will be given full consideration.

The primary authors of this revision are Gabe Paone and Andrew Fedors of the Department Ethics Counselor's staff in coordination with William Holleman, John Trezise and Paula Goldberg of the Solicitor's Office.

NOTE:—The Department of the Interior has determined that this rule is not a significant rule under E.O. 12044.

Dated: January 15, 1979.

JAMES A. JOSEPH,
Under Secretary of the Interior.

AUTHORITY: The provisions of this revision to Part 20 are issued under E.O. 11222 of May 8, 1965, 30 FR 6469, 3 CFR 1964-1965, Comp.; 5 CFR 735.104; 5 U.S.C. 301; Pub. L. 94-163; Pub. L. 94-429; Pub. L. 94-579; Pub. L. 95-87, Pub. L. 95-372.

43 CFR Part 20 is revised as follows:

1. The Table of Sections to 43 CFR Part 20 is amended by adding reference to recent and new additions as follows:

Sec.

20.735-17 Specific regulations under the Outer Continental Shelf Lands Act Amendments of 1978

Appendix B-6 Public Disclosure Statement of Known Financial Interests (Outer Continental Shelf Lands Act Amendments of 1978—Form DI-211C)

Appendix G—List of Bureaus and Offices, or Subunits Thereof, Performing Functions or Duties Under the Outer Continental Shelf Lands Act Amendments of 1978 and Positions Which the Secretary has Determined to be Exempt From Reporting Requirements of Section 605.

2. The entire 43 CFR Part 20 is amended by changing office and position title references throughout the part as follows:

(1) Assistant Secretary—Administration and Management is revised to read Assistant Secretary—Policy, Budget and Administration.

(2) Director, Office of Audit and Investigation is revised to read Inspector General.

(3) Office of Audit and Investigation is revised to read Office of Inspector General.

(4) In addition, § 20.735-22(c)(2) is amended by revoking the clause:

“the Governor and Secretary of American Samoa;”

3. Section 20.735-11 is amended by adding requirements under Section 605 of the Outer Continental Shelf Lands Act Amendments of 1978 as a new paragraph (g) as follows:

§ 20.735-11 Scope of subpart.

(g) Outer Continental Shelf Lands Act Amendments of 1978 requirements. Section 605(a) of the Amendments, 43 U.S.C. 1864, requires each officer or employee of the Department who performs any function or duty under the Outer Continental Shelf Lands Act, as amended, to file annually with the Secretary a written statement disclosing all such interests held during the preceding calendar year. Such statement is subject to examination and is available for copying by the public upon request. Subsection 605(c) provides that specific positions or classes thereof which are nonregulatory and nonpolicymaking may be identified and officers or employees occupying such positions shall be exempted from the requirements of section 605. Subsection 605(d) provides that any officer or employee who is subject to, and knowingly violates section 605(a) shall be fined not more than \$2,500 or imprisoned not more than one year, or both. Section 20.735-17 implements the statutory requirements of section 605 of the Outer Continental Shelf Lands Act Amendments of 1978.

4. Section 20.735-12 is amended by adding paragraph (c) as follows:

§ 20.735-12 Statutory prohibitions.

(c) Section 201(f) of the Surface Mining Control and Reclamation Act, Pub. L. 95-87, 91 Stat. 450, requires that: No employee of the Office or any other Federal employee performing any function or duty under this Act shall have a direct or indirect financial interest in underground or surface coal mining operations. Whoever knowingly violates the provisions of the above sentence shall, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment for not more than one year, or both.

For purposes of this Act, “Office” means Office of Surface Mining Reclamation and Enforcement. Provisions implementing Section 201(f), Pub. L.

95-87, are contained in 30 CFR Part 706 and are incorporated here by reference. Therefore, if you are an employee of the Office or a Federal employee who performs any function or duty under the Act, you are required to comply with 30 CFR Part 706. Compliance with the filing requirements established by the Act and 30 CFR Part 706 satisfies the requirements for other confidential financial reporting under 43 CFR 20.735-22.

§ 20.735-13 [Amended]

5. Section 20.735-13 is amended by revoking and reserving paragraph (a) and revising paragraph (c) as follows:

(a) [Reserved]

(c) Office of the Secretary: The statutory restrictions quoted in § 20.735-12(b) shall also apply to the employees of the Office of the Secretary and other organizational entities reporting directly to the Secretarial officer who are required to file a statement of employment and financial interests under § 20.735-22. Employees in the Office of Water Research and Technology are exempted from the statutory prohibitions in § 20.735-12(b). The Secretary of the Interior may authorize other exceptions to this restriction for individual employees or a class of employees for cause.

6. Section 20.735-17 is added as follows:

§ 20.735-17 Specific regulations under the Outer Continental Shelf Lands Act Amendments of 1978.

(a) *Definitions.* (1) “Act as amended” means the Outer Continental Shelf Lands Act, 43 U.S.C. 1331 *et seq.*, 67 Stat. 462, as amended by the Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. 95-372, September 18, 1978.

(2) “Covered employee” means an officer or employee of the Department of the Interior performing a function or duty under the Act as amended, whose position has not been exempted by the Secretary of the Interior from the reporting requirements of section 605 of Pub. L. 95-372.

(3) “Person” means an individual, corporation, partnership, association, consortium, company, firm, society, trust, joint venture, joint stock company, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business.

(4) “Outer Continental Shelf” means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

(5) “Minerals” means oil, gas, sulphur, geopressed-geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from “public lands”.

(6) “Engaged in business subject to the Act as amended” means the conduct of any business involving the exploration for or the development or production of, minerals of the Outer Continental Shelf. A parent company or holding company is “engaged in business subject to the Act as amended” if one or more of its subsidiaries is “engaged in business subject to the Act as amended”. A mutual fund or investment club is within the definition if it specializes in a business or businesses involved in the exploration for or the development or production of, minerals of the Outer Continental Shelf.

(7) “Pecuniary interest” means any monetary or financial interest (whether owned directly by a covered employee or held for the employee’s benefit by a trustee), including, but not limited to (i) the ownership of common stock, preferred stock, bonds, debentures, warrants or a partnership share, (ii) a leasehold, rental permit, license, right of way, or contract, or (iii) a pension or retirement plan, shared income or other arrangement as a result of current or prior employment or professional association.

(8) “Known Financial Interest” means any pecuniary interest in any person who you know or could reasonably be expected to know (i) is applying for or has received any permits or leases authorizing exploration for or the development or production of, minerals of the Outer Continental Shelf or (ii) is otherwise engaged in any business subject to the Act as amended.

(b) *Who Shall File.* (1) The Act as amended applies to all officers and employees of the Department who perform functions or duties under it. All such officers and employees must file a public disclosure statement unless they occupy a position which has been specifically exempted by the Secretary of the Interior from reporting requirements of section 605 of the Act as amended or are no longer employed by the Department at the time a filing is due.

(2) Appendix G to this part lists the bureaus and offices of the Department, or subunits thereof, performing functions or duties under the Act as amended and also lists positions which the Secretary has determined are of a nonregulatory and nonpolicymaking nature and has exempted from the reporting requirements of section 605 of the Act as amended.

(3) The head of each affected bureau or office will annually review

and update the related portion of Appendix G to this part. Proposed revisions or a certification that revision is not required shall be submitted to the Department Ethics Counselor by no later than October 31 of each year. The Secretary may revise Appendix G by the addition or deletion of positions at any time he determines such revisions are required to carry out the purpose of the law or the regulations of this part. Additions to, deletions from and other amendments of the list of positions in Appendix G are effective upon notification to the incumbents or publication in the **FEDERAL REGISTER**.

(c) *When to File.* Each covered employee required to file a public disclosure statement shall file such a statement on form DI-211C (See Appendix B-6). The Ethics Counselor shall notify each such employee, and furnish the form to the employee by December 15 of each year. The employee shall file a completed statement with the appropriate ethics counselor no later than February 1 of each year showing applicable holdings and interests for the previous calendar year.

(d) *Where to File.* The Secretary shall file his statement with the Department Ethics Counselor. All other covered employees shall file their statements as provided in § 20.735-22(c) for form DI-212 (Statement of Employment and Financial Interests).

(e) *What to Report.* (1) Covered employees will report all information required on form DI-211C (Appendix B-6). An employee is not required to report: (i) Holdings owned by his/her spouse or children. (ii) Holdings acquired by trustee for blind trust. Covered employees who are beneficiaries of blind trusts are required to disclose only interests that are initially committed to the blind trust, not of interests thereafter acquired by the trustee of which the employee or officer has no actual knowledge.

(2) Covered employees having no known financial interests to report shall file a Form DI-211C indicating thereon where appropriate, "None".

(f) *Procedure.* (1) Review and analysis of statements. The head of each affected bureau or office will annually review and update Appendix G in accordance with paragraph (b) of this section. After the employee files a statement pursuant to paragraphs (b),

(c), (d), and (e) of this section, review and analysis of the statement shall be pursuant to § 20.735-23, insofar as what is provided there is not inconsistent with the provisions of this § 20.735-17.

(2) Procedures for remedial action shall be pursuant to § 20.735-24 insofar as what is provided there is not inconsistent with the provisions of this § 20.735-17.

(3) Appeals procedures shall be pursuant to § 20.735-25, insofar as what is provided there is not inconsistent with the provisions of this § 20.735-17.

(4) The annual report required by section 605(b)(2) of the Act as amended shall be prepared under the supervision of the Department Ethics Counselor for submission to the Congress by June 1.

(g) *Public Access to and Copying of Statements: Fees.* (1) Form DI-211C shall be available for review or copying at those offices where employees are required to file pursuant to § 20.735-22(c). Within 30 days after receipt (by March 1) the DI-211C forms will be available to the public centrally at the Department Library, 18th and C Streets, N.W., Washington, D.C. 20240.

(2) The fee schedule for services performed in obtaining or copying a statement is set forth in 43 CFR Part 2, Appendix A, which is applicable to this regulation.

7. Section 20.735-31 is amended by adding paragraph (b) as follows:

§ 20.735-31 Scope of subpart.

(b) *Actions to be avoided.* An employee shall avoid any action, whether or not specifically prohibited by this subpart, which might result in, or create the appearance of:

- (1) Using public office for private gain;
- (2) Giving preferential treatment to any person;
- (3) Impeding Government efficiency or economy;
- (4) Losing complete independence or impartiality;
- (5) Making a Government decision outside official channels; or
- (6) Affecting adversely the confidence of the public in the integrity of the Government.

8. Section 20.735-32 is amended as follows:

Paragraph (d) is vacated (transferred to § 20.735-31) and reserved.

§ 20.735-32 Gifts, entertainment, and favors.

• • • • •
(d) [Reserved]

9. Section 20.735-51 is amended by adding items (22) and (23) to paragraph (a) as follows:

§ 20.735-51 Miscellaneous statutory provisions and restrictions.

• • • • •
(a) * * *

(22) The requirement that each employee of the Office of Surface Mining Reclamation and Enforcement or any other Federal employee performing any function or duty under Pub. L. 95-87, 91 Stat. 445, file a written statement disclosing any direct or indirect financial interest in underground or surface coal mining operations.

(23) The requirement that each officer or employee of the Department of the Interior performing a function or duty under the Outer Continental Shelf Lands Act, as amended, file a written statement disclosing known financial interest in any person who applies for or receives any permit or lease under, or is otherwise subject to the provisions of that Act.

Appendix A-5 [Reserved]

10. Appendix A to 43 CFR 20.735 is amended by revoking Appendix A-5 as follows:

• • • • •
Appendix A-5 is reserved.

11. Appendix B to 43 CFR 20.735 is amended by adding Appendix B-6 as follows:

• • • • •

UNITED STATES DEPARTMENT OF THE INTERIOR
PUBLIC DISCLOSURE STATEMENT OF KNOWN FINANCIAL INTERESTS
(Outer Continental Shelf Lands Act Amendments of 1978, Sec. 605, P.L. 95-372)

INSTRUCTIONS

1. TYPE OR PRINT.
2. All "Covered employees" shall complete this form in accordance with 43 CFR 20.735-17.
3. You may exclude from this form any holdings owned solely by your spouse, minor child, or other relative residing in your home. This exclusion applies only to public disclosure statements and not to the regular confidential financial disclosure statements (form DI-212 or DI-212A). You are cautioned that such holdings (spouse, minor children, etc.) are subject to the regular conflict of interest statutes, Executive Order, and Departmental regulations.
4. You may also exclude holdings in mutual funds, holding companies, banks, savings and loan associations, investment clubs or regulated investment companies which do not specialize in any person or business subject to the Act as amended.
5. With respect to a blind trust, you are only required to disclose holdings of which you have actual knowledge; for example, those holdings initially committed to the blind trust, if subject to the provisions of the Act as amended must be disclosed.
6. Signed statements shall be sent to and reviewed by your appropriate Ethics Counselor. Please retain a copy.

DEFINITIONS

"Act as amended" means the Outer Continental Shelf Lands Act 43 U.S.C. 1331 *et. seq.* 67 Stat. 462 as amended by the Outer Continental Shelf Lands Act Amendments of 1978, Pub. Law 95-372, September 18, 1978.

"Covered employee" means an officer or employee of the Department of the Interior performing a function or duty under the Act as amended, whose position has not been exempted by the Secretary of the Interior from the reporting requirements of Section 605 of P.L. 95-372.

"Person" means an individual, corporation, partnership, association, consortium, company, firm, society, trust, joint venture, joint stock company, or any entity organized for a common business purpose, wherever situated, domiciled, or doing business.

"Outer Continental Shelf" means all submerged lands lying seaward and outside of the area of lands beneath navigable waters as defined in 43 U.S.C. section 1301, and of which the subsoil and seabed appertain to the United States and are subject to its jurisdiction and control.

"Minerals" means oil, gas, sulphur, geopressed - geothermal and associated resources, and all other minerals which are authorized by an Act of Congress to be produced from "public lands".

"Engaged in business subject to the Act as amended" means the conduct of any business involving the exploration for or the development or production of, minerals of the Outer Continental Shelf. A parent company or holding company is "engaged in business subject to the Act as amended" if one or more of its subsidiaries is "engaged in business subject to the Act as amended". A mutual fund or investment club is within the definition if it specializes in a business or businesses involved in the exploration for or the development or production of, minerals of the Outer Continental Shelf.

"Pecuniary interest" means any monetary or financial interest (whether owned directly by a covered employee or held for the employee's benefit by a trustee), including, but not limited to (i) the ownership of common stock, preferred stock, bonds, debentures, warrants or a partnership share, (ii) a leasehold, rental, permit, license, right of way, or contract, or (iii) a pension or retirement plan, shared income or other arrangement as a result of current or prior employment or professional association.

12. Appendix C to 43 CFR 20.735 as published in 43 FR 1072-1086—Friday, January 6, 1978, is amended for those bureaus, offices or subunits having changes to update the list of positions in addition to GS-15's and higher, who are required by Executive Order 11222 and by 43 CFR 20.735-22 to file a Confidential Statement of Employment and Financial Interests. Lists of positions for some of the bureaus, offices or subunits having changes are completely revised and others are amended by additions and deletions. Bureau, office, and subunit lists not revised or amended remain the same. The revisions and amendments to Appendix C are as follows:

APPENDIX C—LIST OF EMPLOYEES, IN ADDITION TO GS-15'S AND HIGHER, REQUIRED TO FILE CONFIDENTIAL STATEMENTS OF EMPLOYMENT AND FINANCIAL INTERESTS

ETHICS COUNSELORS

Assistant Department Ethics Counselor, Washington, D.C.
Assistant to the Assistant Department Ethics Counselor, Washington, D.C.
All Deputy Office and Bureau Ethics Counselors.
All Assistant Office and Bureau Ethics Counselors.

SECRETARY'S IMMEDIATE OFFICE

Special Assistants to the Secretary
Confidential Assistants
Staff Assistants
Staff Officer
Desk Officers

OFFICE FOR EQUAL OPPORTUNITY

Division of Minority Business Enterprise
Minority Business Enterprise Specialist, Washington, D.C.

Division of Title VI Compliance

Supervisory Equal Opportunity Specialist (Employment), Washington, D.C.
Equal Opportunity Specialists (Employment), Washington, D.C., GS-9 and above

TERRITORIAL AFFAIRS

Staff Assistant for Political and Legislative Affairs, Washington, D.C.
Systems Accountant, Washington, D.C.
Budget Officer, Washington, D.C.
Budget Analyst, Washington, D.C.

American Samoa Comptroller

Supervisory Auditor, Pago Pago
Auditor, GS-12 and above, Pago Pago

Virgin Islands Comptroller

Supervisory Auditor, St. Thomas
Supervisory Auditor, St. Croix
Auditor, GS-12 and above, St. Croix
Auditor, GS-12 and above, St. Thomas
Management Analyst, St. Thomas
Computer Specialist, St. Thomas

Guam/TTPI/NMI Comptroller

Supervisory Auditor, Agana, Guam
Supervisory Auditor, Saipan, Mariana Islands
Auditor, GS-12 and above, Agana, Guam
Auditor, GS-12 and above, Saipan, Mariana Islands

Systems Accountant, Saipan, Mariana Islands
Systems Accountant, Agana, Guam
Auditor, GS-12 and above, Majuro, Marshall Islands
Auditor, GS-12 and above, Koror Palau
Government of the Trust Territory of the Pacific Islands

Supply Management Officer, Saipan, Mariana Islands
Supply Officer, GS-12, Saipan, Mariana Islands
Agriculturist, GS-12, Saipan, Mariana Islands
Personnel Management Specialist, GS-12, San Francisco, California
Economist, GS-12, Saipan, Mariana Islands
Deputy Director, Resource and Development, GS-12, Saipan, Mariana Islands
Business Organization and Management Advisor, GS-12, Saipan, Mariana Islands
Realty Officer, GS-12, Saipan, Mariana Islands
Liaison Officer, GS-12, Agana, Guam
Administrative Officer, GS-12, Kwajalein, Marshall Islands
Liaison Officer, GS-12, Honolulu, Hawaii
Administrative Officer, GS-12, Majuro, Marshall Islands
District Administrator, GS-12, Kosrae
Agricultural Management Specialist, GS-11, Ponape
Agricultural Management Specialist, GS-10, Truk
Agricultural Management Specialist, GS-11, Palau
Agricultural Management Specialist, GS-11, Kosrae

ENVIRONMENTAL PROJECT REVIEW

Delete:

Environmental Review Officers, GS-11 and above (regardless of official classification title), Washington, D.C.
Chief, Transportation Staff, Washington, D.C.

Add:

Environmental Review Officers, GS-12 and above
General Engineers, GS-14
General Biologists, GS-13

OFFICE OF BUDGET

Budget Analysts, Washington, D.C.

OFFICE OF OUTER CONTINENTAL SHELF PROGRAM COORDINATION

Delete:

Staff Assistant, New York, N.Y.
Economist, Washington, D.C.

Add:

Information Specialist, GS-14

OFFICE OF POLICY ANALYSIS

Program Analysts, Washington, D.C.
Economists

OFFICE OF AUDIT AND INVESTIGATION

Delete:

Office title of Office of Audit and Investigation

Add:

New Office title of Office of Inspector General

OFFICE OF AIRCRAFT SERVICES

Contract Specialist, Boise, Idaho
Chief, Division of Technical Services, Boise, Idaho
Regional Director, Anchorage, Alaska
Chief, Division of Technical Services, Anchorage, Alaska
Contract Specialist, Anchorage, Alaska

OFFICE OF MANPOWER TRAINING AND YOUTH ACTIVITIES

Delete:

Title of Office of Manpower Training and Youth Activities
Chief, Operations Division, GS-14
Chief, Program Planning and Support Division, GS-14

Add:

New office title, Office of Youth Programs
Assistant Director (Job Corps), GS-14
Staff Assistant (State Grant Programs), GS-12
Staff Assistant, GS-11
YACC Program Specialists (All Regions), GS-11's and GS-12's.

OFFICE OF LIBRARY AND INFORMATION SERVICES

Add:

Librarian, GS-12, Acquisitions Branch

OFFICE OF ADMINISTRATIVE SERVICES

Delete:

Procurement and Grants Specialist, Washington, D.C.

Add:

Supervisory Contract Specialist, GS-13

OFFICE OF ADMINISTRATIVE AND MANAGEMENT POLICY

Procurement Analysts
Grants Policy Specialist
Management Analyst
Contract Specialist
Supervisory Civil Engineer
Architect (Management Officer)
Financial Manager

OFFICE OF PERSONNEL MANAGEMENT

Labor Relations Specialist (Training) GS-14
Employee Development Specialist (Supervisory Training) GS-13
Employee Development Specialist (Program Development) GS-13
Employee Development Specialist (Manager, DMDP) GS-13
Employee Development Specialist (Training Center) GS-12

WASHINGTON COMPUTER CENTER DIVISION

Delete:

Administrative Officer

Add:

Financial Manager

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

Delete:

RULES AND REGULATIONS

Staff Assistant

OFFICE OF THE ASSISTANT SECRETARY—FISH,
WILDLIFE AND PARKS

Special Assistants, Washington, D.C.

OFFICE OF THE ASSISTANT SECRETARY—
LAND AND WATER RESOURCES

Delete:

Delete (2) after Staff Assistants

BUREAU OF INDIAN AFFAIRS

*Central Office Headquarters,
Washington, D.C.*

Delete:

Contract Specialist, Washington, D.C. (4)
GS-14 (3); GS-13 (1) and above Rights
Protection Officer, Washington, D.C.
Auditor, Report to Washington, D.C. (11)
GS-12 (6); GS-11 (5) and above
Contract Specialist, Washington, D.C. (3)
GS-11 (1); GS-9 (2) and above
Coordinator of Institutional Enrollment
(Business Manager), Haskell Indian
Junior College, Lawrence, Kansas

Add:

Contract Specialist, Washington, D.C. (3)
GS-14 (3) and above
Auditors, report to Washington D.C. (9)
GS-12 (4); GS-11(4); GS-13(1) and above
Contract Specialist, Washington, D.C. (1)
GS-11 (1) and above
YCC Administrator, Washington, D.C. (GS-
14)
Law Enforcement Specialist, Washington,
D.C. (GS-14)
Housing Service Specialist, Washington,
D.C. (2); GS-14 (1); GS-13 (1)
Special Projects Officer, Washington, D.C.
(GS-14)
Industrial Development Specialist, Wash-
ington, D.C. (2); GS-14 (2)
Supervisory Loan Specialist, Washington,
D.C. (GS-14)
Loan Specialist, Washington, D.C. (GS-14)
Trust Facilitation Specialist, Washington,
D.C. (GS-14)
Natural Resources Specialist, Washington,
D.C. (GS-13)
Administrative Officer, Washington, D.C.
(GS-13)
Paralegal Specialist, Washington, D.C. (GS-
14)
Hunting and Fishing Rights Specialist,
Washington, D.C. (GS-14)
Realty Specialist, Washington, D.C. (6); GS-
14 (2); GS-13 (4)
Trust Services Specialist, Washington, D.C.
(GS-14)
Appraiser, Washington, D.C. (GS-14)
Minerals Officer, Washington, D.C. (GS-14)
Geologist, Washington, D.C. (GS-14)
Research Specialist, Washington, D.C. (2);
GS-13 (1); GS-12 (1)
Staff Assistant, Washington, D.C. (GS-12)
Program Analyst, Washington, D.C. (2);
GS-14 (1); GS-12 (1)
Staff Assistant, Washington, D.C. (GS-12)
Program Analyst, Washington, D.C. (2);
GS-14 (1); GS-12 (1)
Indian Self-Determination Analyst, Wash-
ington, D.C. (3); GS-14 (1); GS-13 (2)
Special Assistant (Hunting/Fishing Rights),
Washington, D.C. (GS-12)
Special Assistant, Washington, D.C. (GS-12)
Criminal Investigator, report to Washing-
ton, D.C. (GS-12)

Supervisory Criminal Investigator, report to
Washington, D.C. (2); GS-13 (1) GS-12 (1)
Supervisory Loan Specialist, report to
Washington, D.C. (GS-12)

Loan Specialist, report to Washington, D.C.
(2); GS-12 (2)

Loan Specialist (General), report to Wash-
ington, D.C. (2); GS-14 (1); GS-12 (1)

Education Program Administrator, Haskell
Indian Junior College, Lawrence, Kansas
(GS-13)

*Field Administrative Office,
Albuquerque, New Mexico*

Delete:

Field Administrator, Administrative Service
Center, Albuquerque, New Mexico and
above
Supply Management Officer, Administra-
tive Services Center, Albuquerque, New
Mexico
Supervisory Civil Engineer, Albuquerque,
New Mexico and above
Supervisory Contract Specialist, Albuquer-
que, New Mexico, (2) GS-13 (1); GS-12 (1)
and above
Contract Specialist, Field Administrative
Office, Albuquerque, New Mexico (5) GS-
12 (1); GS-9 (4) and above
Procurement Agent, Field Administrative
Office, Albuquerque, New Mexico (3) GS-
11 (1); GS-9 (1); GS-7 (1) and above
Administrator, Indian Education Resource
Center, Albuquerque, New Mexico Pro-
gram Officer, Indian Technical Assistance
Center, Denver, Colorado (3) GS-9 (1);
GS-7 (1); GS-5 (1) and above

Add:

Field Administrator, Field Administrative
Office, Albuquerque, New Mexico, and
above
Supervisory Civil Engineer, Division of
Facilities Engineering, Albuquerque, New
Mexico (2); GS-14 (2) and above
Supervisory Contract Specialist, Field Ad-
ministrative Office, Albuquerque, New
Mexico (GS-12) and above
Contract Specialist, Field Administrative
Office, Albuquerque, New Mexico (3); GS-
11 (2); GS-9 (1) and above
Procurement Agent, Field Administrative
Office, Albuquerque, New Mexico (3); GS-
9 (2); GS-7 (1) and above
Contract Specialist, Indian Technical Assist-
ance Center, Denver, Colorado (8); GS-12
(2); GS-11 (2); GS-9 (2); GS-7 and above
Supervisory Contract Specialist, Indian
Technical Assistance Center, Denver,
Colorado (GS-13)
Supervisory Contract Specialist, Division of
Facilities Engineering, Albuquerque, New
Mexico (GS-13)
Contract Specialist, Division of Facilities
Engineering, Albuquerque, New Mexico
(4); GS-12 (1); GS-11 (3)
Contract Industrial Relations Specialist,
Field Administrative Office, Albuquerque,
New Mexico (GS-11)

Pierre Boarding School

Delete:

Education Program Administrator, Pierre
Boarding School, Pierre, South Dakota
(GS-12)

Winnebago Agency

Supervisory Police Officer, Winnebago
Agency, Winnebago, Nebraska (GS-6)

Resources Development Officer, Winnebago
Agency, Winnebago, Nebraska (GS-12)
Agency Credit Officer, Winnebago Agency,
Winnebago, Nebraska (GS-11)

Yankton Agency

Delete:

Loan Assistant, Yankton Agency, Wagner,
South Dakota (GS-7)

Albuquerque Area Office

Delete:

Assistant Area Director (Administration),
Albuquerque Area, Albuquerque, New
Mexico and above
Supervisory Contract Specialist, Albuquer-
que Area, Albuquerque, New Mexico (3)
GS-13 (2); GS-12 (1) and above
Contract Specialist, Albuquerque Area, Al-
buquerque, New Mexico (6) GS-11 (3);
GS-9 (1); GS-7 (2) and above
Office Services Manager, Albuquerque Area,
Albuquerque, N.M. (GS-11) and above
Area Special Officer, Albuquerque Area, Al-
buquerque, N.M. (GS-12) and above
Area Credit Officer, Albuquerque Area, Al-
buquerque, N.M., and above
Area Realty Officer, Albuquerque Area, Al-
buquerque, N.M., and above
Employment Assistance Officer, Denver Job
Placement and Services Unit, Denver,
Colorado (GS-11) and above

Add:

Administrative Officer, Albuquerque Area,
Albuquerque, N.M., and above
Supervisory Contract Specialist, Albuquer-
que Area, Albuquerque, N.M., (GS-12) and
above
Contract Specialist, Albuquerque Area, Al-
buquerque, N.M., (10); GS-11 (4); GS-9
(3); GS-7 (3) and above
Office Services Specialist, Albuquerque
Area, Albuquerque, N.M., (GS-7) and
above
Criminal Investigator, Albuquerque Area,
Albuquerque, N.M. (GS-12) and above
Business Program Manager, Albuquerque
Area, Albuquerque, N.M. (GS-13) and
above
Realty Officer, Albuquerque Area, Albu-
querque, N.M. (GS-13) and above
Supervisory Vocational Development Spe-
cialist, Denver Job Placement and Ser-
vices Unit, Denver, Colorado (GS-11) and
above
Office Services Manager, Albuquerque Area,
Albuquerque, N.M. (GS-11)

Jicarilla Agency

Delete:

Agency Special Officer, Jicarilla Agency,
Dulce, N.M. (GS-12) and above
Agency Credit Officer, Jicarilla Agency,
Dulce, N.M. (GS-11) and above
Agency Realty Officer, Jicarilla Agency,
Dulce, N.M. (GS-11) and above
Agency Program Officer, Jicarilla Agency,
Dulce, N.M. (GS-12) and above

Add:

Criminal Investigator, Jicarilla Agency,
Dulce, N.M. (GS-11) and above
Loan Specialist, Jicarilla Agency, Dulce,
N.M. (GS-11) and above
Realty Specialist, Jicarilla Agency, Dulce,
N.M. (GS-11) and above

Tribal Assistance Officer, Jicarilla Agency, Dulce, N.M. (GS-12) and above

Mescalero Agency

Delete:

Administrative Manager, Mescalero Agency, Mescalero, N.M. (GS-9) and above
Agency Special Officer, Mescalero Agency, Mescalero, N.M. (GS-12) and above
Realty Specialist, Mescalero Agency, Mescalero, N.M. (GS-7) and above

Add:

Administrative Officer, Mescalero Agency, Mescalero, N.M. (GS-11) and above
Supervisory Criminal Investigator, Mescalero Agency, Mescalero, N.M. (GS-11)
Realty Specialist, Mescalero Agency, Mescalero, N.M. (GS-9) and above

Northern Pueblos Agency

Delete:

Administrative Manager, Northern Pueblos Agency, Santa Fe, N.M. (GS-12) and above
Agency Special Officer, Northern Pueblos Agency, Santa Fe, N.M. (GS-11) and above
Natural Resource Officer, Northern Pueblos Agency, Santa Fe, N.M., and above
Agency Realty Officer, Northern Pueblos Agency, Santa Fe, N.M. (GS-12) and above
Agency Credit Officer, Northern Pueblos Agency, Santa Fe, N.M. (GS-11) and above

Add:

Administrative Officer, Northern Pueblos Agency, Santa Fe, N.M. (GS-11) and above
Supervisory Criminal Investigator, Northern Pueblos Agency, Pojoaque, N.M. (GS-11) and above
Natural Resource Manager, Northern Pueblos Agency, Santa Fe, N.M. (GS-12) and above
Realty Officer, Northern Pueblos Agency, Santa Fe, N.M. (GS-12) and above
Loan specialist (General), Northern Pueblos Agency, Santa Fe, N.M. (GS-11) and above

Ramah-Navajo Agency

Delete:

Police Officer, Ramah-Navajo Agency, Ramah, N.M. (GS-7) and above
Housing Development Officer, Ramah-Navajo Agency, Ramah, N.M. (GS-12)
Employment Assistance Officer, Ramah-Navajo Agency, Ramah, N.M. (GS-9)
Natural Resource Manager, Ramah-Navajo Agency, Ramah, N.M. (GS-12)

Add:

Supervisory Police Officer, Ramah-Navajo Agency, Ramah, N.M. (GS-6) and above
Supervisory Range Conservationist, Ramah-Navajo Agency, Ramah, N.M. (GS-11)

Southern Pueblos Agency

Delete:

Administrative Officer, Southern Pueblos Agency, Albuquerque, N.M. (GS-11) and above

Vocational Development Specialist, Southern Pueblos Agency, Albuquerque, N.M. (GS-12) and above

Agency Special Officer, Southern Pueblos Agency, Albuquerque, N.M. (GS-12) and above

Agency Credit Officer, Southern Pueblos Agency, Albuquerque, N.M. (GS-12) and above

Agency Realty Officer, Southern Pueblos Agency, Albuquerque, N.M. and above

Add:

Administrative Officer, Southern Pueblos Agency, Albuquerque, N.M. (GS-11) and above
Supervisory Vocational Development Specialist, Southern Pueblos Agency, Albuquerque, N.M. (GS-12) and above
Supervisory Criminal Investigator, Southern Pueblos Agency, Albuquerque, N.M. (GS-12) and above
Loan Specialist (General), Southern Pueblos Agency, Albuquerque, N.M. (GS-12) and above
Realty Officer, Southern Pueblos Agency, Albuquerque, N.M. (GS-12) and above

Southern Ute Agency

Delete:

Agency Credit Officer, Southern Ute Agency, Ignacio, Colorado (GS-12)
Agency Realty Officer, Southern Ute Agency, Ignacio, Colorado (GS-11) and above

Add:

Realty Officer, Southern Ute Agency, Ignacio, Colorado (GS-11) and above
Criminal Investigator, Southern Ute Agency, Ignacio, Colorado (GS-11)

Ute Mountain Ute Agency

Delete:

Agency Special Officer, Ute Mountain Ute Agency, Towaoc, Colorado (GS-11)
Agency Realty Officer, Ute Mountain Ute Agency, Towaoc, Colorado (GS-11) and above
Program Officer, Ute Mountain Ute Agency, Towaoc, Colorado (GS-12) and above

Add:

Realty Officer, Ute Mountain Ute Agency, Towaoc, Colorado (GS-11) and above
Program Analyst, Ute Mountain Ute Agency, Towaoc, Colorado (GS-12) and above

Pueblo of Zuni

Delete:

Field Representative, Pueblo of Zuni, N.M. (GS-13)
Administrative Officer, Pueblo of Zuni, Zuni, N.M. (GS-9)
Natural Resource Manager, Pueblo of Zuni, Zuni, N.M. (GS-12)
Loan Specialist (General), Pueblo of Zuni, Zuni, N.M. (GS-11)

Anadarko Area Office

Delete:

Contract Specialist, Anadarko Area, Anadarko, Oklahoma (3) GS-11 (1); GS-9 (1); GS-7 (1) and above

Appraisers, Anadarko Area, Anadarko, Oklahoma (5) GS-12 (3); GS-11 (2) and above

Add:

Contract Specialist, Anadarko Area, Anadarko, Oklahoma (4); GS-9 (4) and above
Appraiser, Anadarko Area, Anadarko, Oklahoma (GS-12) and above
Supervisory Contract Specialist, Anadarko Area, Anadarko, Oklahoma

Anadarko Agency

Add:

Supervisory Appraiser, Anadarko Agency, Anadarko, Oklahoma (GS-12)
Appraisers, Anadarko Agency, Anadarko, Oklahoma (3); GS-11 (3)

Concho Agency

Add:

Appraiser, Concho Agency, Concho, Oklahoma (GS-12)

Horton Agency

Delete:

Appraiser, Horton Agency, Horton, Kansas (GS-11) and above

Add:

Appraiser, Horton Agency, Horton, Kansas (GS-12) and above

Pawnee Agency

Add:

Appraiser, Pawnee Agency, Pawnee, Oklahoma (GS-12)

Shawnee Agency

Add:

Appraiser, Shawnee Agency, Shawnee, Oklahoma (GS-12)

Billings Area Office

Delete:

Contract Specialist, Billings Area Office, Billings, Montana (2) (GS-9) and (GS-11) and above
Supervisory Appraiser, Billings Area Office, Billings, Montana (2) GS-13 (1); GS-12 (1) and above
Appraiser, Billings Area Office, Billings, Montana (5) GS-11 (5) and above
Director, Missouri River Basin Investigation Project, Billings Area Office, Billings, Montana

Add:

Contract Specialist, Billings Area Office, Billings, Montana (4); GS-12 (1); GS-11 (3) and above
Supervisory Appraiser, Billings Area Office, Billings, Montana (GS-13) and above
Appraisers, Billings Area Office, Billings, Montana (6); GS-12 (1); GS-11 (5) and above
Natural Resources Planning Officer, Billings Area Office, Billings, Montana (GS-14)

Blackfeet Agency

Delete:

RULES AND REGULATIONS

Agency Special Officer, Blackfeet Agency, Browning, Montana (GS-11) and above
 Housing Coordinator, Blackfeet Agency, Browning, Montana (GS-12)
 Employment Assistance Officer, Blackfeet Agency, Browning, Montana (GS-11) and above
 Agency Realty Officer, Blackfeet Agency, Browning, Montana (GS-11) and above
 Agency Credit Officer, Blackfeet Agency, Browning, Montana (GS-12)

Add:

Criminal Investigator, Blackfeet Agency, Browning, Montana (GS-11) and above
 Vocational Development Specialist, Blackfeet Agency, Browning, Montana (GS-11) and above
 Supervisory Realty Specialist, Blackfeet Agency, Browning, Montana (GS-11) and above
 Supervisory Civil Engineer Technician, Blackfeet Agency, Browning, Montana (GS-11)

*Crow Agency**Delete:*

Employment Assistance Officer, Crow Agency, Crow Agency, Montana (GS-11) and above
 Agency Special Officer, Crow Agency, Crow Agency, Montana (GS-12) and above
 Agency Credit Officer, Crow Agency, Crow Agency, Montana (GS-11) and above

Add:

Vocational Development Specialist, Crow Agency, Crow Agency, Montana (GS-11) and above
 Criminal Investigator, Crow Agency, Crow Agency, Montana (GS-12) and above
 Loan Specialist (General), Crow Agency, Crow Agency, Montana (GS-11) and above

*Flathead Agency**Delete:*

Agency Special Officer, Flathead Agency, Ronan, Montana (GS-11) and above
 Housing Coordinator, Flathead Agency, Ronan, Montana (GS-11)

Add:

Criminal Investigator, Flathead Agency, Ronan, Montana (GS-9) and above

*Flathead Irrigation Project**Delete:*

Administrative Officer, Flathead Irrigation Project, St. Ignatius, Montana (GS-12)

*Fort Belknap Agency**Delete:*

Agency Special Officer, Fort Belknap Agency, Harlem, Montana (GS-11) and above
 Housing Coordinator, Fort Belknap Agency, Harlem, Montana (GS-11)
 Agency Credit Officer, Fort Belknap Agency, Harlem, Montana (GS-11) and above
 Land Operations Officer, Fort Belknap Agency, Harlem, Montana (GS-11) and above
 Agency Realty Officer, Fort Belknap Agency, Harlem, Montana (GS-11) and above

Community Services Officer, Fort Belknap Agency, Harlem, Montana (GS-12)

Add:

Criminal Investigator, Fort Belknap Agency, Harlem, Montana (GS-11) and above
 Loan Specialist (General), Fort Belknap Agency, Harlem, Montana (GS-11) and above
 Natural Resources Officer, Fort Belknap Agency, Harlem, Montana (GS-11) and above
 Realty Officer, Fort Belknap Agency, Harlem, Montana (GS-11) and above

*Fort Peck Agency**Delete:*

Agency Special Officer, Fort Peck Agency, Poplar, Montana (GS-11) and above
 Housing Development Officer, Fort Peck Agency, Poplar, Montana (GS-11)
 Agency Credit Officer, Fort Peck Agency, Poplar, Montana (GS-11) and above
 Natural Resource Manager, Fort Peck Agency, Poplar, Montana (GS-12) and above
 Agency Realty Officer, Fort Peck Agency, Poplar, Montana (GS-12) and above

Add:

Supervisory Criminal Investigator, Fort Peck Agency, Poplar, Montana (GS-11) and above
 Loan Specialist (General), Fort Peck Agency, Poplar, Montana (GS-11) and above
 Natural Resource Officer, Fort Peck Agency, Poplar, Montana (GS-12) and above
 Realty Officer, Fort Peck Agency, Poplar, Montana (GS-12) and above

*Northern Cheyenne Agency**Delete:*

Community Services Officer, Northern Cheyenne Agency, Lame Deer, Montana (GS-11)
 Agency Special Officer, Northern Cheyenne Agency, Lame Deer, Montana (GS-11) and above
 Housing Coordinator, Northern Cheyenne Agency, Lame Deer, Montana (GS-11)
 Agency Realty Officer, Northern Cheyenne Agency, Lame Deer, Montana (GS-11) and above

Add:

Criminal Investigator, Northern Cheyenne Agency, Lame Deer, Montana (GS-11)
 Realty Specialist, Northern Cheyenne Agency, Lame Deer, Montana (GS-11) and above

*Rocky Boy's Agency**Delete:*

Administrative Assistant, Rocky Boy's Agency, Box Elder, Montana (GS-9) and above
 Policemen, Rocky Boy's Agency, Box Elder, Montana (GS-7)
 Agency Credit Officer, Rocky Boy's Agency, Box Elder, Montana (GS-11) and above
 Natural Resource Manager, Rocky Boy's Agency, Box Elder, Montana (GS-11) and above

Add:

Administrative Manager, Rocky Boy's Agency, Box Elder, Montana (GS-9) and above
 Loan Specialist (General), Rocky Boy's Agency, Box Elder, Montana (GS-11) and above
 Natural Resource Officer, Rocky Boy's Agency, Box Elder, Montana (GS-11) and above

*Wind River Agency**Delete:*

Agency Specialist Officer, Wind River Agency, Fort Washakie, Wyoming (GS-12)
 Agency Credit Officer, Wind River Agency, Fort Washakie, Wyoming (GS-11) and above
 Agency Realty Officer, Wind River Agency, Fort Washakie, Wyoming (GS-12) and above
 Criminal Investigator, Wind River Agency, Fort Washakie, Wyoming (GS-12) and above
 Loan Specialist (General), Wind River Agency, Fort Washakie, Wyoming (GS-11) and above
 Realty Officer, Wind River Agency, Fort Washakie, Wyoming (GS-12) and above

*Add:**Eastern Area Office**Delete:*

Community Services Officer, Eastern Area, Washington, D.C. and above
 Employment Assistance Office, Cleveland FEO, Cleveland, Ohio (GS-12) and above
 Employment Assistance Officer, Washington, D.C. (GS-12)

Add:

Community Services Specialist, Eastern Area, Washington, D.C. (GS-13) and above
 Vocational Development Officer, Cleveland FEO, Cleveland, Ohio (GS-12) and above
 Self Determination Specialist, Washington, D.C. (GS-12)
 Contract Specialist, Washington, D.C. (2); GS-13 (1); GS-11 (1)

*Cherokee Agency**Delete:*

Employment Assistance Officer, Cherokee Agency, Cherokee, N.C. (GS-11) and above
 Forester (Admin.) Cherokee Agency, Cherokee, N.C. (GS-11) and above
 Supervisory Engineer Technician, Cherokee Agency (Snowbird), Cherokee, N.C. (GS-12) and above

Add:

Vocational Development Specialist, Cherokee Agency, Cherokee, N.C. (GS-11) and above
 Forestry Technician, Cherokee Agency, Cherokee, N.C. (GS-9) and above
 Supervisory Engineer Technician, Cherokee Agency, Cherokee, N.C. (GS-12) and above

*Choctaw Agency**Delete:*

Employment Assistance Officer, Choctaw Agency, Philadelphia, Mississippi (GS-12)

Add:

Loan Specialist (General), Choctaw Agency, Philadelphia, Mississippi (GS-12)
Supervisory Criminal Investigator, Choctaw Agency, Philadelphia, Miss. (GS-12)

Seminole Agency

Delete:

Realty Officer, Seminole Agency, Hollywood, Florida (GS-11) and above
Forester, Seminole Agency, Hollywood, Florida (GS-11) and above

Add:

Realty Officer, Seminole Agency, Hollywood, Florida (GS-12) and above
Forester, Seminole Agency, Hollywood, Florida (GS-12) and above

Juneau Area Office

Add:

Assistant Area Director (Education), Juneau Area, Juneau, Alaska
Assistant Area Director (Program), Juneau Area, Juneau, Alaska
Public Information Officer, Juneau Area, Juneau, Alaska (GS-12)
Indian Law Specialist, Juneau Area, Juneau, Alaska (GS-12)

Anchorage Agency

Add:

Tribal Operations Officer, Anchorage Agency, Anchorage, Alaska (GS-11)

Fairbanks Agency

Delete:

Loan Specialist, Fairbanks Agency, Fairbanks, Alaska (GS-11) (2)
Realty Specialist, Fairbanks Agency, Fairbanks, Alaska (GS-12) (2)

Add:

Tribal Operations Officer, Fairbanks Agency, Fairbanks, Alaska (GS-11)

Seattle Liaison Office

Delete:

Assistant Administrative Officer and Special Representative, Seattle Liaison Office, Seattle, Washington
Supply Officer, Seattle Liaison Office, Seattle, Washington (GS-11)

Miami Agency

Delete:

Realty Specialist, Miami Agency, Miami, Oklahoma (GS-11)
Land Operations Officer, Miami Agency, Miami, Oklahoma (GS-12)

Add:

Natural Resources Specialist, Miami Agency, Miami, Oklahoma (GS-12)

Navajo Area Office

Delete:

Supply Management Officer, Navajo Area, Gallup, N.M. (2) GS-12 (1); GS-11 (1) and above

Procurement Officer, Navajo Area, Gallup, N.M. (GS-12) and above
Supervisory Maintenance Engineer, Navajo Area, Window Rock, Arizona and above
Supervisory Highway Engineer, Navajo Area, Window Rock, Arizona, and above
Supervisory Forester Administration, Navajo Area, Window Rock, Arizona and above

Realty Officer, Navajo Area, Window Rock, Arizona, and above
Contract Specialist, Navajo Area, Gallup, New Mexico (3) GS-11 (2); GS-9 (1) and above

Procurement Agent, Navajo Area, Gallup, N.M. (3) GS-11 (2); GS-9 (1) and above
Safety Manager, Navajo Area, Window Rock, Arizona, and above
Supervisory Social Worker, Navajo Area, Window Rock, Arizona, and above
Supervisory Vocational Development Specialist, Navajo Area, Window Rock, Arizona (GS-12) and above

Add:

Supply Management Officer, Navajo Area, Gallup, N.M. (GS-13) and above
Procurement Officer, Navajo Area, Gallup, N.M. (GS-14) and above
Supervisory Maintenance Engineer, Navajo Area, Window Rock, Arizona (2); GS-14 (1); GS-12 (1) and above
Supervisory Highway Engineer, Navajo Area, Window Rock, Arizona (2); GS-14 (1); GS-13 (1) and above
Forester (Administration), Navajo Area, Window Rock, Arizona (GS-13) and above
Realty Officer, Navajo Area, Window Rock, Arizona (2); GS-13 (1); GS-12 (1) and above
Contract Specialist, Navajo Area, Gallup, N.M. (8); GS-12 (3); GS-11 (3); GS-9 (2) and above

Procurement Agent, Navajo Area, Gallup, N.M. (2); GS-11 (1); GS-9 (1) and above
Safety Manager, Navajo Area, Gallup, N.M. (GS-13) and above
Supervisory Social Worker, Navajo Area, Window Rock, Arizona (2); GS-13 (1); GS-12 (1) and above

Supervisory Vocational Development Specialist, Navajo Area, Window Rock, Arizona (2); GS-13 (1); GS-12 (1) and above
Tribal Operations Specialist, Navajo Area, Window Rock, Arizona (GS-12)

Indian Self-Determination Specialist, Navajo Area, Window Rock, Arizona (GS-12)

Supervisory Procurement Agent, Navajo Area, Gallup, N.M. (GS-12)

Supervisory Supply Management Representative, Navajo Area, Gallup, N.M. (GS-12)

Supervisory Distribution Facilities Specialist, Navajo Area, Gallup, N.M. (GS-11)

Quality Inspection Specialist (Subsistence), Navajo Area, Gallup, N.M. (GS-9)

Accounting Officer, Navajo Area, Gallup, N.M. (2); GS-13 (1); GS-12 (1)

Budget Officer, Navajo Area, Gallup, N.M. (GS-13)

Assistant Area Director, Division of Community Services, Navajo Area, Window Rock, Arizona (GS-14)

Loan Specialist, Navajo Area, Window Rock, Arizona (2); GS-12 (2)

Housing Development Specialist, Navajo Area, Window Rock, Arizona (GS-12)

Supervisory Auditor, Navajo Area, Window Rock, Arizona (GS-12)

Auditor, Navajo Area, Window Rock, Arizona (2); GS-11 (2)

Assistant Area Director, Division of Resources Development, Navajo Area, Window Rock, Arizona (GS-14)

Environmental Quality Services Officer, Navajo Area, Window Rock, Arizona (GS-13)

Realty Specialist, Navajo Area, Window Rock, Arizona (2); GS-12 (2)

Assistant Area Director, Division of Education, Navajo Area, Window Rock, Arizona (GS-13)

Deputy Assistant Area Director (Education), Navajo Area, Window Rock, Arizona (GS-14)

Chinle Agency

Delete:

Employment Assistance Officer, Chinle Agency, Chinle, Arizona (GS-12) and above

Supervisory Social Worker, Chinle Agency, Chinle, Arizona (GS-11) and above
Agency Special Officer, Chinle Agency, Chinle, Arizona (GS-11) and above

Add:

Supervisory Vocational Development Specialist, Chinle Agency, Chinle, Arizona (GS-12) and above

Supervisory Social Worker, Chinle Agency, Chinle, Arizona (GS-12) and above

Agency Criminal Investigator, Chinle Agency, Chinle, Arizona (GS-11) and above

Loan Specialist, Chinle Agency, Chinle, Arizona (GS-9)

Supervisory Supply Specialist, Chinle Agency, Chinle, Arizona (GS-9)

Eastern Navajo Agency

Delete:

Agency Special Officer, Eastern Navajo Agency, Crownpoint, N.M. (GS-11) and above

Agency Credit Officer, Eastern Navajo Agency, Crownpoint, N.M. (GS-11) and above

Add:

Agency Criminal Investigator, Eastern Navajo Agency, Crownpoint, N.M. (GS-11) and above

Loan Specialist, Eastern Navajo Agency, Crownpoint, N.M. (GS-11) and above

Supervisory Supply Specialist, Eastern Navajo Agency, Crownpoint, N.M. (GS-9)

Fort Defiance Agency

Delete:

Vocational Development Officer, Fort Defiance Agency, Fort Defiance, Arizona
Supervisory Maintenance Engineer, Fort Defiance Agency, Fort Defiance, Arizona

Add:

Supervisory Vocational Development Officer, Fort Defiance Agency, Fort Defiance, Arizona (GS-12) and above

Supervisory Supply Specialist, Fort Defiance Agency, Fort Defiance, Arizona (GS-9)

Realty Specialist, Fort Defiance Agency, Fort Defiance, Arizona (GS-9)

Navajo Irrigation Project

Delete:

Project Manager, Navajo Irrigation Project, Farmington, N.M. and above
General Engineer, Navajo Irrigation Project, Farmington, N.M. and above
Supervisory Highway Engineer, Navajo Irrigation Project, Farmington, N.M. and above

Add:

Supervisory General Engineer, Navajo Irrigation Project, Farmington, N.M. (GS-14) and above
Civil Engineer, Navajo Irrigation Project, Farmington, N.M. (GS-13) and above
Supervisory Highway Engineer, Navajo Irrigation Project, Farmington, N.M. (2); GS-12 (1); GS-11 (1) and above

Shiprock Agency**Delete:**

Vocational Development Officer, Shiprock Agency, Shiprock, N.M. (GS-12) and above
Agency Special Officer, Shiprock Agency, Shiprock, N.M. (GS-11) and above
Agency Credit Officer, Shiprock Agency, Shiprock, N.M. (GS-12) and above

Add:

Supervisory Vocational Development Officer, Shiprock, N.M. (GS-12) and above
Agency Criminal Investigator, Shiprock Agency, Shiprock, N.M. (GS-11) and above
Loan Specialist, Shiprock Agency, Shiprock, N.M. (GS-12) and above

Western Navajo Agency**Delete:**

Agency Special Officer, Western Navajo Agency, Tuba City, Arizona (GS-11) and above
Vocational Development Specialist, Western Navajo Agency, Tuba City, Arizona (GS-12) and above
Supervisory Civil Engineer Technician, Western Navajo Agency, Tuba City, Arizona (GS-12)

Add:

Agency Criminal Investigator, Western Navajo Agency, Tuba City, Arizona (GS-11) and above
Supervisory Vocational Development Specialist, Western Navajo Agency, Tuba City, Arizona (GS-12) and above
Supervisory Highway Engineer, Western Navajo Agency, Tuba City, Arizona (GS-12)
Loan Specialist, Western Navajo Agency, Tuba City, Arizona (GS-11)
Realty Specialist, Western Navajo Agency, Tuba City, Arizona (GS-9)

Phoenix Area Office**Delete:**

Employment Assistance Officer, Phoenix Area Office, Phoenix, Arizona, and above
Property Management Officer, Phoenix Area Office, Phoenix, Arizona (GS-12) and above

Add:

Vocational Development Officer, Phoenix Area Office, Phoenix, Arizona and above
Property Management Officer, Phoenix Area Office, Phoenix, Arizona (GS-9) and above

Portland Area**Delete:**

Area Special Officer, Portland Area, Portland, Oregon

Add:

Accounting Officer, Portland Area, Portland, Oregon (GS-13)
Budget Officer, Portland Area, Portland, Oregon (GS-13)
Property Management Officer, Portland Area, Portland, Oregon (GS-13)
Assistant Area Director (Economic Development), Portland Area, Portland, Oregon (GS-14)
Loan Specialist (General), Portland Area, Portland, Oregon (GS-12)
Supervisory Real Property Officer, Portland Area, Portland, Oregon (GS-13)
Assistant Area Director (Community Services), Portland Area, Portland, Oregon (GS-14)
Tribal Government Services Officer, Portland Area, Portland, Oregon (GS-13)
Criminal Investigator, Portland Area, Portland, Oregon (GS-13)
Supervisory Social Worker, Portland Area, Portland, Oregon (GS-14)

Chemawa School**Delete:**

School Superintendent, Chemawa School, Chemawa, Oregon and above
Administrative Manager, Chemawa School, Chemawa, Oregon (GS-11) and above

Add:

Education Program Administrator, Chemawa School, Chemawa, Oregon and above
Administrative Officer, Chemawa School, Chemawa, Oregon (GS-11) and above
Principal, Chemawa School, Chemawa, Oregon, (GS-12)
Supervisory Guidance Counselor, Chemawa School, Chemawa, Oregon (GS-11)

Colville Agency**Delete:**

Agency Credit Officer, Colville Agency, Nespelem, Washington (GS-12) and above
Agency Realty Officer, Colville Agency, Nespelem, Washington (GS-12) and above

Add:

Loan Specialist (General), Colville Agency, Nespelem, Washington (GS-12) and above
Realty Property Officer, Colville Agency, Nespelem, Washington (GS-12) and above
Administrative Officer, Colville Agency, Nespelem, Washington (GS-11)
Construction Superintendent, Colville Agency, Nespelem, Washington (GS-11)
Social Worker, Colville Agency, Nespelem, Washington (GS-12)
Natural Resources Officer, Colville Agency, Nespelem, Washington (GS-13)

Fort Hall Agency**Delete:**

Agency Special Officer, Fort Hall Agency, Pocatello, Idaho (GS-11) and above

Add:

Criminal Investigator, Fort Hall Agency, Pocatello, Idaho (2); GS-11 (2) and above

Social Worker, Fort Hall Agency, Pocatello, Idaho (GS-12)
Criminal Investigator, Fort Hall Agency, Pocatello, Idaho (GS-11)
Natural Resources Officer, Fort Hall Agency, Pocatello, Idaho (GS-13)
Supervisory Real Property Officer, Fort Hall Agency, Pocatello, Idaho (GS-12)
Highway Engineering Technician, Fort Hall Agency, Pocatello, Idaho (GS-12)
Soil Conservationist, Fort Hall Agency, Pocatello, Idaho (GS-12)
Supervisory Range Conservationist, Fort Hall Agency, Pocatello, Idaho (GS-12)
Housing Development Officer, Fort Hall Agency, Pocatello, Idaho (GS-11)

Northern Hall Agency**Delete:**

Agency Credit Officer, Northern Idaho Agency, Lapwai, Idaho (GS-12) and above
Employment Assistance Officer, Northern Idaho Agency, Lapwai, Idaho (GS-12) and above
Supervisory Forester (Admin.), Northern Idaho Agency, Lapwai, Idaho (GS-12) and above
Natural Resource Manager, Northern Idaho Agency, Lapwai, Idaho (GS-12) and above
Agency Realty Manager, Northern Idaho Agency, Lapwai, Idaho (GS-12) and above

Add:

Loan Specialist (General), Northern Idaho Agency, Lapwai, Idaho (GS-11) and above
Vocational Development Officer, Northern Idaho Agency, Lapwai, Idaho (GS-12) and above
Forester (Administration), Northern Idaho Agency, Lapwai, Idaho (2); GS-12 (1); GS-11 (1) and above
Natural Resource Officer, Northern Idaho Agency, Lapwai, Idaho (GS-12) and above
Realty Officer, Northern Idaho Agency, Lapwai, Idaho (GS-12) and above
General Supply Specialist, Northern Idaho Agency, Lapwai, Idaho (GS-7)
Engineering Equipment Operator (Roads), Northern Idaho Agency, Lapwai, Idaho (WD-10)
Foreman II, Maintenance, Northern Idaho Agency, Lapwai, Idaho (WD-6)
Social Worker, Northern Idaho Agency, Lapwai, Idaho (GS-12)
Supervisory Criminal Investigator, Northern Idaho Agency, Lapwai, Idaho (GS-12)

Spokane Agency**Delete:**

Agency Realty Officer, Spokane Agency, Willpinit, Washington (GS-11) and above

Add:

Realty Officer, Spokane Agency, Willpinit, Washington (GS-11) and above

Umatilla Agency**Delete:**

Agency Credit Officer, Umatilla Agency, Pendleton, Oregon (GS-9) and above
Realty Officer, Umatilla Agency, Pendleton, Oregon (GS-11) and above

Add:

Loan Specialist (General), Umatilla Agency, Pendleton, Oregon (GS-9) and above

Realty Specialist, Umatilla Agency, Pendleton, Oregon (GS-11) and above
Social Worker, Umatilla Agency, Pendleton, Oregon (GS-11)
Game Law Enforcement Agent, Umatilla Agency, Pendleton, Oregon (GS-9)

Wapato Irrigation Project

Add:

General Engineer, Wapato Irrigation Project, Wapato, Washington, (GS-13)

Warm Springs Agency

Add:

Criminal Investigator, Warm Springs Agency, Warm Springs, Oregon (GS-12)

Western Washington Agency

Delete:

Employment Assistance Officer, Western Washington Agency, Hoquiam (GS-11) and above
Housing Development Officer, Western Washington Agency, Hoquiam (GS-11) and above
Reservation Programs Officer, Western Washington Agency, Hoquiam (GS-12) and above

Add:

Vocational Development Officer, Western Washington Agency, Hoquiam, Washington (GS-12) and above
Housing Development Officer, Western Washington Agency, Hoquiam, Washington (GS-13) and above
Reservation Programs Officer, Western Washington Agency, Hoquiam, Washington (GS-13) and above
Supervisory Criminal Investigator, Western Washington Agency, Hoquiam, Washington (GS-13)
Supervisory Real Property Management Officer, Western Washington Agency, Hoquiam, Washington (GS-13)
Social Worker, Western Washington Agency, Hoquiam, Washington (GS-12)

Yakima Agency

Delete:

Agency Credit Officer, Yakima Agency, Toppenish, Washington (GS-12) and above
Land Operations Officer, Yakima Agency, Toppenish, Washington (GS-12) and above
Agency Realty Officer, Yakima Agency, Toppenish, Washington and above

Add:

Supervisory Loan Specialist (General), Yakima Agency, Toppenish, Washington (GS-12) and above
Land Operations Officer, Yakima Agency, Toppenish, Washington (GS-13) and above
Realty Officer, Yakima Agency, Toppenish, Washington (GS-13) and above
Supervisory Civil Engineering Technician, Yakima Agency, Toppenish, Washington (GS-12)
Supervisory Criminal Investigator, Yakima Agency, Toppenish, Washington (GS-11)
Social Worker, Yakima Agency, Toppenish, Washington (GS-12)

Sacramento Area Office

Delete:

Area Credit Officer, Sacramento Area, Sacramento, Calif.
Realty Officer, Sacramento Area, Sacramento, Calif. (2) GS-9
Contract Specialist, Sacramento Area, Sacramento, Calif. (2) GS-9
General Supply Specialist, Sacramento Area, Sacramento, Calif. (GS-9)
Appraiser, Sacramento Area, Sacramento, Calif. (5) GS-12 (4); GS-7 (1)
Natural Resources Specialist, Sacramento Area, Sacramento, Calif. (GS-12)
Program Officer, Sacramento Area, Sacramento, Calif. (GS-12)
Administrative Assistance Officer, Los Angeles Field Employment Assistance Office, Los Angeles, Calif., and above
Employment Assistance Officer, Oakland/San Francisco FEAO, Alameda, Calif., and above.

Add:

Realty Specialist, Sacramento Area, Sacramento, Calif. (GS-11) and above
Vocational Development Officer, Los Angeles Field Employment Assistance Office, Los Angeles, Calif. and above
Vocational Development Officer, Oakland/San Francisco FEAO, Alameda, Calif. and above
Land Operations Officer, Sacramento Area, Sacramento, Calif. (GS-13)
Field Representative, Sacramento Area, Sacramento, Calif. (GS-12)

GEOLOGICAL SURVEY

OFFICE OF THE DIRECTOR

Program Analysts, Reston, Va.
Economists, Reston, Va.
Congressional Liaison Officer, Reston, Va.
Administrative Operations Officer, Reston, Va. GS-11 (1)

LAND INFORMATION AND ANALYSIS OFFICE

Administrative Officer, Reston, Va.
Operations Research Analyst, Reston, Va.
Physical Scientists, Reston, Va.
Supervisory Physical Scientists, Reston, Va.
Geographers, Reston, Va.
Geologists, Reston, Va.
Hydrologists, Reston, Va.
Environmental Scientists, all specialties, Reston, Va. GS-12 and above
Research Geographer, Reston, Va.
Physical Scientists, Reston, Va.
Administrative Officer, EROS Data Center, Sioux Falls, S. Dak.
Research Forester, Sioux Falls, S. Dak.
Supervisory Remote Sensing Scientists, Sioux Falls, S. Dak.
Remote Sensing Scientist, Sioux Falls, S. Dak.
General Engineer, Sioux Falls, S. Dak.
Principal Remote Sensing Specialist (Geologic Applications), Sioux Falls, S. Dak.
Data Management Officer, Sioux Falls, S. Dak.
Supervisory Computer Specialists, Sioux Falls, S. Dak.
Computer Systems Analysts, Sioux Falls, S. Dak.
Computer Specialists, Sioux Falls, S. Dak.
Photographic Technologists, Sioux Falls, S. Dak.
Physical Scientist, Flagstaff, Ariz.
Geologist, Denver, Colo.

OFFICE OF NATIONAL PETROLEUM RESERVE IN ALASKA

Environmental Specialists, all locations
Physical Scientists, all locations
Geophysicists, all locations
Geologist, all locations—GS-11 and above
Petroleum Engineers, all locations
Civil Engineers, all locations
Industrial Property Management Specialist, Anchorage, Alaska GS-12 (1)
Administrative Officer, Anchorage, Alaska GS-12 (1)

ADMINISTRATIVE DIVISION

Supervisory Contract Specialists, Reston, Va.
Contract Specialists, Reston, Va. GS-11 and above
Procurement Analysts, Reston, Va. GS-9 and above
Contract Price Analysts, Reston, Va. GS-11 and above
Supervisory Contract Specialists, Lakewood, Colo.
Contract Specialists, Lakewood, Colo.
Supervisory Contract Specialists, Menlo Park, Calif.
Contract Specialists, Menlo Park, Calif.
Contract Administrators, Reston, Va., GS-9 and above

CONSERVATION DIVISION

Accountants and Auditors, all locations GS-9 and above
Accounting Assistants (Mineral Royalties), all locations GS-7 and above
Administrative Officers, all locations GS-12 and above
Assistant Oil and Gas Supervisor—Resource Evaluation, Metairie, La.
Assistant Regional Conservation Manager, Anchorage, Alaska
Biological Technicians, all locations GS-9 and above
Biologists, all specialties, all locations GS-9 and above
Chemical Engineers, all locations GS-9 and above
Computer Equipment Analyst, Reston, Va. GS-12 (1)
Computer Programmers, all locations GS-9 and above
Computer Specialists, all locations GS-9 and above
Computer Systems Analysts, all locations GS-9 and above
Contracts Liaison Specialists, Reston, Va.
Digital Computer Systems Administrator, Metairie, La.
Economists, all specialties, all locations GS-12 and above
Electrical Engineers, all locations GS-9 and above
Environmental Analysis Specialists, all locations GS-9 and above
Environmental Scientists, all locations GS-9 and above
Environmental Specialists, all locations GS-9 and above
General Engineers, all locations GS-9 and above
Geologists, all locations GS-9 and above
Geophysicists, all locations GS-9 and above
Hydraulic Engineers, all locations GS-9 and above
Hydrologists, all locations GS-9 and above
Legal Staff Assistants, Reston, Va. GS-12 and above
Manpower Utilization Specialist, Reston, Va.
Mechanical Engineers, all locations GS-9 and above

RULES AND REGULATIONS

Meteorologists, all locations GS-9 and above
 Mine Inspectors, all locations GS-9 and above
 Mining Engineering Technicians, all locations GS-9 and above
 Mining Engineers, all locations GS-9 and above
 Oceanographers, all locations GS-9 and above
 Operations Research Analysts, all locations GS-12 and above
 Petroleum Engineering and Drilling Technicians, all locations GS-9 and above
 Petroleum Engineers, all specialties, all locations GS-9 and above
 Physical Science Technicians, all locations GS-9 and above
 Physical Scientists, all specialties, all locations GS-9 and above
 Program Analysis Officer, Reston, Va.
 Program Analysts, all locations GS-12 and above
 Program Officer, Washington, D.C.
 Quality Assurance Specialist, all locations GS-9 and above
 Staff Assistant for Programs, Lakewood, Colo.
 Statisticians, all specialties, all locations GS-9 and above
 Structural Engineers, all locations GS-9 and above
 Transportation Specialist, Reston, Va. GS-12 (1)

GEOLOGIC DIVISION

Administrative Officers, Reston, Va. GS-12 (1)
 Assistant Deputy Chief Geologist for Program and Budget, Reston, Va.
 Deputy Western Regional Geologist, Menlo Park, Calif.
 Staff Geologist for Marine and Engineering Geology, Reston, Va.
 Staff Geologist for Outer Continental Shelf Environmental Studies, Reston, Va.
 Staff Geologist for Onshore Oil and Gas Resources, Reston, Va.
 Mining Engineer, Office of Energy Resources, Branch of Uranium and Thorium Resources, Lakewood, Colo.
 Deputy Chief for Land Resources, Reston, Va.
 Staff Scientist for Grants and Contracts, Reston, Va.
 Program Manager for Environmental Overviews, Reston, Va.
 Program Manager for Energy Lands, Golden, Colo.
 Program Manager for Landslides and Hazard Reduction, Golden, Colo.
 Chief, Branch of Astrogeologic Studies, Flagstaff, Ariz.
 Staff Geologist for Geochemistry and Geophysics, Reston, Va.
 Staff Botanist for Geochemistry and Geophysics, Reston, Va.
 Staff Geologist, Alaska Programs, Reston, Va.
 Staff Geologist, Office of Mineral Resources, Reston, Va.
 Assistant to Office Chief, Office of International Geology, Reston, Va.
 International Activities Officer, Reston, Va.
 Staff Geologist for Outer Continental Shelf Leasing Activities, Reston, Va.

PUBLICATIONS DIVISION

Chief, Branch of Administrative Services, Reston, Va.
 Deputy Assistant Chief (Research and Technical Coordination), Reston, Va.
 Printing Liaison Officer, Reston, Va.

Chief, Branch of Distribution, Eastern Region, Reston, Va.
 Assistant Chief, Eastern Region, Reston, Va.
 Chief, Administrative Services, Eastern Region, Reston, Va. GS-12 (1)
 Assistant Chief, Administrative Services, Eastern Region, Reston, Va. GS-11 (1)
 Chief, Branch of Technical Editing, Eastern Region, Reston, Va.
 Chief, Branch of Exhibits, Eastern Region, Reston, Va.
 Chief, Branch of Printing, Eastern Region, Reston, Va.
 Chief, Branch of Visual Services, Eastern Region, Reston, Va.
 Chief, Branch of Cartography, Eastern Region, Reston, Va.
 Chief, Central Region, Lakewood, Colo.
 Chief, Branch of Technical Editing, Central Region, Lakewood, Colo.
 Chief, Branch of Cartography, Central Region, Lakewood, Colo.
 Chief, Branch of Distribution, Central Region, Lakewood, Colo.
 Chief, Branch of Exhibits, Central Region, Lakewood, Colo. GS-12 (1)
 Chief, Western Region, Menlo Park, Calif.
 Chief, Branch of Technical Editing, Western Region, Menlo Park, Calif.
 Chief, Branch of Cartography, Western Region, Menlo Park, Calif.
 Chief, Branch of Exhibits, Western Region, Menlo Park, Calif.
 Chief, Flagstaff Cartographic Section, Western Region, Flagstaff, Ariz.

TOPOGRAPHIC DIVISION

Supervisory Cartographers, Reston, Va.
 Cartographers, Reston, Va. GS-12 (1); GS-11 (1); GS-9 (1)
 Research Cartographers, Reston, Va.
 Mechanical Engineers, Reston, Va.
 Electronics Engineers, Reston, Va.
 Physical Scientist, Reston, Va.
 Photographic Technologist, Reston, Va.

NATIONAL PARK SERVICE

Washington, D.C.

Chief, Budget Division
 Chief, Training Division
 Chief, General Services Division
 Contract Specialist, GS-13
 Chief, Maintenance Division
 Chief, Ranger Activities and Protection Division
 Realty Officers
 Realty Specialists, GS-13 and above
 Appraisers, GS-13 and above
 Chief, Mining and Minerals Division
 Engineers, GS-13 and above
 Environmental Sanitation Officer
 Chief, Safety Management Division
 Chief, Concessions Management Division
 Concessions Analysts, GS-13 and above
 Minority Business Enterprise Coordinator
 Chief, Federal State and Liaison Division

HARPERS FERRY CENTER

Harpers Ferry, West Virginia

Administrative Officer
 Chief, Division of Museum Services
 Chief, Division of Reference Services
 Chief, Division of Interpretive Planning
 Chief, Branch of Procurement and Property Management

ROCKY MOUNTAIN REGION

Denver, Colorado

Associate Regional Directors

Assistant to Regional Director, Utah
 Superintendents, GS-11 and above
 Assistant Superintendents
 Regional Chief, Division of Contracting and Property Management
 Administrative Officers, GS-13 and above
 Realty Officer
 Chief Appraiser
 Appraisers
 Chief, Operations Evaluation
 Equal Opportunity Officer
 Public Information Officer
 Chief, Division of Finance
 Concession Analysts and Specialists, GS-11 and above
 Chief, Contract Administration Division, Denver Service Center
 Chief, Quality Control and Compliance Division, Denver Service Center
 Chief, Surveys Branch, Denver Service Center
 Chief, Graphics Division, Denver Service Center
 Chief, Professional Support Division, Denver Service Center
 Chief, Branch of Construction Contracts, Denver Service Center
 Chief, Branch of Professional Services Contracts, Denver Service Center
 Chief, Special Programs Division
 Chief, Program Control Division

NORTH ATLANTIC REGION

Boston, Massachusetts

Associate Regional Directors
 Regional Chief, Division of Contracting and Property Management
 Chief, Contracting Branch
 Regional Chief, Division of Programs and Budget
 Regional Chief, Division of Finance
 Superintendents, GS-13 and above
 Equal Opportunity Officer
 Assistant Superintendents, GS-13 and above
 Realty Officer
 Realty Specialist, GS-11
 Public Information Officer
 Appraiser, GS-13
 Regional Scientist
 Unit Manager
 Administrative Officers, GS-13 and above
 Concessions Specialists, GS-9 and above

NATIONAL CAPITAL REGION

Washington, D.C.

Chief, Division of Property Management
 Chief, Division of Contracting and Procurement
 Equal Opportunity Officer
 Superintendents, GS-11 and above
 General Managers
 Director, Wolf Trap Farm Park
 Chief, U.S. Park Police
 Assistant Chief, U.S. Park Police

MID-ATLANTIC REGION

Philadelphia, Pennsylvania

Associate Regional Directors
 Superintendents, GS-11 and above
 Assistant Superintendents, GS-13 and above
 Regional Chief, Division of Contracting and Property Management
 Regional Chief, Division of Programming and Budget
 Equal Opportunity Officer
 Administrative Officers, GS-13 and above
 Regional Chief, Division of Finance
 Appraisers, GS-12 and above
 Realty Specialists, GS-12 and above
 Supervisory General Supply Specialist

Park Manager
Architect
Park Planner
General Biological Scientist
Public Information Officer
Staff Curator
Supervisory Museum Curator
Archeologist
Supervisory Park Ranger
Program Manager
Paralegal Assistant

MIDWEST REGION

Omaha, Nebraska

Associate Regional Directors
Executive Assistant to Regional Director
Superintendents, GS-13 and above
Assistant Superintendents
Equal Opportunity Officer
Regional Realty Officer
Realty Officer
Realty Specialists
Regional Appraiser
Concessions Management Specialist, GS-12
Regional Contracting and Property Officer
Chief, Midwest Archeological Center

SOUTHEAST REGION

Atlanta, Georgia

Associate Regional Directors
Superintendents, GS-13 and above
Assistant Superintendents
Equal Opportunity Officer
Conservation Center Directors
Supervisory Concessions Analyst
Realty Officers, GS-13 and above
Appraisers, GS-13 and above
Supervisory Archeologist, Southeast Archeological Center
Supervisory Archeologist, Atlanta Archeological Center
Chief, Contracting and Property Management
Assistant General Supply Officer
Accounting Officer
Assistant Accounting Officer

SOUTHWEST REGION

Santa Fe, New Mexico

Associate Regional Directors
Assistant to the Regional Director, Texas
Chief, Operations Evaluation
Chief, Division of Finance
Chief, Division of Programming and Budget
Chief, Concessions
Equal Opportunity Officer
Appraiser, GS-13
Contract Specialist, GS-12
Contract Specialist, GS-11
Chief, Contracting and Property Management
Chief, Land Acquisition
Public Information Officer
Superintendents, GS-13 and above
General Superintendent
Park Ranger (Management Consulting)
Realty Officer, GS-13 and above

WESTERN REGION

San Francisco, California

Superintendents, GS-13 and above
Assistant Superintendents, GS-13 and above
Regional Chief, Division of Contracting and Property Management

Regional Chief, Division of Finance
Equal Opportunity Officer
Administrative Officers, GS-13 and above
Regional Chief, Programming and Budget Manager, Western Archeological Center
Concessions Analysts and Specialists, GS-13 and above
Realty Officers and Specialists, GS-13 and above
Appraisers, GS-13 and above

PACIFIC NORTHWEST REGION

Seattle, Washington

Associate Regional Directors
Superintendents, GS-13 and above
General Superintendent, Klamath Falls Group
Chief Scientist
Realty Officers
Equal Opportunity Officer
Mining Engineers
Chief, Contracting and Property Management
Area Director, Alaska
Staff Assistant, Alaska
Management Assistant, Alaska
Concessions Analysts
Appraisers

HERITAGE CONSERVATION AND RECREATION SERVICE

All GS-15's and above (31)
General Engineer, Washington, D.C.
Grants Administrator, Washington, D.C.
Office Services Manager, Washington, D.C.
Contracting Officer, Washington, D.C.
Supervisory Historian, Washington, D.C.
Supervisory Architect/Historian, Washington, D.C.
Accounting Officer, Washington, D.C.
Area Director, Alaska
Supervisory Archeologist, San Francisco, California
Supervisory Archeologist, Denver, Colorado
Supervisory Archeologist, Atlanta, Georgia
All Assistant Regional Directors (15)
Regional Supervisory Outdoor Recreation Planner (8)

U.S. FISH AND WILDLIFE SERVICE

(Washington Office)

Deputy Assistant Director—Public Affairs—Washington, D.C.
Chief, Office of Audio Visual Services—Public Affairs—Washington, D.C.
Chief, Office of Current Information—Public Affairs—Washington, D.C.
Chief, Office of Radio & TV Program Coordination—Public Affairs—Washington, D.C.
Contract Specialist—Contracting and General Services—Duty Station—Denver, Colorado
Chief, Branch of Contracting—Washington, D.C.
Staff Biologists—Federal Aid—Washington, D.C.—All GS-13 and above
Assistant Chief—Division of Ecological Services—Washington, D.C.
Leader, Stream Alteration Team—OBS—Washington, D.C.
Leader, Power Plant Team—OBS—Washington, D.C.
Special Agents—Washington, D.C.—All

Program Coordinators—Washington, D.C.
Chief, Office of Wildlife Assistance—Washington, D.C.
Chief, Youth Conservation Programs—Washington, D.C.
Assistant Chief, Division of Engineering—Washington, D.C.
Assistant Chief, Division of Realty—Washington, D.C.
Chief Appraiser—Washington, D.C.
Realty Specialists and Appraisers—GS-13 and above—Washington, D.C.
Assistant Chief, Migratory Bird Management—Laurel, Maryland
Chief, Alaska Native Claims Staff—Washington, D.C.
Energy Manager—Washington, D.C.
Chief, Aircraft Management Staff—Washington, D.C.
Regional Realty Specialists and Appraisers—GS-11 and above—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado; Anchorage, Alaska
Regional Manpower Specialists—All regions
Regional Pesticide Specialist—GS-12 and above—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado
Regional Chief Engineer—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado; Anchorage, Alaska
Coordinator—Indian Programs, Technical Assistance—Seattle, Washington

FIELD LEVEL

Area Managers—All—Various Locations
Unit Leaders, Cooperative Fish and Wildlife Research Units, All—Various locations
Area Supervisors—Division of Ecological Services—All—Various locations
Special Agents—All—Various locations
Project Leaders, National Wildlife Refuges—All—Various locations
Project Leaders, National Fish Hatcheries—All—Various locations
Research Center and Laboratory Directors—All—Various locations
Center Directors, Job Corps Centers—Puxico, Missouri; Indianola, Oklahoma
State Supervisors, Animal Damage Control Programs—All—Various locations
Field and Area Level Staff Specialists for Wildlife Assistance—GS-11 and above—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado
Chief, Office of Cooperative Units, Research—Washington, D.C.
Regional Staff Biologists—Federal Aid—GS-12 and above—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado; Anchorage, Alaska
Deputy Alaska Area Director—Anchorage, Alaska
Chief, Regional Contracting and General Services Officer—GS-12 and above—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia;

Boston, Massachusetts; Denver, Colorado, Anchorage, Alaska

Assistant Regional Directors—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado

Assistant Alaska Area Director—Anchorage, Alaska

Chiefs, Office of Support Services—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado, Anchorage, Alaska

Regional Public Affairs Officer—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado, Anchorage, Alaska

Regional Safety Officers—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado; Anchorage, Alaska

Regional Activity Leaders and Environmental Specialists—GS-12 and above—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado, Anchorage, Alaska

Field and Area Level Staff Specialists for Fisheries Assistance—GS-11 and above—Portland, Oregon; Albuquerque, New Mexico; Twin Cities, Minnesota; Atlanta, Georgia; Boston, Massachusetts; Denver, Colorado

Environmental Specialists—GS-12 and above—All Regions and Alaska

Project Coordinator—Land Acquisition, Albuquerque, New Mexico

Realty Specialists and Appraisers—GS-11 and above—All locations

OFFICE OF HEARINGS AND APPEALS

Office of the Director

Attorney-Adviser (General), Arlington, Virginia, GS-12

Administrative Division

Administrative Officer, Arlington, Virginia GS-12

Board of Contract Appeals

Attorney-Adviser (General) Arlington, Virginia, GS-14

Board of Land Appeals

Attorney-Advisers (General), Washington, D.C. GS-12 and above

Alaska Native Claims Appeal Board

Board Members, Anchorage, Alaska, GS-14's

Attorney-Advisers (General), Anchorage, Alaska, GS-14's

Surface Mining and Reclamation Appeals

Attorney-Advisers (General), Arlington, Virginia, GS-12 and above

Hearings Division.

Attorney-Adviser (General), Arlington, Virginia, GS-12

Attorney-Adviser (General), Salt Lake City, Utah, GS-12

BUREAU OF RECLAMATION

Washington Office

Washington Office Manager, Commissioner's Office, Washington, D.C.

Chief, Supply and Service Branch, Office of the Washington Office Manager, Washington, D.C.

Senior Staff Assistant, Lands and Recreation, Commissioner's Office, Washington, D.C.

Contract and Repayment Specialist, Commissioner's Office, Washington, D.C.

Chief, Division of Youth Conservation Programs, Commissioner's Office, Washington, D.C.

Foreign Activities Staff Director, Commissioner's Office, Washington, D.C.

ENGINEERING AND RESEARCH CENTER

Supervisory General Engineer (7), Denver, Colorado

General Engineer, Denver, Colorado

Supervisory Civil Engineer, Denver, Colorado

Civil Engineers (4), Construction, Denver, Colorado

Environmental Specialist, Denver, Colorado

Supervisory Contract Procurement Officer, Denver, Colorado (GS-12)

Supervisory Procurement Agent, Denver, Colorado (GS-12)

Procurement Officer, Denver, Colorado (2) (GS-14, GS-13)

Supervisory Research Physical Scientists (2), Denver, Colorado

Research Physical Scientist, Denver, Colorado

Supply Management Officer, Denver, Colorado

Supervisory Computer Specialist, Denver, Colorado

PACIFIC NORTHWEST REGIONAL OFFICE

Regional Engineer, Boise, Idaho

Chief, Construction Branch, Boise, Idaho

Chief, Design Branch, Boise, Idaho

Chief, Division of Water, Power and Lands, Boise, Idaho

Chief, Repayment and Statistics Branch, Boise, Idaho

Chief, Lands Branch, Boise, Idaho

Chief, Operations and Maintenance Branch, Boise, Idaho

Supervisory Soil Scientist, Boise, Idaho

Regional Planning Officer, Boise, Idaho

Chief, Engineering and Surveys Branch, Boise, Idaho

Chief, Economics Branch, Boise, Idaho

Chief, Recreation Branch, Boise, Idaho

Regional Procurement and Property Officer, Boise, Idaho

Supervisory Civil Engineer, Oroville-Tonasket Branch, Boise, Idaho

Chief, Resource Utilization Branch, Boise, Idaho

Regional Public Affairs Officer, Boise, Idaho

Chief, Procurement Branch, Boise, Idaho (GS-12)

Contract Specialist, Boise, Idaho (GS-12)

Appraiser, Boise, Idaho (GS-12)

Appraiser, Boise, Idaho (GS-11)

Natural Resource Planner (Study Coord.), Boise, Idaho

Chief, Reports Branch, Boise, Idaho

Chief, Water Resources Branch, Boise, Idaho

Realty Specialists (4), Boise, Idaho (GS-11 and above)

Chief, Technical Services Branch, Boise, Idaho

Chief, Salem Field Branch, Salem, Oregon

Project Superintendent, Central Snake Projects Office, Boise, Idaho

Chief, Lands and Recreation Division, Central Snake Projects Office, Boise, Idaho (GS-12)

Realty Specialist, Central Snake Projects Office, Boise, Idaho (GS-9)

Center Director, Columbia Basin Civilian Conservation Center, Moses Lake, Washington

Project Manager, Columbia Basin Project Office, Ephrata, Washington

Chief, Engineering and Drainage Division, Ephrata, Washington

Chief, General Construction Branch, Ephrata, Washington

Chief, Construction Division, Ephrata, Washington

Chief, Water and Lands Operations Division, Ephrata, Washington

Chief, Realty Section, Ephrata, Washington (GS-12)

Appraiser, Ephrata, Washington (GS-11)

Realty Officer (Chief, Land Management Branch), Ephrata, Washington (GS-12)

Supervisory Civil Engineer (Chief, General Engineering Branch), Ephrata, Washington

Chief, Construction Field Branch, Coulee City, Washington

Project Superintendent, Hungry Horse Project, Hungry Horse, Montana

Project Superintendent, Minidoka Project Office, Burley, Idaho

Realty Specialist, Minidoka Project Office, Burley, Idaho (GS-12)

Center Director, Marsing Civilian Conservation Center, Marsing, Idaho

Resident Engineer, Forest Grove, Oregon

Project Superintendent, Yakima Project Office, Yakima, Washington

Chief, Construction Field Division, Cle Elum, Washington

Field Engineer, Grand Coulee, Washington

Chief, Engineering and Resources Division, Grand Coulee, Washington

Office Engineer, Grand Coulee, Washington

Chief, Maintenance Division, Grand Coulee, Washington

Chief, Operations Division, Grand Coulee, Washington

Project Public Affairs Officer, Grand Coulee, Washington (GS-12)

Chief, Administrative Services, Grand Coulee, Washington

Appraiser, Grand Coulee Project Office, Grand Coulee, Washington (GS-7)

Chief, Teton Claims Officer, Idaho Falls, Idaho

Assistant Claims Officer, Rexburg, Idaho (GS-12)

MID-PACIFIC REGIONAL OFFICE

Assistant Regional Director—Administration, Sacramento, California

Project Construction Engineer, Fresno, California

Chief, Office Engineering Division, Fresno, California

Project Manager, Klamath Falls, Oregon

Conservation Corps Coordinator, Sacramento, California

Chief, Office Engineering Division, Auburn, California

Chief, Right-of-Way Division, Auburn, California

Administrative Officer, Auburn, California

Project Manager, Carson City, Nevada

Regional Loan Engineer, Sacramento, California

Regional Finance Officer, Sacramento, California

Regional Supervisor of Water and Land Operations, Sacramento, California

Chief, Repayment Branch, Division of Water and Land Operations, Sacramento, California
 Regional Engineer, Sacramento, California
 Chief, Construction Branch, Division of Design and Construction, Sacramento, California
 Chief, Design Branch, Division of Design and Construction, Sacramento, California
 Regional Planning Officer, Sacramento, California
 Project Construction Engineer, Auburn, California
 Regional Supply and Services Officer, Sacramento, California
 Chief, Procurement Branch, Division of Supply and Services, Sacramento, California
 Regional Real Estate Officer, Sacramento, California
 Supervisory Appraiser, Division of Real Estate, Sacramento, California
 Chief, Acquisition Branch, Division of Real Estate, Sacramento, California
 Project Superintendent, Folsom, California
 Project Superintendent, Fresno, California
 Supervisory Repayment Specialist, Contract Administration Division, Fresno, California
 Project Superintendent, Tracy, California
 Project Superintendent, Redding, California
 Project Construction Engineer, Willows, California
 Chief, Office Engineering Division, Willows, California
 Project Construction Engineer, Gilroy, California
 Recreation Manager, Lake Berryessa, California

LOWER COLORADO REGIONAL OFFICE

Assistant Regional Director (Administration), Boulder City, Nevada
 Regional Public Affairs Officer, Boulder City, Nevada
 Regional Engineer, Boulder City, Nevada
 Regional Supervisor of Water and Land Operations, Boulder City, Nevada
 Chief, Land Management Branch, Boulder City, Nevada
 Regional Supervisor of Power, Boulder City, Nevada
 Assistant Regional Supervisor of Power, Boulder City, Nevada
 Regional Supply and Services Officer, Boulder City, Nevada
 Chief, Procurement Branch, Boulder City, Nevada
 Chief, Contracts and Repayment Branch, Boulder City, Nevada
 Regional Planning Officer, Boulder City, Nevada
 Regional Loan Program Coordinator, Boulder City, Nevada (GS-12)
 Project Manager, Boulder City, Nevada
 Assistant Project Manager, Lower Colorado Dams Project Office, Boulder City, Nevada
 Project Construction Engineer, Southern Nevada Construction Office, Henderson, Nevada
 Office Engineer (SNCO), Henderson, Nevada
 Assistant Projects Manager, Arizona Projects Office, Phoenix, Arizona
 Chief, Administrative Division, Phoenix, Arizona
 Chief, Appraisal Branch, Phoenix, Arizona
 Chief, Lands Division, Phoenix, Arizona
 Construction Engineer, Phoenix, Arizona
 Assistant Project Manager, Yuma Projects Office, Yuma, Arizona

Chief, Lands Branch, Yuma, Arizona
 Chief, Property and Procurement Branch, Yuma, Arizona (GS-12)

UPPER COLORADO REGIONAL OFFICE

Assistant Regional Director (Administration), Salt Lake City, Utah
 Public Information Officer, Salt Lake City, Utah
 Regional Engineer, Salt Lake City, Utah
 Regional Finance Officer, Salt Lake City, Utah
 Chief, Water and Power Resources Management Division, Salt Lake City, Utah
 Chief, Operations and Repayment Branch, Salt Lake City, Utah
 Chief, Lands Branch, Salt Lake City, Utah
 Appraisers, Salt Lake City, Utah (4) (GS-11 and 12)
 Regional Planning Officer, Salt Lake City, Utah
 Regional Procurement Officer, Salt Lake City, Utah (GS-12)
 Center Director, Collbran Job Corps Civilian Conservation Center, Collbran, Utah
 Assistant Center Director, Collbran, Colorado (GS-12)
 Administrative Officer, Collbran, Colorado (GS-11)
 Center Director, Weber Basin Job Corps Civilian Conservation Center, Ogden, Utah
 Assistant Center Director, Ogden, Utah (GS-12)
 Administrative Officer, Ogden, Utah (GS-11)
 Power Operations Manager, Page, Arizona
 Administrative Officer, Page, Arizona (GS-12)
 Manager, Operations and Maintenance Branch, Page, Arizona
 Manager, Flaming Gorge Field Division, Dutch John, Utah
 Manager, Curicanti Field Division, Montrose, Colorado
 Assistant Project Manager, Central Utah Projects Office, Provo, Utah
 Supervisory Civil Engineer, Bonneville Basin Construction Division, Provo, Utah
 Supervisory Civil Engineer, Uinta Basin Field Division, Duchesne, Utah
 Projects Manager, Grand Junction, Colorado
 Project Construction Engineer, Montrose, Colorado
 Projects Manager, Durango, Colorado
 Project Construction Engineer, Cortez, Colorado
 Supervisory Civil Engineer, Lyman Projects Office, Mountain View, Wyoming

SOUTHWEST REGION

Assistant Regional Director—Administration, Amarillo, Texas
 Regional Public Affairs Officer, Amarillo, Texas (GS-12)
 Regional Engineer, Amarillo, Texas
 Regional Planning Officer, Amarillo, Texas
 Regional Supervisor of Water, Land, and Power, Amarillo, Texas
 Chief, Land Operations, Management, and Recreation Branch, Division of Water, Land, and Power, Amarillo, Texas
 Chief, Repayment and Economics Branch, Division of Water, Land, and Power, Amarillo, Texas
 Regional Finance Officer, Amarillo, Texas
 Regional Supply and Services Officer, Amarillo, Texas
 Regional Youth Programs Manager, Amarillo, Texas

Projects Superintendent, Upper Rio Grande Basin Projects Office, Albuquerque, New Mexico
 Project Superintendent, Rio Grande Project, El Paso, Texas
 Project Construction Engineer, Navajo Indian Irrigation Project, Farmington, New Mexico
 Project Manager, Pecos River Projects Office, Carlsbad, New Mexico
 Project Construction Engineer, Mountain Park Project, Altus, Oklahoma
 Project Construction Engineer, Palmetto Bend Project, Edna, Texas
 Project Construction Engineer, Nueces River Project, Three Rivers, Texas
 Chief, Right-of-Way Division, Nueces River Project, Three Rivers, Texas
 Planning Officer, Albuquerque, New Mexico
 Planning Officer, Austin, Texas
 Planning Officer, Oklahoma City, Oklahoma
 Camp Director, Mondale Young Adult Conservation Corps Camp, Chickasha, Oklahoma
 Camp Director, Roadrunner Young Adult Conservation Corps Camp, Albuquerque, New Mexico (GS-11)
 Special Government Employee, U.S. Commissioner and Chairman of the Canadian River Commission (Expert), Office of Regional Director, Amarillo, Texas

UPPER MISSOURI REGIONAL OFFICE

Assistant Regional Director—Administration, Billings, Montana
 Regional Public Affairs Officer, Billings, Montana
 Regional Engineer, Billings, Montana
 Regional Supervisor of Water and Land, Billings, Montana
 Assistant Regional Supervisor of Water and Land, Billings, Montana
 Regional Planning Engineer, Billings, Montana
 Regional Procurement and Property Officer, Billings, Montana
 Chief, Procurement Branch, Billings, Montana (GS-12)
 Chief, Right-of-Way Branch, Billings, Montana
 Youth Program Specialist, Billings, Montana (GS-12)
 Assistant Project Manager, Bismarck, North Dakota
 Chief, Administrative Services Division, Bismarck, North Dakota (GS-12)
 Chief, Supply and Services Branch, Bismarck, North Dakota (GS-11)
 Chief, Appraisal Branch, Bismarck, North Dakota (GS-12)
 Chief, Acquisition Branch, Bismarck, North Dakota (GS-12)
 Chief, Right-of-Way Division, Bismarck, North Dakota
 Realty Specialist, Bismarck, North Dakota (GS-12)
 Public Information Officer, Bismarck, North Dakota (GS-12)
 Appraisers (3), Bismarck, North Dakota
 Realty Specialists (4), Bismarck, North Dakota
 Project Manager, Huron, South Dakota
 Realty Specialist, Huron, South Dakota (GS-11)
 Project Manager, Great Falls, Montana (GS-12)
 Project Manager, Riverton, Wyoming
 Administrative Officer, Riverton, Wyoming (GS-9)
 Project Superintendent, Canyon Ferry, Montana

Chief, Administrative Services Division, Canyon Ferry, Montana (GS-7)
 Project Superintendent, Fort Smith, Montana
 Administrative Officer, Fort Smith, Montana (GS-9)
 Project Construction Engineer, Tiber Dam near Chester, Montana
 Administrative Officer, Tiber Dam near Chester, Montana (GS-9)

LOWER MISSOURI REGION

Assistant to the Regional Director—Administrative Management, Denver, Colorado
 Regional Public Affairs Officer, Denver, Colorado
 Public Information Specialist, Denver, Colorado (GS-11)
 Regional Engineer, Denver, Colorado
 Chief, Construction Coordination and Estimates Branch, Denver, Colorado
 Construction Representative, Denver, Colorado
 Civil Engineer, Denver, Colorado (GS-12)
 Regional Planning Officer, Denver, Colorado
 Civil Engineer (Small Loans Officer), Denver, Colorado (GS-12)
 Regional Supervisor of Water and Land, Denver, Colorado
 Chief, Repayment Branch, Denver, Colorado
 Contract and Repayment Specialists (2) Denver, Colorado (GS-11, 12)
 Regional Youth Programs Coordinator, Denver, Colorado (GS-12)
 Chief, Land Acquisition Branch, Denver, Colorado
 Appraisers, (4) Denver, Colorado (GS-9, 11, GS-12)
 Realty Specialists, (2) Denver, Colorado (GS-9, GS-12)
 Regional Supervisor of Power, Denver, Colorado
 Regional Finance Officer, Denver, Colorado
 Chief, Division of Supply and Services, Denver, Colorado
 Procurement Officer, Denver, Colorado (GS-12)
 Procurement Agent, Denver, Colorado (GS-11)
 Chief, Construction Field Division, Salida, Colorado
 Administrative Officer, Pueblo, Colorado
 Chief, Engineering-Operations Division, Pueblo, Colorado
 Realty Specialists, (4) Pueblo, Colorado (GS-9 and above)
 Project Manager, Loveland, Colorado
 Project Manager, Casper, Wyoming
 Project Manager, McCook, Nebraska
 Kansas Reclamation Representative, Topeka, Kansas
 Wyoming Reclamation Representative, Cheyenne, Wyoming
 Project Manager, Central Nebraska Projects Office, Grand Island, Nebraska
 Construction Engineer (Chief, North Loups Construction Field Division) Ord, Nebraska
 Chief, Engineering Resources Division, Grand Island, Nebraska
 Realty Specialists (2) Grand Island, Nebraska (GS-11 and 12)
 Realty Specialist (Narrows Construction Representative) Fort Morgan, Colorado

BUREAU OF LAND MANAGEMENT

Delete:

All authorized Officers' Field Representatives, Branch of Construction, Alaska Pipeline Project, Anchorage, Alaska (11)
 All Managers, Outer Continental Shelf Offices, GS-14 (1)

Add:

All Authorized Officers Field Representatives, Branch of Construction, Alaska Pipeline Project, Anchorage, Alaska (9)
 Program Issues Coordination Officer
 Chief, Office of Equal Employment Opportunity, Washington, D.C.
 Chief, Office of Coal Program Development Staff
 Environmental Specialist, GS-13, Coal Operations Staff, Washington, D.C.
 Natural Resources Specialist, GS-13, Coal Operations Staff, Washington, D.C. (4)
 Mineral Leasing Specialists, GS-13, Coal Operations Staff, Washington, D.C. (4)
 Industry Economist, GS-12, Coal Operations Staff, Washington, D.C.
 Regional Planner, GS-13, Coal Program Development Staff, Washington, D.C. (3)
 Program Analyst, GS-13, Coal Program Development Staff, Washington, D.C.
 Natural Resource Specialist, GS-13, Coal Program Development Staff, Washington, D.C.
 Geographer, GS-13, Coal Program Development Staff, Washington, D.C.
 Mining Engineer, GS-13, Coal Program Development Staff, Washington, D.C.
 Assistant Chief, Wilderness and Environmental Areas Staff, Washington, D.C.
 All Area Managers (196)
 Chief, Division of Alaska Native Claims Settlement Operations, Anchorage, Alaska

OFFICE OF WATER RESEARCH AND TECHNOLOGY

Technology Development Specialist (5), Washington, D.C.
 Technology and Information Transfer Specialist (4), Washington, D.C.
 Staff Assistant, Office of Administrative Manager, Washington, D.C.
 Assistant Chief, Contracts and Grants Center, Washington, D.C.
 Contracts and Grants Specialists, Contracts and Grants Center, Washington, D.C.
 Chief, Management Services Center, Washington, D.C.
 Desalting Project Specialist (2), Tel Aviv, Israel
 Desalting Project Specialist (3), Jeddah, Saudi Arabia

OFFICE OF SURFACE MINING RECLAMATION AND ENFORCEMENT

Office of the Director
 Public Information Officer
 Abandoned Mined Lands
 Program Analyst
 Mining Industry Specialist (Minerals)
 Land Use Planners
 Engineer (General)
 Economist
 Mining Industry Analyst
 Reclamation Specialist
 Realty Specialist
 Appraiser
 Grants Coordinator, GS-12

Inspection and Enforcement

Chief, State Inspection Officer
 Inspector (Training and Qualifications)
 Inspection Practices Specialist
 Enforcement Specialists
 Collection Specialist

Assistant Assessment Officer
 Assessors, all grades

State and Federal Programs

Grants Management Specialist, GS-12
 State Programs Specialists, GS-9 and above
 Federal Lands Specialists, GS-9 and above
 Program Specialists, GS-9 and above
 Physical Scientists

Technical Services and Research

Land Use Planner
 Botanist
 Biologists
 Chemist
 Soil Scientists
 Civil Engineers
 Agricultural Engineers
 Physical Scientist
 Mining Engineers
 Landscape Architect
 Geologist
 Agronomist
 Air Pollution Analyst
 Performance Bond and Insurance Specialist

Management and Budget

Budget Analyst, GS-13
 Grants Fiscal Specialists, GS-12 and above
 Chief, Property and Procurement
 Contract Specialists, GS-13 and above
 Space Management Specialist
 Chief, Systems Development
 Chief, Cataloging and Data Center
 Management Analysis Officer
 Program Analysts, GS-13 and above
 Economists
 Land Use Planner
 Senior Environmental Scientist
 Soil Scientist
 Mining Engineers, GS-11 and above
 Hydrologist
 Recreation Specialist
 Regional Offices (Charleston, West Virginia; Knoxville, Tennessee; Indianapolis, Indiana; Kansas City, Missouri; and Denver, Colorado)
 Public Affairs Officers, all locations
 Chief, Branch of Fee Compliance, GS-12, all locations
 Fee Compliance Officers, GS-9 and above, all locations
 Chief, State Reclamation Programs, all locations
 Chief, Federal Reclamation Programs, all locations
 Land Use Specialists, various locations
 Chief, Branch of Realty, all locations
 Mining Engineers, various locations
 Program Management Officers, various locations
 Environmental Analysis Specialists, GS-12, all locations
 Appraisers, all locations
 Realty Specialists, GS-12, various locations
 Reclamation Specialists, various locations
 Chief Inspectors, various locations
 Staff Assistants (Inspection and Enforcement), various locations
 Chief, Technical Assistance, various locations
 Assistants for Enforcement and Employee Protection, various locations
 Conference Officers, GS-12, various locations
 State Programs Specialist, GS-9 and above, all locations
 Physical Scientists, GS-11 and above, all locations
 Tribal Programs Specialists, various locations

Federal Lands Coordinators, various locations
Cooperative Agreement Specialists, GS-11 and above, various locations
Reclamation Specialists, all locations
Resource Planners, various locations
Mining Engineers, all locations
Geologists, all locations
Soils Scientists, all locations
Hydrologists, all locations
Wildlife Biologists, all locations
Agronomists, various locations
Agricultural Engineers, all locations
Economists, various locations
Foresters, various locations
Landscape Architects, various locations
Range Management Scientists, various locations
Civil Engineers, various locations
Environmental Coordinator—Denver, Colorado
Administrative Officers, all locations
District Level
District Managers
Office Services Managers, GS-9
Supervisory Mining Engineers
All Reclamation Specialists
All Inspectors

OFFICE OF THE SOLICITOR

Special Assistants to the Solicitor
Deputy Ethics Counselor
Assistant Ethics Counselor
Confidential Assistant to the Solicitor
Secretarial or Confidential Assistant to the Deputy Solicitor
Secretarial Assistants to the Special Assistants to the Solicitor
Field Solicitors
Attorneys: GS-13 and above
Clerical Assistant/Steno

13. Appendix D to 43 CFR 20.735 as published in 43 FR 1086-1088, January 6, 1978, is amended for those bureaus, offices or subunits having changes, to update the list of Bureaus and Offices, or subunits thereof, performing functions or duties under the Federal Land Policy and Management Act and positions which the Secretary has exempted from the reporting requirements. The lists for some bureaus, offices or subunits are completely revised and others are amended by additions and deletions. Bureau, office and subunit lists not revised or amended remain the same. The revisions and amendments to Appendix D are as follows:

APPENDIX D—LIST OF BUREAUS AND OFFICES, OR SUBUNITS THEREOF, PERFORMING FUNCTIONS OR DUTIES UNDER THE FEDERAL LAND POLICY AND MANAGEMENT ACT AND POSITIONS WHICH THE SECRETARY HAS DETERMINED TO BE EXEMPT FROM REPORTING REQUIREMENTS OF SECTION 313

All employees in the following bureaus, offices, and subunits thereof, are subject to the filing requirements of the Act except for the following positions which do not involve policy-making or regulatory responsibility under the Act.

SECRETARY'S IMMEDIATE OFFICE

Delete:

GS-14, Confidential Assistant, Washington, D.C.
GS-12, Staff Assistant, Washington, D.C.
GS-11, Staff Assistant, Washington, D.C.
GS-11 and below, Correspondence Management Specialist, Washington, D.C.

Add:

GS-14, Staff Assistant
GS-12, Chief, Correspondence Staff
GS-11, Research Assistant
GS-10, Lead Correspondence Analyst

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

GS-9, Staff Assistant to the Director

Division of Congressional Liaison

GS-13, Congressional Services Specialist
GS-11, Special Assistant to the Director
GS-11, Management Specialist
GS-8 and below, administrative, clerical and secretarial personnel

Division of Legislation

GS-14, Attorney-Advisors
GS-13, Attorney-Advisors
GS-12, Attorney-Advisors
GS-10, Legislative Assistant
GS-9, Legislative Assistant
GS-8 and below, secretaries, clerks, and administrative personnel

OFFICE OF ENVIRONMENTAL PROJECT REVIEW

Add:

GS-12, Staff Assistant

OFFICE OF AUDIT AND INVESTIGATION

Delete:

Office title of Office of Audit and Investigation
GS-12, Administrative Officer

Add:

New office title Office of Inspector General
GS-13, Administrative Officer

OFFICE OF MINERALS POLICY AND RESEARCH ANALYSIS

Delete:

GS-11, Statistician

Add:

GS-13, Economist, (1)—Division of Minerals Data, Forecasting and Analysis

ASSISTANT SECRETARY—ENERGY AND MINERALS

Delete:

GS-15, Industrial Specialist
GS-11, Staff Assistant

ASSISTANT SECRETARY—POLICY, BUDGET AND ADMINISTRATION

Delete:

GS-15, Management Resources Officer
GS-13, Equal Opportunity Officer

Add:

GS-15, Assistant to the Deputy Assistant Secretary
GS-15, Assistant to the Assistant Secretary

GS-14, Equal Opportunity Officer
GS-13, Equal Opportunity Specialist

ASSISTANT SECRETARY—FISH AND WILDLIFE AND PARKS

GS-16, Special Assistant
GS-15, Special Assistants
GS-15, Staff Assistant
GS-15, Fish and Wildlife Biologist
GS-13, Special Assistants
GS-11, Confidential Assistant
GS-9 and below, administrative, clerical and secretarial personnel

ASSISTANT SECRETARY—LAND AND WATER RESOURCES

Delete:

GS-15, Public Information Officer
GS-11, Confidential Assistant

Add:

GS-16, Staff Assistant (Economics)
GS-15, Special Assistant to Assistant Secretary (3)
GS-15, Staff Assistants (2)
GS-9, Confidential Assistant

OFFICE OF THE SOLICITOR

The following subunits of the Solicitor's office perform functions and duties under the Act. In addition to any positions listed under each subunit, all clerical, administrative and paralegal positions in each subunit are also exempt.

Immediate Office of the Solicitor
Administrative Office, All personnel are exempt except the Deputy Ethics Counselor, Assistant Ethics Counselor and 1 Clerical Assistant Steno
Division of General Law, 8 Attorney-Advisers
Division of Conservation and Wildlife, 3 Attorney-Advisers
Division of Energy and Resources, 8 Attorney-Advisers
Salt Lake City Regional Office, 1 Attorney-Adviser
Anchorage Regional Office,
Atlanta Regional Office 7 Attorney-Advisers
Portland Regional Office, 8 Attorney-Advisers
Sacramento Regional Office, 2 Attorney-Advisers
Denver Regional Office, 7 Attorney-Advisers
Amarillo Field Office
Boise Field Office
Santa Fe Field Office
Phoenix Field Office
Billings Field Office
Riverside Field Office

GEOLOGICAL SURVEY

OFFICE OF THE DIRECTOR, RESTON, VIRGINIA
Immediate Office

Assistant Director—Program Analysis
Assistant Director—Geologic Engineering
Assistant Director—Eastern Region
Program Analysts
Economists
Physical Scientists
Legislative Specialist
Congressional Liaison Officer
Biological Scientist

Staff Assistant
Public Information Officer
Public Information Specialist
Operations Research Analyst
Special Assistant for Environmental Analysis
Computer Systems Analyst
Data Base Administrator
Historian
Information Assistant
Program Assistant
Congressional Liaison Assistant
Equal Opportunity Officers
Secretarial, clerical, and administrative personnel

GEOLOGIC DIVISION

IMMEDIATE OFFICE OF THE CHIEF GEOLOGIST

Deputy Chief Geologist for Program and Budget
Administrative Officer
Fiscal Officer
Clerical, secretarial, and other administrative personnel

OFFICE OF MINERAL RESOURCES, IMMEDIATE OFFICE OF CHIEF

Reston, Virginia

Deputy Chief for Mineral Resources Specialist Program
Secretarial and clerical personnel

Denver, Colorado

Secretarial and clerical personnel

Menlo Park, California

Secretarial and clerical personnel

CONSERVATION DIVISION

In addition to the specific exemptions identified below by office, the following groups are exempt in all offices required to file:

All secretarial personnel
All accounting assistants GS-6 and below
All clerical personnel
All cartographic, engineering, and physical science aids
All engineering, geologic, hydrologic, and topographic field assistants
All cartographic, engineering, petroleum engineering, and physical science technicians GS-6 and below

Offices required to file:

Office of the Division Chief
Office of Assistant Division Chief, Operations
Branch of Mining Operations
Branch of Onshore Oil and Gas Operations
Office of Assistant Division Chief, Programs
Office of Assistant Division Chief, Resource Evaluation
Branch of Onshore Evaluation
Branch of Mineral and Water Classification

The following categories of personnel, engaged only in matters relating to the Outer Continental Shelf in the offices listed below are exempt:

Engineers, all specialties
Petroleum Engineering Technicians
Environmental Specialists
Oceanographers
Geologists
Geophysicists
Physical Science Technicians
Cartographic Technicians
Accountants GS-7 and above

Offices required to file, in which some personnel are engaged solely in Outer Continental Shelf activities:

Office of the District Geologist, Los Angeles, Calif.
Office of Area Oil and Gas Supervisor, Los Angeles, Calif.
Office of Area Oil and Gas Supervisor, Anchorage, Alaska
Office of Area Geologist, Anchorage, Alaska

BUREAU OF LAND MANAGEMENT

Delete:

GS-160
340 at GS-11 and below
345 at GS-13 and below
401 at GS-12 and below
880
881
1104 at GS-11 and below
1105 a
1170 at GS-11 and below
1301

Add:

GS-099
160 at GS-13 and below
150 at GS-12 and below
230 at GS-11 and below
340 at GS-10 and below
345 at GS-12 and below
399
401 at GS-10 and below
454 at GS-12 and below
499
599
699
880 at GS-11 and below
881 at GS-11 and below
1104 at GS-9 and below
1105 at GS-10 and below
1170 at GS-10 and below
1301 at GS-13 and below
1399

14. Appendix E to 43 CFR 20.735 as published in 43 FR 1088-1090, Friday, January 6, 1978, is amended for those bureaus, offices or subunits having changes, to update the list of Bureaus and Offices, or subunits thereof, performing functions or duties under the Mining in the Parks Act and positions which the Secretary has exempted from the reporting requirements. The lists for some bureaus, offices or subunits are completely revised and others are amended by additions and deletions. Bureau, office and subunit lists not revised or amended remain the same. The revisions and amendments to Appendix E are as follows:

APPENDIX E—LIST OF BUREAUS AND OFFICES, OR SUBUNITS THEREOF, PERFORMING FUNCTIONS OR DUTIES UNDER THE MINING IN THE PARKS ACT AND POSITIONS WHICH THE SECRETARY HAS DETERMINED TO BE EXEMPT FROM REPORTING REQUIREMENTS OF SECTION 13.

All employees in the following bureaus, offices, and subunits thereof, are subject to the filing requirements of the Act except for the following positions which do not involve policy-

making or regulatory responsibility under the Act.

SECRETARY'S IMMEDIATE OFFICE

Delete:

GS-11, Staff Assistant, Washington, D.C.
GS-12, Staff Assistant, Washington, D.C.
GS-11 and below, Correspondence Management Specialist, Washington, D.C.

Add:

GS-14, Staff Assistant
GS-11, Research Assistant
GS-11, Chief, Correspondence Staff
GS-10, Lead Correspondence Analyst

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

GS-9, Staff Assistant to the Director
Division of Congressional Liaison: GS-13, Congressional Services Specialist
GS-11, Special Assistant to the Director
GS-11, Management Specialist
GS-8 and below, administrative, clerical and secretarial personnel
Division of Legislation:
GS-14, Attorney-Advisors
GS-13, Attorney-Advisors
GS-12, Attorney-Advisors
GS-10, Legislative Assistant
GS-9, Legislative Assistant
GS-8 and below, secretaries, clerks, and administrative personnel

OFFICE OF ENVIRONMENTAL PROJECT REVIEW

Delete:

All personnel on the Water Resources Staff

Add:

All personnel on the Water Resources and Transportation Staffs

OFFICE OF AUDIT AND INVESTIGATION

Delete:

Title of Office of Audit and Investigation
GS-12, Administrative Officer

Add:

Title of Office of Inspector General
GS-13, Administrative Officer

ASSISTANT SECRETARY—POLICY, BUDGET AND ADMINISTRATION

Delete:

GS-15, Management Resources Officer
GS-13, Equal Opportunity Officer

Add:

GS-15, Assistant to the Assistant Secretary
GS-15, Assistant to the Deputy Assistant Secretary
GS-14, Equal Opportunity Officer
GS-13, Equal Opportunity Specialist

ASSISTANT SECRETARY—ENERGY AND MINERALS

Delete:

Director, Ocean Resources
GS-15, Industrial Specialist
GS-11, Staff Assistant

ASSISTANT SECRETARY—FISH AND WILDLIFE AND PARKS

GS-16, Special Assistant

GS-15, Special Assistants
GS-15, Staff Assistant
GS-15, Fish and Wildlife Biologist
GS-13, Special Assistants
GS-11, Confidential Assistant
GS-9 and below, administrative, clerical, and secretarial personnel

ASSISTANT SECRETARY—LAND AND WATER RESOURCES

GS-17, Deputy Assistant Secretary
GS-16, Deputy Assistant Secretary
GS-16, Special Assistant (Emergency Water Planning)
GS-16, Staff Assistant (Economics)
GS-16, Director, Office of Coal Leasing, Planning and Coordination
GS-15, Deputy Assistant Secretary (Intergovernmental Affairs)
GS-15, Special Assistant (4)
GS-15, Staff Assistant
GS-15, Special Assistant to Director (Coal Leasing)
GS-15, Construction Representative
GS-14, Deputy Director, Office of Coal Leasing, Planning and Coordination
GS-14, Staff Assistant
GS-9, Confidential Assistant
GS-7, Special Assistant
GS-8, and below, secretarial, stenographic and clerical personnel

GEOLOGICAL SURVEY

OFFICE OF THE DIRECTOR, RESTON, VIRGINIA

Immediate Office

Assistant Director—Program Analysis
Assistant Director—Geologic Engineering
Assistant Director—Eastern Region
Program Analysts
Economists
Physical Scientists
Legislative Specialist
Congressional Liaison Officer
Biological Scientist
Staff Assistant
Public Information Officer
Public Information Specialist
Operations Research Analyst
Special Assistant for Environmental Analysis
Computer Systems Analyst
Data Base Administrator
Historian
Information Assistant
Program Assistant
Congressional Liaison Assistant
Equal Opportunity Officers
Secretarial, clerical, and administrative personnel

GEOLOGIC DIVISION

IMMEDIATE OFFICE OF THE CHIEF GEOLOGIST

Deputy Chief Geologist for Program and Budget
Administrative Officer
Fiscal Officer
Clerical, secretarial, and other administrative personnel

OFFICE OF MINERAL RESOURCES, IMMEDIATE OFFICE OF CHIEF

Reston, Virginia

Deputy Chief for Mineral Resources Specialist Program
Secretarial and clerical personnel

Denver, Colorado

Secretarial and clerical personnel

Menlo Park, California

Secretarial and clerical personnel

CONSERVATION DIVISION

In addition to the specific exemptions identified below by office, the following groups are exempt in all offices required to file:

All secretarial personnel
All accounting assistants GS-6 and below
All clerical personnel
All cartographic, engineering, and physical science aids.
All engineering, geologic, hydrologic, and topographic field assistants.
All cartographic, engineering, petroleum engineering, and physical science technicians GS-6 and below

OFFICES REQUIRED TO FILE

Office of the Division Chief
Office of Assistant Division Chief, Operations
Branch of Mining Operations
Branch of Onshore Oil and Gas Operations
Office of Assistant Division Chief, Programs
Office of Assistant Division Chief, Resources Evaluation
Branch of Onshore Evaluation
Branch of mineral and Water Classification

The following categories of personnel, engaged only in matters relating to the Outer Continental Shelf in the offices listed below are exempt:

Engineers, all specialties
Petroleum Engineering Technicians
Environmental Specialists
Oceanographers
Geologists
Geophysicists
Physical Science Technicians
Cartographic Technicians
Accountants GS-7 and above

OFFICES REQUIRED TO FILE IN WHICH SOME PERSONNEL ARE ENGAGED SOLELY IN OUTER CONTINENTAL SHELF ACTIVITIES

Office of the District Geologist, Los Angeles, Calif.
Office of Area Oil and Gas Supervisor, Los Angeles, Calif.
Office of Area Oil and Gas Supervisor, Anchorage, Alaska
Office of Area Geologist, Anchorage Alaska

NATIONAL PARK SERVICE

Delete:

Immediate Office of the Associate Regional Director, Management and Operations (Rocky Mountain Region)
Rockefeller National Parkway
Immediate Office of the Associate Regional Director, Management and Operations (Midwest Region)

Add:

Immediate Office of the Associate Regional Director, Park Operations (Rocky Mountain Region)
John D. Rockefeller Junior Memorial Parkway
Immediate Office of the Associate Regional Director, Operations

OFFICE OF THE SOLICITOR

The following subunits of the Solicitor's Office perform functions and duties under the Act. In addition to any positions listed under each subunit, all clerical, administrative and paralegal positions in each subunit are also exempt.

Immediate Office of the Solicitor

Administrative Office—All personnel are exempt except the Deputy Ethics Counselor, Assistant Ethics Counselor and 1 Clerical Assistant/Steno

Division of General Law—8 Attorney-Advisers

Division of Conservation and Wildlife—5 Attorney-Advisers

Salt Lake City Regional Office—2 Attorney-Advisers

Anchorage Regional Office

Portland Regional Office—7 Attorney-Advisers

Sacramento Regional Office—7 Attorney-Advisers

Denver Regional Office—8 Attorney-Advisers

San Francisco Field Office

Amerillo Field Office

Boise Field Office

Santa Fe Field Office

Phoenix Field Office—4 Attorney-Advisers

Billings Field Office

Riverside Field Office

15. Appendix F to 43 CFR Part 20 as published in 42 FR 1090-1091, Friday, January 6, 1978, is amended for those bureaus, offices or subunits having changes to update the list of Bureaus and Offices or subunits thereof, performing functions or duties under the Energy Policy and Conservation Act and positions which the Secretary has exempted from the reporting requirements. The lists for some bureaus, offices or subunits are completely revised and others are amended by additions and deletions. Bureau, office and subunits lists not revised or amended remain the same. The revisions and amendments to Appendix F are as follows:

APPENDIX F—LIST OF BUREAUS AND OFFICES, OR SUBUNITS THEREOF, PERFORMING FUNCTIONS OR DUTIES UNDER THE ENERGY POLICY AND CONSERVATION ACT AND POSITIONS WHICH THE SECRETARY HAS DETERMINED TO BE EXEMPT FROM REPORTING REQUIREMENTS OF SECTION 522

All employees in the following bureaus, offices, and subunits thereof, are subject to the filing requirements of the Act except for the following positions which do not involve policy-making or regulatory responsibility under the Act.

SECRETARY'S IMMEDIATE OFFICE

Delete:

GS-14, Confidential Assistant, Washington, D.C.
GS-12, Staff Assistant
GS-11, Staff Assistant
GS-11 and below, Correspondence Management Specialists

RULES AND REGULATIONS

Add:

GS-14, Staff Assistant
GS-12, Chief, Correspondence Staff
GS-11, Research Assistant
GS-10, Lead Correspondence Analyst

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

GS-9, Staff Assistant to the Director
Division of Congressional Liaison:
GS-13, Congressional Services Specialist
GS-11, Special Assistant to the Director
GS-11, Management Specialist
GS-8 and below, administrative, clerical and secretarial personnel
Division of Legislation:
GS-14, Attorney-Advisors
GS-13, Attorney-Advisors
GS-12, Attorney-Advisors
GS-10, Legislative Assistant
GS-9, Legislative Assistant
GS-8 and below, secretaries, clerks, and administrative personnel

OFFICE OF AUDIT AND INVESTIGATION

Delete:

Office title of Office of Audit and Investigation
GS-12, Administrative Officer

Add:

Office title of Office of Inspector General
GS-13, Administrative Officer
Immediate Office of the Regional Audit Manager—Sacramento Regional Office:
GS-9 and below, Secretarial and Administrative personnel
Anchorage Suboffice: No exempt personnel

OFFICE OF MINERALS POLICY AND RESEARCH ANALYSIS

Delete:

GS-11, Statistician

Add:

GS-14, Economist (1)—Division of Minerals Data, Forecasting and Analysis

ASSISTANT SECRETARY—POLICY, BUDGET AND ADMINISTRATION

Delete:

GS-15, Management Resources Officer
GS-13, Equal Opportunity Officer

Add:

GS-15, Assistant to the Assistant Secretary
GS-15, Assistant to the Deputy Assistant Secretary
GS-14, Equal Opportunity Officer
GS-13, Equal Opportunity Specialist

ASSISTANT SECRETARY—ENERGY AND MINERALS

Delete:

GS-11, Staff Assistant

ASSISTANT SECRETARY—LAND AND WATER RESOURCES

Delete:

GS-16, Special Assistant (Emergency Water and Planning)
GS-15, Special Assistant (2)
GS-15, Public Information Officer
GS-14, Staff Assistant (2)

GS-11, Confidential Assistant

Add:

GS-17, Deputy Assistant Secretary
GS-16, Deputy Assistant Secretary
GS-15, Staff Assistants
GS-15, Special Assistant (4)
GS-14, Staff Assistant (1)
GS-9, Confidential Assistant

GEOLOGICAL SURVEY

OFFICE OF THE DIRECTOR, RESTON, VIRGINIA

Immediate Office

Assistant Director—Program Analysis
Assistant Director—Geologic Engineering
Assistant Director—Eastern Region
Program Analysts
Economists
Physical Scientists
Legislative Specialist
Congressional Liaison Officer
Biological Scientist
Staff Assistant
Public Information Officer
Public Information Specialist
Operations Research Analyst
Special Assistant for Environmental Analysis
Computer Systems Analyst
Data Base Administrator
Historian
Information Assistant
Program Assistant
Congressional Liaison Assistant
Equal Opportunity Officers
Secretarial, clerical, and administrative personnel

CONSERVATION DIVISION

IMMEDIATE OFFICE OF THE DIVISION CHIEF

Geologists
Staff Assistant
Secretarial and clerical personnel

BUREAU OF LAND MANAGEMENT

Delete:

Office of the Director: Personal Assistant
Office of the Associate Director: Staff Assistant
Office of the Assistant Director, Legislation and Plans: Clerk
Division of Mineral Resources, Office of the Division Chief: Administrative Assistant

Add:

Office of the Director: Confidential Assistant
Office of the Associate Director: Clerk-Typist
Office of Coal Management:
Office of the Assistant to the Director:
Secretary
Supervisory clerk
Clerk
Clerk-Typist
Coal Operations Staff:
Technical Writer Editor
Clerk-Typist
Coal Program Development Staff:
Technical Writer Editor
Clerk-Typist
Office of the Special Assistant to the Director:
Office of the Executive Secretary:
Office of Policy Analysis:
Division of Mineral Resources, Office of the Division Chief: Staff Assistant

OFFICE OF THE SOLICITOR

The following subunits of the Solicitor's office perform functions and duties under the Act. In addition to any positions listed under each subunit, all clerical, administrative and paralegal positions in each subunit are also exempt.

Immediate Office of the Solicitor

Administrative Office—All personnel are exempt except the Deputy Ethics Counselor, Assistant Ethics Counselor and 1 Clerical Assistant/Steno
Division of General Law—8 Attorney-Advisers
Salt Lake City Regional Office—4 Attorney-Advisers
Anchorage Regional Office
Denver Regional Office—10 Attorney-Advisers
Amarillo Field Office
Boise Field Office
Santa Fe Field Office

16. Appendix G is added to Part 20 to read as follows:

APPENDIX G—LIST OF BUREAUS AND OFFICES, OR SUBUNITS THEREOF, PERFORMING FUNCTIONS OR DUTIES UNDER THE OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS OF 1978 AND POSITIONS WHICH THE SECRETARY HAS DETERMINED TO BE EXEMPT FROM THE REPORTING REQUIREMENTS OF SECTION 605.

All employees in the following bureaus, offices, and subunits, thereof, are subject to the filing requirements of the Act except for the following positions which do not involve policymaking or regulatory responsibility under the Act.

SECRETARY'S IMMEDIATE OFFICE

All employees are exempt except:
Secretary of the Interior
Under Secretary
Deputy Under Secretary (2)
Executive Assistant to the Secretary
Assistant to the Secretary (State and Federal Relations)

OFFICE OF CONGRESSIONAL AND LEGISLATIVE AFFAIRS

All employees are exempt except:
Assistant to the Secretary and Director of Congressional & Legislative Affairs
Deputy Director for House Liaison
Deputy Director for Senate Liaison
Legislative Counsel
Assistant Legislative Counsel
Congressional Liaison Officer

OFFICE OF THE ASSISTANT SECRETARY—POLICY, BUDGET AND ADMINISTRATION

All employees are exempt except:
Assistant Secretary
Deputy Assistant Secretary (2)

OFFICE OF BUDGET

All employees are exempt except:
Director
Deputy Director

OFFICE OF ENVIRONMENTAL PROJECT REVIEW

All employees are exempt except:
Director
Environmental Review Officer (3)
General Engineer (3)

Biologist
Regional Environmental Review Officer (6)
OFFICE OF INSPECTOR GENERAL

All employees are exempt except:

Inspector General
Deputy Inspector General
Assistant Inspectors General
Assistant Departmental Ethics Counselor
Assistant to the Assistant Departmental Ethics Counselor
Program Audit Manager—Indian Affairs
Program Audit Manager—Land and Water
Program Audit Manager—Fish and Wildlife and Parks
Auditors, GS-10 and above

OFFICE OF OUTER CONTINENTAL SHELF PROGRAM COORDINATION

All employees are exempt except:

Director
Program Analyst
Economist (2)
OCS Information Specialist
Staff Assistant

OFFICE OF PERSONNEL MANAGEMENT

All employees are exempt except: Director

OFFICE OF POLICY ANALYSIS

All employees are exempt except:

Director
Assistant Director—Studies Staff
Operations Research Analyst (2)

OFFICE OF THE ASSISTANT SECRETARY—ENERGY AND MINERALS

All employees are exempt except:

Assistant Secretary
Deputy Assistant Secretary (2)
Assistant to the Assistant Secretary (1)
Program Analysis Officer
Staff Assistant (1)

OFFICE OF THE ASSISTANT SECRETARY—FISH AND WILDLIFE AND PARKS

All employees are exempt except:

Assistant Secretary
Deputy Assistant Secretary (1)
Special Assistant (2)

OFFICE OF THE ASSISTANT SECRETARY—LAND AND WATER RESOURCES

All employees are exempt except:

Assistant Secretary
Deputy Assistant Secretary (2)

OFFICE OF HEARINGS AND APPEALS

All employees in the following offices and subunits are subject to the filing requirements of the Act except for the following positions which do not involve policy making or regulatory responsibility under the Act.

DIRECTOR'S OFFICE

GS-12 and below, attorney advisors
All clerical, paralegal, and administrative personnel

HEARINGS DIVISION

GS-12 and below, attorney advisors
All clerical, paralegal, and administrative personnel

INTERIOR BOARD OF LAND APPEALS

GS-12 and below, attorney advisors
All clerical, paralegal and administrative personnel

GEOLOGICAL SURVEY

IMMEDIATE OFFICE

Assistant Director—Geologic Engineering
Assistant Director—Eastern Region
Deputy Assistant Director—Coal Programs
Physical Scientists
Legislative Specialists
Congressional Liaison Officer
Biological Scientist
Staff Assistant
Public Information Officer
Public Information Specialist
Special Assistant for Environmental Analysis
Data Base Administrator
Historian
Geologist
Information Assistant
Program Assistant
Congressional Liaison Assistant
Equal Opportunity Officers
Secretarial, clerical, and administrative personnel

LAND INFORMATION AND ANALYSIS OFFICE

Resource and Land Investigations Program (RALI), Reston, Virginia

Community Planners (GS-9 and GS-14)
Computer Aid
Economist
Program Assistant
Secretarial and clerical personnel

Environmental Impact Analysis Program, Reston, Virginia

Biological Technicians
Cartographer
Cartographic Aids
Editorial Assistants
Environmental Scientists
Supervisory Environmental Scientist
Geologists
Hydrologists
Information Assistant
Physical Scientists
Supervisory Physical Scientists
Technical Publications Writer-Editor
Writer-Editor
Secretarial and clerical personnel

OFFICE OF ENERGY RESOURCES, RESTON, VIRGINIA

Office of the Chief

Chief, Office of Energy Resources
Deputy Chief
Deputy Chief for Uranium and Thorium
Secretarial, clerical, and administrative personnel

OFFICE OF MARINE GEOLOGY, RESTON, VIRGINIA

Office of the Chief

Chief, Office of Marine Geology
Secretarial, clerical, and administrative personnel

CONSERVATION DIVISION

In addition to the specific exemptions identified below by office, the following groups are exempt in all offices required to file:

All secretarial personnel
All accounting assistants. GS-6 and below
All clerical personnel
All cartographic, engineering, and physical science aids
All engineering, geologic, hydrologic, and topographic field assistants

All cartographic, engineering, petroleum engineering, and physical science technicians. GS-6 and below.

Offices requires to file:

Office of the Division Chief Legislation, Regulations, Appeals Section
Office of the Assistant Division Chief for Operations
Branch of Marine Oil and Gas Operations
Royalty Accounting Section
Office of the Assistant Division Chief for Programs, Programs, Planning and Budget Section
Environmental Analysis Section
Office of the Assistant Division for Resource Evaluation
Statistical and Economic Analysis Section
Federal Minerals Inventory Section
Branch of Marine Evaluation
Office of Conservation Manager, Eastern Region
Office of Atlantic Area Oil and Gas Supervisor for Resource Evaluation
Office of Atlantic Area Oil and Gas Supervisor for Operations
Office of District Engineer, Mid Atlantic District
Office of District Engineer, South Atlantic District
Office of Conservation Manager, Western Region
Office of District Engineer, Santa Barbara, California
Office of Conservation Manager, Gulf of Mexico Region
Office of Management
Office of Area Supervisor for Resources Evaluation and for Field Operations
Office of District Supervisor, Freeport District
Office of District Supervisor, Lafayette District
Office of District Supervisor, Metairie District
Office of District Supervisor, Lake Charles District
Office of District Supervisor, Houma District
Office of Area Supervisor for Operations Support
Office of Area Supervisor for Reserves and Diligence
Office of Area Supervisor for Accounting

The following categories of personnel, engaged *only* in matters unrelated to the Outer Continental Shelf in the offices listed below are exempt:

Engineers, all specialties
Petroleum Engineering Technicians
Environmental Specialists
Geologists
Geophysicists
Physical Scientists
Physical Science Technicians
Cartographic Technicians

Offices required to file, in which *some* personnel are *not* engaged solely in outer continental shelf activities:

Office of the Area Geologist, Pacific Area, Menlo Park, California
Office of the District Geologist, Los Angeles District, Los Angeles, California
Office of Area Oil and Gas Supervisor, Pacific Area, Los Angeles, California
Office of Area Oil and Gas Supervisor, Alaska Area, Anchorage, Alaska
Office of Area Geologist, Alaska Area, Anchorage, Alaska

RULES AND REGULATIONS

BUREAU OF LAND MANAGEMENT

OFFICE OF THE DIRECTOR

Confidential Assistant, GS-301-11
Secretary, GS-318-08

OFFICE OF THE ASSOCIATE DIRECTOR

Secretary, GS-318-09
Clerk, GS-301-5
Clerk-Typist, GS-322-3

OFFICE OF THE SPECIAL ASSISTANT TO THE DIRECTOR

OFFICE OF THE EXECUTIVE SECRETARY

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

Secretary, GS-318-7
All Equal Employment Opportunity Specialists, GS-160-13 and below
Federal Women's Program Coordinator, GS-301-12

OFFICE OF PROGRAM EVALUATION

Secretary, GS-318-7
Clerk, GS-301-5
All Evaluation Specialists, GS-301-13 and below

OFFICE OF POLICY ANALYSIS

OFFICE OF THE ASSISTANT DIRECTOR, LEGISLATION AND PLANS

Secretary, GS-318-9

OFFICE OF LEGISLATION AND REGULATORY MANAGEMENT

Paralegal Specialist, GS-950-9
Secretary, GS-318-7
Clerk, GS-301-5
Clerk-Stenographer, GS-312-5
Clerk-Typist, GS-322-4
All Student Assistants, GS-950-7 (2)

OFFICE OF ENVIRONMENTAL PLANNING AND COORDINATION

Secretary, GS-318-7
Clerk-Typist, GS-322-4 GS-301-4

OFFICE OF COOPERATIVE RELATIONS

Cooperative Specialist (International), GS-301-13
Writer-Editor, GS-1082-9
International Activities Assistant, GS-301-7
Secretary, GS-318-7
Clerk-Typist, GS-322-3

OFFICE OF ENVIRONMENTAL ASSISTANCE

Secretary, GS-318-7
Clerk, (typing) GS-301-6 (2)

OFFICE OF THE ASSISTANT DIRECTOR, TECHNICAL SERVICES

Manpower Development Administrator, GS-142-14
Computer Systems Administrator, GS-330-13
Management Analyst, GS-343-13
Safety Specialist, GS-180-12
Program Analyst, GS-345-12
Secretary, GS-318-9 and below (2)
Clerk, GS-301-6
Clerk-Typist, GS-322-4 and below (2)

DIVISION OF RECORDS SYSTEMS

Incentive Awards Coordinator, GS-301-11
Incentive Awards Assistant, GS-301-9
Secretary, GS-318-6

DIVISION OF CADASTRAL SURVEY

Cartographer, GS-1370-12 and below
Cartographic Technician, GS-1371-11
Secretary, GS-318-7 and below
Clerk, GS-301-7 and below
Clerk-Stenographer, GS-312-5 and below
Student Trainee, GS-099-4 and below

DIVISION OF ENGINEERING

Communications Management Specialist, GS-391-14
Communications Specialist, GS-393-13
Engineer-Highway, GS-810-13
Sign Coordinator, GS-301-11
Illustrator, GS-1020-9 and below
Secretary, GS-318-7

DIVISION OF FIRE AND PROTECTION

Fire Management Specialist, GS-301-15
Secretary, GS-318-7
Statistical Assistant, GS-1531-7
Clerk, GS-301-5

BRANCH OF FIRE MANAGEMENT

Forester, GS-460-13 (3)
Clerk-Typist, GS-322-2

DIVISION OF APPRAISAL

Secretary, GS-318-7

DIVISION OF ACCESS AND TRANSPORTATION RIGHTS-OF-WAY

Realty Specialist, GS-1170-13
Paralegal Specialist, GS-950-7
Secretary, GS-318-7

OFFICE OF ASSISTANT DIRECTOR, ADMINISTRATION

Secretary, GS-318-9

DIVISION OF BUDGET AND PROGRAM DEVELOPMENT

Secretary, GS-318-7
Budget Analyst, GS-560-7

BRANCH OF BUDGET

Budget Analyst, GS-560-12
Secretary, GS-318-6

BRANCH OF PROGRAM DEVELOPMENT

Secretary, GS-318-6

DIVISION OF FINANCE

Systems Accountant, GS-510-13 and below (2)
Staff Accountant, GS-510-12 (2)
Operating Accountant, GS-510-12 and below
Accounting Technician, GS-525-9 and below (2)
Accountant, GS-510-7
Accounting Assistant, GS-501-7
Secretary, GS-318-7
Voucher Examiner, GS-540-6
Clerk-Typing, GS-301-5

DIVISION OF PERSONNEL

Secretary, GS-318-7

BRANCH OF EMPLOYMENT

Staffing Specialist, GS-212-13 and below (3)
Clerk-Typist, GS-322-5 and below (3)

BRANCH OF POSITION AND PAY MANAGEMENT

Clerk-Typist, GS-322-3

BRANCH OF TRAINING

Employee Development Specialist, GS-235-13

Dept. Mgr. Trainee, GS-301-13
Physical Scientist, GS-1301-11
Policy Analyst, GS-301-9
Clerk-Typist, GS-322-4

BRANCH OF PERSONNEL SERVICES

Position Classification Specialist, GS-221-12 and below (2)
Personnel Management Specialist, GS-201-11 (2)
Staffing Specialist, GS-212-9
Personnel Assistant, GS-203-7
Personnel Clerk, GS-203-6
Clerk, GS-301-6
Clerk-Steno, GS-312-4
Clerk-Typist, GS-322-3

DIVISION OF ADMINISTRATIVE SERVICES

Secretary, GS-318-7
Messenger, GS-302

BRANCH OF CONTRACT OPERATIONS

Secretary, GS-318-6
Clerk, GS-301-5

OFFICE OF ASSISTANT DIRECTOR, MINERALS MANAGEMENT

Secretary, GS-318-9

DIVISION OF MINERAL PROGRAM DEVELOPMENT AND ANALYSIS

Secretary, GS-318-9

BRANCH OF MINERAL POLICY DEVELOPMENT ANALYSIS

Mineral Mgmt. Specialist, GS-301-12
Program Analyst, GS-345-12 and below (2)
Secretary, GS-318-6
Clerk, GS-301-5

BRANCH OF MINERALS ECONOMIC ANALYSIS

Economist, GS-110-9
Secretary, GS-318-6
Clerk, GS-301-5

DIVISION OF MINERAL RESOURCES

Staff Assistant, GS-301-9
Secretary, GS-318-7

BRANCH OF UPLAND MINERAL LEASING

Paralegal Specialist, GS-950-12 and below (2)
Secretary, GS-318-6
Clerk, GS-301-5
Clerk-Typist, GS-322-4

BRANCH OF MARINE MINERAL LEASING

Economist, GS-1101-12 (2)
Writer-Editor, GS-1082-11
Clerk, GS-301-5
Clerk-Typist, GS-322-4

BRANCH OF MINING

Paralegal Specialist, GS-950-9
Secretary, GS-318-6

DIVISION OF MINERALS ENVIRONMENTAL ASSESSMENT

Secretary, GS-318-7

BRAND OF MARINE MINERAL ENVIRONMENTAL ASSESSMENT

Environmental Specialist, GS-301-12 (2)
Geographer, GS-150-12
Secretary, GS-318-6
Clerk, GS-301-5
Clerk-Typist, GS-322-4

BRANCH OF ENVIRONMENTAL STUDIES

Oceanographer, GS-1360-12 (2)
Secretary, GS-318-6
Clerk, GS-301-5

NEW ORLEANS OUTER CONTINENTAL SHELF
OFFICE

OFFICE OF THE MANAGER

Studies Staff

Procurement Assistant, GS-1106-6

DIVISION OF OPERATIONS

Statistician, GS-1530-11

BRANCH OF ADJUDICATION

Land Law Examiner, GS-965-9 (2)
Legal Clerk, GS-986-6 and below (2)
Clerk-Typist, GS-322-3
Clerk, GS-301-3

BRANCH OF SALES AND SUPPORT

Cartographic Technician, GS-1371-5 (2)
Cartographic Aid, GS-1371-4
Statistical Assistant, GS-1531-6

DIVISION OF ENVIRONMENTAL ASSESSMENT

Technical Publications Editor, GS-1083-9

DIVISION OF MANAGEMENT SERVICES

Clerk (Records), GS-301-5
Clerk, GS-301-5 (3)
Personnel Clerk, GS-203-5
Library Technician, GS-1411-4
Clerk-Typist, GS-322-4 and below (3)
Mail and File Clerk, GS-305-3

PACIFIC OUTER CONTINENTAL SHELF OFFICES

OFFICE OF THE MANAGER

Studies Staff

DIVISION OF OPERATIONS

Cartographic Technician, GS-1371-7 and below (2)

DIVISION OF ENVIRONMENTAL ASSESSMENT

Technical Publications Writer, GS-1083-11
Oceanographer, GS-1360-11
Statistician, GS-1530-7
Biological Technician, GS-404-7

DIVISION OF MANAGEMENT SERVICES

Information Receptionist, GS-340-4
Clerk Dictating Machine Transcriber, GS-316-4 and below (4)
Mail and File Clerk, GS-305-3
Clerk-Typist, GS-322-4 and below (3)

ALASKA OUTER CONTINENTAL SHELF OFFICE

OFFICE OF THE MANAGER

Studies Staff

DIVISION OF OPERATIONS

Clerical Assistant, GS-301-5
Mail and File Clerk, GS-305-4
Clerk-Typist, GS-322-4

DIVISION OF ENVIRONMENTAL ASSESSMENT

Technical Information Specialist, GS-1412-7
Biological Information Specialist, GS-404-5

DIVISION OF MANAGEMENT SERVICES

Clerical Assistant, GS-301-5
Mail and File Clerk, GS-305-4
Clerk-Typist, GS-322-4

NEW YORK OUTER CONTINENTAL SHELF OFFICE

OFFICE OF THE MANAGER

Public Information Officer, GS-1080-12

Studies Staff

DIVISION OF OPERATIONS

Visual Information Specialist, GS-1084-7

DIVISION OF ENVIRONMENTAL ASSESSMENT

DIVISION OF MANAGEMENT SERVICES

Supervisory Clerical Assistant, GS-301-6
Clerk, GS-301-5
Clerk-Typist, GS-322-4 and below (4)
General Clerk, GS-301-3

BRANCH OF UPLAND MINERALS ENVIRONMENTAL
ASSESSMENT

Secretary, GS-318-6

OFFICE OF THE SOLICITOR

In addition to any positions listed under each subunit, all clerical, administrative and paralegal positions in each subunit are also exempt.

Immediate Office of the Solicitor
Administrative Division

All personnel are exempt except the Deputy Ethics Counselor, Assistant Ethics Counselor and 1 Clerical Assistant/Steno.

All personnel in the following divisions are exempt except those positions listed:
Division of General Law; 8 Attorneys
Division of Energy & Resources; 6 Attorneys
Sacramento Regional Office; 3 Attorneys

BUREAU OF MINES

OFFICE OF THE DIRECTOR

Personal Assistant—Stenography (1)
Congressional Services Assistant (1)

Professional, administrative, secretarial, and clerical employees GS-9 and below.

OFFICE OF THE ASSOCIATE DIRECTOR—MINERAL
AND MATERIALS RESEARCH AND DEVELOPMENT

Writer-Editor (1)

Professional, administrative, secretarial, and clerical employees GS-9 and below

OFFICE OF THE ASSISTANT DIRECTOR—MINING

Program Management Assistant (1)

Professional, administrative, secretarial, and clerical employees GS-9 and below.

OFFICE OF THE CHIEF, DIVISION OF MINE
SYSTEMS ENGINEERING

Geologist (1)

Technology Transfer Group Leader (1)

Technology Information Specialist (1)

Staff Assistant (1)

Professional, administrative, secretarial, and clerical employees GS-9 and below.

TWIN CITIES MINING RESEARCH CENTER—OFFICE
OF THE RESEARCH DIRECTOR

Staff Engineer (1)

Professional, administrative, secretarial, and clerical employees GS-9 and below.

RESEARCH OPERATIONS, TWIN CITIES MINING
RESEARCH CENTER

Mining Engineers (7)

Mechanical Engineers (2)

General Engineers (1)

Geophysicists (3)

Physicists (1)

Professional, administrative, technical, secretarial, and clerical employees GS-11 and below and all wage employees.

IMMEDIATE OFFICE OF THE ASSOCIATE DIRECTOR—MINERAL AND MATERIALS SUPPLY/
DEMAND ANALYSIS

Physical Science Administrator (1)

Industrial Specialist (1)

Administrative Officer (1)

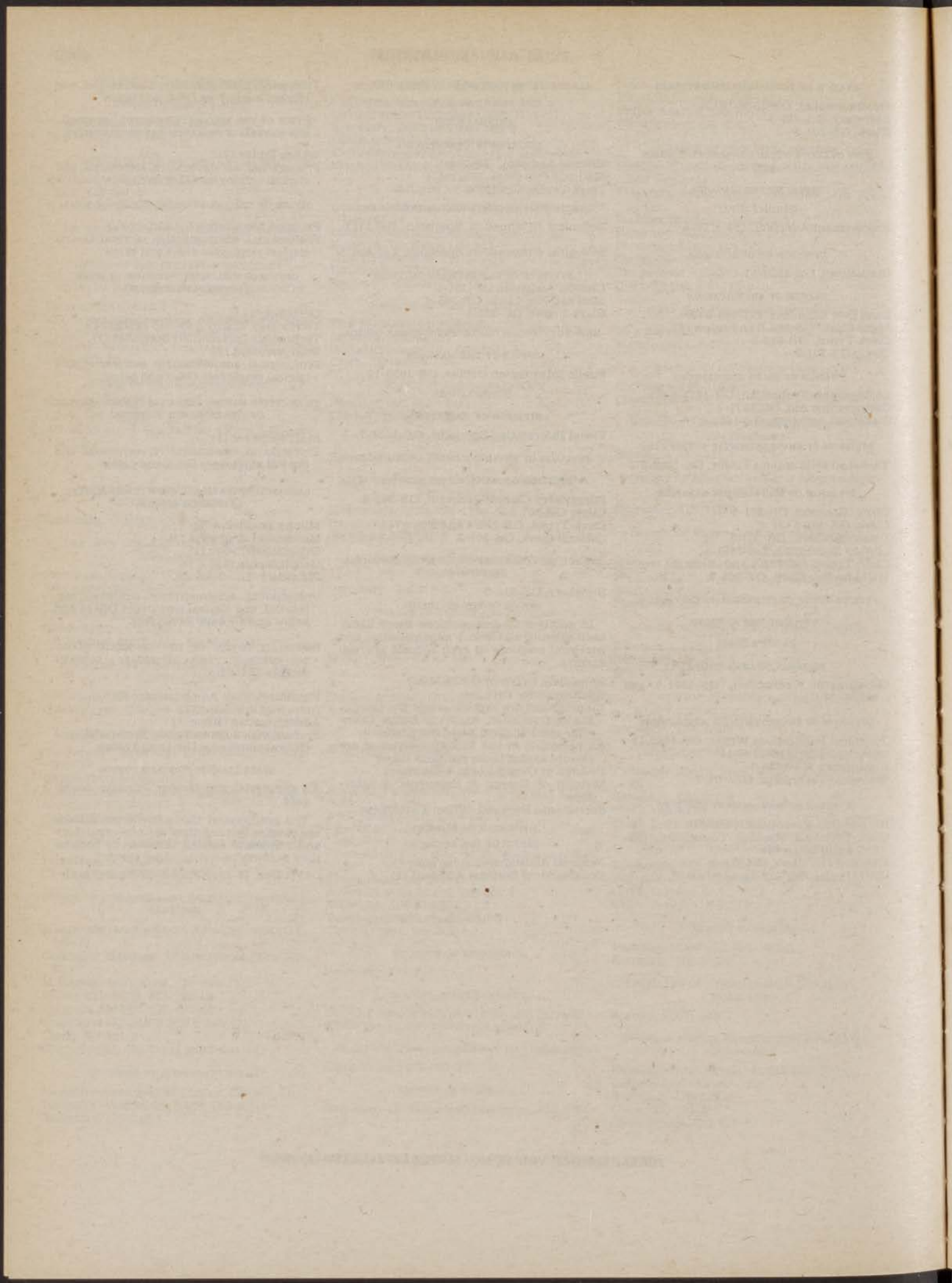
Professional, administrative, secretarial, and clerical employees GS-11 and below.

STATE LIAISON PROGRAM OFFICE

All secretarial and Liaison Program Assistants

The positions in the above organizations are exempt because they are non-regulatory and non-policy making positions or because they perform no duties under the Act.

[FR Doc. 79-1813 Filed 1-18-79; 8:45 am]



FRIDAY, JANUARY 19, 1979
PART VII



**DEPARTMENT OF
ENERGY**

**Economic Regulatory
Administration**

■

**ADMINISTRATIVE
PROCEDURES AND
SANCTIONS; SUBPOENAS,
SPECIAL REPORT ORDERS,
AND INVESTIGATIONS**

**Proposed Rulemaking and Public
Hearing**

Registered
Proposed

[6450-01-M]

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Parts 205 and 210]

[Docket No. ERA-R-79-2]

ADMINISTRATIVE PROCEDURES AND SANCTIONS SUBPOENAS, SPECIAL REPORT ORDERS, AND INVESTIGATIONS

Proposed Rulemaking and Public Hearing

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of proposed rulemaking and public hearing.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice of a proposal to amend provisions of 10 CFR Part 205 concerning subpoenas and investigations. ERA also proposes to modify its regulations concerning special report orders (SRO) currently found at 10 CFR 210.91 and consolidate them with the subpoena regulations in Part 205. The proposed amendments would be applicable to Parts 207, 209 through 214 of Title 10 of the Code of Federal Regulations. The proposed amendments set forth in detail the law enforcement authority of ERA, which is granted under existing statute and which ERA and its predecessors have exercised. In addition, the proposed amendments are designed to streamline the administrative procedures applicable to the issuance, enforcement, and administrative review of subpoenas and SRO's. ERA believes that the proposed amendments will enable it to carry out more effectively its responsibility to enforce the Emergency Petroleum Allocation Act of 1973 (EPAA) and the Mandatory Petroleum Price and Allocation Regulations issued under EPAA.

DATES: Written comments by March 21, 1979, 4:30 p.m. e.s.t. Requests to speak by January 31, 1979, 4:30 p.m. Public Hearing: February 15, 1979, 9:30 a.m.

ADDRESSES: All comments to Office of Public Hearing Management, Docket No. ERA-R-79-2 Department of Energy, Room, 2313, 2000 M Street, N.W., Washington, D.C. 20461. Public Hearing: Economic Regulatory Administration, Room 2105, 200 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, 2000 M Street, N.W., Room 2214 B, Washington, D.C. 20461, 202-554-5201.

William Webb (Office of Public In-

formation), Economic Regulatory Administration, 2000 M Street, N.W., Room B110, Washington, D.C. 20461, 202-632-2170.

Kristina Clark, Office of General Counsel, Rm. 5146, 12th & Pennsylvania Ave., N.W., Washington, D.C. 20461, 202-633-8622.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Proposed Amendments
 - A. Subpoenas and SRO's
 - 1. Review
 - 2. Other Amendments
 - B. Investigations
- III. Comment Procedures
- IV. Other Matters

I. BACKGROUND

The procedures which govern the issuance of subpoenas relating to the petroleum price and allocation regulations are found at 10 CFR 205.8; procedures governing the issuance of SRO's are found at 10 CFR 210.91; and procedures relating to ERA investigations are found at 10 CFR 205.201.

The provisions relating to subpoenas and SRO's provide for a complex procedure for administrative review of these documents. An application to quash or modify a subpoena or SRO first is directed to the issuing DOE official. Then, within 10 days of an adverse decision by that official, a second application may be made to the Regional Administrator for the issuing region, or the Assistant Administrator, or the Director of the issuing office in case of a subpoena or SRO issued by the National Office. Finally, if the application to quash or modify the subpoena or SRO is denied in any part by the reviewing official, an application for relief may be filed within 10 days with the Office of Private Grievances and Redress. Further, a subpoena or SRO is reviewable by a United States District Court.

ERA's enforcement experience has led to the tentative conclusion that the existing provisions for review of subpoenas and SRO's are unduly cumbersome and unnecessarily impede ERA's efforts to carry out its enforcement responsibilities under the EPAA. Accordingly, we propose to amend the regulations to streamline the procedures applicable to the issuance and review of subpoenas and SRO's. In addition, since subpoenas and SRO's are related enforcement tools and the procedures as to both have been identical in many respects, it is considered desirable to combine the procedures for both in one regulatory provision.

We have also tentatively concluded that amendments to the rules regarding investigation procedures also are desirable in order to improve DOE's efficiency in carrying out its enforcement responsibilities.

II. PROPOSED AMENDMENTS

A. SUBPOENAS AND SRO'S

1. *Review.* The amendments proposed today eliminate some of the procedures for administrative review of subpoenas and SRO's, which are unduly duplicative and impede expeditious judicial review of subpoenas and SRO's under the EPAA and the petroleum price and allocation regulations.

The proposed amendments replace the current three levels of DOE review with a single level of review. There is no administrative appeal of a subpoena or SRO.

Under the proposal, a person served with a subpoena or SRO, may file a request for review of the document with the official who issued the subpoena or SRO prior to the time specified for compliance, but no more than 10 days after the date of service. The issuing official in turn forwards the request to his supervisor. The supervisor is required to inform the person requesting review of receipt of the request. If the SRO or subpoena is not rescinded or modified within 10 days of notification by the supervisor, the subpoena or SRO is effective as issued.

2. *Other amendments.* The proposed amendments set forth the procedures for issuance of subpoenas and SRO's and the authority of issuing officials, and would promote full compliance with subpoenas and SRO's.

Under the proposal, a person who issues a subpoena or SRO is referred to as a "DOE Official." The term includes the Secretary of DOE, the Administrator of ERA, the Administrator of Energy Information Administration, the General Counsel of DOE, the Special Counsel for Compliance, the Director of the Office of Hearings and Appeals, any person authorized to issue a subpoena or SRO under the proposed amendments, or the authorized agent of any of the foregoing, who issued a subpoena or SRO. The term "DOE Official" includes the Administrator of Energy Information Administration since by virtue of Part 207 and existing statutes he is authorized to issue subpoenas under this section. A DOE Official is authorized to sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of and sequester witnesses; control dissemination of any record of testimony taken pursuant to amended § 205.8; subpoena and reproduce books, papers, correspondence, memoranda, contracts, agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems. A DOE Official also is authorized to issue a Special Report Order requiring any person subject to the jurisdiction of the ERA

to file a special report, including but not limited to written answers to specific questions. Under the proposed amendments an SRO may be issued in addition to other reports required by DOE.

The proposed amendments set forth detailed procedures for the taking of testimony pursuant to a subpoena. Under the proposal, the DOE Official concerned controls the proceeding. The DOE Official is authorized and required to take all necessary action to regulate the giving of testimony and to avoid unnecessary delay and prevent or restrain contemptuous or obstructive conduct or contemptuous language.

Further, the DOE Official determines whether to record testimony and the means for recording testimony. A witness is permitted to obtain a copy of his testimony, if recorded, upon request, unless the DOE Official denied the request for good cause. Upon proper identification, any witness or his attorney has the right to inspect the official transcript of the witness' own testimony.

In addition, the DOE Official is empowered to sequester any person subpoenaed to furnish documents or give testimony. Neither a witness nor his attorney is permitted to be present during the examination of another witness, unless permitted by the DOE Official.

The proposed amendments set forth the manner in which a witness is permitted to be accompanied, represented and advised by his attorney. The witness and his attorney are permitted to confer privately on any question asked. The witness or his attorney is required to state briefly the legal grounds for any refusal to answer a question. However, if the witness refuses to answer a question on the grounds of the constitutional privilege against self-incrimination, the witness is required to assert the privilege personally.

To promote full compliance with subpoenas and SRO's, proposed § 205.8 requires documents produced in response to a subpoena and information furnished in response to an SRO to be accompanied by a sworn certification under penalty of perjury by the person to whom the subpoena or SRO is directed. In the case of a subpoena, the person is required to certify that a diligent search had been made for all responsive documents and that each responsive document is being produced unless withheld on the ground of privilege. A person to whom an SRO is directed, or an authorized agent of the person who actually provides the information is required to certify that a diligent effort had been made to provide all information required by the SRO and that all information fur-

nished was true, complete, and correct unless withheld on the ground of privilege. If any document responsive to a subpoena is not produced or any information required by an SRO is not furnished, the certification is required to include a statement setting forth all reasons for failing to comply with the subpoena or SRO.

The proposed amendments include a provision concerning withholding of documents on the ground of the attorney-client privilege or any other privilege. The person submitting the certification described above is required to submit a written list describing each document or the information withheld, a description of the document, the date of the document, each person shown on the document as having received a copy, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, and an identification of the person whose privilege is being asserted.

The proposed amendments provide that, upon written request, any person served with a subpoena or SRO shall be notified as to the general purpose for which any testimony, information or documentary material is sought.

Under the proposed amendment, an action may be commenced in the United States District Court to enforce a subpoena or SRO if any person upon whom the subpoena or SRO was served refuses or fails to comply with any provision of the subpoena or SRO.

Proposed § 205.8 includes provisions with respect to service of subpoenas and SRO's and payment of witness fees and mileage. The proposed provisions are substantially the same as those of the current § 205.8. However, under the proposed amendment, the existing requirement that service of a subpoena must include tendering of one day's witness fees and mileage is omitted.

B. INVESTIGATIONS

We are proposing to amend 10 CFR 205.201 relating to procedures in DOE investigations. The proposed amendments set forth in detail DOE's investigatory procedures as authorized by existing statutes and modify certain procedures to enhance DOE's efficiency in carrying out its enforcement responsibilities.

In accordance with current practice under Part 205, Subpart N, a new provision expressly permits any person to request DOE to initiate an investigation. Under these simplified procedures, however, no particular forms or procedures are required to initiate such a request. A request for an investigation is required only to set forth the subject matter to be investigated as fully as possible and include sup-

porting documentation and information. In light of this new provision, the duplicative and somewhat complex procedures of Subpart N relating to the filing of complaints are proposed for deletion.

Another proposed new provision expressly sets forth the well-established principle that there are no parties, as that term is used in adjudicative proceedings, in a DOE investigation. Similarly, the proposed rule also provides in this regard that no person may intervene or participate in an investigation as a matter of right.

The proposed amendment also includes new provisions which amplify current provisions as to disclosure of information or documents obtained during an investigation. Under the proposed regulation, DOE is not permitted to disclose such information or documents unless: (1) DOE directs or authorizes the public disclosure of the investigation; (2) the information or documents have been made a matter of public record; or (3) disclosure is required by the Freedom of Information Act, 5 U.S.C 552. A request for confidential treatment of information for purposes of that act does not prevent disclosure by DOE if in the public interest and otherwise permitted by law.

The proposed section permits any person to submit any document, statement of facts or memorandum of law for the purpose of explaining the person's position or furnish evidence which the person considers relevant to a matter under investigation. A person is permitted to submit any statement of facts, memorandum of law, and evidence at any time during an investigation.

The proposed amendment modifies existing § 205.201(c) to provide that the DOE, upon written request, shall notify any person who is under investigation by the DOE and who is requested to furnish information or documentary evidence of the general purpose of the investigation.

The proposed amendment clarifies the provision concerning the authority of DOE investigators. The proposed amendment expressly authorizes any duly designated and authorized representative of DOE to take such action as he deems necessary and appropriate to the conduct of an investigation, including any action pursuant to § 205.8.

The proposed amendment deletes the existing provision of § 205.201(a) which expressly declares that DOE encourages voluntary cooperation with its investigations. Although DOE intends to retain its current policy of welcoming voluntary cooperation, it will not permit enforcement proceedings to be overly delayed by prolonged efforts to obtain voluntary cooperation.

III. COMMENT PROCEDURES

A. WRITTEN COMMENTS

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the issues set forth in this Notice. Comments should be submitted to the address indicated in the "ADDRESSES" section of the Notice and should be identified on the outside envelope and on documents submitted with the designation "Subpoenas, SRO's and Investigations, Docket No. ERA-R-79-2". You should submit 15 copies. All comments received will be available for public inspection in the DOE Reading Room GA-152, James Forrestal Building, 1000 Independence Avenue S.W., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. We will consider all comments received by March 21, 1979, 4:30 p.m.

You should identify separately any information or data you consider to be confidential and submit them in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat them according to our determination.

B. PUBLIC HEARING

Although it has been determined that opportunity for public hearing is not required by Section 501 of the Department of Energy Organization Act, a public hearing as described below will be held to facilitate full development of the proposed regulations.

1. *Requesting opportunity for oral statement.* The times and places for the hearing are indicated in the "DATES" and "ADDRESSES" sections of this notice. If necessary to present all testimony, the hearing will be continued to 9:30 a.m. of the first business day following the date therefor shown above.

You may make a written request for an opportunity to make an oral presentation at the hearing. You should be prepared to describe the interest concerned; if appropriate, to state why you are a proper representative of a group or class of persons that has such an interest; and to give a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing.

If you are selected to be heard, you will be so notified before 4:30 p.m., February 2, 1979, and must submit 100 copies of your statement before 4:30 p.m., February 15, 1979. Statements for the public hearing should be sent to the Office of Public Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA-R-79-2, 2000 M Street N.W., Washington, D.C. 20461.

2. *Conduct of the hearing.* We reserve the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Questions to be asked of any person making a statement at the hearing may be submitted to the Office of Public Hearings Management at the above address before 4:30 p.m., February 14, 1979. You may also submit any questions, in writing, to the presiding officer at the time of the hearing. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing, including the transcripts, will be retained and made available for inspection at the DOE Freedom of Information Office, Room 2107, Federal Building, 12th and Pennsylvania Avenue N.W., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase copies of the transcripts from the reporters.

IV. OTHER MATTERS

Since the proposed regulation is not a regulation affecting the quality of the environment, the provisions of Section 7(a) (1) of the Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, have been determined to be inapplicable to this proposal.

We have determined that this proposal will not have a major impact as that term is defined in DOE Order 2030 signed December 18, 1978 (44 F.R. 1040) (January 3, 1979) to implement Executive Order 12044, and, therefore, no regulatory analysis pursuant to Executive Order 12044 is required.

Pursuant to the requirements of Section 404 of the Department of Energy Organization Act (Pub. L. 95-91), upon issuance of these proposed amendments, a copy of this Notice will

be referred to the Federal Energy Regulatory Commission for a determination, in its discretion, whether these proposed amendments may significantly affect any function within the Commission's jurisdiction pursuant to Section 402(a) (1), (b) and (c) (1) of that Act. The Commission will have until March 21, 1979, the date the public comment period closes, to make this determination.

(Emergency Petroleum Allocation Act of 1973, Pub. L. 93-159, as amended, Pub. L. 93-511, Pub. L. 94-99, Pub. L. 94-133, Pub. L. 94-163, and Pub. L. 94-385; Federal Energy Administration Act of 1974, Pub. L. 93-275, as amended, Pub. L. 94-332, Pub. L. 94-385, Pub. L. 95-70, and Pub. L. 95-91; Energy Supply and Environmental Coordination Act of 1974, Pub. L. 93-319, as amended; Energy Policy and Conservation Act, Pub. L. 94-163, as amended, Pub. L. 94-385, and Pub. L. 95-70; Department of Energy Organization Act, Pub. L. 95-91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 205 and Part 210 of Chapter II, Title 10 of the Code of Federal Regulations, are proposed to be amended as set forth below.

Issued in Washington, D.C., January 15, 1979.

DAVID J. BARDIN,
Administrator, Economic
Regulatory Administration.

1. Section 205.8 is amended to read as follows:

§ 205.8 Subpoenas, special report orders, oaths, witnesses.

(a) In this section the following terms have the definitions indicated unless otherwise provided.

(1) "DOE Official" means the Secretary of the Department of Energy, the Administrator of the Economic Regulatory Administration, the Administrator of Energy Information Administration, the General Counsel of the Department of Energy, the Special Counsel for Compliance, the Director of the Office of Hearings and Appeals, any person authorized to issue a subpoena of SRO under this section, or the authorized delegate agent of any of the foregoing officials, who issues a subpoena or SRO pursuant to this section.

(2) "SRO" means a Special Report Order issued pursuant to Subsection (b) of this section.

(b)(1) In accordance with the provisions of this section and as otherwise authorized by law, a DOE Official may sign, issue and serve subpoenas; administer oaths and affirmations; take sworn testimony; compel attendance of a sequester witnesses; control dissemination of any record of testimony taken pursuant to this section; subpoena and reproduce books, papers, correspondence, memoranda, contracts,

agreements, or other relevant records or tangible evidence including, but not limited to, information retained in computerized or other automated systems in possession of the subpoenaed person. Unless otherwise provided by Subpart O, the provisions of this section apply to subpoenas issued by the Office of Hearings and Appeals with respect to matters in proceedings before it.

(2) A DOE Official may issue a Special Report Order requiring any person subject to the jurisdiction of the ERA to file a special report, including but not limited to written answers to specific questions. The SRO may be in addition to any other reports required by this chapter.

(3) The DOE Official who issues a subpoena or SRO pursuant to this section, for good cause shown, may extend the time prescribed for compliance with the subpoena or SRO and negotiate and approve the terms of satisfactory compliance.

(4) Prior to the time specified for compliance, but in no event more than 10 days after the date of service of the subpoena or SRO, the person upon whom the document was served may file a request for review of the subpoena or SRO with the DOE official who issued the document. The DOE Official then shall forward the request to his supervisor who shall provide notice of receipt to the person requesting review. If the subpoena or SRO is not modified or rescinded within 10 days of the notification date, the subpoena or SRO shall be effective as issued.

(5) There is no administrative appeal of a subpoena or SRO.

(c) (1) A subpoena or SRO shall be served upon a person named in the document by delivering a copy of the document to the person named.

(2) Delivery of a copy of the document to a natural person may be made by:

(i) Handing it to the person;
(ii) Leaving it at the person's office with the person in charge of the office;

(iii) Leaving it at the person's dwelling or usual place of abode with a person of suitable age and discretion who resides there;

(iv) Mailing it to the person by registered or certified mail, at his last known address; or

(v) Any method that provides the person with actual notice prior to the return date of the document.

(3) Delivery of a copy of the document to a person who is not a natural person may be made by:

(i) Handing it to a registered agent of the person;

(ii) Handing it to any officer, director, or agent in charge of any office of such person;

(iii) Mailing it to the last known address of any registered agent, officer, director, or agent in charge of any office of the person by registered or certified mail, or

(iv) Any method that provides any registered agent, officer, director, or agent in charge of any office of the person with actual notice of the document prior to the return date of the document.

(d) (1) A witness subpoenaed by the DOE shall be paid the same fees and mileage as paid to a witness in the district courts of the United States.

(2) If in the course of a proceeding conducted pursuant to Subparts M or O, a subpoena is issued at the request of a person other than an officer or agency of the United States, the witness fees and mileage shall be paid by the person who requested the subpoena. However, at the request of the person, the witness fees and mileage shall be paid by the DOE if the person shows:

(i) The presence of the subpoenaed witness will materially advance the proceeding; and

(ii) The person who requested that the subpoena be issued would suffer a serious hardship if required to pay the witness fees and mileage.

The DOE Official issuing the subpoena shall make the determination required by this subsection.

(e) If any person upon whom a subpoena or SRO is served pursuant to this section, refuses or fails to comply with any provision of the subpoena or SRO, an action may be commenced in the United States District Court to enforce the subpoena or SRO.

(f) (1) Documents produced in response to a subpoena shall be accompanied by the sworn certification, under penalty of perjury of the person to whom the subpoena was directed that (i) a diligent search has been made for each document responsive to the subpoena, and (ii) each document responsive to the subpoena is being produced unless withheld on the grounds of privilege pursuant to subsection (g).

(2) Any information furnished in response to an SRO shall be accompanied by the sworn certification under penalty of perjury of the person to whom it was directed or his authorized agent who actually provides the information that (i) a diligent effort has been made to provide all information required by the SRO, and (ii) all information furnished is true, complete, and correct unless withheld on grounds of privilege pursuant to subsection (g).

(3) If any document responsive to a subpoena is not produced or any information required by an SRO is not furnished, the certification shall include a statement setting forth every reason

for failing to comply with the subpoena or SRO.

(g) If a person to whom a subpoena or SRO is directed withholds any document or information because of a claim of attorney-client or other privilege, the person submitting the certification required by paragraph (f) of this section also shall submit a written list of the documents or the information withheld indicating a description of each document or information, the date of the document, each person shown on the document as having received a copy of the document, each person shown on the document as having prepared or been sent the document, the privilege relied upon as the basis for withholding the document or information, and an identification of the person whose privilege is being asserted.

(h) Upon written request any person served with a subpoena or SRO shall be notified as to the general purpose for which any testimony, information or documentary material is sought.

(i) (1) If testimony is taken pursuant to a subpoena, the DOE Official shall determine whether the testimony shall be recorded and the means by which the testimony is recorded.

(2) A witness whose testimony is recorded may procure a copy of his testimony by making a written request for a copy and paying the appropriate fees. However, the DOE official may deny the request for good cause. Upon proper identification, any witness or his attorney has the right to inspect the official transcript of the witness' own testimony.

(j) The DOE Official may sequester any person subpoenaed to furnish documents or give testimony. Unless permitted by the DOE Official, neither a witness nor his attorney shall be present during the examination of any other witnesses.

(k) (1) Any witness whose testimony is taken may be accompanied, represented and advised by his attorney as follows:

(i) Upon the initiative of the attorney or witness, the attorney may advise his client, in confidence, with respect to the question asked his client, and if the witness refuses to answer any question, the witness or his attorney is required to briefly state the legal grounds for such refusal; and

(ii) If the witness claims a privilege to refuse to answer a question on the grounds of self-incrimination. The witness must assert the privilege personally.

(l) The DOE Official shall take all necessary action to regulate the course of testimony and to avoid delay and prevent or restrain contemptuous or obstructionist conduct or contemptuous language. DOE may take actions as the circumstances may warrant in

regard to any instances where any attorney refuses to comply with directions or provisions of this section.

2. Section 205.201 is amended to read as follows:

§ 205.201 Investigations.

(a) The DOE may initiate and conduct investigations relating to the scope, nature and extent of compliance by any person with the rules, regulations or statutes of the DOE or any order, court decree or agency action relating thereto.

(b) Any duly designated and authorized representative of DOE has the authority to conduct an investigation and to take such action as he deems necessary and appropriate to the conduct of the investigation including any action pursuant to § 205.8

(c) There are no parties, as that term is used in adjudicative proceedings, in an investigation under this subpart, and no person may intervene or participate as a matter of right in any investigation under this Subpart.

(d) Any person may request the DOE to initiate an investigation pursuant to paragraph (a) of this section. A request for an investigation shall set forth the subject matter to be investigated as fully as possible and include supporting documentation and information. No particular forms or procedures are required.

(e) Any person who is requested or compelled to furnish documentary evidence or testimony in an investigation, upon written request, shall be in-

formed of the general purpose of the investigation.

(f) DOE shall not disclose information or documents that are obtained during any investigation unless (1) DOE directs or authorizes the public disclosure of the investigation; (2) the information or documents are a matter of public record; or (3) disclosure is not precluded by the Freedom of Information Act, 5 U.S.C. 552 and 10 CFR Part 1004. A request for confidential treatment of information Act for purposes of the Freedom of Information shall not prevent disclosure by DOE if disclosure is determined to be in the public interest and otherwise permitted by law.

(g) During the course of an investigation any person may submit at any time any document, statement of facts or memorandum of law for the purpose of explaining the person's position or furnish evidence which the person considers relevant to a matter under investigation.

(h) If facts disclosed by an investigation indicate that further action is unnecessary or unwarranted, the investigative file may be closed without prejudice to further investigation by the DOE at any time that circumstances so warrant.

§ 210.91 [Deleted]

3. Section 210.91 is deleted.

§§ 205.180—205.185 [Deleted]

4. Sections 205.180 through 205.185 are deleted.

[FR Doc 79-1906 Filed 1-18-79; 8:45 am]

Register
of
Proposed
Regulations

FRIDAY, JANUARY 19, 1979

PART VIII



**ENVIRONMENTAL
PROTECTION
AGENCY**

**FEDERAL PESTICIDE ACT
OF 1978**

**Implementation Plan and
Preliminary Solicitation of Views**

[6560-01-M]

ENVIRONMENTAL PROTECTION AGENCY

[FRL 1039-4; OPP-000831]

FEDERAL PESTICIDE ACT OF 1978

Implementation Plan and Preliminary Solicitation of Views

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

ACTION: Agency's plan for carrying out the Federal Pesticide Act of 1978, and solicitation of views.

SUMMARY: On September 30, 1978, the President signed into law the Federal Pesticide Act of 1978 (Pub. L. 95-396, 92 Stat. 819) amending the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq. This notice summarizes the changes these new amendments will effect in the FIFRA, and the Agency's general plan and timing for implementing them. Any comments on the Agency's general approach in addressing issues and implementation plans are invited.

DATES: Comments on this notice should be submitted by February 21, 1979.

ADDRESS: Address all comments to Federal Register Section, Program Support Division, (TS-757), Office of Pesticide Programs EPA, 401 M Street, SW., Washington, D.C. 20460. Comments received will be available for public inspection in Room E-401, Waterside Mall East Tower, 401 M Street, SW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Ms. Susan H. Sherman, Chief, External Affairs Unit (TS-766), (see mailing address above), telephone 202/775-8020.

SUPPLEMENTARY INFORMATION: The following information describes the legislative history of the Federal Pesticide Act of 1978, the legislation itself, and a section-by-section implementation plan.

LEGISLATIVE HISTORY

In March of 1977, the Administrator of EPA testified before the House Committee on Agriculture and the Senate Committee on Agriculture, Nutrition, and Forestry that the pesticide registration and reregistration program was in need of modification and streamlining, requiring statutory amendment as well as administrative changes. The Administration shortly thereafter presented for the Committees' consideration a proposed bill intended to significantly alter the pesticide law. The objectives of the Administration bill were to provide greater

flexibility to the Agency in regulating pesticides, eliminate inequitable aspects of the registration process, and provide a framework for a simpler, more focused registration and reregistration program. These issues were explored in testimony by EPA, the States, the pesticide-producing industry, farm and other user organizations, and environmental groups during hearings held in the spring and summer of 1977.

On July 29, 1977, the Senate passed S. 1678, a comprehensive bill designed to remedy the problems identified by the Administration and the other parties who presented views. The House, after holding further hearings, passed H.R. 8681 on October 31, 1977. The House bill contained some of the same basic elements of the Senate bill (although treating some of the issues differently) and added other unique provisions. A Conference Committee convened in April 1978 and issued a Conference Report on September 12, 1978. The Conference bill was adopted by the Senate on September 18, 1978, by the House on September 19, 1978, and was signed into law on September 30, 1978.

DESCRIPTION OF THE LEGISLATION

The FIFRA has been the primary vehicle for regulating pesticides since 1947. Until 1972, the law was focused on the proper labeling of pesticide products shipped in interstate commerce. In 1972, however, Pub. L. 92-516 strengthened the law considerably, changing it from a labeling law to a comprehensive regulatory statute. The 1972 amendments reflected the public concern about potential adverse health impacts of pesticides only then becoming apparent, the need to adequately assess the "reasonableness" of the risks posed by these products and to permit continued sale and use of those products found to not pose unreasonable risks. Pub. L. 92-516 charged EPA with the responsibility not only for requiring adequate pre-market data review of new products, but also for reexamining previously registered products, and reregistering those which continue to meet today's safety standards.

The Agency encountered numerous obstacles in attempting to carry out the registration responsibilities imposed by the 1972 law. Registration came to a near standstill due to ongoing litigation over use of one company's data by another, and because for many products data sufficient to meet today's data requirements have not yet been generated. At the same time, however, the law allowed earlier-registered products, identical to those for which registration is now sought, to remain on the market pending reregistration, giving rise to a "double stand-

ard" among manufacturers of like products. The new legislation recognizes and remedies the inequities of the present system, and permits some far-reaching changes in the registration program which will simplify the regulation of pesticides in this country.

The new law incorporates several important features considered by the Administration and Congress to be laudable goals of contemporary environmental legislation:

- Regulatory reform—lessening burdens on the private sector and simplifying the regulatory process;

- Decision making in the "sunshine"—making the Agency's information base accessible to the public; and

- Direction of resources to highest priority health and safety questions.

1. **Registration.** Several major provisions of the legislation significantly affect the registration process. These provisions authorize EPA to:

- *Issue conditional registrations, to expedite the registration process, and give the Agency and the industry greater flexibility in fulfilling data requirements.

- *Develop generic pesticide standards for each pesticide active ingredient encompassing all of its approvable formulations and uses. The Agency in the future will adopt a chemical-by-chemical approach to registration rather than the current product-by-product approach.

- *Classify registered pesticides for restricted use by regulation prior to full reregistration.

- *Waive the finding of efficacy, reducing data requirements to industry, allowing the marketplace to determine efficacy, and allowing the Agency to devote its limited resources primarily to the assessment of health and safety questions.

The Agency plans to review all pesticides currently on the market chemical-by-chemical over the next 10-15 years, and to develop a generic standard (basically a profile of formulations and uses which the Agency has determined will not pose unreasonable adverse effects on humans or the environment) for each pesticide active ingredient. This process involves the review and validation of all data in EPA files, the identification and filling of data gaps by registrants, and the reregistration of currently registered products which are approvable under the standard. Conditional registration will under sections 3(c)(7) (A) and (B) serve as a bridge to generic standards involving "old" chemicals over a 10-15 year period. In other words, a product will be conditionally registered until the generic standard for its active ingredient is developed, after that time, it will be reregistered unconditionally if it is in compliance with the new

standard. Conditional registration will be used after a standard is developed only when the Administrator imposes a new data requirement in order to allow applicants an appropriate amount of time to meet the new requirement.

Under section 3(c)(7)(C) of the Act EPA is also authorized to issue conditional registrations for new chemicals under certain special circumstances. These include cases where the early registration is in the public interest as a substitute for an RPAred or cancelled pesticide, would provide control for a pest now having no adequate control or would provide other socially beneficial effects.

An important change in thrust of the registration program expressed by the Administration during the legislative process is the rejection of a piecemeal approach to data consideration for individual registration actions, which wastes both Agency resources and applicant effort. This change in philosophy underlies both the generic standards (reregistration) program and the conditional registration program. The Agency will use all relevant data available in establishing generic standards. The standard will not be based on one item of data, or five items of data or any particular pieces or combinations of individual items of data—it will be based on *all* data reviewed by the Agency which is pertinent to a finding of no unreasonable adverse effects. The legislative history provides added incentive to adopt this course by endorsing the Agency's proposal to validate data only once for each chemical rather than on a product-by-product basis.

As the Agency explained in Congressional testimony, it has no intention of examining the existing data base on a chemical in reaching conditional registration decisions, for product uses similar or identical to currently registered products. Comprehensive review of this data base will occur systematically with the establishment of generic standards. Therefore, EPA will be implicitly relying on what is already known (i.e., the existing decision base) about pesticides now on the market in granting conditional registrations; only new data in support of a new use

or a new chemical will be actually reviewed and scientifically assessed.

This approach to data consideration will effect changes in the registration process. In the long run, it will result in simpler, more efficient procedures for registrants who apply for registration under an established generic standard, and increased saving of EPA's time and resources since it will make health and safety decisions once for each chemical rather than hundreds of times over for individual applications. The Agency envisions in the future—after the data base has been validated, data gaps have been filled, and generic standards established—a system under which (in most cases) an applicant will certify that his product is in conformance with the standard, will submit only limited product-specific data, and will certify that he has taken the appropriate steps to comply with the data compensation provisions of the Act. Applicants will need to submit substantial data only when they propose new uses, new chemicals or other deviations from the established standard.

In the short run, this approach means that we expect to change the data citation and compensation procedures (discussed in detail below) which may cause some initial, temporary confusion. Because the Agency is relying on its "institutional knowledge" about pesticides, based on all data already in the files, rather than relying on individual ad hoc review of discrete items of data, we are proposing that applicants for conditional registration must rely on (and offer to pay for) all items of data in Agency files pertinent to the active ingredient contained in the product for which registration is sought, if those data are the kinds of data required under today's criteria to support the *initial* registration of such a product. These procedures are contained in draft conditional registration regulations now out for public review. During the interim three options are available to the registrant which are detailed in PR Notice 78-5, issued on December 8, 1978. In any case, the universe of data for which any registrant must actually pay compensation is limited by three primary factors: (1) The 1970 cut-off date for

compensation in the statute; (2) the Agency's waiver of efficacy data requirements for many use patterns; and (3) the separation between data on technical active ingredients and formulated products for compensation purposes. These factors are discussed in the following section and in number 2 below.

2. Data Sharing and Disclosure. The degree of control over data any registrant should be allowed to maintain after the data are submitted to EPA to support a pesticide registration was a major issue in developing the new legislation.

The two principal concepts discussed by the Conferees were: (1) Compensation for data (registrants who rely on data submitted by another must pay the submitter compensation for use of that data) and (2) exclusive use of data (data submitter has the right to allow or deny use of data by other registrants, at his discretion). The compromise struck by the Conferees combines part of each of these concepts.

The new law provides for compensation for data for a period of 15 years after submission for active ingredients in already-registered pesticides ("old" chemicals). That provision applies to data already in EPA files, and to new data which will be required by EPA in the future to maintain registrations of "old" active ingredients ("defensive data"). The compensation requirement does not apply to data submitted prior to 1970 (nor did it under the prior law).

The Federal Pesticide Act further provides that data pertaining to a pesticide containing a new active ingredient in a product first registered after September 30, 1978, will be entitled to exclusive use protection for 10 years after the date of initial registration. Any data supporting new uses of such new active ingredients will enjoy whatever period of exclusive use is still in effect from the initial registration. Exclusive use will in no case apply to defensive data.

Any disputes between registrants over the amount of compensation will be resolved by binding arbitration under the rules of the Federal Mediation and Conciliation Service. The old FIFRA provided that the EPA Admin-

istrator would decide such disputes by formal adjudication with opportunity for court review.

A new concept in cost sharing is also introduced by the Federal Pesticide Act of 1978. Some of the data required for registration are generated by tests on the active ingredient or technical product alone, while others are conducted with the pesticide product as formulated. The new cost sharing concept recognizes this fact by assigning costs of data on active (technical) ingredients to registrants of such ingredients and costs of data on formulated products to registrants of formulated products. In other words, compensation will operate horizontally between registrants competing at the same market level, not vertically between registrants at different market levels. The Act specifies that formulators (who purchase registered active ingredient chemicals for use in making end-use products) will not have to pay separate compensation to producers of the active ingredients for data concerning the safety of the active ingredients, beyond that amount of compensation implicit in the price of purchased technical materials. This provision should reduce the administrative and financial problems of formulators who no longer will be obliged to separately compensate producers of active technical ingredients for use of their expensive long term safety testing data submitted to EPA.

The law also clarifies the degree to which data underlying Agency regulatory decisions should be accessible to the public. It reflects the agreement of the Administration and the Congress that most data underlying EPA's decisions on pesticide regulation should be routinely available to the general public, so they can review Agency decisions. Bona fide trade secrets, however, such as confidential formula, manufacturing process, quality control processes, and production and sales data, will not be routinely releasable to the public. (These data can be disclosed in certain circumstances, if procedural safeguards are followed.)

The Act also provides that representatives of multinational pesticide producers will not have access to data otherwise available to the public. This prohibition was introduced because Congress was concerned about the impact of use of data overseas on international competition, when compensation provisions would not pertain. However, data pertaining to a pesticide which is the subject of an intensive public review proceeding (e.g., rebuttable presumption against registration, suspension, or cancellation) will be accessible to multinational companies in order to assure complete public accessibility to the data, and in

order to permit such companies to participate in the proceedings.

3. *State responsibilities.* The Federal Pesticide Act provides additional flexibility and authority to States in two areas: State registrations for special local needs, and primary use enforcement authority. The States played a very active role in the legislative process, and the amended Act provides expanded responsibilities for States in permitting uses of pesticides and ensuring their proper use within State boundaries.

4. *Other changes.* The new legislation defines "use inconsistent with the label"; imposes new requirements on exporters of pesticides cancelled or never registered in the United States; mandates the priority reregistration of food use pesticides insofar as practicable; confirms the Agency authority to certify applicators in States without approved plans; directs the Agency to consider restriction of a pesticide as an alternative to cancellation; requires an agricultural impact statement for any regulations promulgated under the Act; directs EPA to work with USDA in developing a list of agricultural pests; requires an annual report on conditional registrations issued over the previous year; and directs the Agency to conduct special studies on ultra-low-volume pesticide applications; minor use pesticides, and the possibility of charging fees for pesticide registrations.

DESCRIPTION OF EACH SECTION AND IMPLEMENTATION PLAN

Most of the provisions of the Federal Pesticide Act of 1978 are immediately effective. Plans to issue regulations to further define Administrative procedures which are not clear under the statute or as required by the statute are noted.

The Administrative Procedure Act, 5 U.S.C. 552-553, requires that Agency rules of general applicability and future effect be published in the *FEDERAL REGISTER*. Thus, when the Agency determines that in the future it will implement a provision of FIFRA in a certain uniform manner, it will publish an explanation of its intended manner of implementing the Act as a rule or general policy statement, as appropriate. Additionally, various changes in existing Agency regulations will be necessary to conform the regulations to the new provisions of FIFRA. Regulations will be promulgated in accordance with Executive Order 12044, with opportunity provided for public comment and participation.

A description of each section of the Federal Pesticide Act and a discussion of the Agency implementation plans follow.

1. *Definitions* (effective immediately; amendment to §7 regulations to follow).

Section 1 of the new amendments defines for the first time the phrase, "to use any registered pesticide in a manner inconsistent with its labeling," as meaning any use not permitted by labeling with the exception of four specific use practices as well as any uses otherwise authorized by other sections of the Act, and permits the Administrator to find other uses "consistent" which are not in literal accord with the label. It is the Agency's view that this definition is effective immediately, and does not require implementing regulations. EPA will publish a *FEDERAL REGISTER* notice formally rescinding those Pesticide Enforcement Policy Statements (PEPS) which were rendered obsolete by the new law. In addition, the Agency plans to develop regulations, to be published in the *FEDERAL REGISTER* establishing procedures for declaring other uses which are not in literal accord with labeling in the future to be "consistent" with the purposes of the Act.

The new legislation also specifies that an applicator of pesticides who follows label directions and applies registered pesticides as a service to control pests is not a seller or distributor of pesticides, changes the definition of "commercial applicator," and clarifies the term "producer." Because these are but three of several sections affecting certain applicators, a concise description of all changes in this area should be clearer than piecemeal attention. That discussion is found in number 17 below.

Section 1 of the new amendments also amends the definition of "Establishment" in the Act to include "any place where a pesticide or device or active ingredient used in producing a pesticide" (new words italicized). This new definition will require a change in the §7 regulations, "Registration of Establishments."

Two other changes in definitions concern exporters of pesticides and ultra-low-volume pesticide application, which will be discussed in numbers 18 and 27 below respectively.

2. *Use of data* (effective immediately, regulations to follow).

(a) *Compensation and exclusive use.* Section 2 of the new legislation amends §3(c)(1)(D) of the FIFRA to specify how data submitted by one registrant can be used for registration purposes by subsequent applicants. The general scheme envisioned by the amendments (i.e., 15 years of compensation from the date of submission of data, and 10 years of exclusive use from the date of first registration of future new pesticides containing new active ingredients) has been discussed above.

Draft 3(c)(1)(D) regulations have been publicly available since October 5, 1978, and have been discussed in a public meeting November 6, 7, and 8 in Washington. The Agency plans to issue final regulations by February 1979 in conjunction with the regulations implementing conditional registrations (discussed in number 6 below).

The new procedures dealing with compensation and exclusive use are effective now, and will be clarified in regulations. Thus, for all registrations issued after September 30, 1978, registrants must comply with the compensation and exclusive use portions of the Federal Pesticide Act of 1978. This means that in addition to furnishing to EPA a statement offering to pay reasonable compensation when applicable as in the past, applicants must also write directly to the submitters of data pertinent to their registration, and EPA must be notified by the applicant that the data submitters have been contacted.

In addition, data on a new active ingredient first registered after September 30, 1978, will be entitled to 10 years exclusive use from the date of the original registration, and can be used by subsequent applicants only with the express permission of the data submitter.

The Agency procedures for implementing compensation for data and other changes to the registration process which are applicable between the enactment of the new amendments and the effective date of regulations is explained in detail in PR Notice 78-5, available from the Registration Division, Office of Pesticide Programs (TS-767), EPA, Washington, D.C. 20460.

(b) *Compensation disputes.* The concept of required sharing of data and compensation is not new. The 1972 and 1975 FIFRA amendments provided for reasonable compensation of owners of data submitted in support of product registration when those data were used by subsequent applicants to support additional registrations. Disputes over the appropriate amount of compensation were to be settled by the Administrator, and reviewable in the court.

The new amendments substantially change the procedures for settling disputed compensation issues arising from registrations issued after September 30, 1978. Henceforth, disputes will be resolved by binding arbitration under the auspices of the Federal Mediation and Conciliation Service. The findings and determinations of the arbitrator shall be final and conclusive, and not subject to judicial review except upon verified complaint of fraud, misrepresentation or other misconduct. However, claims resulting from registrations issued prior to en-

actment of the new amendments will be settled in accordance with the old procedures unless the parties mutually elect to use binding arbitration or otherwise resolve their disputes.

As under the old Act, the law directs that the Agency need not wait until a compensation dispute is resolved to issue a registration to an applicant who has offered to pay compensation. The Act provides that if the Administrator determines that the original data submitter has failed to participate in binding arbitration or failed to honor the terms of the arbitration, the submitter forfeits his rights to compensation. On the other hand, the Act provides that the Administrator shall deny or cancel the registration without any further hearing if the applicant fails to enter into arbitration or fails to honor an arbitration decision. In either case EPA will advise the party of the intended action by certified mail, and will allow 15 days for response before taking action.

3. *Minor uses* (effective immediately; policy statement of current practice; regulations as part of guidelines).

The new legislation directs the Administrator to consider the anticipated extent of use, pattern of use, and the level and degree of potential exposure to the pesticide in determining appropriate data requirements for registration. The Agency will review the regulations governing data requirements in light of this amendment; in the interim, EPA will issue a general policy statement on various aspects of the minor use problem, including the relationship of registration to the tolerance setting procedures of the Federal Food, Drug, and Cosmetic Act (FFDCA), in the FEDERAL REGISTER in the next month. In addition, the Agency will complete a report to Congress by June 30, 1979 (see number 25 below) regarding the minor use problem.

As a result of these analyses, EPA may well find areas where changes in regulations are necessary and appropriate. The most likely examples involve the specification of data requirements in the Registration guidelines. Regulations will be issued to reflect such changes in data requirements as needed.

4. *Simplified registration* (Act mandates regulations within 9 months; exemption for data citation effective immediately).

As noted above, one of the innovations in the new legislation is the concept of limiting direct compensation transactions according to whether safety data are generated on the active ingredient or formulated product. This provision is effective immediately, and is discussed in the data compensation registration regulations which are

scheduled to be completed by February 1979.

It was also in the context of this limitation on compensation transactions that the Committees discussed the generic approach to registration. As EPA testimony explained, "... it has become increasingly clear that we are spending far too much time on individual end-use formulation applications, and that the whole structure for registration needs to be focused primarily on the chemicals themselves rather than thousands of individual applications for products containing mixtures of chemicals. Section 1 of our bill would facilitate that restructuring. We envision a system in which it is the technical material which becomes the focal point for registration, with the bulk of the safety data obtained from manufacturing-use, rather than end-use, registrations." Section 1 of the administration bill—the "generic pesticides standards" amendment—is embodied in § 4 of the Federal Pesticide Act of 1978. The Agency plans to publish a FEDERAL REGISTER notice within the next month describing how EPA will go about the development of generic standards and the reregistration program.

5. *Efficacy waiver* (effective immediately; waiver to be stated in conditional registration regulations preamble; amendment to § 3 regulations to follow as needed.)

The new legislation allows EPA to waive submission of efficacy data and to register a product without a determination that the pesticide's composition is such as to warrant claims of efficacy. EPA sought this amendment in order to concentrate limited Agency resources in the health and safety area, and because efficacy demonstrations in the laboratory or in field trials do not necessarily remain valid for very long, because of regional climatic situations, crop production technology changes and pest resistance factors. In order to implement the efficacy waiver provision, the Agency will incorporate a new efficacy waiver policy in the conditional registration regulations (see number 6 below). As a general rule, efficacy data will continue to be required in cases in which a human health impact could result from ineffectiveness of the product. The Conference Committee Report also gives EPA the option of waiving review of efficacy data if needed to determine efficacy of a product if the Agency has established data requirements and test protocols for such a product, if the required data are submitted and if the applicant provides a certified summary stating the product meets the efficacy requirements.

Congress, USDA, industry, and user groups have generally applauded the concept, but some States and other in-

interested parties believe it will signal an open season to fly-by-night operators who will defraud the public. Since this is a major deregulation action, EPA will consider it an experiment in social policy and EPA, in cooperation with the Experimental Technology Incentives Program of the National Bureau of Standards, will monitor the impacts of the efficacy waiver policy to determine if:

- * Consumer fraud increases;
- * Consumer fraud is effectively reported and curtailed through existing market institutions including State regulation processes, USDA and the Extension Service, farmers associations, and the marketplace;
- * Reductions in data requirements have any impact on innovation in the pesticide industry;
- * Expected Agency resource savings (because of reduced data review) are realized.

6. *Registration under special circumstances* (effective immediately; regulations to follow).

The Agency believes that this provision will provide the greatest relief to pesticide formulators and users, and also believes it has a commitment to the Congress to implement this program immediately. Coupled with new data use and trade secret provisions, it will remove the double standard that has existed for three years and has caused the rejection of numerous applications. EPA is therefore planning to issue interim final regulations which specify the basis on which it will grant conditional registrations for products identical or substantially similar to those already on the market, and for new uses of old (already registered) chemicals. The Agency's current schedule calls for the regulations to be issued by February 1979. Regulations regarding the conditional registration of new chemicals will be proposed 6 to 10 months after the promulgation of interim final regulations pertaining to old chemicals. Any application for a conditional registration of a new chemical will be handled on a case-by-case basis until that time.

The Agency desires to reconcile the need for public participation in the rulemaking process. Thus, in the *FEDERAL REGISTER* of July 25, 1978, EPA announced its intention to issue final regulations governing conditional registration of old and new uses of old chemicals without first formally proposing regulations. This expedited procedure, authorized by § 553(b)(3)(B) of the Administrative Procedure Act, is considered necessary due to the serious hardship being experienced by companies in certain segments of the pesticide producing industry who have been essentially deprived of a mechanism to attain registration since 1975. Public comment

was solicited. EPA held three days of public meetings on November 6, 7 and 8, during which the public was invited to express views and ask questions about the proposed approach to conditional registration. A draft of the regulations and preamble has been sent out to all interested parties, and is available upon request from Bob Rose, Registration Division, Office of Pesticide Programs (TS-767), EPA, 401 M Street, SW., Washington, D.C. 20460.

Section 6 of the new law also prohibits the Agency from initiating an interim administrative review process (i.e., a notice of rebuttable presumption against registration) unless it is based on "a validated test or other significant evidence." The Act also directs the Agency to define those terms in the *FEDERAL REGISTER*.

The Agency will shortly publish a *FEDERAL REGISTER* notice in compliance with this requirement.

7. *Classification prior to reregistration; change in classification from restricted use to general use* (effective immediately; regulations required; partially issued)

The new amendments authorize classification of pesticides by regulation, prior to full reregistration.

The first 23 pesticide active ingredients having restricted uses were classified in this manner (final regulations were published on February 9, 1978, in the *FEDERAL REGISTER* (43 FR 5783)) and the Agency published on January 9, 1979, proposed rulemaking in the *FEDERAL REGISTER* to classify uses of an additional 14 active ingredients.

The Act now provides that a registrant may petition the Agency to change a classification from restricted use to general use. The Agency is directed to act upon such a petition within 60 days after receipt; any denial of such a petition by the Administrator will be subject to judicial review under § 16 of FIFRA. The Agency will modify its current regulations to accommodate the procedures to be used in petitioning for such change.

8. *Priority of food uses in reregistration* (effective immediately).

The new amendments direct EPA to reregister food use pesticides on a priority basis to the extent practicable. The Agency's compliance with this provision will be discussed in the forthcoming generic standards notice which will explain the rationale for and describe the generic standards approach. The notice will be submitted to USDA and the Scientific Advisory Panel for review and comment.

9. *Certification in States without approved plans* (effective immediately; regulations to follow).

The new amendments give the Administrator explicit authority to certify applicators who intend to purchase

and use restricted use pesticides in States which do not have approved plans. Although the 1972 FIFRA was silent on the question of the consequences of a State's not having an approved plan for certification purposes, EPA believed all applicators should have the opportunity to come into compliance with the statute. EPA thus decided to provide a program in the absence of State action. Federal programs have been instituted in the States of Nebraska and Colorado, and the procedures followed in those States were consistent with the requirements of the new law, i.e., consultation with the Governor, publication of the plan in the *FEDERAL REGISTER*, and opportunity for a hearing in the State. The 1978 amendments also provide that EPA may by regulation require record keeping by commercial applicators in those States in which a Federal certification program is conducted. The Agency will amend current regulations as necessary to accomplish this.

10. *Experimental Use Permits* (effective immediately; Act requires final § 5(f) regulations).

The new amendments direct the Agency to review applications for experimental use permits within 120 days, and to issue regulations implementing § 5(f) of the FIFRA authorizing States to issue experimental use permits to support State registrations under § 24(c) of the Act.

The Agency will continue to review applications for experimental use permits as quickly as possible and expects that such review will be completed in less than 120 days in most cases. It would be of great assistance to EPA if applicants would submit applications at regular intervals throughout the year, rather than inundating the Agency with applications shortly before the growing season for which experimental use is sought.

Regarding § 5(f) regulations, proposed regulations were published for comment on September 3, 1975 (40 FR 40545). The Agency is planning to publish final regulations in the *FEDERAL REGISTER* in the next six months.

11. *Alternative to cancellation* (effective immediately; no regulations required).

The new amendments direct the Agency to consider restriction of a pesticide as an alternative to cancellation. One of the benefits of the restricted use/certified applicator program has always been to retain uses of pesticides which would otherwise have to be cancelled unless used by knowledgeable applicators. For example, the Agency modified an earlier cancellation decision to allow use of sodium cyanide in the M-44 device with additional restrictions on who may use the device, where and in what situations.

Likewise when the Agency suspended registrations of products containing dibromochloropropane (DBCP), the suspension action did not apply to certain DBCP products if the products' registrations were amended to restrict use to certified applicators and appropriate labeling changes to safeguard applicators were made. The viability of this option will depend on a continuing applicator certification program in the future.

12. *Cancellation of conditional registrations* (effective immediately; regulations to follow with conditional registration regulations).

The amendments provide for an expedited cancellation procedure for conditional registrations if the registrant fails to meet the conditions specified at the time of registration. Any hearing pursuant to such a cancellation will be limited to the issue of whether the condition was or was not met, rather than a full risk/benefit determination for the chemical in question. Cancellation procedures will be included in the conditional registration regulation package scheduled for early 1979 completion.

13. *Establishment registration for manufacturers of active ingredients* (effective immediately; amendment of § 7 regulations to follow).

The new bill amends § 7 of FIFRA to require manufacturers of any "active ingredient used in producing a pesticide subject to this Act" to register their establishments with EPA. The Agency will propose an amendment to the § 7 regulations regarding this provision.

The amendments also provide that the names of pesticides or active ingredients used in producing pesticides produced, sold, or distributed at an establishment which are submitted to EPA in accordance with § 7 are not confidential under § 10 of the FIFRA, and are thus available under the Freedom of Information Act.

14. *Inspection of Books and Records* (effective immediately).

Section 14 of the amendments requires any individual conducting an inspection under § 8 of FIFRA to present his or her credentials and a written statement as to the reason for the inspection, including a statement as to whether a violation of the law is suspected, to the owner, operator, or agent in charge of the establishment. The amendment also specifies that inspections shall be completed with reasonable promptness.

These requirements have been spelled out in the Pesticides Inspection Manual, which is the procedural guidebook for EPA inspectors. This manual is available to the public through Freedom of Information Act Procedures. All pesticide enforcement personnel in the EPA Regional Offices

were advised by memorandum of August 22, 1978, that these procedures would be required by the amendment to FIFRA § 8.

15. *Trade Secrets* (effective immediately; regulations to follow; Act requires regulations on contractor access to trade secret information).

One of the most important amendments sought by the Agency was a clarification in the statute of what information is to be made generally available to the public, and what is to be released only under specified conditions.

The new amendments provide a clear and detailed answer on this point. The Agency may routinely disclose pesticide effects data, including human, animal and plant hazard evaluation data, efficacy data, and environmental chemistry data, after complying with procedures to safeguard data submitters' legitimate rights. Four categories of data are not routinely disclosable: (1) Data on manufacturing and quality control processes; (2) data on methods for testing, detecting, or measuring deliberately added inert ingredients; (3) data on the identity or percentage quantity of deliberately added inerts; and (4) data on production, distribution, sale and inventories of pesticides. However, the Federal Pesticide Act provides that these data may be released under circumstances in which disclosure is necessary to protect health or the environment. Procedures for such release will be covered in regulations which the Agency will be proposing governing the confidentiality of business information.

The Agency may disclose data entitled to confidential treatment to any contractor with the Federal government who is performing work required by the FIFRA. Such disclosure will be made only when required so the contractor can successfully complete his work for the government. However, contractors (and their employees) are required to keep such data in confidence and are subject to penalties of up to \$10,000 or one year imprisonment for willful or knowing disclosure of any confidential information. In addition, the Agency will be proposing regulations specifically required by the new amendments to prescribe the proper security precautions a contractor must take in order to ensure confidential treatment of data which are trade secrets.

In addition, the new amendments prohibit the Agency from knowingly disclosing any data submitted by an applicant or registrant to foreign or multinational pesticide producers or pesticide exporters without consent of the data owner (except, as explained earlier, if the chemical in question is undergoing an intensive public

review). The Agency will be developing procedures for data release, including a statement from the party seeking access to the data that he or she does not intend and will not purposefully or negligently deliver such data to foreign or multinational pesticide producers.

As noted, the Agency plans to amend existing regulations governing confidentiality of business information to reflect the changes of FIFRA § 10. However, because the provisions of the Federal Pesticide Act are effective immediately and because the amendment of the existing regulations will take some time in order to afford appropriate opportunity for review and comment, the Agency published a FEDERAL REGISTER notice on December 19, 1978, detailing interim procedures.

16. *Sale of restricted pesticides to an uncertified applicator* (effective upon promulgation of regulations; regulations to be amended).

The Federal Pesticide Act of 1978 amends § 12(a)(2)(F) of FIFRA so that it shall not be unlawful for an individual to sell a restricted use pesticide to an uncertified applicator for application by a certified applicator as authorized in regulations promulgated by EPA. This provision was added to the law to allow uncertified farmers to continue the traditional practice of purchasing pesticides (some of which will be restricted) in advance of actually contracting with an applicator to apply the products. Often this practice results in substantial economic savings to farmers.

Conditions under which this practice may be continued are described in the Preamble to the classification regulations (43 FR 5783, February 9, 1978). The procedures outlined in that preamble will remain in effect until regulations amending the FIFRA § 4 regulations (40 CFR Part 171) are promulgated.

17. *Penalty provisions* (effective immediately).

Several sections of the Federal Pesticide Act of 1978 affect "for hire" applicators, notably the definitions section (§ 1) and the penalty provisions (§ 17).

The new legislation specifies that "any applicator who holds or applies registered pesticides, or use dilutions of registered pesticides consistent with section 2(ee) of this Act, only to provide a service of controlling pests without delivering any unapplied pesticide to any person so served is not deemed to be a seller or distributor of pesticides under this Act." For purposes of brevity these applicators referred to above who provide a service of controlling pests, where that service is in whole or in part their occupation, shall henceforth be referred to as "for hire" applicators. Previously, it had

been EPA's position that "for hire" applicators "distributed" pesticides as a part of their service when they applied them (policy memorandum of March 25, 1976). As distributors, these applicators were held to a higher standard under the law than other users. For example, their place of business and their books and records were subject to administrative inspection and they were liable for higher penalties for misuse of pesticides.

The new Act treats these applicators somewhat differently. "For hire" applicators are no longer to be considered sellers or distributors except in certain circumstances (for example, if they hold or apply an *unregistered* pesticide, or they deliver any *unapplied* pesticide to the customer). In situations such as these, the applicator would be considered a seller or distributor for any violation of FIFRA, and subject to the higher penalties set forth in § 14(a)(1) and § 14(b)(1).

Section 1 of the new amendments also changes the definition of the term "Commercial Applicator" in section 2(e)(3) of the FIFRA. Previously, the term "commercial applicator" meant "a *certified* applicator who uses or supervises the use of any pesticide which is classified for restricted use for any purpose or on any property other than [as a private applicator]" (emphasis added). The new Act reads, "The term 'commercial applicator' means an *applicator* . . . who uses or supervises . . ." (emphasis added). In other words, a commercial applicator is no longer defined as being a *certified* applicator. Thus, *any* applicator (except a *certified* private applicator) who uses or supervises the use of a restricted use pesticide, whether or not that applicator is *certified*, is a commercial applicator subject to the higher penalties under § 14(a)(1) and § 14(b)(1) of the Act.

Section 1 of the new amendments also specifies that an individual who dilutes a formulated pesticide for his own use in accordance with the label directions cannot be considered a "producer" under the Act.

Section 17 of the new amendments revises § 14(a) of the FIFRA regarding civil penalties for violations of the Act. The new amendments, unlike the 1972 FIFRA, differentiate between restricted use and general use pesticides in terms of the maximum fine that a "for hire" applicator can incur. Any "for hire" applicator who violates any provision of FIFRA while holding or applying a registered *general use* or *unclassified* pesticide is liable for a maximum fine of \$500 for the first offense and \$1000 for subsequent offenses; the maximum fine for a violation which occurs with a *restricted use* pesticide is \$5,000. Previously, the Agency had considered "for hire" applicators sub-

ject to a maximum penalty of \$5,000 whether they were using general or restricted pesticides.

The new law also recasts a provision of the 1972 Act which directs the Agency to consider the size of the business of the person charged with the violation, the effect on the person's ability to continue in business and the gravity of the violation in determining the size of a civil penalty. The Agency has the discretion to issue a warning in lieu of assessing a civil penalty in situations where a violation occurred "despite the exercise of due care or did not cause significant harm to health or the environment." This amendment, directed principally at misuse violations governed by § 12(a)(2)(G), will be taken into account when determining whether to take action under § 14 (civil penalties) or § 9(c)(3) (minor warnings for use of a pesticide in a manner inconsistent with labeling). The agency plans to publish a new chart providing guidance on assessing civil penalties in the FEDERAL REGISTER which will take the legislative changes into account.

18. *Pesticides and devices intended for export* (effective within 180 days after enactment; regulations required).

Exporters of pesticides will be significantly affected by the new legislation. Under the 1972 FIFRA, an exporter did not have to meet any labeling or packaging requirements other than those specified by the foreign purchaser. The new amendments, however, specify that a pesticide intended for export will be misbranded if it does not conform to several provisions of § 2 of FIFRA, meaning that exporters have to conform to certain U.S. labeling requirements for the first time. The new amendments also specify that exporters are subject to § 7, establishment registration, as well as § 8, books and records, of the Act.

In addition, labels of pesticides which are not registered in the U.S. and which are intended for export must bear the following statement: "Not Registered for Use in the United States of America." The foreign purchaser must sign a statement acknowledging that he understands that such pesticides are not registered for use in the U.S. and cannot be sold in the U.S. under FIFRA. A copy of the statement must be transmitted to an appropriate official of the government of the importing country.

The amendment also directs EPA to provide foreign nations with information on alternatives to cancelled pesticides upon request. This provision augments the current requirement that EPA notify foreign governments, via the State Department, of all significant pesticide cancellation actions.

The provisions of modifying section 17 of FIFRA regarding labeling for ex-

ports, and related § 7 and § 8 requirements, become effective 180 days after enactment (March 29, 1979). EPA will, within that time, notify pesticide registrants and export firms of the new requirements through the FEDERAL REGISTER. The Agency plans to amend to § 8 regulations to accommodate the additional recordkeeping to which exporters will be subjected and to develop procedures for transmittal of the acknowledgement statements.

19. *Disposal* (effective immediately).

The new amendments direct EPA to provide information on pesticide disposal when action is taken to finally cancel a pesticide. The Agency will do so as cancellations occur in the future. A directive to Agency employees will be included in internal procedural manuals.

20. *IPM & Monitoring* (effective immediately).

In accordance with the new amendments, EPA will continue to coordinate programs in integrated pest management (IPM) with the U.S. Department of Agriculture. The Conference Committee's directives on monitoring humans and environmental media for pesticide exposure will be accommodated in the National Monitoring Plan already being developed under § 20 of the 1972 FIFRA.

21. *State Cooperation, Aid, and Training* (effective FY 1980; EPA general grant regulations to follow).

Section 21 of the new bill provides that EPA may enter into cooperative agreements with States and Indian tribes to assist in enforcement of the Act, and to assist in developing and administering State and Indian programs to train and certify applicators.

The legislation also authorizes to be appropriated such funds as necessary for EPA to provide through cooperative agreements an amount equal to 50 percent of the anticipated costs to each State and Indian tribe. If funds sufficient to pay 50 percent are not appropriated, each State's and tribe's share shall be reduced in a like proportion.

EPA is planning to propose regulations in the next 6 months governing general grant procedures for enforcement and certification and training purposes. Development of proposed regulations was nearing completion when the law was amended, and draft regulations are now being revised accordingly. In addition, the Agency will be working closely with the States and Indian tribes in deciding what costs should be included in the 50/50 sharing plan. EPA will ask each State what proportion of Federal funding supports their certification programs, since estimates were available only on National totals rather than a State by State basis at the time the Conference considered the funding amendment.

The Agency will report its findings to the States and to the House and Senate agriculture committees before the appropriations hearings next spring.

This amendment is an authorization but not a guarantee of appropriations. Funds for each year will still need to be justified and appropriated through the normal budget process.

22. *State Registration for Special Local Needs* (certain portions effective immediately; remainder upon issuance of regulations).

The new legislation amends §24(c) of FIFRA to provide the States with greater flexibility and independence in issuing registrations for "special local needs." There are certain changes in FIFRA §24(c) which are effective immediately upon enactment of the Federal Pesticide Law of 1978. Most notable of these are:

* States no longer need to submit a program for EPA approval in order to obtain permission to issue local needs registrations;

* EPA cannot disapprove a State registration on the basis of lack of essentiality of a pesticide or if its composition and use patterns are similar to those of a Federally registered pesticide (unless such use has been previously denied, disapproved, or cancelled by the Administrator.) EPA can, however, disapprove State registrations within a 90-day period if the use pattern or composition is dissimilar to a Federally registered product (and if EPA determines that such a registration would be harmful to health or the environment.) EPA can immediately disapprove registrations for use of a pesticide on a food crop for which there is no established tolerance under the FFDCA, or if the State registration constitutes an imminent hazard.

* EPA must notify States if it intends to disapprove a State registration and provide time for the State to respond.

* States may register uses not considered, or considered and approved, by EPA in disapproving, cancelling, or denying registration of other uses of such products. Products containing an ingredient subject to an intensive review of risks and benefits (i.e., rebuttable presumption against registration) are also eligible for State registrations if otherwise acceptable under the new amendment.

Because of these changes, and the obvious need for cooperative guidelines, the Agency in consultation with the States has prepared a policy memorandum which addresses the transition period between enactment of the new amendments and development of new §24(c) regulations. This document is now available to the public. Copies may be obtained by writing to Mr. Ralph Colletti, Oper-

ations Division, Office of Pesticide Programs (TS-770), EPA, 401 M Street, SW., Washington, D.C. 20460.

Because the new amendments have significantly affected the State registration provisions of the law, the Agency intends to repropose §24(c) regulations in the FEDERAL REGISTER. EPA will work closely with the States through the State FIFRA Issues Research and Evaluation Group in the development of these regulations.

23. *Agricultural vs. non-agricultural uses, agricultural impact statements, Scientific Advisory Panel* (effective immediately.)

Section 23 of the new amendments directs EPA to consider the differences in environmental risk and the appropriate data for evaluating such risk between agricultural and non-agricultural pesticides. This amendment was developed primarily in response to complaints by registrants of household products that EPA does not properly distinguish between the potential risks their pesticides may pose as compared to pesticides used on crops.

EPA has considered the differences in risk potential of various product types in establishing data requirements. The amendment ensures that the Agency will continue to do so in the future.

In an effort to clarify how the Agency in its regulations distinguishes between crop uses and household uses of pesticides regarding data requirements and hazard evaluation, EPA will publish a descriptive paper as a Pesticide Regulation notice in Spring 1979.

Section 23 of the new legislation also directs EPA to analyze the impact of regulations promulgated under FIFRA on the agricultural economy, and to publish that analysis in the FEDERAL REGISTER. The Agency will comply with this requirement during the rule-making process. The Agency has published on July 11, 1978 (43 FR 29891), a proposed plan for improving environmental regulations which require the Agency to analyze all routine regulations for "insights into the potential effects on the economy and on those who are subject to the regulation." Factors to be taken into consideration in these economic analyses are described in that notice.

Regarding the Scientific Advisory Panel, the new legislation extends the termination date of the Panel to September 30, 1981. It also directs the Panel to consult and coordinate its activities with the Science Advisory Board. In addition, §23 of the new bill directs the EPA Administrator to "solicit from the advisory panel comments, evaluations, and recommendations for operating guidelines to improve the effectiveness and quality of scientific analyses made by personnel of the Environmental Protection

Agency * * * We intend to present questions of scientific policy to the Panel as they arise in the future.

24. *State Enforcement, Pest List, Annual Report* (effective as described below).

The Federal Pesticide Act of 1978 adds two new sections to FIFRA (Sections 26 and 27) which outline conditions under which a State will be judged to have primary authority to enforce FIFRA's prohibitions on the misuse of pesticides and the conditions under which EPA can exercise such enforcement responsibilities.

A State has primary use enforcement authority if EPA determines that it has adequate use laws and regulations, has adequate procedures for the enforcement of those laws and regulations, and will keep records and make reports as the Administrator may require by regulation. The new law further provides that any State which has a cooperative enforcement agreement with EPA "automatically" has primary use enforcement authority. It also directs EPA to review State plans submitted in accordance with §4 of FIFRA within six months of the enactment of the amendments to determine if the laws and regulations in those States meet the criteria to grant them the responsibility for primary use enforcement.

Those States that currently have Cooperative Enforcement Agreements with EPA, and thus have "automatic" primary use enforcement responsibilities, are:

Arizona*	Nevada
Arkansas	New Hampshire
California	New Jersey
Connecticut	New Mexico
Delaware	New York
District of Columbia	North Carolina
Guam	Oklahoma
Hawaii	Oregon
Idaho	Pennsylvania
Indiana	Puerto Rico
Iowa	South Dakota
Kansas	Tennessee
Kentucky	Texas
Louisiana	Vermont
Maryland	Virginia
Michigan	Virgin Islands
Mississippi	Washington
Montana	West Virginia

*EPA has a cooperative enforcement agreement with the State's Structural Pest Control Board only. Primary use enforcement responsibility has therefore been delegated only for the structural pest control area. Primary use enforcement responsibility in the agricultural area is retained by EPA.

Those States with no cooperative enforcement agreement and which therefore do not have automatic primary use enforcement responsibility are:

Alabama**
Alaska**
Arizona**
Colorado
Florida**
Georgia
Illinois
Maine**
Massachusetts
Minnesota**
Missouri**

Nebraska
North Dakota**
Ohio**
Rhode Island**
Samoa
South Carolina**
Trust Territories
Utah**
Wisconsin**
Wyoming**

** States with fully approved § 4 plans.

The Agency will examine the § 4 State plans for the States with fully approved plans to determine whether their enforcement authorities are appropriate to qualify them for primary use enforcement authority. Failure to review such plans within six months will result in automatic State primary use authority for the the unreviewed States.

For those States without either a cooperative enforcement agreement or fully approved § 4 plan, no primary use enforcement responsibility will be conferred until such time as (a) the State's § 4 plan is given full approval by EPA and its enforcement authorities have been reviewed for adequacy, or (b) the State applies for review of its enforcement authorities and EPA finds they are consistent with FIFRA § 26(a).

In addition, the Agency plans to propose regulations to implement the suspension provisions of the new § 27 concerning a State's failure to carry out its primary use enforcement responsibilities. These regulations will address the procedures for referral of complaints to States, define "appropriate enforcement action" and "significant violation of the pesticide use provisions" of the Act describe when an "emergency condition" exists, and outline procedures for rescinding primary use enforcement responsibility as appropriate. These proposed regulations will be developed with cooperation from the States and other interested groups.

Regarding the provision of § 4 of the Federal Pesticide Act of 1978 directing the EPA Administrator to identify agricultural pests in coordination with the Secretary of Agriculture, the Agency plans to solicit the assistance of USDA in this endeavor. EPA anticipates that a list can be developed in 12 months.

The new Act also directs the Agency to submit an annual report to Congress before February 16 of each year beginning in 1979 describing the conditional registrations issued for the previous year. The Agency will comply with this requirement as specified in the legislation.

25. Studies

Section 27 of the Federal Pesticide Act of 1978 directs the Agency to conduct three studies:

(a) Feasibility of charging fees for Federal registration of pesticide products, in order to reduce taxpayer expense. Statutory deadline: nine months after enactment.

(b) Review of all available scientific information dealing with methods of pesticide application, particularly ultra-low-volume application. Statutory deadline: Six months after enactment.

EPA plans to work with the States, USDA, and concerned private industry and environmental groups and user groups on this study. EPA has published (43 FR 54697) a FEDERAL REGISTER notice soliciting comment on the issues believed by the Agency to be the most important to resolution of the safety questions surrounding ultra-low-volume application. The study to Congress will be followed by a regulation or advisory opinion by

March 31, 1979. If the Agency fails to issue any regulation or advisory opinion by that date, ultra-low-volume application becomes "consistent" with the label as defined in FIFRA § 2.

(c) An updated review of the problems of minor uses. The Agency will coordinate with the States, the experiment stations, IR-4, and other interested parties in re-examining the minor use area. Statutory deadline: nine months after enactment.

SUMMARY

The following regulations will be developed by the Agency under the Federal Pesticide Act of 1978. Generally speaking, the Agency anticipates proposing new regulations where appropriate within the next 9-12 months. Better estimates will be provided in Advance Notices of Proposed Rule-making as developed.

Amend § of FIFRA	Per § of FPA	Purpose and Timing
24(c).....	22	Repropose State special local needs registration regulations.
3(c)(1)(D).....	2	Final regulations on compensation (by February 1979).
3 (addition to).....	6	Interim final conditional regulations (by February 1979).
3 (addition to).....	4	Simplified registration: line between data requirements for registration of technical materials & formulations (by February 1979).
3 (addition to).....	5	Condition of efficacy waiver; conditional registration regulations.
26 & 27 (new).....	24	Proposed primary use enforcement regulations.
10.....	15	Proposed regulations on disclosure of information to the public and to contractors.
3(d).....	7	Procedural regulations have been issued (FR February 1978); additional pesticides proposed (FR January 1979).
4.....	9	Proposed regulations for record keeping for dealers in States without approved plans.
5(f).....	10	Final regulations for state experimental use permit authority.
7.....	13	Proposed amendment to regulations to add producers of active ingredients.
4.....	16	Proposed amendment to allow sale to uncertified applicators.
8.....	18	Proposed amendment to include exporters.
2.....	1	Propose regulation regarding procedures for finding uses "consistent."

The following additional policy statements, FEDERAL REGISTER notices, Pesticide Registration notices, or other public documents will be prepared.

§ of FIFRA	§ of FPA	Purpose and Timing
2.....	1	Rescind PEPS (Pesticide Enforcement Policy Statement); FR notice by Spring 1979.
17.....	18	FR notice describing new export requirements by March 29, 1979.
2.....	1, 27	FR notice published asking for public comment on ULV (Ultra Low Volume); comment period closed December 22, 1978. Study on advisability of ULV (Ultra Low Volume) by March 31, 1979. Regulation or advisory opinion by March 31, 1979.
3.....	4	FR notice describing generic standards plans in February 1979.
	27	Minor use policy statement by January 1979; Minor use study to Congress by June 30, 1979. Guidelines and/or registration regulations as needed by September 1979.

§ of FIFRA	§ of FPA	Purpose and Timing
3	6	FR notice defining "validated test" and "other significant evidence" in February 1979.
10	15	FR notice regarding trade secret policy published December 19, 1978.
14	17	New civil penalty schedule in FR by Spring 1979.
24(c)	22	Notice detailing transition policy already issued.
25	23	PR (Pesticide Regulation) notice—agricultural vs. nonagricultural by Spring 1979.
26	24	Publish names of States which have automatic authority/which § 4 plans OK by March 29, 1979.
29 (new)	24	Annual conditional registration report beginning February 15, 1979.
	27	Study to Congress on feasibility of registration fees by June 30, 1979.
28 (new)	24	Pest list by October 1, 1979. Will be published for public comment.

Dated: December 18, 1978.

STEVEN D. JELLINEK,
Assistant Administrator for
Toxic Substance.

Dated: January 10, 1979.

MARVIN B. DURNING,
Assistant Administrator
for Enforcement.

[FR Doc. 79-1718 Filed 1-18-79; 8:45 am]

FRIDAY, JANUARY 19, 1979

PART IX



**DEPARTMENT OF
LABOR**

**Employment and Training
Administration**

**COMPREHENSIVE
EMPLOYMENT AND
TRAINING ACT**

**Proposed Rules for Programs under
Titles I, II, VI, and VII of
the Act**

Proposed
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and VII
of
the Act

[4510-30-M]

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Parts 675-679]

COMPREHENSIVE EMPLOYMENT AND TRAINING ACT

Regulations for Programs Under Titles I, II, VI, and VII of the Act

PROPOSED RULEMAKING

AGENCY: Department of Labor.

ACTION: Proposed rules.

SUMMARY: This document proposes new rules at 20 CFR Parts 675-679, implementing provisions of the Comprehensive Employment and Training Act Amendments of 1978 (Public Law 95-524). The purpose of this publication is to request review and comment on these proposed rules.

DATES: Comments on the proposed rulemaking are due on or before February 19, 1979.

ADDRESSES: Comments should be addressed to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213. Attention: Robert Anderson, Administrator, Office of Comprehensive Employment Development.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Anderson, Telephone: (202) 376-6254

SUPPLEMENTARY INFORMATION: The Comprehensive Employment and Training Act Amendments of 1978 (Public Law 95-524) was signed into law on October 27, 1978.

The new statute contains, in Section 4, provisions for transition from the programs in operation under the old law to the programs authorized under the new law. To be effective on October 27, 1978 were new eligibility requirements for participation in public service employment activities, and new language amending the criminal provisions in Title 18 of the United States Code providing for prosecution leading to imprisonment for criminal activity for obstruction of investigations.

The transition provisions further required the implementation within 90 days of enactment (that is January 26, 1979) of the new eligibility criteria for participation in all programs, and the limitations on wages and wage supplementation from other funding sources.

Also, the provisions relating to the prevention of fraud and abuse in the program were to be implemented as soon as possible. Both these provisions and the above 90 day requirements were implemented through transitional regulations (Part 93 of the CFR)

published in the FEDERAL REGISTER on December 29, 1978, and effective January 26, 1979. During this transition period, the Secretary has the authority to continue operation under the previously applicable regulations, but the new law must be implemented by April 1, 1979.

To accommodate the April 1, 1979, deadline, these proposed regulations are being published for a 30 day review and comment period. This will allow the Department an opportunity to receive and reconcile comments from a nationwide audience prior to publishing final regulations which must be effective on April 1. This publication schedule also serves to orient the CETA system and the general public to the new law, and provides guidance for planning and modifying existing plans in order to comply with the new law.

The regulations included in this publication will amend Chapter 5 of Title 20 of the Code of Federal Regulations by adding parts 675 through 679. Later publications will contain regulations in parts 680 through 695. The regulations included here generally cover Titles I, II, VI, and VII of the Act.

CETA is a combination of programs which are designed to provide specific employment and training services needed to prepare and place eligible individuals in unsubsidized employment.

These different programs share a common administrative bond in Title I of the Act. Those provisions generally applicable to all CETA activity are stated in the initial title of the law and Part 676 of the regulations. Deviations from this are specifically noted as appropriate in the rest of the Act.

The programs include those under Title II of the Act for the structurally unemployed. Training, services, and public service employment in II, D are all allowable activities, but the activities are to be designed to meet the needs of each participant.

Title VI of the Act is designed to provide short term public service jobs to low income persons who are temporarily out of work because of economic conditions causing a contraction of the job market.

Title VII of the Act authorizes new initiatives in developing private sector opportunities for the economically disadvantaged. This includes the involvement of the business community in CETA, and efforts to increase employment opportunities for participants in the private sector.

The presentation of the regulations is patterned on the sequence of the Titles described above, and is based on a grouping of programs according to operator. The programs under Title II, VI, VII, are administered by units of State and Local governments, and ac-

cordingly, federal regulations for such programs are being promulgated together.

The development of the regulations has included significant and regular input from different segments of the CETA system. Meetings have been held in Washington, D.C. in August, November, and December with representatives of public interest groups, organized labor, prime sponsors, private industry groups, federal agencies, community based organization and other groups. Meetings have also been held in each region during December with the prime sponsors and interested organizations. These meetings were to review the regulations development process, and the product in draft form to that date.

By including these groups in the process from the beginning, the Department sought to ensure a final product which would be responsive to the needs of the CETA system, and which could be implemented quickly and effectively.

An implicit goal of the process is the publication of regulations which are as easy to use and understand as possible, considering the requirements of the statute and the management needs of the system. This goal has been realized to an extent with the implementation of a comprehensive administrative Part, reducing, and in many cases eliminating, the need for repetition of generally applicable provisions. To the extent possible, jargon has been reduced or eliminated, and the requirements are written in plain and precise English. Cross references within the regulations and to other laws have been kept to a minimum. Sections dealing with participant eligibility, nondiscrimination, and prevention of fraud and abuse have been consolidated for ease of reference.

In proposing these regulations, the Department has purposely undertaken a series of major objectives which are intended to enhance the effectiveness of CETA programs. These include targeting services to those persons most in need; ensuring comprehensive planning and delivery through coordination of the various employment and training opportunities; focusing on the transition of participants into unsubsidized employment; providing for improved management control to ensure the integrity and efficiency of the program; and initiating new requirements to eliminate fraud and abuse. These provisions are identified and discussed in the following paragraphs.

TARGETING SERVICES TO THOSE PERSONS MOST IN NEED

The eligibility criteria for prime sponsor programs under Titles II, VI, VII, and IV are consolidated in section 675.5 of the regulations. For each pro-

gram, a person must meet criteria based on both income and employment status. Furthermore, service is to be provided equitably to the significant segments of the eligible population based on age, race, sex, and national origin, according to Section 676.54. Special consideration in enrollment shall be given Vietnam-era and disabled veterans and public assistance recipients as described in Section 676.30(a).

Within the eligible population for each program, efforts are to be made to serve those most in need. This will be accomplished not only through enrollment provisions, but also through designing jobs in public service employment programs to accommodate new average wage provisions and limitations on the extent to which wages may be supplemented from non-CETA resources.

COORDINATION OF PLANNING AND DELIVERY OF SERVICES

New requirements for planning provide for a much more extensive involvement within the community of groups and organizations concerned with employment and training activities. This includes private employers, the educational system, organized labor, community-based organizations, (CBO's) State employment security agencies (SESA's) and other such groups. All such groups are to be involved in planning, whether included on the planning council or not, as described in Section 676.7.

TRANSITION INTO UNSUBSIDIZED EMPLOYMENT

A number of new provisions provide for a strengthened effort to transition CETA participants into unsubsidized employment. New involvement of the private sector is provided under Title VII, through the establishment of a private industry council not only to enhance planning but also to provide direct involvement by the council in the administration of programs. Such private sector involvement is also intended to enhance the design of programs under other titles.

Particular effort is to be undertaken in Title VI for the transition of public service employment participants into unsubsidized jobs through the designation of 10 percent of funds in FY 1979 and 5 percent in subsequent fiscal years for training, counseling and other services to assist in such transition. Employability plans are required for participants in Title II programs, and are principally intended to assist in guiding participants through activities and into unsubsidized employment in a more effective manner.

IMPROVED PROGRAM MANAGEMENT

Central to improving the effectiveness of CETA programs is the development of a strengthened management capacity. Implementing monitoring and eligibility verification systems is to be the basis for eliminating fraud and abuse and limiting the number of ineligible participants in program. Instituting assessment systems to continually determine program effectiveness is intended to provide the basis for correcting problems and enhancing program planning. Better and more timely systems for handling complaints will serve to make the program more responsive to problems. Enhancing the overall management control of programs will serve to effectively assist participants.

PREVENTION OF FRAUD AND ABUSE

Part 676, subpart E describes on a consolidated basis the requirements to prevent program fraud and abuse. Included are new requirements for prime sponsor systems to eliminate such abuse, including an independent monitoring unit and participant eligibility determination systems. Also included in Part 676, Subpart F are new requirements to improve the consideration of complaints and the provision of hearings. Procedures for disallowance of improper costs or activities and the application of sanctions are described in this subpart.

The Department of Labor has also proposed in these regulations new procedures for on-the-job training. Section 676.25(b), has been revised to streamline the OJT process in order to place as few administrative burdens as possible on participating employers while still satisfying the requirements of the Act. The section reflects comments made at meetings on OJT throughout the country attended by representatives of business, labor, educational agencies, CBO's, recipients, GAO, Congress, and DOL audit and Solicitor staff, as well as over 400 responses to a questionnaire sent to interested parties on the OJT process.

The Department also is examining the provisions of § 676.24 regarding equitable service in CETA programs to the significant segments of the population according to race, age, sex, and national origin. During the past two years, prime sponsors have been required to plan service levels to such segments within 15 percent of their incidence in the eligible population. The new law requires the continuation of the equitable service approach. However, questions have been raised regarding the latitude provided by the 15 percent benchmark. Particular concern has also been indicated regarding the sufficiency of local data on which to base planning. Accordingly, comment is specifically requested on es-

tablishing requirements that will afford the effective implementation of this provision in the law. It is the intent of the Department to examine options (such as reducing the benchmark to 10 percent) and consider comments in anticipation of revising the requirements for providing equitable service for FY 1980.

The Department has also undertaken a revision of the administrative cost provisions for Title VII programs. Due to the unique nature of many of the activities anticipated under Title VII, the "services" cost category has been expanded for Part 679 to include activities which are employment generating, but which are not directly related to the immediate training or employment of participants.

Provisions implementing new statutory requirements for the use of CETA funds for retirement benefits are included at § 676.28. Comment is particularly requested for new provisions for retirement benefits included in package arrangements.

The Department has involved both DOL and prime sponsor staff in the development of revised grant procedures, particularly the structure of the Master Plan and Annual Plan. The structure as presented in these regulations is intended to include as many provisions as possible in the Master Plan in order to not require yearly descriptions which do not change. The annual plan has been structured in a manner to eliminate duplicate descriptions among Titles. Full procedures for the development of the comprehensive employment and training plan are to be included in the *Forms Preparation Handbook*.

The *Forms Preparation Handbook* is cited in numerous sections of these regulations as containing more detailed or specific descriptions of requirements. Many organizations have requested an opportunity to also comment on the handbook. We are hereby advising the public of the opportunity to comment by requesting a copy of the draft handbook from Mr. Robert Anderson at the address noted above. Such comment should be provided within the 30 day period from the time when the handbook is generally made available.

Concern has been expressed regarding anticipated changes in the manner in which the CETA program may be charged for its share of administrative costs previously paid by the local jurisdiction. This is normally done according to procedures described in Federal Management Circular 74-4. The possibility of restricting charges to CETA to those additional administrative costs which result only from the CETA program is under consideration. We would welcome comments on this question, particularly as to the

manner in which this would affect indirect cost computation.

New provisions are included in the Act regarding audit procedures including unified audit arrangements. The Department is undertaking a careful examination of such requirements in order to provide more specific guidance on audit provisions in the final regulations than is included in these proposed regulations. Part of this examination shall include consultation with prime sponsor jurisdictions. Specific comment is requested on such new audit requirements.

Accordingly, Title 20 of the CFR, Parts 675-695, is proposed to be added as follows:

PART 675—INTRODUCTION OF THE REGULATIONS

Sec.

- 675.1 Scope and Purpose of the Act.
- 675.2 Format of These Regulations.
- 675.3 Table of Contents.
- 675.4 Definitions.
- 675.5 Eligibility.
- 675.6 Intake and Assessment.

AUTHORITY: Sec. 126 of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 801 *et seq.*), unless otherwise noted.

§ 675.1 Scope and purpose of the Act.

(a) It is the purpose of this Act to:

(1) Provide training and employment opportunities to increase the earned income of economically disadvantaged, unemployed, or underemployed persons;

(2) Establish a flexible, coordinated and decentralized system of Federal, State, and local programs so that services will lead to maximum employment opportunities and enhance self-sufficiency; and

(3) Provide for the coordination of programs, under CETA with other employment and training related and social service programs, economic development, community development, and related activities, such as vocational education, vocational rehabilitation, public assistance, self-employment training, and social service programs.

(b) *The Act is comprised of eight titles.* (1) Title I sets forth the administrative provisions governing programs under the other titles.

(2) Title II establishes programs administered by State and local prime sponsors to provide comprehensive employment and training services for economically disadvantaged persons.

(3) Title III establishes national programs administered by the Secretary:

(i) To provide employment and training services for groups of persons with disadvantages in specific and general labor markets or occupations.

(ii) To provide comprehensive employment and training programs for

Indians and Native Americans, and for migrant and seasonal farmworkers;

(iii) To provide research, and technical assistance programs and to evaluate activities under CETA.

(4) Title IV establishes a broad range of coordinated employment and training programs for youth.

(5) Title V establishes a National Commission for Employment Policy to examine issues of development, coordination and administration of employment and training programs, and to advise the President and the Congress on these issues.

(6) Title VI authorizes temporary employment in public service jobs during periods of high unemployment.

(7) Title VII authorizes activities to increase the involvement of the private sector in employment and training activities.

(8) Title VIII establishes a Young Adult Conservation Corps to provide conservation work on public lands and waters and other benefits to youth.

§ 675.2 Format for these regulations.

(a) Regulations promulgated by the Department of Labor to implement the new provisions of the Act and are set forth in Parts 675 through 695 of Title 20 of the Code of Federal Regulations.

(b) Statutory authority for the regulations is found at section 126(a)(1) of the Act. Specific statutory authorities other than section 126(a)(1) are noted throughout the regulations.

§ 675.3 Table of contents.

PART 675—INTRODUCTION OF THE REGULATIONS

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- 676.4 Consortium Agreements.
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PARTS 680-695 [RESERVED]

§ 675.4 Definitions.

Academic Credit means credit for education, training or work applicable toward a secondary school diploma, a postsecondary degree, or an accredited certificate of completion, consistent with applicable State law and the requirements of an accredited educational agency or institution.

Act means the Comprehensive Employment and Training Act of 1973.

Annual Plan means that part of the Comprehensive Employment and Training Plan which consists of the yearly description of program activities and services to be provided by prime sponsors.

Appropriate Labor Organizations means a local labor organization that has jurisdiction to represent employees in the prime sponsor's area in the same or substantially equivalent jobs as those for which recipients provide, or propose to provide, employment and training under the Act.

Architectural Barriers means physical conditions of a building or facility which reduce the accessibility to or usefulness of such building or facility to the physically handicapped.

Area of Substantial Unemployment (ASU) means an area within a prime sponsor's jurisdiction:

(1) Which has a population of at least 10,000;

(2) In which all the units which comprise the area (census tracts, census divisions, cities, counties, etc.) are contiguous; and

(3)(i) Which has an average unemployment rate of at least 6.5 percent for the most recent twelve-month period, as determined by the Bureau of Labor Statistics (BLS); or

(ii) Which for fiscal year 1979, and for Parts A, B, and C of Title II of the Act for all fiscal years, has an average unemployment rate of at least 6.5 percent for any three consecutive months during the most recent 12-month period as determined by the Bureau of Labor Statistics.

Artificial Barriers to Employment means limitations (such as: age, sex, race, national origin, parental status,

credential requirements, criminal record, lack of child care, physical or mental status and absence of part-time or alternative working patterns/schedules) in hiring, firing, promotion, licensing, and conditions of employment which are not directly related to an individual's fitness or ability to perform the tasks required by the job.

Balance of State (BOS) means the area which consists of all areas within a State which are not within the jurisdictions of local prime sponsors and, therefore, are served by the State acting as the prime sponsor.

Capital Improvement means any modification, addition, restoration or other improvement:

(1) Which increases the usefulness, productivity, or serviceable life of an existing building, structure, or major item of equipment;

(2) Which is classified for accounting purposes as a "fixed asset"; and

(3) The cost of which increases the recorded value of the existing building, structure, or major item of equipment and is subject to depreciation.

CETA means the Comprehensive Employment and Training Act.

Community Based Organization (CBO) means a private nonprofit organization which is representative of the community or a significant segment of a community, and which provides employment and training services and/or activities. (Examples include: Opportunities Industrialization Centers, the National Urban League, SER-Jobs for Progress, United Way of America, Mainstream, the National Puerto Rican Forum, agencies serving women, neighborhood groups and organizations, community action agencies, community development corporations, vocational rehabilitation organizations, rehabilitation facilities (as defined in Sec. 7(1) of the Rehabilitation Act of 1973), agencies serving youth, union-related organizations, and employer-related nonprofit organization).

Comprehensive Employment and Training Plan (CETP) means the approved plan under which a prime sponsor operates programs under the Act.

Construction means the erection, installation, assembly or painting of a new facility or a major addition, expansion, or extension of an existing facility, and the related site preparation, excavation, filling and landscaping or other land improvements.

Contract means a procurement instrument by which the Department, a recipient, or a subrecipient pays for property, services, supplies, materials or equipment.

Contractor means any person, corporation, partnership, public agency, or other entity which enters into a contract with the DOL, a recipient or a subrecipient under the Act.

Consumer Price Index means the "All Urban Consumer Index" as determined by the Bureau of Labor Statistics (BLS).

Department means the United States Department of Labor (DOL) including its agencies and organizational units.

Dependent means:

(1) Any relative for whom the participant or applicant has assumed a responsibility for support, and who is either:

(i) A member of the immediate household; or

(ii) One of the following relatives:

(A) A parent of the participant;

(B) A child of the participant;

(C) A relative of the participant who is unemployed because of a physical or mental disability; or

(2) Any individual who is currently being supported by the participant, is a member of the participant's immediate household, and during the preceding twelve months earned less than \$1,000.

Displaced Homemaker means an individual who:

(1) Has not worked in the labor force for a substantial number of years but has, during those years, worked in the home providing unpaid services for family members; and

(2) (i) Has been dependent on public assistance or on the income of another family member but is no longer supported by that income; or

(ii) Is receiving public assistance on account of dependent children in the home; especially where such assistance will soon be terminated; and

(3) Is unemployed or underemployed and is experiencing difficulty in obtaining or upgrading employment.

DOL, see **Department**.

Economically Disadvantaged means a person who is either:

(1) A member of a family which receives public assistance;

(2) A member of a family whose income during the previous 6 months on an annualized basis, was such that

(i) The family would have qualified for public assistance, if it had applied for such assistance; or

(ii) It does not exceed the poverty level; or

(iii) It does not exceed 70 percent of the lower living standard income level;

(3) A foster child on whose behalf State or local government payments are made;

(4) A client of a sheltered workshop;

(5) A handicapped individual with a family income of 100 percent or less of the Lower Living Standard Income level.

(6) A person confined to an institution or facility providing 24 hour support such as a prison or hospital; or

(7) A regular out patient of a mental hospital, rehabilitation facility or similar institution.

Employing Agency means any public or private nonprofit employer which employs PSE or work experience participants.

Entry Level means the lowest position in any promotional line, as defined locally by collective bargaining agreements, past practice, or applicable personnel rules.

Family means, except as provided in paragraph (2) or (3):

(1) One or more persons living in a single residence who are related to each other by blood, marriage, or adoption. A step-child or a step-parent shall be considered to be related by marriage.

(2) Except for any person who would be eligible for assistance under Title V of the Older Americans Act of 1965 or a handicapped individual who is 16 years of age or older, any one claimed as a dependent on another person's Federal Income Tax return for the previous year shall be presumed, unless otherwise demonstrated, to be a part of that person's family for the current year.

(3) An individual 18 or older, except as provided in (2) above, who receives less than 50 percent of his/her maintenance from the family, and who is not the head nor the spouse of the head of the household, shall not be considered a member of the family. Such an individual shall be considered a family of one living in group quarters.

Family Income means all income actually received from all sources by all members of the family.

(1) Family income shall include:

(i) Gross wages and salary (before deductions), except wages paid for work experience under the Act, but including wages and salary received by individuals in public service employment or on-the-job training;

(ii) Net self-employment income (gross receipts minus operating expenses);

(iii) Other money income received from sources such as net rents, OASI social security benefits, pensions, alimony, child support, and periodic income from insurance policy annuities, and other sources of income.

(2) Family income shall exclude:

(i) Non-cash income such as food stamps, or compensation received in the form of food or housing;

(ii) Imputed value of owner-occupied property, i.e., rental value;

(iii) Public assistance payments;

(iv) Cash payments received pursuant to a State plan approved under Titles I, IV, X, or XVI of the Social Security Act, or disability insurance payments received under Title II of the Social Security Act;

(v) Federal, State or local unemployment benefits;

(vi) Payments made to participants in employment and training programs, except wages paid for PSE and OJT;

(vii) Capital gains and losses;

(viii) One time, unearned income, such as but not limited to:

(A) Payments received for a limited fixed term under income maintenance programs and supplemental (private) unemployment benefits plans;

(B) One-time or fixed-term scholarship and fellowship grants;

(C) Accident, health, and casualty insurance proceeds;

(D) Disability and death payments, including fixed term (but not lifetime) life insurance annuities and death benefits;

(E) Inheritance, including fixed term annuities;

(G) Fixed term workers' compensation awards;

(H) Terminal leave pay;

(I) Soil bank payments;

(J) Agriculture crop stabilization payments;

(ix) Pay or allowances which were previously received by any veteran while serving on active duty in the Armed Forces; and

(x) Educational assistance and compensation payments to veterans and other eligible persons under Chapters 11, 13, 31, 34, 35, and 36 of Title 38, United States Code.

(xi) Payments received under the Trade Readjustment Act of 1974 and the Redwood Forest Act of 1978.

Federal Reservation means lands as identified by the Bureau of Indian Affairs which have been set aside for Indian tribes and for which the United States is trustee, or non-trust land under the tribal jurisdiction.

Financial Assistance means any grant, loan, or any other arrangement (other than a procurement contract or a contract of insurance or guaranty) by which the Department provides or otherwise makes available assistance in the form of:

(1) Funds;

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of such property, including:

(i) Transfers or leases of such property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of such property if the Federal share of its fair market value is not returned to the Federal Government.

Governor means the chief executive, or her/his designee, of any State.

Handicapped Individual means any person who has a physical or mental disability which, at the time of enrollment, constitutes in a substantial barrier to employment and the individual

is unemployed as a result of this disability, as determined by the prime sponsor.

Hawaiian Native—means any individual whose ancestors were natives, prior to 1778, of the area which now consists of the Hawaiian Islands.

Indian or Alaskan Entity means an Indian tribe, band, or group, or an Alaskan native village or corporation or a private nonprofit Indian or Alaskan organization.

In-School Youth means a person age 14 to 24 inclusive, who:

(1) Is currently enrolled full-time in, and attending, a secondary, trade, technical, vocational school or community college or is scheduled to attend full-time the next regularly scheduled quarter or semester of any of these schools; or

(2) Has not completed high school and is scheduled to attend a program leading to a secondary school diploma or its equivalent.

Job restructuring means:

(1) The procedure which includes:

(i) Identifying the separate tasks that comprise a job or group of jobs;

(ii) Developing new positions descriptions which retain some of the tasks of the original job; and

(iii) Developing a career ladder which builds upward from the new positions containing the lesser skilled tasks to regular jobs.

(2) A restructured job shall be clearly different from the original one in terms of skills, knowledge, abilities, and experience needed to perform the work. (sec. 432(a)(3)(L)).

Local Education Agency means:

(1) Except for purposes of Youth Employment and Training Programs (YETP) under Part 680, a board of education or other legally constituted local school authority having administrative control and direction of public elementary or secondary schools in a city, county, township, school district, or political subdivision in a State, or any other public educational institution or agency having administrative control and direction of a vocational education program;

(2) For purposes of YETP under Part 680, a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or a combination of such school districts or counties which are recognized in a State as an administrative agency for their public elementary or secondary schools.

Lower Living Standard Income Level means that income level (adjusted for selected Standard Metropolitan Statistical Areas and regional metro-

politan and non-metropolitan differences and family size) determined annually by the Secretary based upon the most recent lower living family budget issued by the Bureau of Labor Statistics.

Low Income Housing means:

(1) Those dwellings which are occupied by persons whose family income does not exceed 125 percent of the poverty level, and which are either:

(i) Owned by the occupant;

(ii) Publicly owned; or

(iii) Owned by a private nonprofit organization.

(2) For weatherization or winterization projects funded and approved by the Federal Energy Administration, "Low Income Housing" shall include privately owned rental housing.

Low Income Level means \$7,000 with respect to income in 1969, and for any later year means that amount which bears the same relationship to \$7,000 as the Consumer Price Index for that year bears to the Consumer Price Index for 1969, rounded to the nearest \$1,000.

Master Plan means that part of the Comprehensive Employment and Training Plan (CETP) which serves as the long-term agreement between the Department and a prime sponsor.

Offender means any adult or juvenile who is or has been subject to any stage of the criminal justice process for whom employment and training services may be beneficial or who requires assistance in overcoming artificial barriers to employment resulting from a record of arrest or conviction.

Participant means an individual who is eligible for, and takes part in, activities under provisions of the Act or receives services funded under the Act, except for an individual who receives only outreach and intake services. An individual applicant becomes a participant when:

(1) The individual is declared eligible upon intake; and

(2) The individual receives employment, training or services funded under the Act following intake, except for an individual who receives only outreach and/or intake services.

Placement means the act of securing unsubsidized employment for or by a participant.

Poverty Level means that annual income level at, or below, which families are considered to live in poverty, as annually determined by the Office of Management and Budget.

Prime Sponsor A recipient of financial assistance designated pursuant to § 676.5.

Program Agent means:

(1) A unit of general local government with a population of at least 50,000 within the jurisdiction of a single prime sponsor,

(2) A combination of units of general

local government (preferably contiguous) with a total population of at least 50,000 within the jurisdiction of a single prime sponsor which possesses:

(i) The legal authority to receive funds and to transact business throughout its jurisdiction in accordance with the Act and regulations; and

(ii) The administrative capability to plan, administer and operate an employment and training program.

Program of Demonstrated Effectiveness means a program which has demonstrated the capacity to achieve planned goals at reasonable costs within acceptable timeframes, and is either: (1) a program which has demonstrated to the prime sponsor that it has performed effectively within the prime sponsor's jurisdiction, or (2) a program which can demonstrate to the prime sponsor that it has carried out effectively a similar program under similar circumstances in other jurisdictions and can carry out such program effectively within the prime sponsor's jurisdiction.

Project means:

(1) For the purpose of public service employment in Parts 677 and 678, a definable task or group of related tasks which will be completed within eighteen months, has a public service objective, will result in a specific product or accomplishment, and would otherwise not be done with existing funds;

(2) For the purposes of Youth Community Conservation and Improvement Projects in Part 680, an activity which provides constructive work, conducted by youth, under the guidance of skilled supervisors, which (1) results in tangible outputs or a specific product; (2) benefits the participants in terms of work habits, skills, and attainment of academic credit where applicable; and (3) will be completed within a definable period of time not to exceed 12 months (sec. 421).

Project Applicants means States and agencies thereof, units of general local government, and agencies thereof, combination or associations of such governmental units when the primary purposes of such combinations or associations is to assist such governmental units to provide public service, special purpose political subdivisions having the power to levy taxes and spend funds or serving such special purpose within an area served by one or more units of general local government, local educational agencies, institutions of higher education, community based organizations, nonprofit groups and organizations serving Native Americans, and other private nonprofit organizations or institutions engaged in a public service.

Public Assistance means Federal, State, or local government cash payments for which eligibility is determined by a need or income test.

Public Service means the type of service normally provided by government and includes, but is not limited to, work (including part-time work) in such fields as environmental quality, child care, health care, education, crime prevention and control, prisoner rehabilitation, transportation, recreation, maintenance of parks, streets and other public facilities, solid waste removal, pollution control, housing and neighborhood improvement, rural development, conservation, beautification, veterans outreach, development of alternative energy technologies, and other fields of human betterment and community improvement.

RA means Regional Administrator of the Employment and Training Administration.

Recipient means State or local government, a Federally recognized Indian tribal government, a public or private institution of higher education, a public or private hospital, an Indian or Native American entity other than a Federally recognized Indian tribal government, or other quasi-public or private profit or non-profit organization which receives financial assistance directly from DOL, through a grant to perform substantive work under the Act (employment, training, supportive services, etc.). Recipients do not include contractors as defined in this section.

Residence means an individual's permanent dwelling or home. Maintenance of an address is not necessarily the same as residence.

Secretary means the Secretary of Labor.

Significant Segments means the groups of the population identified in terms of the following demographic characteristics: age, sex, race, and national origin.

Special Disabled Veteran means a person who served in the Armed Forces and was discharged or released, with other than a dishonorable discharge, and who had been given a disability rating of 30 per centum or more, or a person whose discharge or release from active duty was for a disability incurred or aggravated in the line of duty.

State means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Marianas Islands, American Samoa, and the Trust Territory of the Pacific Islands.

State Employment Security Agency (SESA) means the State agency which exercises control over the Unemployment Insurance Service and the Employment Service.

Subrecipient means any person, organization or other entity which receives financial assistance under CETA through a recipient to carry out

substantive work (e.g., employment, training, supportive services).

Underemployed person means:

- (1) Persons who are working part time but seeking full time work; or
- (2) Persons who are working full time but receiving wages, not in excess of, the higher of either:

- (i) The poverty level; or
- (ii) 70 percent of the lower living standard income level.

Unemployed person means for purposes of determining eligibility:

- (1) A person who is without a job for at least seven consecutive days prior to application for participation. A person shall be considered as being without a job if, for seven consecutive days, such person:

- (i) Worked no more than 10 hours; and
- (ii) Earned no more than \$30; and
- (iii) Was seeking and available for work; or

- (2) A person who is:
- (i) A client of a sheltered workshop;
- (ii) A prisoner eligible for, or in, a work release program, or
- (iii) Institutionalized in a hospital or similar institution; or

- (3) A person who is 18 years of age or older whose family receives public assistance, or whose family would be eligible to receive public assistance if both parents were not present in the home; or

- (4) A person who is a veteran who has not obtained permanent unsubsidized employment since being released from active duty. Such person shall be considered to meet "unemployed" eligibility requirements regardless of the specific term of unemployment required.

Unit of general local government means any city, municipality, county, town, township, parish, village, or other general purpose political subdivision which has the power to levy taxes and spend funds, as well as general corporate and police powers.

Veteran means a person who:

- (1) Served on active duty for more than 180 days, and was released with other than a dishonorable discharge; or

- (2) Was discharged or released from active duty for a service connected disability.

Veterans Outreach means the recruitment, counseling, and registration of eligible veterans for participation in appropriate employment and/or training programs provided under the Act and under acts administered by the Veterans Administration.

Vietnam-era Veteran means a veteran under 35 years of age who served on active duty between August 5, 1964, and May 7, 1975 and who was discharged or released within four years preceding application for this part.

§ 675.5 Eligibility requirements to participate in programs under CETA.

(c) All recipients shall establish effective systems to determine participant eligibility in accordance with § 675.75(d). To assist in eligibility determination, a consolidated list of all eligibility requirements for programs administered by prime sponsors under CETA is presented in this section.

(b) Participants shall be limited to citizens of the United States, United States Nationals, permanent resident aliens, or other aliens who have been permitted to accept permanent employment in the United States by the Immigration and Naturalization Service. (sec. 132(e) and 121(p)).

(c) Participants may be transferred from one activity under the Act into another activity under the Act administered by the same prime sponsor only if they met the eligibility requirements for such other activity or title at the time that they were originally determined eligible for their first CETA activity, except that if the second activity has an age limitation, participants shall meet the age limitations upon being transferred into that activity or title.

(d) The following eligibility requirements for each program must be met at the time of enrollment into a program activity, except as provided in paragraph (c) above, or as otherwise provided in this section.

(e)(1) For programs described in Subpart B of Part 677, a person shall be

- (i) Economically disadvantaged; and
- (ii) Unemployed, underemployed, or an in-school youth. (sec. 213).

(2) For Upgrading programs described in Subpart C of Part 677.

- (i) A person must be:
- (A) Operating at less than full skill potential; and

(B) Working for at least the prior six months with the same employer in an entry level, unskilled or semi-skilled position, or a position with little or no advancement opportunity in a normal promotional line;

(ii) Priority consideration shall be given to those workers who have been in entry level positions for the longest period of time, and who have potential for upward mobility.

(3) For Retraining programs described in Subpart C of Part 677, a person must (i) Have received a bona fide notice of impending layoff within the last 6 months; and

(ii) Have been determined by the prime sponsor with the assistance of the local Employment Service as having little opportunity to be reemployed in the same or an equivalent occupation or skill level within the labor market area.

(4) For programs under the Special Grants for Governors described in

Subpart D of Part 677, a person must be economically disadvantaged, and unemployed, underemployed or an in-school youth, except for Public Service Employment for which the eligibility requirements are the same as those for Title II D or VI which are described in paragraph (f) or (g) of this section.

(f) For Title II D PSE programs described in Subpart E of Part 677, a person must:

(1) (i) Be economically disadvantaged, be unemployed at the time of enrollment, and have been unemployed during 15 of the 20 weeks immediately prior to enrollment; or

(ii) Be a member of a family which is receiving public assistance (sec. 236(a)); and

(2) Reside within the prime sponsor's jurisdiction except that:

(i) As authorized under the following paragraph, a program agent or a unit of general local government with a population of 100,000 or more which is not a prime sponsor, may not hire persons outside of its jurisdiction nor may their prime sponsors hire persons from their jurisdictions. This does not require the layoff of participants eligible under the residency requirements that were applicable at the time of their selection; and

(ii) A prime sponsor, program agent or unit of general local government with a population of 100,000 or more which is not a prime sponsor may receive additional funds as a subrecipient of another such entity only to enroll residents of such other jurisdictions;

(3) Not have within the immediately prior six months voluntarily terminated, without good cause, his or her last previous full-time employment at a wage rate not less than the Federal minimum wage under Section 6(a)(1) of the Fair Labor Standards Act, or the State or local minimum wage, if higher, (Sec. 122(n)).

(g) For Title VI PSE programs described in Part 678, a person must:

(1) Reside within the prime sponsor's jurisdiction as provided in § 675.5(f); and

(2) (i) (A) Be unemployed at the time of enrollment; and

(B) Have been employed for at least 10 out of 12 weeks immediately prior to enrollment; and

(C) Have a family income as defined in § 675.4 which does not exceed 100 percent of the lower living standard income level based on the three-month period prior to the individual's application for participation, or

(ii) Be a member of a family which has been receiving public assistance for 10 of the last 12 weeks (sec. 236(a)).

(3) The provisions of § 675.5(f)(3) shall apply to the eligibility of persons

who voluntarily terminated their last employment (sec. 122(n));

(h) For programs described in Part 679, Private Sector Initiative Program, the eligibility requirements are the same as set forth for Title II B paragraph (e)(1) of this section.

(i) (1) For Youth Employment and Training Program (YETP) programs described in Subpart A of 680, except as provided in paragraph (j) of this section, at the time of enrollment a youth must: (sec. 435)

(i) Be unemployed or underemployed or in school;

(ii) Be 16 through 21 years of age inclusive; and

(iii) Be a member of a family with a total family income at or below 85 percent of the lower living standard income level; and

(2) Preference shall be given to economically disadvantaged youth. Appropriate efforts shall be made to give service to those youth who have severe handicaps in obtaining employment, such as those who lack credentials (such as high school diploma), require substantial basic and remedial skill development, are women or minorities, or veterans, or offenders, or handicapped individuals, or have dependents or those who otherwise demonstrated special needs as determined by the Secretary (sec. 444(a)).

(3) A youth may not be enrolled in full-time employment opportunities if:

(i) The youth has not attained the age with respect to which any requirement of compulsory education ceases to apply, under the laws of the State in which such individuals reside except:

(A) During periods when school is not in session; and

(B) If employment is undertaken in cooperation with school-related programs awarding academic credit for work; or

(ii) The youth has not attained a high school degree or its equivalent and it has been determined, by the prime sponsor that the youth dropped out of high school in order to participate in YETP (sec. 443(f)).

(j) For YETP programs (extraordinary):

(1) Individuals otherwise eligible under paragraph (i) above who are in school, and who are 14 or 15 years old, may participate when the YETP plan specifies a youth development strategy which provides broad career exposure for these youths (sec. 435).

(2) Youth need not meet the income criteria described in paragraph (i)(1)(iii) above, if they participate in a special component, as described in § 680.11(d) (sec. 435), which provides for the participation of youth of various income levels.

(3) Youths, who do not meet the income criteria defined in paragraph

(i)(1)(iii) above, and who are not in a special component described in § 680.11(d) may be given only the following services:

(i) Counseling, including occupational information;

(ii) Occupational, education, and training information including information on apprenticeship training;

(iii) Placement services;

(iv) Job referral information through coordinated intake systems; and/or

(v) Assistance in overcoming employment related sex-stereotyping in job development, placement, counseling, and guidance.

(k) (1) For Youth Community Conservation Improvement Projects (YCCIP) described under Subpart B 680; at the time of enrollment a youth must be:

(i) 16 through 19 years of age, inclusive; and

(ii) Unemployed.

(2) Preference shall be given to economically disadvantaged youth.

(3) Appropriate efforts shall be made to serve youths who have severe handicaps in obtaining employment, as described in paragraph (i)(2) above (sec. 444(a)).

(4) A youth may not be enrolled in full-time employment opportunities if:

(i) The youth has not attained the age with respect to which any requirement of compulsory education ceases to apply under the laws of the State in which such individuals reside, except:

(A) During periods when school is not in session; and

(B) If employment is undertaken in cooperation with school-related programs awarding academic credit for work experience; or

(ii) The youth has not attained a high school degree or its equivalent and it has been determined by the prime sponsor that the youth dropped out of high school in order to participate in YCCIP (sec. 443)).

(5) Each participant shall be limited to a maximum enrollment of 12 months with no more than two terminations and reenrollments, provided age eligibility is met at the time of each reenrollment.

(l) For Summer Youth Employment Programs (SYEP) described in Subpart C of Part 680; a youth must be:

(1) At the time of application, economically disadvantaged; and

(2) At the time of enrollment 14 through 21 years of age inclusive (sec. 402)

(m) Eligibility requirements for programs in Parts 680-695 are found in the specific regulations for those programs.

§ 675.6 Intake and assessment.

(a) Each recipient of funds shall, at the time of intake, assess every indi-

vidual to determine what activities and services are most appropriate for that individual. Recipients shall ensure that every participant is afforded services or activities which will enable him or her, to obtain unsubsidized employment and increase earned income.

(b) Recipients shall establish appropriate mechanisms to ensure that available employment and training activities available under the grant are provided to those most in need (sec. 103(a)(5)(A)).

(c) Recipients shall afford participants an opportunity to participate in the full range of program activities and services available.

(d) Enrollment and referral of participants to activities shall be based on the initial assessment at intake. For example, participants who are structurally unemployed shall be assigned to activities which are designed for the structurally unemployed. In making these determinations, recipients shall plan for the utilization of all available CETA and community resources, such as those from SESA, the prime sponsor's Private Industry Council, area apprenticeship opportunities, CBO's, the educational system, and all other resources. Such assessment does not mandate a central intake system, but does require that recipients provide an opportunity for referral to the full range of services.

(e) In designing programs, all recipients shall develop goals and provide maximum efforts for transitioning participants into unsubsidized employment.

(f) In designing and operating programs recipients and subrecipients shall give special consideration to providing for alternative working arrangements such as flexible hours of work, work-sharing and part-time jobs, particularly for older workers, and those with household obligations including parents of young children (sec. 121(d)(3)).

PART 676—GENERAL PROVISIONS

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AUTHORITY: Sec. 126 of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 801 *et seq.*), unless otherwise noted.

Subpart A—Grant Procedures

§ 676.1 General.

This Subpart specifies the procedures by which prime sponsors may obtain funds to operate programs under the Act.

§ 676.2 Prime sponsor applicants.

The following entities may apply to the prime sponsors: (sec. 101)

- (a) A State;
- (b) A unit of general local government which has a population of 100,000 or more;
- (c) Any consortium of units of general local government which includes a unit of general local government qualifying under paragraph (b) of this section;
- (d) Existing Concentrated Employment Program (CEP) prime sponsors.

(e) Any unit of general local government previously designated as a prime sponsor, with a population below 100,000 persons, which the Secretary certifies has demonstrated its effectiveness in, and continues to have the capability for, adequately carrying out programs under the Act.

(f) Any unit of general local government or any consortium of such units with a population below 100,000 which believes:

(1)(i) It has the capacity to serve a substantial portion of a functioning labor market area, or

(ii) It is a rural area having a high level of unemployment; and

(2)(i) It has the capability for adequately carrying out programs under the Act,

(ii) That there is a special need for services within the area to be served, and

(iii) That it will carry out programs and services in the area as effectively as any larger unit of general local government in its jurisdiction or as the State.

§ 676.3 Preapplication for Federal assistance.

(a) The Secretary, through a notice in the *FEDERAL REGISTER*, shall annually invite all potential prime sponsor applicants to apply for financial assistance by a specified date. The notice may include a list of those potential applicants which the Secretary believes may wish to apply. This, however, shall not preclude other applicants from applying. An applicant interested in being designated as a prime sponsor shall submit a preapplication to the RA, the Governor, and the appropriate State and areawide clearinghouses pursuant to Office of Management and Budget (OMB) Circular A-95, not later than 30 days prior to the submission of its completed CETP to the clearinghouses for formal review. The preapplication shall consist of Standard Form 424 described in 41 CFR 29-70.

(b) Prime sponsors shall comply with State and areawide OMB A-95 clearinghouse review procedures. If the prime sponsor applicant receives no notification as specified in § 676.12, from the A-95 clearinghouse, the prime sponsor applicant may submit its CETP to the RA without submitting it to the A-95 clearinghouses.

(c) All applicants with populations below 100,000 shall include documentation showing that they meet the requirements for such applicants.

§ 676.4 Consortium agreements.

(a) Except as provided in paragraph (b) of this section, each consortium applicant, at a date established by the RA, shall submit to the RA a consortium agreement signed by the chief-elected official or chief executive officer of each consortium member. The agreement shall include the following:

(1) A statement that the agreement has been formed under CETA or that another agreement has been amended to conduct programs under CETA and a statement of the duration of the agreement which shall be at least one fiscal year.

(2) A listing of the units of general local government which are members of the consortium.

(3) A listing of any unit of general local government which is within the area covered by the consortium but has not joined the consortium.

(4) An identification of the geographical area(s) which will be served.

(5) A certification that State and local law permits services under the consortium agreement to be provided within the entire geographical area covered by the agreement.

(6) A letter from each member's chief legal officer assuring that the member has the legal authority to enter into the consortium agreement.

(7) A statement that: (i) The grant shall be signed by the chief-elected official or chief executive officer of each consortium member; or

(ii) As designated in the consortium agreement, the grant shall be signed by the chief-elected official or chief executive officer of one or more consortium members or by the chief executive of the administrative unit.

(8) A certification that, pursuant to State or local law, each consortium member jointly and separately accepts responsibility for the operation of the program.

(9) The agreement shall clearly delineate the division of powers and responsibilities between the consortium members and the administrative unit. It shall describe the powers and responsibilities reserved by the consortium members specifying the process by which decisions will be made, the process by which each member will review and approve the CETP, and the procedure by which chief-elected officials will participate in the planning and operation of the program. It shall also describe the powers and responsibilities which will be delegated to an administrative entity, which may be a consortium member or a separate entity, to operate the program, and the name and organizational structure of that entity. The administrative unit may be delegated the power to enter into contracts, subgrants and other necessary agreements; to receive and expend funds; to employ personnel including participants under the Act for the purposes of administering the program; to organize and train staff; to develop procedures for program planning, operation, assessment and fiscal management; to evaluate program performance and determine resulting need to reallocate resources; and, to modify the grant agreement with the Department. The administrative arm of the consortium should have responsibility for the entire operation of the program, except that the consortium members shall reserve to the consortium the right of evaluation and the decision to reprogram funds.

(b) The chief-elected official or chief executive officer of each consortium member of a consortium which was a prime sponsor in the prior year shall attest in writing that the agreement remains the same or note the specific changes.

(c) Consortia incentive funds. In order to encourage the formation of consortia, that comprise at least 75 percent of labor market areas, the Secretary may use up to 5 percent of the funds available for Title II of the Act to provide additional funding only for such consortia. Prior to making decisions concerning these funds, the RA shall consult with the Governors of the appropriate States and afford

them an opportunity to make recommendations.

§ 676.5 Prime Sponsor Designation.

(a) Upon receipt of a completed preapplication and a consortium agreement, if required, the RA shall designate prime sponsor applicants as prime sponsors and shall notify all applicants in writing of the determination. A grant application package (§ 676.10 and § 676.11) shall be sent to each prime sponsor designee.

(b)(1) A State shall not be designated as a prime sponsor for any geographical area within the jurisdiction of any prime sponsor applicant described in § 676.2(b) (c) (d) (e) and (f) unless such prime sponsor applicant has not submitted an approvable CETP for such area (sec. 101(b)(1)).

(2) A larger unit of general local government shall not be designated as a prime sponsor with respect to the jurisdiction within its area of any smaller eligible unit of general local government unless such smaller unit has not submitted an approvable CETP for such area (sec. 101(b)(2)).

(c) The Secretary shall not designate as a prime sponsor any applicant with less than 100,000 population except in exceptional circumstances and unless it has demonstrated that it qualifies pursuant to § 676.2(e) and (f).

§ 676.6 Planning process.

(a) Each prime sponsor shall have a planning process which shall involve a broad spectrum of groups and individuals, in the development of the CETP. This process shall utilize the prime sponsor planning council and shall include community groups insofar as they are not represented on the planning council, local educational agencies, community-based organizations, appropriate labor organizations, organizations serving women, local apprenticeship programs, local advisory councils established under the Vocational Education Act of 1963, the youth and private industry councils, and post-secondary institutions (sec. 103(a) (6) and (14)).

(b) Prime sponsors are specifically encouraged to join or initiate local public/private approaches to the coordinated planning and operation of economic, community and employment development activities to accomplish such objectives as reducing out-migration from an area and encouraging private sector investment in order to enhance existing employment opportunities (sec. 103(a)(20) and 105(b)(5)).

(c) Where employment opportunities already exist, or where there is a reasonable expectation of near term expansion of such employment potential, prime sponsors shall plan to provide, to the extent consistent with the

needs and interests of program participants, employment and training opportunities in the development and use of solar, geothermal, hydroelectric and other alternative energy technologies, and conservation (sec. 121(m)).

(e) Prime sponsors shall contact the Bureau of Apprenticeship and Training (BAT) in establishing arrangements to promote the use of apprenticeship training or other on-the-job training for veterans, under section 1787 of Title 38, United States Code (sec. 121(b)(2)(c)).

§ 676.7 Prime sponsor planning councils.

(a) Each prime sponsor shall establish a planning council (sec. 109(a)).

(b) Each prime sponsor shall appoint to its Planning Council members who are representative of the eligible population (including significant segments thereof), CBO's, the employment service, veterans organizations (a congressionally chartered veterans organization or an organization incorporated as a veteran's service organization under appropriate laws of the State in which they are located), representatives of handicapped individuals, vocational education agencies, public assistance agencies, other education and training agencies and institutions, business (e.g., representatives of a locally-based business firm, the National Alliance of Business, or Chamber of Commerce), organized labor (e.g., representatives of the central labor council, or the principal labor organizations in the areas where employment or training activities are expected or apprenticeship programs), employees who are not represented by organized labor, and, where appropriate, agricultural employers and workers (sec. 109(b)). Staff of State or local government agencies shall not take the place of representatives of the participant communities which their agencies serve.

(c) The prime sponsor shall appoint the members of the planning council, designate a person who is not an elected official or an employee of the prime sponsor as chairperson and furnish staff to provide professional, technical, and clerical assistance to the council (sec. 109(c)).

(d) The Planning Council shall:

(1) Meet no less than five times per year. The meetings shall be publicly announced, open and accessible to the general public, and a record of the proceedings shall be maintained by the prime sponsor at a location accessible to the public (sec. 109(d));

(2) Actively participate in the development of, and submit recommendations regarding, the prime sponsor's CETP and the basic goals, policies, and procedures of the prime sponsor's program (sec. 109(e));

(3) Consider any comments and recommendations of the Private Industry and Youth Councils (sec. 109(f)); and

(4) Continuously analyze the need for employment, training and related services in the prime sponsor's area, including efforts to reduce and eliminate artificial barriers to employment, and shall monitor and evaluate employment and training programs in the prime sponsor area and make recommendations with respect to them (sec. 109(e)); and

(5) Plan for the coordination and involvement of the local CETA program with the Targeted Jobs Tax program created by the Revenue Act of 1978.

(e) Special consideration shall be given to the recommendations of the planning council, but any final decisions with respect to such recommendations shall be made by the prime sponsor. (sec. 109(e)).

§ 676.8 Area planning bodies.

(a) Balance of State (BOS) prime sponsors, in coordination with units of general local government, shall make arrangements for appropriate area planning bodies to assist in the effective planning and delivery of programs in the BOS (sec. 101(d)).

(b) The BOS shall appoint members of area planning bodies, considering nominations made by local elected officials. The membership shall be composed of groups and individuals which represent a broad cross section of the area to be served and may include the groups and individuals described in § 676.7(b)).

(c) The BOS shall convene the planning bodies at least quarterly to review plans and programs.

(d) Area planning bodies shall be given the opportunity to review and comment upon services to be provided in their area under the CETP.

§ 676.9 Comprehensive employment and training plan (CETP).

(a) Designated prime sponsors shall submit a CETP to apply for financial assistance. The CETP shall consist of two distinct parts, the Master Plan and the Annual Plan.

(1) The Master Plan shall serve as the long-term agreement between the Department and the prime sponsor which describes the established administrative and programmatic arrangements that will govern all programs under the Act operated by the prime sponsor. (sec. 103(a))

(2) The Annual Plan shall be the prime sponsor's yearly plan for providing activities and services to the eligible population.

(3) Detailed instructions for completing the CETP are contained in the *Forms Preparation Handbook*.

(b)(1) The Secretary will, not later than March 31 of the fiscal year pre-

ceding the fiscal year for which an Annual Plan is to take effect, establish a date for submission of the Annual Plan. The Secretary will make available to each prime sponsor a complete and final set of all applicable regulations and necessary application materials no later than May 15 preceding the fiscal year for which such plan is to take effect. With respect to funds allocated to prime sponsors under the Act on the basis of a formula, the Secretary will also provide such prime sponsors a preliminary planning estimate. If for any reason the Secretary cannot provide a complete and final set of all applicable regulations and necessary application materials by May 15, the Secretary will extend the date for submittal of such plan to allow the prime sponsor to review such regulations and to complete such materials prior to submittal (sec. 104(e)(1)).

(2) Between May 15 and the date for submittal of the Plan, the Secretary will not issue any regulations or guidelines or interpretations thereof that require any change in the prime sponsor's CETP which is a condition for the Secretary's approval or disapproval of the CETP, unless the Secretary allows at least one fiscal quarter for the prime sponsor to submit such change, except that the prime sponsor, however, may at its own discretion, submit the required change as part of its plan submitted under paragraph (1) (sec. 104(e)(2)).

§ 676.10 Master plan.

(a)(1) A prime sponsor applying for financial assistance for the first time shall have approved by the RA a signed copy of the Master Plan prior to the execution of an Annual Plan.

(2) A prime sponsor which has already entered into the Master Plan during a previous year, shall submit to the RA with its Annual Plan a certification that the Master Plan remains the same or a modification reflecting any changes. In submitting the initial Plan and subsequent certification, the prime sponsor shall comply with the comment and publication procedures of Sec. 676.12, and the planning process in Sec. 676.6. The Master Plan shall consist of the Signature Page, Narrative Description of General Information, and Assurances and Certifications.

(b) *Signature Page.* By signing the signature page the prime sponsor agrees that all work performed under its CETP will be in accordance with the Act and the regulations.

(c) *Narrative Description of General Information.* The narrative description of general information shall include:

(1) *Statement of purpose.* (2)(i) A detailed description of the geographic

area to be served and demographic characteristics of the population (with data, if available, indicating the number of potential eligible participants from each significant segment and their income and employment status) (sec. 103(a)(1)(A)).

(ii) A comprehensive analysis of the local labor market and economic conditions, using existing sources such as the Employment Service, which includes identification of the availability of employment and training in the public and private sectors and the potential for job growth in those sectors (sec. 103(a)(1)(B)).

(3) A statement of long-term program goals related to the improvement of the labor market and economic conditions (sec. 103(a)(2)).

(4)(i)(A) A description of arrangements to ensure that employment and training services are provided to those individuals most in need, including low-income persons, handicapped individuals, older workers facing artificial barriers to employment and persons of limited English-speaking ability (sec. 103(a)(5)(A)).

(B) The method used to determine priorities for service based on objective locally established criteria using such factors as employment status, household status, level of employability development, handicap, veteran status, age, race, sex or other criteria established by the prime sponsor (sec. 103(b)(12)).

(ii) A description of the recruitment, intake, and selection methods to be used to identify, and place participants in programs (sec. 103(a)(4)(B) and 103(a)(5)(A)).

(iii) A description of the system for developing participant employability plans, including the methods for determining the appropriate training and services to provide to each participant (sec. 205).

(iv) A description of job development and placement services, and how these services will relate to, and be coordinated with, other area employment and training opportunities not provided under the Act, including any special activities designed to orient participants for their job responsibilities (sec. 103(b)(6)).

(v) A description of arrangements to provide participants with job search assistance, counseling and other services (sec. 103(a)(4)(B)).

(vi) A description of methods to insure compliance with personnel procedures and collective bargaining agreements where participants are engaged in employment and training activities (sec. 103(a)(18)).

(5) *Service deliverers.* (i) A description of procedures and criteria used to select service deliverers (sec. 103(a)(3)(B)).

(ii) A description of the criteria used to designate programs of demonstrated effectiveness (sec. 103(a)(4)(A)).

(iii) A description of procedures for giving special consideration to employment and training programs of demonstrated effectiveness which are operated by community-based organizations (sec. 123(1)).

(6) *Coordination.* (i) A description of the methods for coordination between the prime sponsor and local State Employment Security Agencies, as provided in the agreement under § 676.23(g) (sec. 103(a)(15)).

(ii) A summary of the agreement made with State or local educational agencies or post-secondary institutions for the conduct of employment and training programs (sec. 103(b)(16)).

(iii) A description of procedures used to ensure the participation of and consultation with local educational agencies, vocational education agencies, community-based organizations, Federal and State agencies, organized labor, apprenticeship programs, business and other institutions and organizations, including women's organizations, in the conduct of programs (sec. 103(a)(9)).

(iv) A description of methods to coordinate programs with employment and training programs administered by the Secretary (sec. 103(a)(8)(B)).

(v) A description of efforts to promote maximum feasible use of apprenticeship or other on-the-job training opportunities available for veterans under Section 1787 of Title 38 United States Code, and coordination with the local Bureau of Apprenticeship and Training (sec. 103(a)(8)(C)).

(vi) A description of procedures concerning academic credit developed in conjunction with the appropriate local educational agency or institution of higher education and approved by the appropriate State educational agency (sec. 103(a)(16)).

(vii) A description of plans and activities to coordinate, strengthen, and expand employment and training activities with economic development activities in the private sector. (sec. 103(a)(20)).

(viii) A description of arrangements for implementing responsibilities under the Targeted Jobs Tax Credit Program created by the Revenue Act of 1978.

(7) *Prime sponsor planning.* (i) A description of the functions and responsibilities of the prime sponsor Planning Council (secs. 109(e) and 103(a)(10)).

(ii) A description of the procedures used to ensure that council meetings are publicly announced, open and accessible to the general public, and that minutes of such meetings are maintained (sec. 109(d)).

(iii) A description of staff support provided by the prime sponsor to the council (sec. 109(c)).

(iv) A list of the groups within the community represented on the council (sec. 109(b)).

(v) A description of procedures used to select members of the council (sec. 103(a)(4)(c)).

(vi) A description of the methods and arrangements for the participation of groups not directly represented on the council as required by § 676.6 (sec. 103(a)(6) and 103(a)(14)).

(vii) A description of efforts to involve the private sector in the design and/or implementation of programs (sec. 103(b)(8)).

(viii) A description of coordination and consultation linkages between the prime sponsor Planning Council, Youth Council, and Private Industry Council (secs. 109(f) and 103(a)(4)(C)).

(8) *Management and Administration.* (i) Organizational Structure and Staffing.

(A) A description of the prime sponsor's organizational structure (sec. 103(a)(4)(A)).

(B) A description of procedures to recruit and select administrative staff (sec. 103(a)(4)(A)).

(C) A description of the Personnel Merit System including any plan for obtaining an acceptable personnel system as required in § 676.43.

(ii) Administrative Controls. A description of arrangements and procedures for:

(A) Management Information System (including accounting, participant tracking system, client record and reporting systems); (sec. 103(a)(11)).

(B) Evaluation and monitoring system, including the independent unit responsible for monitoring programs and subrecipients (secs. 103(a)(12) and 121(o)(3)).

(C) Fiscal and program auditing, including procedures for auditing subrecipients and bonding (secs. 103(a)(12) and 134);

(D) Supervising deliverers of services (sec. 103(a)(4)(A)).

(E) Determining and verifying eligibility of applicants (sec. 103(a)(11)).

(F) Allowance payments system, including waiver provisions (sec. 124);

(G) A description of methods to ensure compliance with the retirement provisions set forth in § 676.28 (sec. 121(j)).

(iii) Grievance procedures. A description of the procedures for resolving any complaints or grievances alleging violation of the Act, regulations, and CETA and CETA participants, contractors, subrecipients and other parties (secs. 106 and 103(a)(4)(A)).

(9)(i) *Nondiscrimination and equal employment opportunity.* A description of the mechanisms which will be

used to ensure nondiscrimination and the provision of equal employment opportunities (sec. 103(a)(5)(B)).

(ii) *Affirmative action.* A description of plans and procedures concerning affirmative action, as outlined in § 676.53, including a description of:

(A) Efforts and procedures to eliminate artificial barriers to employment and occupational advancement, for CETA participants, including the hiring, licensing and contracting activities of the prime sponsor (secs. 103(a)(19) and 103(b)(11));

(B) Efforts to remove architectural barriers to employment of the handicapped (sec. 121(a)(5)).

(10) *Public Service Employment.* (i) An explanation of the basis for distributing funds and the basis upon which job allocation to each employing agency will be made.

(ii) A description of the process for selecting project applicants including:

(A) The methods and criteria to be used for soliciting and approving project applicants.

(B) The role of the planning council in the approval process.

(iii) A description of the items required on the project applications including at least the following information:

(A) Description of project;
(B) Goals and objectives;
(C) Number of persons to be served; and
(D) Length of project.

(d) *Assurances and Certifications.* The Assurances and Certifications form appears in the *Forms Preparation Handbook*. Prime Sponsors shall assure compliance with the Act, the regulations under the Act, and the CETP and for consortia, the approved consortium agreement (sec. 103(a)(21)).

§ 676.11 Annual plan.

(a)(i) The Annual Plan shall be prepared pursuant to provisions in this section and §§ 676.41, 677.15, 677.33, 677.56, 678.6, 679.4, 680.5, 680.107, and 680.207 as appropriate.

(ii) In submitting the Annual Plan for RA approval, prime sponsors shall comply with the comment and publication procedures of § 676.12 and the planning process in § 676.6. The Annual Plan shall consist of an Application for Federal Assistance (SF-424), Narrative Description of Programs, and Program Planning Summaries, Budget Information Summaries and other forms as appropriate.

(b) Application for Federal Assistance shall identify the total amount of funds requested under Parts 677, 678, 679, and 680.

(c) *Narrative description of programs.* The Narrative Description of Programs shall include:

(1) A summary of any evaluation conducted of the program(s) in the previous year and current year to date and a description of use made of such evaluation (sec. 103(b)(14)).

(2) A detailed summary of the expenditures made during the preceding year, and of results achieved and changes made in the Annual Plan for the program year (sec. 103(b)(5)).

(3) A summary of the extent to which special needs of the handicapped have been met during the previous year, including the number record served, type of training provided and the number placed in unsubsidized employment (sec. 103(b)(15)).

(4) A list of the specific training subgrants and agreements from the current year, including the rate of positive termination for program completers (sec. 103(b)(13)).

(5) *Approach.* (i) A description of specific programs or services, including apprenticeship programs, if any, designed for those segments of the population who are experiencing severe handicaps in obtaining employment, including individuals who lack credentials, require basic and remedial skills development, have limited English-speaking ability, are handicapped, are disabled or Vietnam-era veterans, are offenders, are displaced homemakers, are public assistance recipients, are persons 55 years of age or older, are youth, are single parents, are women or other individuals having particular disadvantages in the labor market (sec. 103(b)(3); sec. 214; sec. 215; and sec. 216).

(ii) A description of services and activities planned to be provided with funds available under the Act which are not allocated by formula, and coordinated with the activities and services described in this Plan (sec. 103(b)(9)).

(iii) A description of the efforts to be undertaken to increase the participation of qualified disabled and Vietnam-era veterans (sec. 121(b)(2)(A)).

(iv) A description of the plans and methods to be used to provide opportunities for minority-owned businesses and small businesses (including those owned by women), to compete for procurement contracts such as through the use of set asides where appropriate. (sec. 121(k)).

(v) A description of activities which will contribute to occupational development, upward mobility, development of new careers and overcoming of sex stereotyping, including procedures which will lead to skill development and job opportunities for participants in occupations traditionally limited to individuals of the opposite sex (sec. 103(a)(5)(C)).

(6) Information specific to each program to be operated under the Act as required by §§ 677.15, 677.33, 677.56,

678.6, 679.4, 680.5, 680.107, and 680.207.

(7)(i) Attach recommendations of the planning council, including minority reports, which were not included in the plan, together with the reasons for the prime sponsor's rejection of them (sec. 103(a)(17)).

(ii) Attach recommendations and comments of the Governor and the State employment and training council.

§ 676.12 Comment and publication procedures relating to submission of the CETP.

(a) Prime sponsors shall make public the provisions of the Plan prior to submission to the RA through such means as public hearings, public notice in newspapers, bulletins, or other media, including publications that primarily serve significantly segments of the eligible population. (sec. 104(a) and 104(a)(3)). At a minimum, each prime sponsor shall comply with paragraphs (b), (c), (d), and (e) of this section.

(b)(1) Each prime sponsor shall publish at a minimum in one issue of a newspaper or newspapers of general circulation in the prime sponsor's area (including minority newspapers, where applicable) a statement indicating the following information:

(i) The source of funds;
(ii) The amount requested;
(iii) A brief summary of the purpose of the proposed program and activities; and

(iv) The location and hours when the CETP and a comparison of performance against the prior year's plan through the most recent quarter, can be reviewed and the address and phone number where questions and comments may be directed.

(2) The prime sponsor shall publish the statement at least 45 days prior to the submission of the CETP to the RA in order to allow at least 30 days of review and comment. In addition, a copy of the newspaper article shall be transmitted to the RA (sec. 104(a)(3)).

(c) Each prime sponsor shall, at least 45 days before submitting its CETP to the RA, provide the Plan for comment to the Governor, the State employment and training council, the prime sponsor planning council, the private industry council, appropriate units of general local government in its area, appropriate Native American recipients, and appropriate labor organizations. Prime sponsors shall allow at least 30 days for review and comment. (sec. 104(a)(1)).

(d) At the same time, each prime sponsor shall provide written notification of the availability of the Plan to each House of the State Legislature for appropriate referral, to appropriate community-based organizations of

demonstrated effectiveness including appropriate women's organizations, and appropriate educational and apprenticeship agencies and institutions (sec. 104(a)). Prime sponsors shall allow at least 30 days for review and comment.

(e) If a State or areawide Clearinghouse notifies a prime sponsor that it wishes to review the complete Plan, the applicant shall also provide a copy of such to the Clearinghouse(s) 45 days prior to its submission to the RA.

(f) When the PSE Occupational Summary has not been finalized at the time the Plan is made available for public comment, the prime sponsor shall make the document available for a 30-day comment period at the time of submission to the RA as described in § 676.12(c). 29341

(g) A prime sponsor shall acknowledge any written comment and shall inform in writing any party submitting a substantive written comment of whether any plan revision will be made in response to the comment and the reasons for the prime sponsor's determination. The prime sponsor shall provide, upon request, copies of all written comments to the Planning Council and the Governor. In addition, copies of the comments and recommendations of the Governor, the State employment and training council and the planning council shall be transmitted to the RA with submission of the Plan, or if the comments are received after the Plan's submission, they may be sent separately to the RA (sec. 104(b)).

(h) If no comments are received from an A-95 Clearinghouse, or if the Clearinghouse has not requested to review the CETP, the prime sponsor applicant shall so note this on Standard Form 424.

§ 676.13 Submission of the CETP.

(a) Each designated prime sponsor shall simultaneously submit to the RA by a date set by the Secretary:

- (1) An Annual Plan;
- (2) A certification that the Master Plan remains the same or a modification reflecting any changes; and
- (3) An Approval Request Letter.

(b) Newly designated prime sponsors shall submit and have the Master Plan approved by the RA prior to the approval of the Annual Plan. An Approval Request Letter shall accompany the submission.

§ 676.14 Review, approval, and disapproval of the CETP.

(a) *Plan review.* The RA shall review each CETP to determine if:

- (1) It is complete and meets the requirements of the Act and regulations (sec. 104(c)).
- (2) Prime sponsor's performance and placement goals are adequate in light

of performance standards which recognize that performance will vary with local conditions and the nature of employment barriers faced by the eligible population to be served (sec. 126(a)(2)).

(3) The Plan is adequately designed to carry out an effective and well-administered program, taking into account such factors as past program performance and the recommendations made by the Governor, the State employment and training council, and the prime sponsor planning council (sec. 104(c)(1)).

(b) If a Clearinghouse has recommended against approval of a Plan because it conflicts with or duplicates another Federal or federally-assisted project, the RA shall consult with the agency assisting the referenced projects prior to taking action on the Plan.

(c) Plan approval and disapproval.

(1) The RA shall notify a prime sponsor applicant, the Governor, and the A-95 Clearinghouse within 7 days after approving, disapproving, partially or conditionally approving the CETP on the Standard Form 424. In addition, a letter shall be sent to the prime sponsor and Governor. If any party commenting to the RA pursuant to the A-95 Clearinghouse review process has made recommendations, and if the RA, after review of the recommendations, makes a determination contrary to the recommendations, the RA shall inform the party making the comment of the reasons for the determination on the Standard Form 424.

(2) With respect to approved plans, the Department shall issue a Notice of Funding Availability to provide funding authority. When funds are obligated incrementally, a new Notice of Funding Availability shall not require a revision of the Annual Plan, or publication, comment or A-95 clearance procedures.

(3) If the Plan is disapproved fully or partially or conditionally approved, the RA shall notify the prime sponsor and the Governor in the letter required by paragraph (c)(1) of this section:

- (i) of the reasons for disapproval;
- (ii) of corrective steps needed to remedy the defects within a specified time but not less than 30 days; and
- (iii) that failure to comply with the corrective steps within the specified time will result in final disapproval, which shall be subject to the appeal procedures in Subpart F of this Part.

(4) The approval of the Plan shall not preclude DOL from a subsequent determination that the prime sponsor is in violation of the Act or regulations.

§ 676.15 Use of alternative prime sponsors; services by the Secretary.

If a Plan is not filed or is disapproved, or if a Plan is terminated in whole or in part, which results in services not being provided in the area:

(a) The Secretary may allocate the funds to service the area to another prime sponsor or, if this is inappropriate, to the Governor; or

(b) The Secretary may make financial assistance directly to public agencies or private nonprofit organizations as if the Secretary were the prime sponsor for that area (sec. 102).

§ 676.16 Modifications.

(a) The RA may modify the CETP only once each fiscal quarter except as otherwise provided in the regulations.

(b) Modifications of the Master Plan.

(1) The Assurances and Certifications may only be modified by the RA.

(2) Prime sponsors shall obtain prior RA approval of a modification initiated by a prime sponsor which proposes to make a significant change in the Narrative Description of General Information.

(3) Modification requests from prime sponsors shall consist of the following:

- (i) Approval Request Letter;
- (ii) Revised Narrative Description of General Information and/or revised Assurances and Certifications, if appropriate; and
- (iii) A copy of the newspaper announcement required in paragraph (d) of this section, for significant changes to the narrative description.

(c) Modifications to the Annual Plan.

(1) Prior written RA approval is required to modify:

- (i) The duration of the Annual Plan or subparts of the Annual Plan.
- (ii) The Annual Plan allocation;
- (iii) An increase or decrease of 15% or more in the cumulative number of individuals to be served, planned enrollment levels for program activities, planned placements, terminations or individuals to be served within significant segments.

(iv) For Annual Plan Subparts of \$100,000 or less, a cumulative transfer of \$15,000 among program activities or cost categories.

(v) For Annual Plan Subparts of over \$100,000, the cumulative transfer among program activities or cost categories of \$50,000 or more or 15 percent of the total plan budget, whichever is greater; or

(vi) Significant changes in program design.

(2) Prime sponsors may not modify their Annual Plan solely to adjust planned performance to meet actual performance.

(3) Modifications to the Annual Plan requested by prime sponsors shall consist of:

(i) Approval Request Letter;

(ii) Revised Form SF 424 (if required);

(iii) Revised Program Planning Summary and Budget Information Summary for current and future quarters only;

(iv) Description of any conforming changes made in the narrative descriptions.

(v) Revised Occupational Summary and other forms, if appropriate.

(4) A prime sponsor must notify the RA of changes not set out in paragraph (c)(1) within 30 days from the beginning of the quarter in which the changes are effective.

(d) Publication and comment procedures specified in § 676.12 shall apply to modifications for which prior RA approval is necessary except that:

(1) Each prime sponsor shall comply with the comment and publication requirements at least 30 days prior to submission of its modification to the RA.

(2) The required newspaper announcement shall include a notice of the prime sponsor's intent to modify, a brief summary of the nature and purpose of the proposed modification, the location where and hours when the complete modification can be reviewed, and the telephone number to which questions may be directed.

(3)(i) The prime sponsor shall clear modifications through the A-95 Clearinghouses only if:

(A) There is a cumulative increase or decrease in funds equal to or more than 15 percent of the allocation for any Annual Plan Subpart for the current program year; or

(B) The Annual Plan, or any Subpart, is extended for a period of more than 3 calendar months.

(ii) When A-95 clearance is required, the notice from the prime sponsor to the Clearinghouse shall consist of a revised SF 424 and a brief description of the anticipated modification. If within 15 days of the notice, the prime sponsor receives no notice from the A-95 Clearinghouses that it wishes to review the modification, the prime sponsor may submit the modification to the RA without A-95 clearance.

(e) The RA shall approve or disapprove proposed modifications fully or partially within 30 days of receipt, and, within 7 days of such action, notify the prime sponsor and the Governor in writing of the decision. The procedures in § 676.14(b) and (c)(1) shall apply to modifications.

Subpart B—Program Design and Management

§ 676.21 General responsibilities of CETA grantees.

This Part sets out program operation requirements for CETA recipients including program management linkages, coordination, and consultation, allowable activities, participant benefits, and duration of participation provisions.

§ 676.22 Program management systems.

(a) All recipients shall establish management systems to assess all programs. Recipients shall take necessary corrective action to improve underperformance and to plan for more effective programs for subsequent operations (Sec. 104(c)(1), (2), (3)). Prime sponsors must institute and maintain effective systems for the overall management of all titles of their programs, including but not limited to:

(1) Program monitoring systems as described in § 676.75.

(2) Eligibility verification systems as described in § 676.75.

(3) Complaint and Hearing Procedures as described in § 676.83.

(4) Mechanisms for taking immediate corrective action where problems have been identified and for restitution of CETA funds, as noted in Subpart F, for improper expenditures.

(b) All recipients shall establish and maintain financial management and participant tracking systems in accordance with § 676.34. The principal objective of such systems shall be to provide the recipient with systems necessary to effectively manage its program and to provide information necessary to design program activities and delivery mechanisms best suited to resolve employment and training problems in the area. (Sec. 104(c)(3))

(c) Each recipient shall establish and use procedures for the continuous, systematic assessment of program performance in relation to the goals contained in its grant. Recipients shall (except for Job Corps and the Young Conservation Corps): (sec. 103(a)(4)(A)).

(1) Establish written quantified goals for each activity and service and for each subrecipient based on the specific program purposes of the service, activity or subgrant.

(2) Establish and use procedures for collecting performance information (including information on the status of individuals subsequent to entering unsubsidized employment) and for assessing such information in terms of the goals contained in its grant.

(3) Establish and use procedures for identifying performance problems and for developing and implementing appropriate remedial actions.

(d) Recipients shall establish and use procedures whereby the informa-

tion collected and assessments conducted shall be considered in subsequent program planning and in the selection of deliverers. Prime sponsors shall provide program assessments to their Planning Council and, as appropriate, to their Youth and Private Industry councils.

§ 676.23 Program linkages and selection of deliverers.

(a) In designing programs and in the selection of delivery agents, prime sponsors shall follow the procedures as presented in this section.

(b) In determining service deliverers the prime sponsor shall compile and maintain a publicly available inventory of potential deliverers which have expressed an interest in writing (Sec. 103(3)(B)).

(c) In designing programs under the Act and in selecting service deliverers, prime sponsors shall give special consideration in carrying out programs, to community based organizations of demonstrated effectiveness in the delivery of employment and training programs as follows: (Sec. 123(1)).

(1) Community based organizations shall be actively involved in the Prime Sponsors' planning process, as described in §§ 676.5, 676.7, and 676.12.

(2) Prime sponsors shall establish a mechanism for providing special consideration, including at least the following steps:

(i) Written or other public notification which ensures that appropriate CBO's are notified of the availability of funds and a request that all potential deliverers of employment and training services who wish to be placed on the inventory submit to the prime sponsor the following information:

(A) The name of the organization interested in receiving funds;

(B) The types of service and activities the organization is interested in providing; and

(C) The types of services and activities the organization has provided in the past, the number and types of people served, and documentation regarding the effectiveness of these services.

(ii) The prime sponsor shall determine from the inventory of all potential deliverers of service described in paragraph (b) of this section which have demonstrated effectiveness as defined in § 675.4, based on specific objective criteria.

(iii) The prime sponsor shall provide notice to all CBO's of demonstrated effectiveness on the inventory list of the planned activities and services so that they may make application to deliver such activities and services.

(iv) In the selection of service deliverers, prime sponsors shall give special consideration to CBO's of demonstrated effectiveness in the delivery of

employment and training services. For example, in competitive procurement procedures, the prime sponsor may afford special consideration through additional points in a rating system.

(v) If the prime sponsor, after considering a CBO of demonstrated effectiveness as a service deliverer does not select such CBO, it shall upon request provide the reasons for non-selection in relation to its criteria for selection to the affected CBO or the RA.

(d) Consideration shall be given to making use of appropriate services currently available in the community, with or without reimbursement, which the prime sponsor has determined to be effective. Agencies which typically provide such services include, but are not limited to the State Employment Security Agency, State Vocational Education and Rehabilitation agencies, State public assistance agencies, area skill centers established under Sec. 231 of the Manpower Development and Training Act of 1962, local education institutions, community based organizations, and other public agencies. The purpose of this consideration shall be to avoid duplication and to obtain such services at a cost saving over establishing another such service or activity (Sec. 103(a)(7) and 121(g)).

(e) Nothing in paragraphs (a) through (d) of this section shall be construed as prohibiting the prime sponsor from utilizing the services and facilities of public or private agencies, institutions or organizations, such as private business, labor organizations and private educational and vocational institutions which the prime sponsor reasonably believes can provide substantially equivalent or better services or facilities, on the basis of such factors as quality of service or cost effectiveness. (sec. 103(a)(7)).

(f) Each prime sponsor shall enter into a written cooperative agreement with the State Employment Security Agency which delineates the responsibilities of each and covers, at a minimum:

(1) Coordination of the employment and training services under the prime sponsor's plan with those funded under the Wagner-Peyser Act;

(2) A description of arrangements for coordination of employer contacts and other activities involving contact with employers;

(3) Allowance payment systems;

(4) Arrangements to coordinate activities including certification, referral, and publicity functions under the Targeted Jobs Tax Credit program of the Revenue Act of 1978; and

(5) Arrangements to provide the SESA with information on available public service employment positions, in order that such information may be provided to unemployment insurance recipients and other applicants for

services from the State Employment Security Agency (sec. 122(1)).

(g) A copy of the agreement described in paragraph (f) of this section shall be made available to the RA upon request.

(h) If a prime sponsor plans to provide a service which is available from the SESA at no cost, the prime sponsor shall justify such non-use in its Annual Plan.

(i) Each prime sponsor shall to the maximum extent feasible:

(1) Coordinate the employment and training services provided under its plan with those available under other programs funded through the Department of Labor (sec. 103(a)(8)), and with self-employment training programs;

(2) Coordinate services to veterans provided under this Act with those activities authorized by Chapter 41 of Title 38, United States Code (relating to counseling and employment services to veterans provided by SESA's) and with other similar activities carried out by other public agencies and organizations. Coordinate services with the appropriate Veterans Administration facilities in utilizing the apprenticeship and other on-the-job training activities available under section 1787 of Title 38 U.S. Code (sec. 121(b) and sec. 103(a)(8)).

(3) Notify the appropriate apprenticeship agency of any training activities in apprenticeship occupations.

(j) Prime sponsors shall coordinate services to AFDC recipients with public assistance agencies and the local sponsor of the Work Incentive Program (WIN) if any.

§ 676.24 Labor organization consultation and/or concurrence.

(a) To ensure the most effective development of employment and training opportunities, prime sponsors are to provide for the participation of organized labor in the planning and design of programs and activities, and coordination in the subsequent operation of such programs (sec. 103(a)(9)).

(b) In addition to involving labor organizations in the planning process as specified in (a) above, prime sponsors shall:

(1) Consult with appropriate labor organizations in the design and content of the training, work experience, public service employment, VEP, OJT, and other appropriate activities with respect to job descriptions, wage rates, training arrangements, and occupations planned; and

(2) Obtain written concurrence from the appropriate bargaining agent where a collective bargaining agreement exists with the participating employer covering occupations in which training or subsidized employment is proposed. Such concurrence shall

apply to the elements of the proposed activity which may affect the bargaining agreement, such as wages, benefits, and other factors. If no response is received within 30 days, the program may proceed. (sec. 103(a)(18)).

(3) Maintain evidence of the results of such consultation or concurrence.

§ 676.25 Employment and training activities.

Recipients and subrecipients may conduct the following activities:

(a) *Classroom training.* (1) This program activity is any training of the type normally conducted in an institutional setting, including vocational education, and designed to provide individuals with the technical skills and information required to perform a specific job or group of jobs. It may also include training designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses such as remedial education, training in the primary language of persons with limited English-speaking ability, or English-as-a-second-language training.

(2) In designing and operating training programs recipients and subrecipients shall:

(i) Refer a person for occupational training only after determining that there is a reasonable expectation of employment in the occupation in which such person would be trained (sec. 121(f)(4)).

(ii) Not refer a person to an occupation which requires less than two weeks of preemployment training unless there are immediate employment opportunities for that person available in that occupation (sec. 121(f)(2)).

(iii) Train persons only for jobs which are not in industries nor occupations with lower wages than the average for nondurable goods industries in the area, as set forth in the BLS Handbook of Labor Statistics, except that training is permissible for those jobs for which there exists a training program of a specified length of time designed to teach specific skills, and for which the rate of labor turnover does not exceed substantially the rate of labor turnover in the same area, as noted above. (sec. 123(a)).

(b) *On-the-job-training.* (1) *General.* (i) On-the-job training (OJT) is training in the private or public sector given to a participant, who has been hired first by the employer, while he or she is engaged in productive work which provides knowledge or skills essential to the full and adequate performance of the job. This does not preclude a participant who has been hired by, and received OJT from, one employer from being ultimately placed with another employer.

(ii) OJT may involve individuals at the entry level of employment or be used to upgrade or retrain present employees into occupations requiring higher skills in accordance with Part 677, Subpart C. OJT may be coupled with other CETA employment and training activities as specified in paragraph (g) of this and § 676.26(a)(6). As needed, OJT participants may receive any of the employment and training services and/or supportive services specified in paragraph (e) of this section through the CETA system, through community resources, or through employer resources.

(2) *Participation.* All OJT participants must be eligible for CETA in accordance with the requirements described in Section 675.5 of these OJT regulations. Recipients should establish procedures for the referral of OJT participants utilizing the information available through the Participant Assessment System (see § 675.6). The following guidelines should be considered in determining priorities of service:

(i) Primarily, OJT opportunities should be offered to those most in need, who lack the related education, training, or work experience for the job for which training is offered.

(ii) Recipients may also refer persons to OJT who have related education, training or work experience when no other suitable opportunities exist for such individuals, either in unsubsidized employment or within the CETA system.

(3) *Selection.* From among those referred for OJT opportunities, the employer may make the final selection of participants based on suitability for the training opportunity.

(4) *Length of training.* The length of time for which payments from CETA funds may be made shall not exceed that period of time generally required for acquisition of skills needed for the position within a particular occupation (sec. 121(1)). Recipients shall develop standardized methods for determining the length of training for OJT occupations, and shall describe or identify such methods in the Annual Plan or grant application. The Dictionary of Occupational Titles (D.O.T.) Specific Vocational Preparation (S.V.P.) codes, or other equivalent standardized tools may be used to fulfill this requirement.

(5) *Eligible jobs.* The requirements of § 676.25 of this section shall apply to OJT. In the selection of jobs for which training will be offered, recipients should consider those which provide opportunities not otherwise available, lead to economic self-sufficiency, and provide upward mobility.

(6) *Reimbursement.* (i) *For private sector OJT.* (A) Based upon past experience, DOL has determined that a fixed unit cost method of reimburse-

ment based on 50 percent of the participant's wages represents the difference between the costs of recruiting and training and the costs of lower productivity associated with employing CETA participants who lack the requisite skills to perform the job, and such costs for those otherwise employed (sec. 121(1)).

(B) To maximize limited available resources, recipients may choose to negotiate lower reimbursement levels with employers.

(C) (1) Should an employer or recipient feel that special circumstances warrant a reimbursement level higher than the 50 percent limitation, each circumstance, along with the specified level and its rationale, shall be presented in the recipient's Annual Plan or grant application. Recipients may then negotiate OJT agreements under these circumstances at the reimbursement level approved in the plan without any further DOL approval. The circumstances and the reimbursement level in such cases should also be documented in each OJT agreement.

(2) If a circumstance not covered in the annual plan or grant arises which the recipient believes warrants reimbursement at higher than the 50 percent level, a letter specifying the circumstances and the proposed reimbursement level shall be sent to DOL for approval prior to signing the OJT agreement. Once approved, the terms of the approval shall be incorporated into the recipient's Annual Plan or grant, and the recipient may sign the OJT agreement, documenting the approved circumstances and the reimbursement level in the OJT agreement.

(3) Special circumstances are envisioned as those where the characteristics of the participant indicate greater obstacles to employment than those of the normal CETA participant or where the training would provide the participant with unusually high skills. Examples might include the following, among others: handicapped or mentally retarded participants; disabled veterans; ex-offenders; and exceptionally costly programs providing an above-average quality of training.

(D) Recipients may provide OJT reimbursement on a declining ratio to wages over the period of training, as long as the planned average reimbursement does not exceed the specified reimbursement level for the planned period in which the participant is in training. Recipients shall monitor the declining reimbursement provisions of OJT agreements closely. Should abuse occur (i.e., significant numbers of participants leaving after the "high end of the scale" reimbursement period), the arrangements should be immediately curtailed.

(E) In addition to the reimbursement allowed by paragraphs (b)(6)(c)(i) through (4) of this section, the actual costs incurred by an employer for employment and training services and supportive services for OJT participants which are different than or above the level of those normally provided by the employer to regular employees may be paid on a cost reimbursement or fixed cost basis.

(ii) *For public sector OJT.* Costs incurred for public sector OJT may be paid only in accordance with § 676.41(f)(2). Public sector OJT may be used only to provide opportunities for participants deemed to be eligible in accordance with § 676.25(b)(2) above. It may not be used specifically to avoid the wage level and other requirements of public sector employment contained in these regulations, when PSE in fact offers the more suitable opportunity for the participant. Wages for participants in public service OJT shall meet the criteria outlined in § 676.25(b)(6)(i).

(7) *OJT Agreements.* At a minimum the OJT agreement shall contain the elements listed below. Recipients may place additional provisions in the OJT agreement only after a careful assessment is made of the additional burdens imposed on participating employers. Agreements may only be entered into with employers which have not been seriously deficient in their conduct of or participation in any DOL program pursuant to § 676.38(e). (Sec. 121(o)).

(i) Brief training outline, including the length of training and the nature of the training;

(ii) Method and maximum amount of reimbursement; justification if reimbursement amounts exceed 50 percent of participant's wages;

(iii) Number of participants to be trained;

(iv) Job description and participant wage rates;

(v) Reporting requirements;

(vi) An assurance that payroll records, time and attendance records, job duties and documentation of employment and training or supportive services costs for which the employer is being reimbursed will be subject to review;

(vii) A termination clause for non-performance;

(viii) An assurance that the employer will comply with the Act and regulations.

(8) *Labor Organization Consultation and Concurrence.* Labor organization consultation and concurrence must be obtained as specified in § 676.24.

(c) *Public service employment.* (1) Public service employment is subsidized employment with public and pri-

vate nonprofit employers who provide public services.

(2) PSE jobs shall be provided, to the extent feasible, in occupational fields which are most likely to expand within the public or private sector. (sec. 122(m)).

(3) Except for Federal agencies PSE jobs shall be developed where the employer has the capacity to provide the best possible employment opportunities. Worksite employers which can provide employment opportunities should do so as an employing agency. However, where the capacity of a worksite to function as an employing agency is limited by such factors as the lack of administrative capability to accommodate additional employees and lack of employment benefits, it may be considered a suitable site for outstationing.

(i) Recipients shall not outstation participants to worksites also operated by a prime sponsor or program agent. Participants who were outstationed to such worksites on or before the effective date of these regulations, however, may remain outstationed for the duration of their CETA participation.

(ii) The administrative arm of a prime sponsor consortium, except for those which are units of general local government, shall not employ any participant except in an administrative capacity.

(iii) Outstationed participants are still to be considered employees of the employing agency and shall have the same working conditions and benefits as received by other similarly employed employees of the employing agency (not of the outstationed worksite). However, maximum efforts should be made by the employing agency to accommodate the outstationed worksite by coordinating work hours and holidays.

(4) When filling teaching positions in Title VI, prime sponsors shall subgrant with the appropriate local educational agencies pursuant to section 678.3(j) of these regulations. (sec. 603(a)).

(5) PSE participants shall not be employed in building and highway construction work (except that which is normally performed by the recipient or subrecipient) or in any work which primarily benefits a private-for-profit organization.

(6) Except for projects under Part 678, PSE jobs shall be entry level (sec. 232(a)(1) and sec. 605(a)).

(7) To the extent feasible, the public services provided by the jobs should be designed to benefit the residents of the area (sec. 122(a)).

(8) *Participant Compensation for PSE.* Wages shall be paid in accordance with § 676.26(a)(3).

(9) Take into account the household obligation of those persons who it is

the purpose of the Act to serve, and give special consideration to provisions for alternative working arrangements such as flexible hours of work, work-sharing and part-time jobs, particularly for older workers, and parents of young children (§ 121(d)(3)).

(d) *Work experience.* (1) (i) Work experience is a short-term and/or part-time work assignment with a public employer or a private nonprofit employing agency. It is prohibited in the private-for-profit sector. It shall be designed to enhance employability of individuals through the development of good work habits and basic work skills. Work experience shall be limited to persons who need assistance in becoming accustomed to basic work requirements including basic work skills, in order to be able to compete successfully in the labor market. Work experience shall not be used as a substitute for PSE. It is for persons who have either never worked or who have not been working for an extended period of time, such as students, youth in transition from school to employment, youth with no definite employment goals, chronically unemployed, retired persons, handicapped individuals, residents of institutions, and older workers in such programs as Operation Mainstream, who have no alternative job opportunities (sec. 121(i)).

(ii) Persons who do not satisfy the conditions of subparagraph (d)(1)(i) of this subsection may be placed in work experience for no more than 30 days while an appropriate classroom training, OJT, PSE or unsubsidized job is being developed for them. (sec. 211(6)).

(iii) Participation in work experience shall be for a reasonable length of time based on the needs of the participants, and subject to the restrictions set forth in § 676.30(d), (e), and (f).

(iv) The provisions of § 676.25(c)(9) apply.

(2) At least every 60 days, recipients shall review, and document the progress of each work experience participant to determine whether transfer to another activity or placement in unsubsidized employment, is more appropriate, based on whether the work experience has achieved its purpose. However, this shall not apply to a participant in a summer program.

(3) Work experience participants may be outstationed pursuant to paragraph (c)(3) of this section.

(e) *Services to participants.* This program activity is designed to provide participants with supportive services, employment and training services, and post termination services which will lead to maximum employment opportunities and retention of employment or which will facilitate participation in other employment and training program activities funded under this Act

or in an other Act, leading to their eventual placement in unsubsidized employment. Such services include, but are not limited to, the following:

(1) Services to applicants:

(i) Outreach;

(ii) Intake: This includes screening for eligibility; the initial determination as to whether the program can benefit the individual; the determination of the employment and training activities and services which would be appropriate for the applicant; the determination of the availability of an appropriate employment and training activity; a decision on selection; and dissemination of information on the program. The appropriate items on the Participant Record found in the *Forms Preparation Handbook* shall be completed for each applicant during the intake process. All such applications should be retained, regardless of eligibility or enrollment of the applicant.

(2) Employment and training services:

(i) Orientation to the world of work;

(ii) Counseling. This includes employment related counseling, and testing;

(iii) Employability Assessment (other than that involved during intake);

(iv) Job Development;

(v) Job Search Assistance. This includes transition services, such as job seeking skills instruction, individualized job search plan, labor market information, and other special activities for transition to unsubsidized employment;

(vi) Job Referral and Placement; and

(vii) Vocational exploration program (VEP). A recipient may conduct a VEP program to expose youth to jobs available in the private sector through observation of such jobs, instruction, and, if appropriate, limited practical experience. (sec. 432).

(A) A detailed curriculum shall be developed prior to enrollment in VEP.

(B) Organizations which participate in VEP through an agreement with a recipient may be reimbursed for the costs incurred in the conduct of the program, except that private-for-profit organizations may be reimbursed only for costs for training which is over and above that normally provided by the organization.

(C) An individual may not be involved in any activity that contributes, or could be expected to contribute, to additional sales or profit, or results in the subsidization of wages, of a private-for-profit organization.

(D) Where a vocational exploration program funded directly by DOL operates in a recipient's area, the recipient shall enter into an agreement with the local representative of the program which contains arrangements for re-

cruitment, selection, referral and eligibility certification.

(3) Supportive Services include:

(i) Health care and medical services;
(ii) Child care. Child care programs shall comply with applicable State and local standards including State licensing requirements;

(iii) Transportation;

(iv) Residential support;

(v) Assistance in securing bonds;

(vi) Family planning services. These shall be made available to a participant only on a voluntary basis and shall not be a prerequisite for participation in, or receipt of, any services or benefits from the program; and

(vii) Legal Services.

(4) Post-termination services. For 30 days following termination from the program, employment and training services and supportive services, as described in paragraphs (e)(2) and (3) of this subsection, may be provided, to participants who have obtained unsubsidized employment to enable them to retain employment.

(f) Other employment and training activities. Recipients may conduct activities not described in paragraph (a) through (e) of this section. The approved grant application shall describe the basic design of activities undertaken as "other employment and training activities" and their objectives. These activities may include:

(1) Removal of artificial barriers to employment;

(2) Job restructuring;

(3) Revision or establishment of merit systems; and

(4) Development and implementation of affirmative action plans.

(g) Combined activities:

(1) A participant may be simultaneously or sequentially enrolled in two or more activities.

(2)(i) Reimbursement may be up to 100 percent to employers, including private-for-profit employers, for expenditures for the costs of classroom training, employment and training services or supportive services for participants in combined activities including the costs of participants' wages paid by the employer for time spent in classroom training.

(ii) Reimbursement may be made on a cost reimbursement or fixed cost basis and shall be supported by business receipts, payroll, or other records normally kept by the employer.

(iii) Nothing in this paragraph (3) shall allow reimbursement to private-for-profit employers for the costs of on-the-job training to exceed the amounts allowable in paragraph (b) of this section.

§ 676.26 Compensation for participants.

(a) Payment of wages. General. Except as authorized under § 676.25(g), (7) each participant in on-

the-job training, work experience, and public service employment shall be paid wages.

(1) On-the-job training. (i) Participants in OJT shall be compensated by the employer at such rates, including periodic increases, as are reasonable considering such factors as industry, geographic region, and trainee proficiency. In no event shall the rate be less than the highest of the following: (sec. 124(c)):

(A) The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act;

(B) The minimum hourly wage rate prescribed by applicable State or local law (sec. 124(c));

(C) The prevailing rates of pay for persons employed in similar occupations by the same employer;

(D) The minimum entrance rate for inexperienced workers in the same occupation in the establishment or, if the occupation is new to the establishment, the prevailing entrance rate for the occupation among other establishments in the area;

(E) The minimum rate required by an applicable collective bargaining agreement; or

(F) The prevailing rate established by the Secretary in accordance with the Davis-Bacon Act, when required by paragraph (a)(7) of this section.

(ii) For hours spent in the production of goods or services, the rate of compensation to be paid to trainees by employers, public or private, shall be specified in a written agreement entered into by the training or employing facility and the prime sponsor.

(2) Work experience. Participants in work experience shall be paid at a rate not less than the highest of (sec. 124(d)):

(i) The minimum wage rate specified in Section 6(a)(1) of the Fair Labor Standards Act;

(ii) The minimum wage rate prescribed by applicable State or local law; or

(iii) The prevailing rate established by the Secretary in accordance with the Davis-Bacon Act, when required by paragraph (a)(7) of this section.

(3) Public service employment. (i) Participants in PSE shall be paid wages at rates not less than highest of the following (sec. 124(b)):

(A) The minimum wage rate set out in Section 6(a)(1) of the Fair Labor Standards Act;

(B) The minimum wage rate prescribed by applicable State or local law;

(C) The prevailing rate for persons employed in similar public occupations by the same employer (sec. 124(b));

(D) The minimum entrance rate for inexperienced workers in the same occupations in the establishment, or, if the occupation is new to the establish-

ment, the prevailing entrance rate for the occupations among other establishments in the area;

(E) The minimum rate required by an applicable collective bargaining agreement; or

(F) The prevailing rate established by the Secretary in accordance with the Davis-Bacon Act, when required by paragraph (7) of this section.

(ii) The Secretary shall publish annually an area wage adjustment index, which shall include the maximum wage rates for each prime sponsor's area. The wage adjustment index shall be based on the ratio that the annual average wages in regular public and private employment in an area served by a prime sponsor bears to the average of all such areas.

(A) Data on average annual wages shall be derived from information provided by employers to State Employment Security Agencies which are responsible for administering State and Federal unemployment insurance (UI) laws. Each quarter of the year, employers in both the private and public sectors of the economy covered by UI laws are required to submit reports containing data on a complete count of workers during the payroll period including the 12th of each month and the total wages paid to all employees for the calendar quarter. Each covered employer is requested to report employment and wages in the county where workers are employed.

(B) The average annual wage for each county shall be computed as the ratio of total wages paid during the fiscal year to average monthly employment for the year in the respective counties. In cases where CETA areas represent county combinations and portions of counties, the average annual wage is computed as a weighted average of the wages in component counties based on the relative employment in each. In those instances where more than one CETA area is contained entirely within a county, the average annual wage for each prime sponsor is that for the county as a whole, as the basic payroll data are not produced below the county level.

(iii) Wages, including money received for overtime work and time on leave, paid to any public service employment participant from funds under the Act are limited to a full-time rate of \$10,000 per year (or the hourly, weekly, or monthly rate which, if annualized, would equal a full-time rate of \$10,000 per year), except where this maximum is adjusted upward by the Secretary to the amount set forth in the area wage adjustment index described above in paragraph (ii). This \$10,000 shall not be adjusted upward by more than 20 percent, except for Alaska. In Alaska, the amount in the area wage adjust-

ment index shall be computed by adjusting the \$10,000 upward by the exact percentage that the area wage index exceeds the national average wage index.

(iv) Fringe benefits to any PSE participants may not exceed those regularly afforded to similarly employed non-CETA workers, and shall never exceed those afforded to non-CETA workers earning an amount equal to the maximum wage.

(v) The average annual wage for public service participants hired on or after the effective date of these regulations, shall not exceed \$7,200, adjusted on an area basis in accordance with the area wage adjustment index described in paragraph (a)(3)(ii). Where public service participants are also enrolled in activities other than PSE for which they receive allowances, or where they are participating in a part-time (less than a normal full-time schedule for the occupation) public service position, the average annual wage for these participants shall be computed by annualizing the PSE wages received by these participants.

For fiscal year 1980 and each subsequent year, the average annual wage limitation shall be further adjusted by a percentage equal to the change in the average wage in regular employment not supported under the Act. In no case shall this wage be adjusted downward to a level that is less than 10 percent above the annualized Federal, State, or local minimum wage rate, whichever is highest (sec. 122(i)).

(vi) Except as provided in § 678.7 and in paragraph (a)(3)(vii), no public service employment participant may be provided wages for any public service employment job from sources other than the Act. For participants hired after September 30, 1978 this applies even if a participant is entitled to a promotion, a general salary increase or overtime pay. In such cases, such participants must be transferred to other positions or be terminated (sec. 122(i)(4)(A)).

(vii) Any person in public service employment on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages, so long as such person remains in the same position. However, the non-CETA portion shall not be reduced if the maximum wage has been adjusted upward above \$10,000 after September 30, 1978, as long as the incumbent participant is in this position or until the next prime sponsor budgetary cycle (sec. 122(i)(4)(B)).

(viii) Any person in public service employment on September 30, 1978, who was receiving wages on September 30, 1978, less than \$10,000 may have such wages supplemented above \$10,000 from non-CETA sources after September 30, 1978, if such increase is

a bona fide cost of living increase or a scheduled raise, and the person remains in the same position.

(4) *Services to Participants.* Allowances may be paid to a participant enrolled in employment and training services when such services are combined with another activity or when such services are provided on a regularly scheduled basis.

(5) *Other employment and training activities.* Allowances may be paid to a participant enrolled in other employment and training activities as described in § 676.25(f) when such activities are a component of another activity, or when such activities are provided on a regularly scheduled basis.

(6) *Combined Activities.* (i) Primary activity. A primary activity is one in which a participant is enrolled for more than 50 percent of scheduled time. Participants enrolled in a primary activity for which wages are payable and simultaneously in an activity for which allowances are payable may, at the recipient's option, be paid wages for all hours of participation, except when OJT is the non-primary component. Before placing an individual in such an activity, the recipient shall request a determination from the Internal Revenue Service as to whether income from the non-primary component is taxable. Nothing in this subsection shall authorize compensation at rates less than those required by paragraphs (a) or (b) of this section.

(ii) Employed Participants. Wages may be paid to a participant by the participant's employer for hours spent in classroom training, whether or not such hours constitute a primary component.

(7) Recipients and subrecipients are required to ensure that prevailing wages, as determined by the Secretary pursuant to the Davis-Bacon Act, are paid:

(i) by their contractors and subcontractors to laborers and mechanics, excluding participants, employed in construction (including alteration, repair, painting, decorating, etc.) which is federally assisted under the Act and related to a facility or building which is used primarily for programs under the Act; and

(ii) to laborers and mechanics, including participants, who are employed in construction (including alteration, repair, painting, decorating, etc.) on any project which is funded wholly or partially under a Federal statute, other than CETA, which requires the payment of prevailing wage rates determined in accordance with the Davis-Bacon Act.

(b) *Payment of training allowances.* General. (i) Subject to paragraph (viii) of this section and section 676.25, a basic hourly allowance shall be paid to participants for time spent in class-

room training. In addition, allowances may be paid for time spent in employment and training and supportive services only in accordance with § 676.25(e), (sec. 124(a)).

(ii) No participant may receive allowances for classroom training for more than 104 weeks in a 5-year period. However, this shall not prohibit a recipient from paying for books, tuition and related expenses within the limits set forth in section 121(c).

(1) *The allowance payment system.* A standard system for payment of allowances shall be maintained by every recipient to ensure prompt and efficient payment to all participants. (sec. 124(a)). The standard payment system shall consist of a uniform set of procedures, but may be operated by one or more service deliverers. It shall include:

(i) Determination of entitlement and computation of amount to be paid;

(ii) Issuance and distribution of payments;

(iii) Maintenance of payment records and preparation of required reports;

(iv) Maintenance of a system to detect and collect overpayments; and

(v) Arrangements with other agencies to obtain information to minimize unauthorized payments, including arrangements with:

(A) The State Employment Security Agency for verifying the receipt of unemployment compensation by participants (sec. 124(a)).

(B) Appropriate agencies for verification of public assistance payments (e.g., local welfare agencies); and

(C) Training facilities for submittal of payment requests and certifications of attendance.

(2) *Selection of delivery agent.* The recipient is required to provide a standard allowance payment system either directly or through an organization or organizations it considers appropriate for its particular circumstances. The recipient, in selecting the delivery agent for the payment of participant allowances should give consideration to the use of existing agencies which have experience in operating an allowance payment system, e.g., the Unemployment Insurance Service.

(3) *Basic allowances.* (i) A basic hourly allowance shall, except as provided in paragraphs (8) and (9) of this section, equal the higher of:

(A) The minimum hourly wage prescribed by State or local law for most employment in the recipient's area, multiplied by the number of hours during which the trainee attends or is absent for good cause; or

(B) The minimum hourly wage specified in Section 6(a)(1) of the Fair Labor Standards Act, multiplied by the number of hours during which the

trainee attends or is absent for good cause;

(ii) To compute the number of hours of participation the recipient shall count the time spent in classroom training, and may count the time spent in employment and training services or other activities as specified in sec. 676.25 (e) and (f);

(iii) Dependent allowances, incentive allowances, and additional allowances as described in (4), (5) and (7) of this section are not to be included as part of the basic allowance.

(4) *Dependents allowances.* (i) In the case of an individual with dependents, an additional \$5 a week shall be provided for each dependent over two (2) up to a maximum of four (4) additional dependents for participants receiving basic allowances or who would be receiving basic allowances were it not for adjustments which are permitted pursuant to paragraph (b)(8)(viii)(A) of this section (sec. 124(a)).

(ii) Dependent allowances shall be reduced prorate for absence without good cause. The methodology for making the reduction shall be described in the prime sponsor's Master Plan or grant application. Except as provided in paragraph (b)(i)(iv) of this section, dependents allowances may not be reduced (sec. 124(a)).

(5) *Incentive allowances for persons receiving public assistance.* (i) Except for trainees receiving allowances under Subparts A, B, and D of Part 680 incentive allowances in the amount of \$30 per week, in lieu of basic allowances, shall be paid to participants receiving public assistance or whose needs or income are taken into account in determining such public assistance payments to others (sec. 124(a)(3)).

(ii) Incentive allowances shall be reduced pro rata for absences without good cause. The methodology (e.g., daily or hourly proration) for making the reduction shall be described in the prime sponsor's Master Plan or grant application.

(iii) Incentive allowances shall be disregarded in determining the amount of public assistance payments individuals are entitled to receive under Federal or federally assisted public assistance programs (sec. 124(a)(3)).

(6) *Payments to persons in correctional institutions.* For participants who are prisoners, all or part of the allowances, as determined by the recipient and the head of the institution, may be held in reserve by the institution and delivered upon the participant's release from the institution.

(7) *Additional allowances.* Additional reasonable allowances, such as allowances for transportation or subsistence, may be paid to participants to cover extraordinary costs associated

with participation in an activity. The circumstances in which additional allowances will be paid shall be described in the Master Plan on the grant application (sec. 124(a)).

(8) *Adjustments in allowances.* (i) The basic allowance shall be reduced on a weekly basis by the amount of any unemployment compensation, received. Where eligible, participants should be encouraged to apply for and claim unemployment compensation benefits, if they are not already receiving such benefits. The basic allowance shall not be reduced because of any unemployment compensation received prior to enrollment. If unemployment compensation is paid on a biweekly basis, it shall be prorated over the two weeks before the allowance is reduced (sec. 124(a)).

(ii) The basic allowance may be adjusted upward if conditions for such increases are described in the approved Master Plan or grant.

(iii) Periodic increases to the basic allowances may be provided as an incentive to participation when such increases are described in the approved Master Plan.

(iv) Where a participant is employed by an employer as part of a training or employment activity under the Act, the basic hourly allowance may equal up to the hourly wage of the position in which the participant is employed.

(v) (A) The basic allowance for a participant may be reduced, at the option of the recipient, on a weekly basis, by the total amount of any Basic Education Opportunity Grant (BEOG) during the period in which he/she is enrolled in classroom training divided by the number of weeks in which the participant is enrolled in the classroom training; and

(B) The recipient may, however, make arrangements with the training institution to apply BEOG payment to tuition, books and related training costs normally funded by the recipient. The recipient should then pay the training institution the difference, if any, between the actual training costs and the BEOG.

(vi) The basic allowance may be reduced by the amount of wages received by classroom training participants who are also enrolled full-time during the same payment period in either work experience, PSE or OJT. The determination of whether the activity is full-time shall be based on the number of hours that constitute full-time employment for regular employees similarly employed at the employing agency or worksite.

(9) *Waivers of allowances.* (i) The payment of all or part of the basic allowance, described in paragraph (3) of this section, may be waived only in accordance with paragraphs (9) (ii) or (iii) of this section under the condi-

tions described in the grant (sec. 123(a)).

(ii) Waivers of basic allowances shall be allowable only when the following conditions have been met and documented, and a statement of understanding has been signed by each participant:

(A) That the waiver will be applied to the total enrollment in a course and will not be imposed on an individual basis, except as provided in paragraph (9)(3) of this section; and

(B) That the waiver will not have the effect of denying participation to individuals who could not participate without receipt of allowances; and

(C) That the waiver will increase the number of participants served or the level of services provided; and

(D) That the waiver will otherwise promote the purposes of the Act; and

(E) That all participants for whom allowances are waived will be so notified in writing; and

(F) That documentation of the waiver signed by the participant will be made a part of the participant's record.

(iii) In exceptional circumstances, individual waivers, when described in the plan may be granted under the following conditions:

(A) The waiver is at the written agreement of the participant; and

(B) Individual waivers may only be granted when all of the funds allocated in the Budget Information Summary for allowances have been obligated and training opportunities are still available and are unfilled.

(iv) The dependent allowances described in paragraph (4) of this section may not be waived except in cases where the entire basic allowance is waived.

(v) Allowance payments may not be waived solely because a participant is a veteran and receives benefits through the Vietnam Era Veteran's Readjustment Assistance Act, as amended.

(vi) Incentive allowances shall not be waived.

(10) *Repayments.* Prime sponsors shall require participants to repay the amount of any overpayment of allowances under this Part, except if the overpayment was made in the absence of fault on the part of the participant. Where the recipient requires repayment, any overpayment not repaid may be set off against any future allowance or other benefits under the Act to which the participant may become entitled, but in no case shall the wage be reduced below the applicable minimum wage.

§ 676.27 General benefits and working conditions for program participants.

(a)(1) Each participant in an on-the-job training, work experience, or public service employment program

under the Act shall be assured of workers' compensation at the same level and to the same extent as other employees of the employer who are covered by a State or industry workers' compensation statute. Whether provided through the State's compensation agency or a private insurance carrier, this coverage includes medical and accident insurance as well as income maintenance insurance. (sec. 121(d)(5)).

(2) Where a participant is employed or engaged in any CETA program activity, i.e., work experience, public service employment, on-the-job training, classroom training, services to participants and other activities where others similarly employed or engaged are not covered by an applicable workers' compensation statute, the participant shall be provided with medical and accident insurance coverage. Whether provided through the State's workers compensation agency or a private insurance carrier, the recipient shall provide such participants with coverage which is adequate and comparable to the medical and accident insurance provided under the applicable State workers' compensation statute. However, recipients shall not be required to provide these participants with the income maintenance insurance coverage in the statute (sec. 121(d)(5)).

(b) Each participant in an on-the-job training or public service employment program shall also be provided health insurance, coverage under collective bargaining agreements, unemployment benefits and other benefits and working conditions at the same level and to the same extent as other employee working a similar length of time, doing the same type work, at the same level, and similarly classified with respect to employment status (e.g., temporary, probationary).

(1) Any such classification shall be reasonable and shall include non-federally financed employees. Where only federally subsidized employees work for an employer, classifications may be limited to them.

(2) Classifications shall not be established exclusively for CETA participants nor shall participants be placed in existing or new classifications in order to reduce or deny benefits to which they are entitled.

(3) Within a single classification, a distinction may be made between CETA participants and other employees with respect to retirement systems or plans which provide benefits based on age or service or both pursuant to § 676.28(a) and (c)(1).

(c) Conditions of employment and training shall be appropriate and reasonable, in light of such factors as the type of work, geographical region, and

proficiency of the participant, (sec. 124(d)(1)).

(d) Every participant, prior to entering upon employment or training, shall be informed of his or her rights and benefits in connection with such employment or training. This includes the information that family planning services are voluntary. Participants shall be informed of the name of their employer. (sec. 121(a)(3))

(e) No participant will be required or permitted to work, be trained, or receive services in buildings or surroundings or under working conditions which are unsanitary, hazardous or dangerous to his or her health or safety. Participants employed or trained for inherently dangerous occupations, e.g., fire or police jobs, shall be assigned to work in accordance with reasonable safety practices. (sec. 121(d)(2))

§ 676.28 Retirement benefits for program participants.

(a) CETA participants may be excluded from retirement systems or plans which provide benefits based on age or service or both which cover similarly employed, non-CETA employees. (sec. 122(k))

(b) Except as provided in paragraph (d) of this section, funds may be used for contributions to retirement systems or plans on behalf of CETA participants in on-the-job training in public or private nonprofit agencies, work experience and public service employment only when such contributions bear a reasonable relationship to the cost of providing benefits to participants. The determination of such a reasonable relationship is based on the following contingencies: The participant

(1) obtains unsubsidized employment with the employer, provided the time spent as a CETA participant is accredited service under the employer's retirement plan; or

(2) obtains unsubsidized employment with another employer, provided benefits are transferable or portable; or

(3) obtains vesting. (sec. 121(j)).

(c) Examples of acceptable methods for payment into retirement systems are as follows:

(1) Recipients may use funds for the employer's contribution to a retirement system or plan where the system adopts a "buy-back" or "buy-in" arrangement on behalf of participants who obtain covered unsubsidized employment provided such employment is obtained within 90 days of termination from subsidized participation. Although such individuals are not covered under the appropriate retirement system or plan during their period of CETA participation, that participation period must be creditable under such system or plan. The employer's contri-

bution shall be paid at the rate applicable during the creditable period of CETA participation. Any interest which would have been earned during that period may be paid from CETA funds.

(2) Recipients may establish a separate reserve retirement account for participants. The employer's contribution made with CETA funds contributed on behalf of participants who do not obtain a status described in paragraph (b)(1), (2), or (3) of this section shall be retrievable and the reserve account shall be adjusted quarterly to reflect the turnover of participants and the projected funds needed to cover current participants. Funds set aside in a reserve account may earn interest.

(3) Payments from CETA funds may be made directly into a regular retirement account on behalf of CETA participants, provided the payments are based on the actuarially determined cost of benefits for participants who can expect to obtain a status described in paragraph (b)(1), (2) or (3) of this section.

(d) Except for those recipients which have come into compliance with the provisions of paragraph (b) and (c) this section at an earlier date, funds available for retirement benefits under the Act may be used for contributions on behalf of participants who are enrolled in retirement systems or plans, prior to July 1, 1979, without regard to the provisions set forth in paragraphs (b) and (c) of this section. These contributions may be made on behalf of such individuals for the duration of their CETA participation (sec. 121(j)).

(e)(1)(i) When a recipient intends to use CETA funds for retirement benefits on behalf of participants the method for doing so shall be described in the Annual Plan.

(ii) Recipients may purchase packages of benefits which include retirement and non-retirement benefits. In such cases:

(A) CETA funds may be used to pay for costs reasonably attributable to the non-retirement benefits, and, to the extent allowed by (b) through (d) of this section, to pay costs reasonably attributable to retirement; or

(B) CETA funds may be used to pay for the costs excluding the difference between the total cost of the package (including retirement) and the cost of a similar benefits package for the whole jurisdiction without a retirement component.

(2) Extensions to the provisions in this section may not be granted, except that under very limited circumstances, the RA, with the approval of the Regional Solicitor, may allow an extension until the end of the regular 1979 legislative session under the following circumstances:

(i) the State has a law prohibiting the implementation of procedures required by this section;

(ii) the State legislature did not have a regular session in Calendar year 1978, and the calendar 1979 session will not end prior to July 1, 1979; and

(iii) the recipient has made efforts to have the State legislature change the law.

(f) Expenditures may be made from program funds for taxes under the Federal Insurance Contributions Act (FICA), 26 U.S.C. 3101 et. seq.

§ 676.29 Non-Federal status of participants.

Except where specifically provided to the contrary, participants in a program under the Act shall not be deemed Federal employees and shall not be subject to the provisions of law relating to Federal employment, including those related to hours of work, rates of compensation, leave, unemployment compensation, and Federal employment benefits.

§ 676.30 Termination conditions; participant limitations

(a) Personnel procedures applicable to regular employees shall apply to any participant who is to be terminated by an employer from a position subsidized with CETA funds. Participant recourse shall be the same as that available to any other similarly employed person with the same employer. Except as noted below, termination of employment does not require termination of participation under CETA.

(b) When a suitable job offer or offer of referral to a suitable job is made to and rejected by a participant, this can be acceptable grounds for termination of the participant by the prime sponsor, regardless of how long the individual has been in the program. Suitable job shall mean a job which is: (1) comparable to the participant's CETA job in terms of working conditions and benefits; and (2) the same or equivalent to the participant's CETA job or otherwise commensurate with his/her skill level; and (3) located within a commuting distance of the participant's home comparable to the distance travelled by others in the jurisdiction similarly employed; and (4) not vacant due to a strike, or based on a requirement that an employee must join or resign from a union.

(c) A grantee which has not successfully placed a participant in appropriate unsubsidized employment or training within the established time limits for participation set forth in paragraph (d) and (e) of this section shall provide the participant with written notice of the impending termination and a contact person for questions and further information at least two (2) weeks prior to the effective date. A

dated copy of the notice shall be maintained with the participant's file.

(d) Participation in individual program activities shall be limited to a maximum of:

(1) 1000 hours of work experience during any one year and 2000 hours of work experience during the five year period, beginning October 1, 1978, as provided under paragraph (g) of this section. Participants in YCCIP shall not be subject to this limitation.

(2) 78 weeks of public service employment during a five year period beginning October 1, 1978. In computing this 78 weeks, prime sponsors shall include any public service participation from April 1, 1978, to October 1, 1978. (sec. 122(h)(2)).

(e) No participant may receive allowances for classroom training for more than 104 weeks in a 5-year period (sec. 121(c)(1)).

(f) Except as otherwise provided in paragraphs (g) and (h) of this section, recipients shall limit participation in CETA by any person to a maximum of 30 months during a 5 year period beginning October 1, 1978.

(g) The limitation on total participation in CETA set forth in paragraph (d)(1) and (f) of this section: (1) shall not apply to time spent by in-school youth enrolled in a work experience program under the Act (secs. 121(c)(2) and 212(b)); and (2) may be waived by DOL with respect to time spent by other persons enrolled in a work experience program under the Act based on the inclusion in the Annual Plan or grant application of satisfactory evidence that, due to the lack of alternative job opportunities in the area, this limitation is impractical. Depending on the circumstances in the recipient's area the waiver may be granted for all work experience participants or for one or more subgroups, such as older workers. However, the exemption of in-school youth shall end when the youth is no longer an in-school youth. Those individuals exempt from the 30-month limitation, may continue to participate after the 30-month period has elapsed if they continue in a work experience activity (sec. 121(c)(2)).

(h) A temporary waiver of the limitations set forth in paragraph (d)(2) and (f) of this section of not more than 12 months may be granted by DOL for a limited number of PSE participants hired prior to October 1, 1978, for:

(1) A prime sponsor that has faced unusually severe hardships in its efforts to transition public service employment participants to regular public or private employment not supported under the Act; and

(2) Native American entities that operate programs authorized by section 302 (c)(1) of this Act (sec. 122(h)(4)(A)).

(i) A temporary waiver of the limitation in subsection (d)(2) of this section of not more than 12 months may be granted by the RA for PSE participants hired on or after October 1, 1978 in the case of an area which

(1) (i) Is a unit of general local government which qualifies to be a prime sponsor and that has, at the time of the request for extension, an unemployment rate of at least 7 percent; or

(ii) Is a Native American jurisdiction that has, at time of application for the extension, an unemployment

(iii) Is a unit of general local government that is served by a BOS, or that would have been served by the BOS had it not become part of a consortium, and that has, at the time of the request for the extension, an unemployment rate of at least 7 percent; and

(2) Has faced unusually severe hardship in its efforts to transition public service employment participants into regular public or private employment not supported under the Act (sec. 122(h)(4)(B)).

(j) A prime sponsor desiring an extension under subsection (h) or (i) of this section for itself or for any area within its jurisdiction believed to qualify for such an extension shall make a request to the RA. This request shall be submitted not more than 60 days prior to the scheduled termination date of any participant for whom the extension is being requested. This request shall include:

(1) The name of each participant for whom the extension is being requested;

(2) The date each individual was hired;

(3) The currently required termination date for each participant;

(4) The length of the extension requested and the proposed new date by which the participant will be terminated from public service employment;

(5) The reason the extension is necessary;

(6) The unemployment rate in the area served by the affected recipient;

(7) A general description of the efforts which have been made to place the individuals in unsubsidized employment; and

(8) A description of the additional efforts that will be undertaken if the extension is granted.

(k) DOL shall notify the recipient in writing of the DOL approval or disapproval and reasons for disapproval. When DOL disapproves a prime sponsor's request for an extension under paragraph (h) or (i) of this section, the Department shall include in the written notice of disapproval the specific reasons for such disapproval.

§ 676.30a Procedures for serving specific target groups.

(a) *General.* Recipients shall take appropriate steps to provide for the increased participation of qualified special disabled and Vietnam-era veterans with special emphasis on qualified veterans who served in the Indo-China theater on or after August 5, 1964, and on or before May 7, 1975, through assuring adequate training and employment opportunities for such veterans in their programs. Such steps may include:

(1) Cooperative arrangements and programs with other agencies or programs (such as veterans service organizations, veterans' cost of instruction programs, national and local organizations of business and labor, community and mental health centers, the Veterans Administration and community-based veterans organizations) to provide comprehensive education, employment, training, outreach, job development, veterans' benefits counseling, and personal adjustment counseling.

(2) Creation, maintenance, or expansion of private sector veterans employment and training programs, such as special OJT efforts for veterans, and cooperative programs using supplemental funding for eligible persons pursuing on-the-job training under Chapters 31 and 34, of Title 38, United States Code.

(3) Programs to facilitate effective placement of, and entry by, veterans into readjustment or employment programs.

(4) Other programs or initiatives, such as split-work experience programs, necessary to serve the unique readjustment, rehabilitation and employment needs of veterans (sec. 121(b)(2)).

(5) Providing information on job and training opportunities to veterans organization (sec. 121(b)(2)).

(b) Public service employment programs.

(1) Within a PSE program, preference in enrollment shall be given to those who are the most severely disadvantaged in terms of length of unemployment and their prospects for finding unsubsidized employment (sec. 122(b)(1)).

(2)(i) Recipients shall give special consideration in filling public service jobs to qualified public assistance recipients (or persons who would be eligible to receive public assistance according to established criteria if they would apply for such assistance), and special disabled and Vietnam-era veterans (sec. 122(b)).

(ii) Special consideration shall at a minimum consist of the following:

(A) Outreach mechanisms;

(B) Special referral and selection mechanisms, which may include point systems for weighing applications; and

(C) Specific local goals for participation of target groups.

(iii) In providing special consideration, the prime sponsor shall take advantage of community resources to identify and reach specific target groups. The Master Plan shall specify the mechanism for providing special consideration and shall specify the involvement of SESA's and organizations representing the target groups in the design and/or implementation of these procedures.

(3)(i) Recipients shall provide special emphasis to eligible persons who are offenders, persons of limited English language proficiency, handicapped individuals, women, single parents, displaced homemakers, youth, older workers, and individuals who lack educational credentials (sec. 122(b)).

(ii) Such special emphasis shall include, but not be limited to, taking into consideration the needs of these groups when developing program services and activities, establishing outreach procedures to facilitate the participation of such groups and other steps as the recipient determines to be appropriate.

(iii) Special efforts (e.g., newspaper notices) shall be made to acquaint these groups with the services and activities available under the Act and to coordinate those efforts with other programs serving such persons (sec. 122(b)(3)(B)).

Subpart C—Administrative Standards and Procedures

§ 676.31 General.

(a) This section describes Federal requirements relating to the administration of grants by recipients under CETA. Administrative requirements found in this subpart apply to all programs under the Act unless stated to the contrary for any specific program.

(b) As referenced in this subpart the requirements set forth in 41 CFR 29-70, "Administrative Requirements Governing All Grants and Agreements by which Department of Labor Agencies Awards Funds to State and Local Governments, Indian and Native American Entities, Public and Private Institutions of Higher Education and Hospitals, and other Quasi-Public and Private Nonprofit Organizations," shall apply to grants under CETA.

(1) The requirements in 41 CFR 29-70.1 set forth the policies which apply to all basic grants and agreements.

(2) The requirements in 41 CFR 29-70.2 implement OMB Circular Nos. A-102 and A-110, and applies to all CETA grants and agreements.

§ 676.32 Methods of payment to recipients of CETA funds.

Payments will be made to all recipients according to provisions in 41 CFR 29-70.210, "Grant or Agreement Payment Requirements."

§ 676.33 Depositories for CETA funds.

The standards covering the use of banks and other institutions as depositories for CETA funds are found at 41 CFR 29-70.201, "Cash Depositories."

§ 676.34 Management information systems.

(a) All recipients shall establish and maintain a financial management system which meets the standards set forth in 41 CFR 29-70.207, "Standards for Grantee Financial Management Systems." These systems will include audit procedures in conformance with the "Audit Requirements and Responsibilities" in 41 CFR 29-70.207.4 (sec. 103(a)(11), (sec. 133)).

(b) The recipient may be required to participate in a unified audit established by the Secretary which provide for the audit of both the recipient and its subrecipients and contractors. A unified audit is a coordinated audit of a recipient and its subrecipients and contractors performed by the same public or private organization. The recipient may be required to pay from funds available to it for administrative expenses, that portion of the unified audit expenses allocable to the audit of such subrecipients and contractors. When the recipient arranges for the audit, the following conditions apply:

(1) The request for proposal and the bidding evaluation process must be approved by the Division of Audit; and

(2) Each audit agency or public accounting firm selected must be determined by the Division of Audit to be able to provide an independent audit in accordance with procedures established by the Department (sec. 106(j)).

(c) All recipients shall establish and maintain a client tracking system consisting of records on applicants, participants and trainees which will allow for the audit and monitoring of the recipient's programs, particularly with respect to the eligibility of participants and the propriety of participant selection procedures and practices (sec. 103(a)(11)).

(d) Procedures for establishing additional management controls are specified in §§ 676.22 and 676.75.

§ 676.35 Retention of records.

(a) All records, reports, documents and files required under these regulations shall be the responsibility of the recipient. Retention of and access to those records, reports, documents and files shall be as provided for at 41 CFR 29-70.203, "Retention and Custodial

Requirements for Records." (sec. 133(a)(1)).

(b) Notwithstanding paragraph (a), the recipient shall retain necessary information to ensure that the length of CETA participation for any individual does not exceed the limits on duration found at § 676.30(d) through (f).

(c) Financial records relating to public service employment programs and records of the names, addresses, positions and salaries of all persons employed in public service jobs shall be maintained and made available to the public. (sec. 122(g)).

§ 676.36 Program income.

(a) Except as provided in paragraph (b) of this section, all income realized in CETA activities shall be subject to 41 CFR 29-70.205, "Program Income and Interest Earned."

(b) Any income generated or realized in an activity may be retained by the recipient or subrecipient to continue any CETA activity notwithstanding the expiration of financial assistance. The RA may require the recipient or subrecipient to account for expenditure of such income for a period not to exceed 2 years from the expiration date of the annual plan (sec. 123(h)).

§ 676.37 Recipient contracts and subgrants.

(a) *Recipient responsibility.* (1) The recipient is responsible for development, approval and operation of all contracts and subgrants and shall require that its contractors and subrecipients adhere to the requirements of the Act, regulations promulgated under the Act, and other applicable law.

(2) The recipient shall require contractors and subrecipients to maintain effective control and accountability over all funds, property and other assets covered by the contract or subgrant.

(3) The recipient shall ensure that contractors and subrecipients maintain and make available for review by the recipient and the Department of Labor all records pertaining to the operations of programs under such contracts and subgrants, consistent with the maintenance and retention of record requirements.

(4) Each recipient shall take action against its contractors and subrecipients to eliminate violations of these regulations, and to prevent misuse of CETA funds (sec. 123(i)), (sec. 106(d)(1)).

(5) Subrecipients are entitled to funding for administrative costs. The amount of such funding will be determined during the development of subgrants.

(b) In the event an agreement or subgrant is cancelled, in whole or in part, the recipient shall develop procedures for ensuring continuity of service to participants.

(c) Recipients are authorized to enter into contracts or subgrants which extend past the expiration date of the Annual Plan, but such extension shall not exceed 1 year. In such cases, the recipient shall continue to be responsible for the administration of such contracts and subgrants.

§ 676.38 Procurement standards.

(a) Recipients shall comply with the procurement systems and procedures found in 41 CFR 29-70.216, "Procurement Standards."

(b) Small and minority-owned businesses, including small businesses owned by women, within the jurisdiction of the prime sponsor, shall be provided maximum reasonable opportunity to compete for contracts for supplies and services. One means to provide for this is the use of set-asides (sec. 121(k)).

(c) Prime sponsors shall maintain an inventory of potentially available deliverers of services, including their names, addresses and types of services offered, which have expressed an interest in writing, and use this inventory to select such deliverers of services. This inventory shall be available for public review (sec. 103(a)(3)(B)).

(d) Selection of deliverers shall be in accordance with § 676.23 of these regulations.

(e) No funds will be paid to any non-governmental organization for the conduct of programs (other than under Title VII or on-the-job training) under the Act unless:

(1) It has submitted an acceptable written proposal;

(2) Selection is performed on a merit basis, after thorough review by the prime sponsor, or Secretary as appropriate;

(3) It has not been seriously deficient in its conduct of, or participation in, any Department of Labor program in the past, or is not a successor organization to one that was seriously deficient in the past, unless the Secretary in his/her discretion certifies after a clear, convincing and detailed showing that the deficiencies will be eliminated and performance substantially improved;

(4) A comprehensive monitoring system operated in accordance with § 676.75(c) is in effect;

(5) It has the administrative capability to perform effectively (sec. 121(o)).

(f) No funds will be paid to any non-governmental organization for the conduct of on-the-job training and Title VII programs under the Act unless:

(1) Payment is supported by a written agreement which has been evaluated and found acceptable against standards established by the recipient;

(2) The organization has not been seriously deficient in its conduct of, or participation in, any Department of Labor program (sec. 121(o)).

§ 676.39 Property management standards.

Recipients shall comply with the property management standards set forth in 41 CFR 29-70.215.

§ 676.40 Allowable costs under CETA.

(a) *General.* To be allowable, a cost must be necessary and reasonable for proper and efficient administration of the program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out overall responsibility of State or local governments.

(b) *Direct costs.* Direct costs are those that can be identified specifically with a particular cost objective. These costs may be charged directly to grants, contracts or to other programs against which costs are finally lodged. Direct costs may also be charged to cost objectives used for the accumulation of costs pending distribution in due course to grants and other ultimate cost objectives.

(c) *Indirect costs.* Indirect costs are those:

(1) Incurred for a common or joint purpose benefiting more than one cost objective; and

(2) Not readily assignable to the cost objectives specifically benefited, without effort disproportionate to the results achieved. The term "indirect costs," as used herein, applies to costs of this type originating in the recipient entity, as well as those incurred by other entities in supplying goods, services, and facilities, to the recipient.

(d) *Restrictions on use of funds.* (1) The amount of funds available for any specific cost category or activity shall be limited as specified in the regulations for the specific programs.

(2) Funds made available through one grant or Annual Plan subpart may not be used to support costs properly chargeable to another grant or Annual Plan subpart with the exception that funds available for administration shall be pooled under a separate subpart and used to cover all allowable administrative costs incurred under the Annual Plan (sec. 123(f)).

(e) *Allowable CETA costs.* Except as modified by these regulations, the cost principles to be used in determining allowable CETA costs are referenced in 41 CFR 29-70.103 "Cost Principles."

(1) CETA funds may be used to satisfy cost sharing or matching requirements where authorized by Federal law, other than CETA, when seeking other Federal funds and shall be subject to the provisions of 41 CFR 29-70.206, "Matching Share."

(2) Funds may be used for construction activities only to:

(i) Pay wages and fringe benefits for participants employed by public or private non-profit agencies;

(ii) Purchase equipment, materials, and supplies for use by participants while on the job and for use in the training of such participants;

(iii) Cover costs of a training program in a construction occupation, including costs such as instructors' salaries, training tools, books, and allowances and wages; (sec. 123(c))

(iv) Cover costs of material and supplies, in Titles IID and VI projects, weatherization activities and Youth Community Conservation and Improvement Projects, which becomes part of the construction.

(3) Costs associated with building repairs, maintenance, and capital improvements of existing facilities used primarily for programs under the Act are allowable.

(4) The costs of home repair and weatherization are allowable when:

(i) The work is performed either:

(A) On dwellings of individuals whose family income is at or below 125 percent of the poverty level and which are privately owned and owner occupied, privately owned by a nonprofit organization or are units of public housing; or

(B) In weatherization projects funded by the Community Services Administration pursuant to section 222(a)(5) of the Economic Opportunity Act of 1964 or the Department of Energy pursuant to Title IV of the Energy Conservation and Production Act of 1976; or

(C) In rehabilitation projects of housing for lower income families as defined in section 8(f)(1) of the United States Housing Act of 1937 as part of community revitalization or stabilization projects (sec. 123(c)(4)).

(ii) Such activities are supervised by an adequate number of supervisory personnel who are adequately trained in the skills needed to carry out such activities and to instruct participants in the skills needed to perform in the work involved (sec. 123(c)).

(5) Recipients shall not use funds under the Act, to assist, including placing participants, in an establishment which has relocated from one area to another, or located new branches, subsidiaries, or affiliates within the past two calendar years, when such relocation or location has resulted in an increase in unemployment in the area of original location or any other area.

(6) Unemployment insurance benefit costs are allowable for administrative staff hired in accordance with the administrative provisions of these regulations, and for participants in other than public service employment. Unemployment insurance benefit costs

for public service employment participants including such participants who are also administrative staff, who become eligible for unemployment insurance by reason of their participation in the program shall be paid not from funds under the Act, but from available funds under Part B, Section 220(a) of Pub. L. 94-444. However, administrative costs associated with the recordkeeping requirements necessary to implement Part B, Section 220(a) of Pub. L. 94-444, shall be allowable as an administrative cost under the Act. Each recipient, subrecipient, or contractor shall cooperate with the SESA's in providing data necessary to implement the provisions of Part B of Pub. L. 94-444.

(7) *Administrative costs.* (i) Administrative cost contribution shall not exceed 20 percent of the total planned costs for each Annual Plan Subpart other than Title II D, Title VI and the Youth Community Conservation and Improvement Projects unless the Program Narrative Description sets forth an explanation of how all administrative costs have been determined and a detailed documentation to support that amount. The restriction on the use of funds for administration in Title II D and Title VI programs is set forth in § 677.58(a) and § 678.8(a)(3) and (b). The restriction on use of administrative funds in the Youth Community Conservation and Improvement Projects is set forth in § 680. Administrative cost limitations for Title VII programs are found in Part 679 and for Special Governor's Grant programs in Part 677 Subpart D.

(ii) No funds made available for administrative costs under any Title of this Act may be used by a prime sponsor for making payments on contracts for legal or other associated services unless the prime sponsor certifies in writing that:

(A) The payments are not unreasonable in relation to the fees charged by other contractors providing similar services; and

(B) the services could not be competently provided through employees of the prime sponsor or other available State or local governmental employees (sec. 123(f)(2)).

(8) *The cost of participant travel and staff travel necessary for the operation or administration of programs under the Act is allowed as provided herein.* (i) Travel costs of governmental officials not part of the Office of the Governor of a State or the chief executive of a political subdivision are allowable if costs specifically relate to programs under the Act. These costs shall be charged to administration.

(ii) Travel costs for CETA administrative staff, including participants in administrative positions, are allowable when the travel is specifically related

to the operation of programs under the Act.

(iii) Travel costs for participants using their personal automobiles in the performance of their jobs are allowable if the employing agency normally reimburses its other employees in this manner. These costs shall be charged to fringe benefits.

(iv) Travel costs to enable participants to participate in programs under the Act are allowable. Such travel shall be restricted to the recipient's jurisdiction or within daily commuting distance, except:

(A) To pay for transportation costs at the beginning and end of a training course which is more than daily commuting distance but within the State in which the recipient is located;

(B) As permitted for good cause by the RA, on a case-by-case basis, within the U.S.

§ 676.41 CETA cost allocation.

Allowable costs shall be charged against the following cost categories: Administration; wages; training; fringe benefits; allowances; and services.

(a) Costs are allocable to a particular cost category to the extent that benefits are received by such category.

(b) All recipients are required to plan, control, and report expenditures against the aforementioned cost categories.

(c) All recipients are responsible for insuring that subrecipients and contractors plan, control, and report expenditures against the aforementioned cost categories.

(d) Classification of costs by category. The following principles shall be followed in classifying cost by cost category:

(1) Participants' wages shall be charged to wages. All wages paid to participants receiving on-the-job training in public or private nonprofit organizations, and all wages paid to participants in public service employment and work experience are considered wages. Cost-of-living increases are considered wages.

(2) Participants' fringe benefits shall be charged to fringe benefits. Fringe benefits costs for participants include, but are not limited to, the following: provisions for annual, sick, court and military leave pursuant to an approved leave system; employees' life and health insurance plans, unemployment insurance where applicable, workers' compensation insurance and retirement benefits; and, under public service employment programs, uniforms, tools, or other equipment ordinarily provided by the employer to its regular employees, provided these are for the benefit and ownership of the participants.

(3) Allowances paid to program participants shall be charged to allowances.

(4) Training costs consisting of goods and services which directly and immediately affect program participants in either a work environment or classroom setting shall be charged to training. Training costs include, but are not limited to, the following: salaries; fringe benefits; equipment and supplies of personnel engaged in providing training; books and other teaching aids; equipment and materials used in providing training to participants; classroom space and utility costs; and that part of tuition and entrance fees which represent instructional costs having a direct and immediate impact on participants. The compensation of individuals who both instruct and supervise other instructors must be prorated among the training and administration cost categories on the basis of time records or other equitable means. Similarly, tuition fees, and the costs of supplies used in the course of both participant instruction and other activities should be prorated among the benefiting uses.

(5) Supportive and employment and training service costs which consist of goods and services which affect program participants shall be charged to services. Services include, but are not limited to, supportive and employment and training services and services to applicants. Services costs include, but are not limited to, salaries and fringe benefit, space, utility, equipment and travel costs, when an integral part of the job of personnel engaged in providing services to participants; and that part of single unit charges for child care, health care and other services which represent only the costs of services directly beneficial to participants. Transportation of participants, as provided § 676.40(e)(8)(iv), is properly chargeable to services.

(6) Administrative costs shall consist of all direct and indirect costs associated with the management of the program. These costs shall include the administrative costs, both direct and indirect, of subrecipients and contractors. Administrative costs shall be limited to those necessary to effectively operate the program.

(i) Indirect administrative costs represent the general management and support functions of an organization as well as secondary management and support functions at the bureau or division level. Included are salaries and fringe benefits of personnel engaged in executive, fiscal, personnel, legal, audit, procurement, data processing, communications, maintenance, and similar functions, related materials, supplies, equipment, office space costs, and staff training.

(ii) Direct administrative costs are comprised of goods and services which neither contribute to the general management and support functions of an organization, nor directly and immediately affect participants (e.g. training costs). Also included are salaries and fringe benefits of direct program administrative positions such as supervisors, program analysts, labor market analysts, and project directors. Additionally, all costs of clerical personnel, materials, supplies, equipment, space, utilities, and travel which are identifiable with these program administration positions shall be charged to administration. Some examples of administrative costs are: the salary of a clerical assistant to a supervisor; that part of an instructor's salary representing time spent supervising other instructors; desk-top supplies used by supervisors; and, in general, office administration, rent, depreciation or maintenance of nonclassroom space; staff training; consultant services under contract not involving direct training or services to participants; costs incurred in the establishment and maintenance of a planning or advisory council under CETA, or in publishing a grant application; and costs of monitoring and providing technical assistance to contractors and subrecipients.

(iii) Services normally chargeable to administration shall be charged to wages or fringe benefits, as appropriate, when performed by program participants.

(e)(1) Except under the optional fixed price performance agreement method provided for in paragraph (2) below, when contractors or subrecipients bill the recipient with a single unit charge containing costs which are chargeable to more than one cost category, the recipient will charge these costs to the proper cost categories. For unit charges such as tuition fees for which the necessary detail cannot be provided, an estimate of the breakdown of the single unit charge among cost categories will be obtained, except when such unit charges are normally billed as a single charge and the cumulative amount of such charges does not exceed \$25,000 within the Annual Plan year. These exempted charges do not need to be prorated among the benefiting categories but can be charged to the category receiving the most benefit. Any profit or loss should be prorated among all affected cost categories.

(2) This paragraph provides for an optional method, for agreements to be used only for classroom training. Under the method provided for in this paragraph, costs which are billed as a single unit charge do not have to be allocated or prorated among the several cost categories but may be charged entirely to training. This does not pre-

clude the use of other methods for this purpose as long as the cost allocation requirements of this section are followed.

(i) Agreements under this paragraph must:

(A) Be fixed unit price;

(B) Stipulate that full payment for the full unit price will be made only upon the completion of training by a participant and placement of the participant into unsubsidized employment in the occupation trained for and at not less than the wage specified in the agreement; and

(C) Include a payment schedule which sets out that portion, if any, of the full unit price which may be paid for less than full performance. The payment schedule that is to be used must have been approved by the RA.

(ii) No funds under this Act may be used to pay any private-for-profit organization for training of participants under the method provided herein unless:

(A) That organization is part of (including a subsidiary of) an employer; or

(B) Unless written statements of intent to hire participants trained under the contract have been obtained from employer(s).

(3) In the case of multiuse equipment there must be a proration of costs or, if there is a predominant usage relating to one cost category, a charge shall be made to that category.

(4) Any single cost, such as staff salaries and/or fringe benefits, which is properly chargeable to more than one cost category shall be prorated among the affected categories.

(f) The extent to which the cost categories are assignable to specific program activities is set forth below:

(1) *Classroom training.* Cost categories chargeable are: training; allowances; services; wages when paid to participants during classroom training; and fringe benefits (medical and accident insurance for participants only).

(2) *On-the-job training.* Cost categories are: wages and fringe benefits (attributable to public or private non-profit employers only); training; and services.

(3) *Public service employment.* Cost categories are: wages; fringe benefits; services; and training.

(4) *Work experience.* Cost categories are: training; services; wages; and fringe benefits.

(5) *Services to participants (not part of another program activity).* Cost categories are: allowances; fringe benefits (medical and accident insurance for participants only); and services.

(6) *Other activities.* Cost categories are: training; allowances; and services.

§ 676.42 Administrative cost Annual Plan Subpart.

(a) All administrative funds from all Annual Plan Subparts shall be contained in a separate Administration Annual Plan Subpart unless specifically exempted by regulations or grant agreement. The amount each subpart contributes to the Administrative Cost Subpart shall not exceed the limits set in § 676.40(e)(7), § 677.58 (a) and (b), § 678.8(a)(3) and (b), and 680 (sec. 123(f)(1)).

(b) The Administrative Cost Subpart to the Annual Plan shall consist of the following:

(1) *Budget Information Summary (BIS)*. Provide on the BIS the proposed administrative costs for the program year. This shall include the sum of the contributions from all subparts under the Annual Plan.

(2) *Budget Information Summary Backup*. List separately on this attachment to the BIS each Annual Plan Subpart and the amount it contributed to the administration pool.

(c) When the Administrative Cost Subpart is approved, the funds may be expended for all allowable administrative costs. There is no requirement that administrative costs be allocated back to Title or program activity.

(d) The Administrative Annual Plan Subpart may be modified during the program year. The amount of funds in the subpart may be decreased with the funds going back to the program subparts provided that not program subpart receives back more than it contributed to the Administrative Cost Subpart. The administrative subpart may also be increased up to the percent allowed by the regulations for each program.

(e) At the end of a program year unexpended administrative funds may be carried over into the new subpart or they may be returned to the program subparts. In the new program year the amount of new funds which will go into the Administrative Cost Subpart will be determined by using only the new obligational authority.

§ 676.43 Administrative staff and personnel standards.

(a) *Staffing*. Members of the eligible population shall be provided maximum employment opportunities at all levels of the CETA administration. Recipients shall establish systems to enhance the recruitment and hiring of qualified persons reflecting the significant segments, and to provide opportunities for further occupational training and career advancement (sec. 121(b)(1)(B)).

(b) *Basic personnel standards*. (1) Methods of personnel administration shall be established and maintained by each recipient for its employees, including participants, engaged in the

administration or operation of programs under the Act. Such methods shall be in conformity with the Inter-governmental Personnel Act (IPA) Merit Principles, P.L. 91-648, Section 2, administered by the U.S. Office of Personnel Management.

(2)(i) Except as provided in paragraph (3), below, a recipient whose personnel system does not conform to the merit principles of the IPA shall develop a plan outlining steps to be taken for attaining an acceptable system, and a reasonable date within the grant year for implementing the steps in the plan.

(ii) Recipients whose personnel systems have been accepted by the U.S. Civil Service Commission or the U.S. Office of Personnel Management as being in conformity with the Standards for a Merit System of Personnel Administration, 5 CFR Part 900, Subpart F, shall be deemed to be in compliance with this section.

(3) The following are not subject to the requirements of paragraphs (1) and (2) above:

- (i) Any nongovernmental recipient;
- (ii) A consortium administrative unit which is not a unit of government;
- (iii) Employees of the recipient not engaged in the administration or operation of programs under the Act.

(4) Units whose staff are exempt under paragraph (3) of this section shall ensure equal employment opportunity based on objective procedures of recruitment, selection, promotion, classification, compensation, performance evaluation, and employee management relations, and are encouraged to develop procedures reflective of the principles contained in the IPA.

(c) *Bonding*. Every officer, director, agent or employee of a recipient or subrecipient of funds who is authorized to act on behalf of a recipient or subrecipient for the purpose of receiving or depositing funds into program accounts or issuing financial documents, checks or other instruments of payment for program costs, shall be bonded to provide protection against loss. The provisions of the bonding arrangements shall be included in the description of the administrative systems in the Master Plan or grant application. Existing bond coverage of recipients or subrecipients shall be considered acceptable. For all others, the amount of coverage shall be the lower of the following:

- (1) \$100,000; or
- (2) the highest advance received through check or drawdown during the preceding grant year, or for new recipients, the highest advance through check or drawdown planned for the present grant year (sec. 134).

§ 676.44 Reporting requirements for prime sponsors.

(a) Each prime sponsor shall submit four periodic reports which will be used by the Secretary to assess its performance in carrying out the objectives of the Act. These four reports are:

- (1) The Program Status Summary (sec. 127(d)(1));
- (2) The Financial Status Report (sec. 127(d)(3));
- (3) The Quarterly Summary of Participant Characteristics (sec. 127(d)(2)); and
- (4) Classroom and On-the-Job Training Report (sec. 313(g)).

Prime sponsors may from time to time be required to prepare and submit additional reports requested by DOL and other Federal agencies for the performance of the legal responsibilities of these agencies, except that such reports will not be required by DOL more than once each fiscal quarter. Detailed descriptions of the four reports are in the *Forms Preparation Handbook*.

(b) The reports required by this section shall be prepared to coincide with the ending dates of Federal fiscal year quarters. These reports shall be sent by the prime sponsor to be received by the RA no later than 30 days after the end of the reporting period.

(c) Separate reports will be required for each Annual Plan Subpart.

§ 676.45 Annual plan subpart settlement procedures.

(a) The settlement of an Annual Plan Subpart is the process by which the Department of Labor determines that all applicable administrative actions and all required work of the Annual Plan Subpart have been completed by the prime sponsor and DOL.

(b) The RA shall determine, from the best information available, for each expiring Annual Plan Subpart:

- (1) Total fund availability;
- (2) Estimated accrued expenditures;
- (3) Estimated carryout.

(c) The RA shall issue a notice of fund availability to transfer estimated carryout from the previous Annual Plan Subpart. A second notice of fund availability shall be issued by the RA to transfer the carryout into the new Annual Plan Subpart.

(d) By a date specified by the RA, each recipient shall submit a final Financial Status Report for each of the previous year's Annual Plan Subparts.

(e) If the final reports are acceptable, the RA shall effect a preliminary settlement by transferring remaining funds into the current year's Annual Plan Subpart. Final settlement of expired Annual Plan Subparts shall not be complete until an audit has been performed, audit findings have been

resolved, and final reports have been submitted.

(f) End of the Master Plan. The Master Plan has no end or termination date. However, under the following conditions the Master Plan shall no longer be in effect:

(1) When all activity under the Annual Plan has been completed or the Annual Plan has been terminated and final settlement of the Annual Plan, including an inventory settlement, has been reached.

(2) When the Master Plan is a multi-party agreement and one or more signatory parties has legally withdrawn from the agreement and an inventory settlement under the Master Plan has been reached.

§ 676.46 Secretary's responsibilities.

(a) As used in this section, the term "assessment" refers to the Federal review of grant applications and performance of individual recipients and the term "evaluation" refers to the Federal study of overall effectiveness and impact of programs and activities under the Act.

(b) The Secretary shall provide for the continuing evaluation of all programs, activities, and research and demonstration projects including their cost effectiveness in achieving the purposes of the Act, their impact on communities and participants, their implication for related programs, the extent to which they meet the needs of persons by age, sex, race, and national origin, and the adequacy of the mechanism for the delivery of services. In conducting evaluations the Secretary shall compare the effectiveness of programs conducted by prime sponsors of the same class and of different classes, and shall compare the effectiveness of programs conducted by prime sponsors with similar programs carried out by the Secretary under the Act. The Secretary shall also arrange for obtaining the opinions of participants about the strengths and weaknesses of the programs (sec. 313(a)).

(c) The Secretary shall assess annually the adequacy of each prime sponsor's proposed performance and placement goals in accordance with performance standards which recognize that performance will vary with local conditions and the nature of employment barriers faced by the eligible population to be served.

§ 676.47 Reallocation of funds based on nonutilization.

(a) The RA may reallocate any amount of any allocation under the Act to the extent that it is determined that a recipient will not be able to use such amount within a reasonable period of time. To the extent that nonutilization is determined, a level of 10% of the annual allocation to a pro-

gram may be carried over into the subsequent fiscal year without being considered nonutilization. (sec. 108(a)).

(b) When the RA determines that a reallocation from a prime sponsor is appropriate, he shall give the prime sponsor, the general public, and the appropriate Governor notice of proposed action to remove funds from the grant. Such notice shall include specific reasons for the action being taken and shall invite the prime sponsor, the appropriate Governor, and general public to submit comments on the proposed reallocation of funds. These comments shall be submitted to the RA within 30 days from the date of the notice. After considering any comments timely submitted, the RA shall notify the Governor and affected prime sponsors on any decision to reallocate funds and shall have any such decision published in the FEDERAL REGISTER. (sec. 108(b) (1) and (2)).

(c) The procedures set out in this section are in lieu of any other procedures which might otherwise be applicable under the Complaints and Sanctions provisions in Subpart F.

(d) In reallocating such funds, priority shall be given first to other prime sponsors within the same State and then to prime sponsors within other States, taking into consideration the number of unemployed individuals in those areas. (sec. 108(b) (3)).

Subpart D—Equal Employment Opportunity Under CETA

§ 676.51 General.

This subpart sets out the Department of Labor's regulations for insuring that discrimination is specifically prohibited in all CETA programs, and that services are provided on an equitable basis to the significant segments of the eligible population. This subpart covers the various equal opportunity provisions of this Act, and incorporates by reference other equal opportunity statutes, regulations and executive orders to which recipients under CETA are subject, such as those pursuant to Title VI of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Equal Pay Act of 1967, the Rehabilitation Act of 1973, and the Uniform Guidelines on Employee Selection Procedures (1978).

(a) No person shall, on the ground of race, color, religion, sex, national origin, age, handicap, or political affiliation or belief, be discriminated against, or denied employment as a participant or staff person, in connection with any program under the Act.

(b) Recipients shall comply with the Department of Labor's nondiscrimination requirements at 29 CFR Part 31 under Title VI of the Civil Rights Act, which prohibits discrimination by race, or national origin. They shall

also comply with the Department of Labor's regulations under Section 504 of the Rehabilitation Act, which prohibits discrimination by handicap. The latter regulations will soon be published for comment in the FEDERAL REGISTER.

(c) All programs shall to the maximum extent feasible, contribute to the elimination of sex stereotyping. Prime sponsors shall in planning their program activities:

(1) Recruit for and encourage female entry, through such means as training, in occupations with skill shortages where women represent less than 25 percent.

(2) Recruit for and encourage male entry, through such means as training in occupations with skill shortages where men represent less than 25 percent.

(d) All programs shall contribute to the maximum extent feasible to the elimination of architectural barriers (sec. 121(a)(4) and (5)).

(e) *Artificial barriers.* (1) No person shall be denied training or employment in any program or activity funded in whole or in part with CETA funds because of a qualification requirement which is not directly related to the individual's fitness or ability to perform the duties required by the training or employment position.

(2) Prime sponsors shall analyze and re-evaluate job descriptions and qualification requirements at all levels of employment, including civil service requirements and practices relating thereto, with a view toward removing artificial barriers to public service employment (sec. 122(f)).

(f) Prime sponsors shall establish procedures to ensure against discrimination and foster equal employment opportunity.

(g) Where practicable, the prime sponsor shall assign EEO responsibilities on a full-time basis to an individual or staff; or if this is not practicable, explain why in the Master Plan.

(h) Recipients shall compare the racial, age, handicapped worker, national origin and sex composition of the CETA staff with that of the civilian labor force in the recipient's area and make a determination of the extent of under representation.

§ 676.53 Affirmative action.

(a) Each recipient shall establish an affirmative action plan for outreach to, and training, placement, and advancement of handicapped individuals in employment and training programs under the Act. Such an affirmative action plan shall be described in the annual plan or grant application (sec. 103(b)(15)).

(b) Any recipient which has been determined by DOL or another Federal, State or local agency to have discrimi-

nated in its CETA program, shall take Affirmative Action to overcome the effects of that discrimination.

(c) Such plans and procedures required by (a) and (b) above will include as minimum:

(1) The development and implementation of specific steps along with the assignment of management responsibility, to achieve the objectives stated above, within specific timeframes, e.g., special recruitment efforts, test validation, display of EEO posters, review of eligibility and selection standards to determine discriminatory impact, identification of artificial barriers, and development of upward mobility programs.

(2) The establishment of monitoring and evaluation procedures to measure progress in meeting the goals of the affirmative action program within the projected timeframes.

(3) Internal dissemination of the affirmative action policy statement to all CETA management officials, staff, and participants, and external dissemination of the prime sponsor's affirmative action policy statement to community groups, community-based organizations, minority and female organizations, and the general public, in the same procedure as notice is provided for the Master Plan.

(4) Written documentation that subgrantees and contractors are aware of the prime sponsor's affirmative action program and the specific staffing and service goals.

§ 676.54 Equitable provision of services to the significant segments of the eligible population.

(a) CETA recipients shall provide employment and training opportunities available under each title of the Act on an equitable basis to significant demographic segments in the eligible population (sec. 121(b)(1)).

(b) When planning and developing employment and training opportunities, prime sponsors shall set planned service levels on an equitable basis according to age, race, sex, and national origin categories, in relation to the incidence of such groups in eligible population, taking into account the employment and training needs of those groups. The prime sponsor's Annual Plan shall include a description of the proposed levels of participation for each of these groups and shall provide adequate justification where those planned levels of participation vary by more than 15% from the group's incidence in the eligible population. The prime sponsor shall serve those most in need and may select specific target groups.

The selection of such groups shall be included in the justification of the variances noted above, and should constitute the principal reason for such vari-

ance. Variances for planned male and female service levels may warrant review even within the 15% benchmark.

(c) The recipient shall take positive steps, such as active recruitment, to ensure that the planned levels of participation are realized.

Subpart E—Prevention of Fraud and Program Abuse

§ 676.61 General.

(a) To ensure the integrity of the CETA programs, special efforts are necessary to prevent fraud and other program abuses. Fraud includes deceitful practices and intentional misconduct, such as willful misrepresentation in accounting for the use of program funds. "Abuse" is a general term which encompasses improper conduct which may or may not be fraudulent in nature. While any violation of the Act or regulations may constitute fraud or program abuse, this Subpart E identifies and addresses those specific program problems which were of most concern to the Congress during the reauthorization of CETA.

(b) This Subpart further sets forth specific responsibilities of recipients and subrecipient and of the Secretary to prevent fraud and program abuse in CETA programs.

§ 676.62 Conflict of interest.

(a) No member of any council under the Act shall cast a vote on any matter which has a direct bearing on services to be provided by that member or any organization which such member directly represents or on any matter which would financially benefit such member or any organization such member represents (sec. 121(h)(2)). Members of the PIC may vote on the Title VII Supplement. However, they may not vote on agreements or other matters which would financially benefit themselves or their organization.

(b) Each recipient and subrecipient shall avoid personal and organizational conflict of interest in awarding financial assistance and in the conduct of procurement activities involving funds under the Act in accordance with the code of conduct requirements set forth in 41 CFR 29-70.216-4 (sec. 123(g)).

(c) Neither the Secretary nor any recipient or subrecipient shall pay funds under the Act to any nongovernmental individual, institution or organization to conduct an evaluation of any program under the Act if such individual, institution or organization is associated with that program as a consultant or technical advisor (sec. 121(h)(1)).

§ 676.63 Kickbacks.

No officer, employee or agent of any recipient or subrecipient shall solicit or accept gratuities, favors or anything or monetary value from any actual or potential subrecipient or contractor or supplier (sec. 123(g) and 41 CFR 29-70.214-4).

§ 676.64 Commingling of funds.

Recipients shall comply with the applicable requirements of 41 CFR 29-70.201-2, regarding separate bank accounts (sec. 123(g)).

§ 676.65 Charging of fees.

(a) No funds under this Act shall be used for the payment of a fee charged to an individual for the placement of that individual in a training or employment program under the Act.

(b) No person or organization, including private placement agencies, may charge a fee to any individual for the placement or referral of that individual in or to such program.

(c) Any contract requiring the individual to pay such fees therefore, shall not render the individual liable for such fees (sec. 123(j)).

(d) Nothing in this section shall be interpreted as prohibiting the recipient or subrecipient from entering into an agreement for the purpose of obtaining outreach, recruitment and/or intake services, as part of its approved intake system, provided the individuals served are not charged a fee.

676.66 Nepotism.

(a) *Restriction.* No recipient, subrecipient, or employing agency may hire a person in an administrative capacity, staff position, public service employment position, or on-the-job training position funded under the Act if a member of that person's immediate family is engaged in an administrative capacity for that recipient, subrecipient, or employing agency. The extent that an applicable State or local legal requirement regarding nepotism is more restrictive than this provision, such State or local requirement shall be followed (sec. 123(g)).

(b) For purposes of this section:

(1) The term "immediate family" means wife, husband, son, daughter, mother, father, brother, brother-in-law, sister, sister-in-law, son-in-law, daughter-in-law, mother-in-law, father-in-law, aunt, uncle, niece, nephew, stepparent, and stepchild.

(2) The term "person in an administrative capacity" includes those persons who have overall administrative responsibility for a program including all elected and appointed officials who have any responsibility for the obtaining of and/or approval of any grant funded under the Act, as well as other officials who have influence or control over the administration of the pro-

gram, such as the project director, deputy director and unit chiefs, and persons who have selection, hiring, placement or supervisory responsibilities for public service employment or OJT participants. Persons who are economically disadvantaged and serving on the prime sponsor's planning council, youth council, PIC, or State employment and training council shall not be considered persons in an administrative capacity.

676.67 Child labor.

All recipients and subrecipients shall comply with applicable Federal, State and local child labor laws.

676.68 Political patronage.

(a) No recipient or subrecipient may select, reject, or promote a participant based on that individual's political affiliation or beliefs. The selection or advancement of employees as a reward for political services or as a form of political patronage, whether or not the political service or patronage is partisan in nature, is prohibited.

(b) There shall be no selection of subrecipients or contractors based on political affiliation (sec. 123(g)).

§ 676.69 Political activities.

(a) No program under the Act may involve political activities (sec. 131(a)).

(1) No participant may engage in partisan or nonpartisan political activities during hours for which the participant is paid with CETA funds.

(2) No participant may, at any time, engage in partisan or nonpartisan political activities in which such participant represents himself/herself as a spokesperson for the CETA program.

(3) No participant may be employed or outstationed in the Office of a Member of Congress or a State or local legislator or on any legislative committee or staff.

(4) No participant may be employed or outstationed in the offices of any elected executive official, chief executive officers or officers of a State or a unit of general local government.

(b) Persons governed by Chapter 15 of Title 5, United States Code, the Hatch Act, shall comply with its provision as interpreted by the United States Civil Service Commission. These provisions apply:

(1) to persons (including participants) employed by State and local government in the administration of the CETA program; and

(2) generally to any participant whose principal employment is in connection with an activity financed by other Federal grants or loans (sec. 131(b)).

§ 676.70 Lobbying activities.

No funds provided under the Act may be used in any way:

(a) to attempt to influence in any manner a member of Congress to favor or oppose any legislation or appropriation by Congress (sec. 123(g) and 18 USC 1913); or

(b) for lobbying State or local legislators (sec. 123(g)).

§ 676.71 Sectarian activities.

(a) No funds under the Act may be used in support of any religious activity.

(b) No participant may be employed in the construction, operation, or maintenance of such part of any facility as is used or will be used for sectarian instruction or as a place of religious worship (sec. 121(a)(2)).

(c) Funds may not be used to support any anti-religious activities, such as the preparation or the dissemination of anti-religious materials, whether directed against any particular religion or religions or against the practice of religion in general (sec. 123(g)).

(d) This does not preclude religious organizations from the administration or operation of CETA programs or the use of religious facilities in the operation of such programs.

§ 676.72 Unionization and antiunionization activities/work stoppages.

(a) No funds under the Act shall be used in any way to either promote or oppose unionization (sec. 123(g)).

(b) No individual shall be required to join a union as a condition for enrollment in a program in which only institutional training is provided, unless such institutional training involves individuals employed under a collective bargaining agreement which contains a union security provision (sec. 121(n)(2)).

(c) No participant in work experience or public service employment may be placed into, or remain working in, any position which is affected by labor disputes involving a work stoppage. If such a work stoppage occurs during the grant period, participants in affected positions must either be relocated to positions not affected by the dispute, or be suspended through administrative leave or other means. The grantee shall make every effort to relocate participants, who wish to remain working, into suitable positions unaffected by the work stoppage.

(d) No person shall be referred to or placed in an on-the-job training position affected by a labor dispute involving a work stoppage and no payments may be made to employers for the training and employment of participants in on-the-job training during the periods of work stoppage.

§ 676.73 Maintenance of effort.

(a) To ensure maintenance of effort under all programs under the Act,

(1) Recipients and subrecipients shall ensure that such programs:

(i) Result in an increase in employment and training opportunities over those which would otherwise be available (sec. 121(e)(1));

(ii) Not result in the displacement of currently employed workers, including partial displacement, such as reduction in hours of nonovertime work, wages, or employment benefits (sec. 122(e)(2)); and

(iii) Not impair existing contracts for services or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed (sec. 121(e)(3) and (g)(1)), including services normally provided by temporary, part-time or seasonal workers or through contracting such services out.

(2) Funds under this Act shall supplement, and not supplant, the level of funds that would otherwise be made available from non-Federal sources for the planning and administration of programs (sec. 121(g)(1)(c)).

(b) In addition to the requirements of paragraph (a) of this section, for public service employment programs funded under this Act:

(1) Recipients and subrecipients shall ensure that such public service employment positions shall not

(i) Substitute for existing federally assisted jobs (section 122(e)); and

(ii) Be created in any promotional line that will infringe in any way upon promotional opportunities of persons currently in jobs not funded under the Act (sec. 122(d)).

(2) Whenever a promotional freeze affects non-CETA funded employees it shall apply to CETA participants similarly employed.

(3) No participant shall be hired into, or remain working in, any position when:

(i) The same or substantially equivalent position is vacant due to a hiring freeze, unless the prime sponsor can demonstrate that the freeze resulted from lack of funds to sustain staff levels and was not established in anticipation of the availability of funds under the Act;

(ii) Any other person not supported under the Act or by other Federal funds (other than general revenue sharing) is on lay-off from the same or any substantially equivalent job. The same or equivalent job means any job or classification for which:

(A) Per a personnel code or practice or per a collective bargaining agreement, a recall list is maintained of former employees, who have the first right to any job vacancies occurring within a specific period of time in the classification(s).

(B) If there is no recall list, without other policy, practice or contractual obligation, one or more employees

have been laid off due to a lack of funds or work from a job in the classification any time during the last two operating years of the department or agency (sec. 122(c)(1)).

(4) When termination of CETA participants is imminent due to conditions noted in (3) above, the prime sponsor shall make every feasible attempt to place such participants into other non-affected positions or otherwise attempt placement into unsubsidized jobs or into Title II B.

(5) No former employees laid off or terminated in anticipation of CETA funding of a position may be rehired under CETA into such a position.

(6) A recipient or subrecipient shall not use CETA funds in any manner which results in a reduction of the customary level of public service provided by itself or another public entity in the area, by allowing PSE participants to be placed with or outstationed to private nonprofit organizations.

(c) Prime sponsors shall notify the RA in writing of any layoff or hiring freeze and of any recall rights of employees on layoff, in a department or agency where public service employment participants are employed. Prime sponsors shall, at the direction of the RA, submit documentation and budgetary expenditure records, revenue statements, and other available information relevant to determination under this Section. RA's shall not approve any plan unless prime sponsors have submitted, when directed by the RA, conclusive evidence that the proposed use of funds fully meets the requirements of this Section.

§ 676.74 Theft or embezzlement from employment and training funds; improper inducement; obstruction of investigations and other criminal provisions.

The criminal provision of 18 U.S.C. 665 states that:

(a) Whoever, being an officer, director, agent or employee of, or connected in any capacity with, any agency receiving financial assistance under the Comprehensive Employment and Training Act knowingly hires an ineligible individual or individuals; embezzles, willfully misapplies, steals, or obtains by fraud any of the moneys, funds, assets, or property which are the subject of a grant or contract of assistance pursuant to such Act shall be fined not more than \$10,000 or imprisoned for not more than 2 years, or both; but if the amount so embezzled, misapplied, stolen, or obtained by fraud does not exceed \$100, such person shall be fined not more than \$1,000 or imprisoned not more than 1 year, or both.

(b) Whoever, by threat of procuring dismissal of any person from employment, or of refusal to renew a contract

of employment in connection with a grant or contract of assistance under the Comprehensive Employment and Training Act, induces any persons to give up any money or thing of any value to any person (including such grantee agency) shall be fined not more than \$1,000, or imprisoned not more than 1 year, or both.

(c) Any person who willfully obstructs or impedes, or endeavors to obstruct or impede, an investigation or inquiry under the Comprehensive Employment and Training Act or the regulations thereunder, shall be punished by a fine of not more than \$5,000, or by imprisonment for not more than 1 year, or by both such fine and imprisonment.

(d) In addition to the criminal provisions set forth in paragraph (a), (b) and (c) of this section, individuals may be held criminally liable under other Federal laws such as 18 USC sections 600 and 601 if they:

(1) Directly or indirectly, promise any employment, position, compensation, contract, appointment, or other benefit, provided for or made possible in whole or in part by funds under the Act, or any special consideration in obtaining any such benefit, to any person as consideration, favor, or reward for any political activity or for the support of, or opposition to, any candidate or any political party in connection with any general or special election to any political office, or in connection with any primary election or political convention or caucus held to select candidates for any political office (18 USC 600); or

(2) Directly or indirectly, knowingly causes or attempts to cause any person to make a contribution of a thing of value (including services) for the benefit of any candidate or any political party, by means of the denial or deprivation, or the threat of the denial or deprivation, of any employment or benefits funded under the Act (18 USC 601).

§ 676.75 Responsibilities of recipients and subrecipients for preventing fraud and program abuse and for general program management.

(a) Each recipient and subrecipient shall establish and use internal program management procedures sufficient to prevent fraud and program abuse.

(b) Each recipient and subrecipient shall ensure that sufficient, auditable, and otherwise adequate records are maintained which support the expenditure of all funds under the Act. Such records shall be sufficient to allow the Secretary to audit and monitor the recipients' and subrecipients' programs and shall include the maintenance of a management information system in

accordance with the requirements of § 676.34 (secs. 103(a)(1) and 123(g)).

(c)(1) Prime sponsors, as part of their internal program management procedures, shall establish a monitoring unit which shall be independent of, and not accountable to, any other unit being monitored. This unit shall report to a level of management, which may include the CETA director or the chief-elected official, which will insure adequate monitoring coverage and appropriate action on findings and recommendations. The organizational location of this unit shall be sufficient to maximize its objectivity, facilitate its access to information necessary to carry out its monitoring responsibilities and to minimize organizational conflict of interest.

(2) The independent monitoring unit shall periodically monitor and review through on-site visits, program data, program administration and management practices supported with funds under the Act in order to insure compliance with the Act, the regulations and the terms of any subagreements entered into under the prime sponsor's grant. Examples of areas of monitoring are:

(i) Review all systems for controlling program administration, particularly systems for determining participant eligibility;

(ii) Review pay records and attendance reports;

(iii) Interview participants to determine job-related problems;

(iv) Examine worksites and work conditions;

(v) Review plans/procedures and subrecipient capability to carry out programs and activities;

(vi) Review of participant progress with subrecipient;

(vii) Insure subrecipient is maintaining records on all expenditures of CETA funds;

(viii) Review affirmative action plans as applicable.

(3) The independent monitoring unit shall:

(i) Make recommendations to the prime sponsor for corrective action whenever it identifies noncompliance with the Act, the contract or these regulations;

(ii) Document its monitoring and review activities, the findings resulting therefrom, and any recommendation made for corrective action;

(iii) Maintain on file the prime sponsor's replies to its monitoring reports pursuant to paragraph (5) below.

(4) The prime sponsor shall ensure that the monitoring unit is adequately staffed and trained to fulfill its responsibilities (sec. 121(q)).

(5) The prime sponsor shall review all monitoring reports submitted to it by the monitoring unit, acknowledge receipt thereto and respond to the

monitoring unit with respect to the corrective action taken or planned in response to the recommendations made.

(6) The prime sponsor shall further require each subrecipient which has the administrative capability to establish and maintain an independent monitoring unit which shall monitor the subrecipients' program through review of data, observation of operations and examination of records relating to the subrecipient's agreement in order to ensure compliance with:

(i) The Act and the regulations;

(ii) The provisions of its subagreement; and

(iii) The provision of subagreements awarded by it.

(d) Eligibility determination and verification. Except for Job Corps and YACC, each recipient, and any subrecipient(s) delegated responsibility for the determination of eligibility in accordance with subparagraph (e)(2) of this section, shall be responsible for developing and maintaining a system which ensures an accurate determination of eligibility based on the information provided at the time of application and the verification of that information (sec. 104(c)(3)). The system shall, at a minimum, include:

(1) An application form to record all information necessary to determine eligibility which shall include such items as the:

(i) Applicant's age

(ii) Applicant's residence

(iii) Applicant's citizenship or legal residency status

(iv) Size of applicant's family

(v) Amount and sources of family income

(vi) Applicant eligibility for public assistance

(vii) Applicant's employment status and history including:

(A) Applicant's present employment status

(B) Whether applicant was laid off from most recent job or has received a notice of layoff from present job

(C) Length of employment in present position

(D) Skill level of applicant's present job

(E) Opportunity for applicant's re-employment at present skill level

(F) Dates of applicant's employment for the 20-week period preceding application

(G) Reason(s) for applicant's employment termination during the 26 weeks preceding application

(vii) Applicant's handicapped status

(viii) Applicant's status as institutionalized person

(ix) Applicant's school status

(x) Applicant's veteran status including date of separation

(xi) Applicant's previous period of participation within the same or other prime sponsor's programs.

(2) The signature of the applicant on an application form attesting that the information on the application is true to the best of the applicant's knowledge and acknowledging that such information is subject to verification and that falsification of the application shall be grounds for the participant's termination and may subject the applicant to prosecution under law. In the case of an applicant who is a minor, (except minors who are heads of households) the signature of the parent, responsible adult or guardian is also required.

(3) The signature of the intake officer on the application.

(4) Review of all applications within 30 days of the date of enrollment, by someone other than the intake officer, to determine that:

(i) The application is complete;

(ii) The determination based on the information contained on the application was correct; and

(iii) The information on the application is internally consistent and in all other regards reasonable.

(5) Immediate verification of the eligibility of those participants whose applications are determined by the review in paragraph (4) to be deficient or internally inconsistent.

(6) Verification of participant eligibility on a quarterly basis of a statistically significant sample of participants enrolled during the preceding 3 months.

(7) Maintenance of adequate documentation to ensure the credibility of the eligibility determination, which shall at a minimum consist of the following:

(i) A completed application for participation;

(ii) Documentation of the review conducted pursuant to paragraph (d)(4) of this section and the verification conducted pursuant to subparagraphs (5) and (6) of this section; and

(iii) Records of all actions taken to correct deficiencies identified in the eligibility determination procedures.

(8) Immediate termination of any participant determined to be ineligible.

(9) Prime sponsors may delegate the responsibility for determination of eligibility, under reasonable safeguards which include, in addition to the requirements of (d)(1-8) of this section, provision for reimbursement of costs, incurred as a result of erroneous determinations made deliberately or with insufficient care (sec. 123(i)).

§ 676.76 Action required of the Secretary.

The Secretary shall annually assess the effectiveness of the monitoring units established in accordance with

the requirements of § 676.75(d)(1) of these regulations (sec. 121(q)).

Subpart F—Complaints, Investigations, and Sanctions

§ 676.81 Scope and purpose.

(a) *General.* This part establishes the procedures adopted by the Secretary to receive, investigate and resolve complaints, and conduct hearings to adjudicate disputes in matters arising under the operation and conduct of programs funded under the Comprehensive Employment and Training Act, as amended, 29 U.S.C. § 801 *et seq.* (CETA). The amendments to CETA enacted by Public Law 95-524, 92 Stat. 1909 (October 27, 1978) substantially increase the federal responsibility for monitoring and correcting deficiencies in CETA funded programs by providing significant new remedies and sanctions that may be invoked by the Secretary to correct deficiencies. Judicial review of final action of the Department after opportunity for an administrative hearing (except as provided for emergency situations described in section 106(e) of the Act) has been exclusively established in the United States Courts of Appeals for the circuits in which the affected parties reside. Accordingly, it is the purpose of this part to establish orderly procedures for receiving complaints, conducting investigations and, where required, invoking sanctions upon notice and hearing as provided in the Act. These regulations govern the practice for adjudicative hearings, the rendering of decisions and final action by the Department of Labor pursuant to the Act.

(b) *Investigations initiated; delegations of authority.* CETA inquiries, investigations and hearings may be originated upon the request of the President, Congress, governmental agencies or the Attorney General; upon referrals by the courts; upon complaint by members of the public; or by the Department of Labor upon its own initiative. The Secretary hereby delegates to the Assistant Secretary for the Employment and Training Administration, the authority to initiate investigations. The Assistant Secretary of Labor for Employment and Training shall establish appropriate procedures for conducting investigations into non-criminal matters.

(c) *Policy.* It is the policy of the Secretary of Labor to receive information concerning alleged violations of the Act, the regulations, or the terms of any grant, cooperative agreement, contract, subgrant, subcontract, or other agreement from any person. It is also the policy of the Secretary to refuse to disclose the identity of any person who has furnished information relating to, or assisting in, and investigation of a possible violation of law relat-

ing to a program funded or operated pursuant to the Act in order to effectively accomplish the federal responsibilities for insuring compliance with the Act and regulations; provided however, that where

(1) the identity of the person furnishing the information has already been disclosed, or

(2) disclosure of the person's identity is essential to assure a fair determination of the issues, the Inspector General, or Administrative Law Judge presiding over a hearing in which the matter arises, may disclose upon such conditions as will promote the continued receipt of confidential information by the Department and effectuate the protections and policies stated in paragraph (d) of this section.

(d) *Discriminatory discharge prohibited.* No person, and no recipient under the Act, in connection with the administration of a program, may discharge or in any other manner discriminate or retaliate against any person because such person has filed any complaint or instituted or caused to be instituted any proceeding under or related to the Act, or has testified or is about to testify in any such proceeding or investigation, or unlawfully deny to any person a benefit to which that person is entitled under the provisions of the Act or the regulations in Parts 675-695 of this Chapter.

(e) Whenever any person believes that a prime sponsor or other recipient has violated any provisions of the Act or regulations, and that violation also constitutes a violation of the Federal or a State Constitution, a Federal statute other than CETA, or a State or local law, that person, as to the non-CETA violation may institute a civil action or pursue other remedies authorized under Federal, State, or local law or against the prime sponsor or other recipient without first exhausting the remedies in this subpart. For example, if a subrecipient believes that a prime sponsor has breached the subgrant agreement between the prime sponsor and itself, the subrecipient may institute a civil action for breach of contract in a State court if so authorized by State law. Nothing in this paragraph shall allow any person to join or sue the Secretary except after exhausting the remedies in this subpart. Furthermore, nothing in this paragraph shall allow a person to file a suit which includes a violation of CETA or these regulations without first exhausting the administrative remedies described in this subpart. This paragraph shall not be construed to create a private right of action. (Secs. 106(1) and 132(d)).

(f) With the consent and consideration of State agencies charged with the administration of State laws, the Secretary may elect for the purpose of

carrying out this subpart and Section 133 of the Act, to utilize the services of State and local agencies and their employees, and notwithstanding any other provision of law, may reimburse, in whole or in part, such State and local agencies and their employees for services rendered for such purposes. (Section 106(h)).

§ 676.82 Non-adjudicative procedures; investigation; compulsory processes.

(a) *Investigational policy.* The Department of Labor encourages voluntary cooperation in its investigations of activities under the Act. Where the public interest requires, however, the Department may, in any matter under investigation, invoke any or all of the compulsory processes authorized by law.

(b) *By whom conducted.* Inquiries and investigations are conducted by Department of Labor Representatives designated and duly authorized for the purpose. Such representatives are authorized to exercise and perform the duties of their office in accordance with the laws of the United States and the regulations of the Department of Labor. Included among such duties is the administration of oaths and affirmations in any matter under investigation by the Department of Labor.

(c) *Notification of purpose.* Any person under investigation compelled or requested to furnish information or documentary evidence is entitled to be advised with respect to the purpose and scope of the investigation upon the request of such person.

(d) *Subpoenas in investigations.* (1) The Assistant Secretary of Labor for Employment and Training, may issue a subpoena directing the person named therein to appear before a designated representative at a designated time and place to testify or to produce documentary evidence, or both, relating to any matter arising under the Act being investigated. The Associate Solicitor for Employment and Training Legal Services and the Regional Solicitors and Regional Attorneys (without power of redelegation) for good cause shown, may extend the time prescribed for compliance with subpoenas issued during the investigation of any matter. Any official who is authorized to issue any subpoena under this paragraph is authorized to consider and approve the terms of satisfactory compliance therewith. The Chief Administrative Law Judge, without power of redelegation, may issue investigational subpoenas for matters involving standards of conduct for attorneys practicing before an Administrative Law Judge in a proceeding under the Act.

(2) Any motion to limit or quash any investigational subpoena shall be filed with the Chief Administrative Law

Judge within ten (10) days after service of the subpoena, or, if the return date is less than ten (10) days after service of the subpoena, within such other time as may be allowed. All motions to limit or quash any investigational subpoenas shall be ruled upon by an Administrative Law Judge.

(3) The timely filing of a motion to limit or quash any investigational subpoena shall stay the requirement of a return on the portion challenged. If the Administrative Law Judge has not ruled upon the motion by the return date, or if the ALJ rules subsequent to the return date, and the ruling denies the motion in whole or in part, the Administrative Law Judge shall either specify a new return date or direct that the office which issued the subpoena do so.

(4) All motions to limit or quash investigational subpoenas, and the investigator's responses thereto, shall be part of the public records of the Office of the Administrative Law Judges except as otherwise provided in these regulations.

(e) *Noncompliance.* (1) In cases of failure to comply with compulsory processes (such as a subpoena or a summons), appropriate action may be initiated by the Attorney General, including actions for enforcement, forfeiture, penalties or criminal actions.

(2) The Solicitor of Labor, with the consent of the Attorney General, is hereby authorized by the Secretary of Labor to institute on behalf of the Secretary an enforcement proceeding.

(i) in connection with the failure or refusal of a person, partnership, corporation, recipient or other entity to comply with or to obey a subpoena if the return date or any extension thereof has passed;

(ii) and to request on behalf of the Secretary the institution of civil actions, as appropriate, if the return date or any extension thereof has passed including seeking civil contempt in cases where a court order enforcing compulsory process has been violated;

(iii) and to request, on behalf of the Secretary, the commencement, when deemed appropriate by the Solicitor, of a civil action in connection with the failure of a person, partnership, corporation, recipient or other entity to timely file any report required by the Act or regulations if the due date or any extension thereof has passed.

§ 676.83 Complaint and hearing procedures at the recipient level.

(a) Each recipient shall establish and maintain a procedure for resolving any complaint alleging a violation of the Act, the regulations under the Act, the terms of the grant, or its subgrants including any complaint arising in connection with programs operated

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by its subrecipients. Such complaint procedures must meet the requirements of this section. The complaint procedure shall provide for final resolution of complaints within 60 calendar days after filing the complaint. Where existing complaints or grievance procedures include the elements set forth in this subsection, recipients may adopt such mechanism as, or as part of, their CETA procedure. (Section 106(a)(1)).

(1) When a participant is an employee of a recipient and alleges a violation of the Act, the regulations, or the grant as well as a violation of the terms and conditions of employment under State or local law or a collective bargaining agreement; such participant may pursue either the complaint and hearing procedures set forth in this section or applicable grievance procedures under state or local law or a collective bargaining agreement. Where they choose such other grievance procedures in lieu of the procedures set forth in this section, the time constraints specified in paragraphs (a) and (f) of this section shall not apply.

(i) Nothing in paragraph (1) shall require a private for profit employer to establish a new grievance procedure or to modify an existing procedure as a condition of participating in programs for the training and hiring of participants under the Act. (106(a)(1)).

(ii) Nothing in paragraph (1) shall be construed to deny the availability to any of the elements in the procedure for resolving complaints detailed in paragraphs (e) and (f) of this section.

(2) Complaints which involve activities under the Act but which do not allege violations of the Act, the regulations under the Act or the grant shall not be subject to the procedures set forth in this section. The recipient should endeavor to informally resolve such complaints or refer such complainants to appropriate enforcement agencies or applicable regular complaint or grievance mechanism of the jurisdiction or agency.

(3) Except for issues between the recipient and its subrecipients, issues involving more than one of its subrecipients, or complaints directly involving the operations or responsibilities of the recipient, the recipient may delegate the authority to operate and maintain the complaint and hearing procedure to its subrecipient. Where the procedure is delegated, the recipient may provide for an appeal to itself from the decision of the subrecipient, or the recipient may provide that the subrecipient's decision is the final decision of the recipient. Where the procedure is delegated, the recipient shall assure that the complaint is resolved

properly and promptly within 60 days after a complaint is filed.

(4) With the exception of complaints alleging fraud or any criminal activity, the filing of a grievance must be made within one year of the alleged occurrence. (Section 106(a)(1)).

(5) Complaints may be brought by any individual or organization including but not limited to, program participants, subrecipients, contractors, staff of the recipient or subrecipient, applicants for participation or financial assistance, Labor unions, and community-based organizations. (Section 106(a)(1)).

(6) Nothing in this section precludes an individual or an organization from filing a grievance or complaint simultaneously on the same issue with other agencies or under other procedures where applicable, such as filing a grievance under a collective bargaining agreement where there is an alleged violation of the labor agreement as well as a possible violation of the Act.

(b) Participants shall be provided, upon enrollment, a written description of the complaint procedures including notification of their right to file a complaint and instructions on how to do so. Recipients should designate an individual to monitor the operation of the complaint procedures, to assure that complaints and related correspondence are logged and filed, to assure that assistance is available in properly filing complaints to those with complaints, and to assure the availability, coordination, and promptness, of all elements of the procedures. Upon filing a complaint and at each stage thereafter, each complainant should be notified in writing of the next step in the procedure.

(c) Complainants alleging discrimination by race, color, or national origin (violations of Title VI of the Civil Rights Act of 1964) shall be fully apprised of their right to choose whether the complaint be handled pursuant to the procedures set forth in this subpart or pursuant to 29 CFR Part 31 which covers nondiscrimination in federally-assisted programs of the Department of Labor. Such complaints should be logged and filed separately by the recipient. Those complainants electing to have such complaints handled according to the procedures set forth in this subpart, shall exhaust the recipient procedure specified in this section before they may file a complaint at the Federal level. Those electing to resolve the complaint pursuant to 29 CFR Part 31 may file directly with the appropriate RA.

(d) Where local law requires regular employees of a recipient to receive notice and an opportunity for a hearing prior to or subsequent to any ad-

verse action including termination of employment, similarly employed CETA participants shall receive the same benefit period.

(e) The complaints resolution procedure shall include:

(1) Opportunity to file a written complaint. Assistance shall be available to the complainant.

(2) Opportunity for informal resolution of the complaint.

(3) Notification of an opportunity for a hearing when an informal resolution has not been accomplished. The notice shall state the procedures for requesting a hearing and shall describe the elements in the recipient's hearing procedure including those set forth in paragraph (f).

(4) Opportunity to amend the complaint prior to a hearing.

(5) Opportunity for a hearing pursuant to paragraph (f) of this section within 30 days of filing the complaint.

(6) A final written decision of the recipient which shall be made within 60 calendar days of the filing of the complaint (section 106(a)(1)) and shall include:

(i) The reason(s) for the decision;

(ii) A statement that the procedures delineated in this section have been completed; and

(iii) Notice of the right to file a complaint at the Federal level pursuant to section 676.85 of this subpart where any party disagrees with aspects of the recipient's decision.

(f) *Hearing procedure.* A hearing shall be provided to a participant or subrecipient within 30 working days after filing of a complaint. The hearing procedure shall include but shall not be limited to:

(1) Written notice of the date, time and place of the hearing, the manner in which it will be conducted, and the issues to be decided. Other interested parties may apply to the recipient for notice. Such other interested party is a person or organization supporting the position of the complainant, or any person or organizations potentially affected by the outcome of the complaint. The notice to other interested parties shall include the same items as to the complainant shall further state whether such interested parties may participate in the hearing and if applicable, the method by which they may request such participation;

(2) Opportunity to withdraw the request for hearing in writing before the hearing;

(3) Opportunity to request rescheduling of the hearing for good cause;

(4) Opportunity to be represented by an attorney or representative appointed by the complainant;

(5) Opportunity to bring witnesses and/or documentary evidence;

(6) Opportunity to have records or documents relevant to the issues to be decided at the hearing produced by their custodian when such records or documents are kept by or for the recipient or its subrecipient in the ordinary course of business;

(7) Opportunity to question any witnesses or parties;

(8) The right to an impartial hearing officer;

(9) A written decision from the hearing officer to the recipient, complainant(s), and any other interested parties. The written decision shall include synopsis of facts, statement of reason for the decision and statement of remedies to be applied; and

(10) Where a complaint procedure provides for a recipient review of the hearing officer's decision, the recipient shall provide a final written decision to the complainant(s) and any other parties.

§ 676.84 Exhaustion of recipient level procedure.

(a) Except as provided in § 676.83(c), no complainant who is a participant or subrecipient may file a complaint at the Federal level until the recipient level procedure specified in section 676.83(e) of this subpart has been exhausted. Other complainants shall exhaust the procedures specified in section 676.83(g) of this subpart before filing a Federal level complaint.

(b) Complainants who have not exhausted the procedures at the recipient level may file the complaint directly at the Federal level when the grant officer determines that:

(1) The recipient has not acted within the time frames specified in § 676.83;

(2) The recipient's procedures are not in compliance with § 676.83; or

(3) An emergency situation exists.

§ 676.85 Complaints, investigations, and hearing procedures at the Federal level.

(a)(1) *General; Final determination of substantial evidence.* Section 106(b) of the Act requires that a final determination of complaint shall be made within 120 days after receiving a complaint that satisfies the conditions specified in Section 106(a) of the Act (relating to exhaustion of a recipient's complaint procedure as provided in § 676.83 and .84). The non-criminal investigation and the final determination of substantial evidence (either supporting or not supporting the allegations of the complaint or the belief that a recipient is failing to comply with the requirements of the Act or the regulations) and procedures regarding notice, informal resolution or lack of informal resolution and notice of opportunity for hearing contained

in section 106(i) of the Act as established in § 676.86 below are part of the "final determination" process. The Grant Officer's resolution pursuant to section 106(i)(1) of the Act constitutes the "final determination" required to be accomplished within the 120 days specified in section 106(b) of the Act.

(2) *Final action distinguished.* Section 107 of the Act provides for judicial review of "final action" with respect to disapproval of a prime sponsor's "comprehensive employment and training plan under section 104 of the Act, or "final action" taken with respect to any recipient in the nature of a sanction under section 106. Such "final action" is not the same as a "final determination" subject to the 120 day time limitation used in section 106(b). Principles of due process as well as the public interest require that persons shall not be prejudiced by the imposition of unduly restrictive or arbitrary time limits on the preparation and presentation of essential evidence relating to a matter in controversy. Because section 106(i)(2) requires that an opportunity for a hearing shall be given prior to imposition of a sanction or disapproval of a comprehensive employment and training plan (except under the emergency conditions specified in section 106(e) of the Act), the Grant Officer's compliance with section 106(i)(1) of the Act within 120 days from the filing of the complaint satisfies the requirements of section 106(b) of the Act. Nevertheless, the rules of procedures for hearings "shall be construed to secure the just, speedy and inexpensive determination of every proceeding."

(b) *Contents of complaints.* Every complaint shall be filed in writing before the commencement of any investigation or corrective action shall be required. The complaint shall be deemed filed after satisfying the provisions of Section 106(a) of the Act, as amended, and §§ 676.83, 676.84 of these regulations and no later than 30 days from the date of the Notice of Final Action by the recipient. The complaint shall contain the following:

(1) The full name, telephone number (if any), and address of the person making the complaint.

(2) The full name and address of the respondent (the recipient or person against whom the complaint is made).

(3) A clear and concise statement of the facts, including pertinent dates, constituting the alleged violation.

(4) Where known, the provisions of the Act, regulations, comprehensive employment and training plan, or other agreement believed to have been violated.

(5) A statement disclosing whether proceedings involving the subject of the complaint have been commenced or concluded before any State or local

authority, including the recipient's complaint procedure (see § 676.83) and, if so, the date of such commencement or conclusion and the name and address of the authority.

(6) A statement that the procedures established by the recipient have been followed to completion by the complainant.

(7) A copy of the final decision of the recipient issued pursuant to § 676.83(e)(6) and (g)(3) of this subpart.

(8) A complaint when filed may be withdrawn only with the consent of the Grant Officer. If the complainant fails to cooperate or is unavailable, the complaint may be dismissed upon reasonable notice to the last known address of the complainant.

(c) *Initiation of investigations.* Whenever the Grant Officer receives a complaint filed in accordance with sections (a) and (b) above, the Grant Officer shall investigate the complaint if it alleges that any person or recipient is failing to comply with the requirements of the Act, the regulations or the terms of the Comprehensive Employment and Training Plan, or other agreement. In the absence of a complaint, an investigation may be initiated regarding whether a person or recipient is failing to comply with the requirements of the Act, the regulations or the terms of the Comprehensive Employment and Training Plan or other agreement. Investigations may also be initiated when the Grant Officer has reason to believe, because of an audit, report, onsite review, or otherwise that a recipient is failing to comply with those requirements.

(d) *ETA; Utilization of the Office of Investigation and Compliance.* the Assistant Secretary for Employment and Training may, for purposes of making any investigation, assign a complaint or classes of complaints to the Office of Investigation and Compliance of the Employment and Training Administration, under such conditions as may be appropriate. Such delegation shall not provide any bases for contesting any remedial action or not taken under the Act.

(e) *Reports.* Within 60 days after the filing of a complaint, or such additional time not to exceed 30 days as the Grant Officer may allow, an investigation shall be conducted and a conclusion made pursuant to § 676.86(a).

(1) If there is insufficient evidence to support the allegation informal resolution of the complaint may be undertaken or other action as may be appropriate, including dismissal.

(2) If there is substantial evidence to support the allegation, recommendations shall be made for any corrective action deemed appropriate, including imposition of any sanctions.

(f) *Criminal investigations.* Notwithstanding any other provision of this subpart, investigation of any matter concerning a potential federal criminal violation shall be conducted as the Inspector General shall direct pursuant to the powers granted by the Inspector General Act of 1978, Pub. L. 95-452, 92 Stat. 1101.

§ 676.86 Grant officer's final determination; request for hearing.

(a) Upon receipt of findings of questioned costs or activities, the grant officer shall review such findings through a specific examination of the regulations regarding the alleged violation to determine the allowability or disallowability of the costs or activity. Where specific mechanisms, management, monitoring, eligibility determination, corrective action or other systems or procedures are in the regulations, the grant officer shall review the manner in which the prime sponsor conformed to or implemented such requirements. Based on the circumstances regarding the questioned activities or costs and the conformance to requirements for implementation of systems, mechanism, or procedures, the grant officer shall initially determine whether to allow or disallow activities or costs. In any case in which the grant officer determines that there is sufficient evidence that funds have been misspent, the grant officer shall disallow the costs, except that costs associated with ineligible participants and public service employment programs may be allowed when:

(1) The activity was not fraudulent and the activity did not take place with the knowledge of the recipient or subrecipient;

(2) Immediate action was taken to remove the ineligible participant;

(3) Eligibility determination or other such systems were properly followed and monitored;

(4) Immediate action was taken to remedy the problem causing the questioned activity or ineligibility; and

(5) The magnitude of questioned costs or activities is not substantial.

(b) *Informal resolution.* Except as provided in paragraph (b) of this section, following the initial determination prescribed in paragraph (a) above, the Grant Officer shall immediately give written notice of an opportunity for informal resolution of the matters to the appropriate parties, which should include all interested parties specified by the Grant Officer in the notice. The Grant Officer shall not revoke a prime sponsor's plan, in whole or in part, nor institute corrective action or sanctions against a prime sponsor without first providing the prime sponsor with such written notice of his intended actions and the reasons upon which those intended ac-

tions are based, and also providing the prime sponsor with an opportunity to informally resolve those matters contained in the Grant Officer's notice.

(c) *Impasse.* If all the parties and Grant Officer cannot informally resolve any matter pursuant to paragraph (a), the Grant Officer shall, not later than 120 days after the filing of the complaint provide each party, with a written notice in duplicate by certified mail return receipt requested that (1) indicates that efforts to informally resolve matters contained in the original notice pursuant to paragraph (a) have been unsuccessful, and (2) lists those matters upon which the parties continue to disagree, and (3) lists any sanctions and corrective action, including any other alteration or modification of the plan, grant, agreement or program intended by the Grant Officer, and (4) informs the parties of their opportunity to request a hearing pursuant to these regulations.

(d) *Request for hearing.* Within 10 days of receipt of the Grant Officer's notice under paragraph (c) preceding, any affected prime sponsor, recipient, or complainant may request a hearing by filing a request for hearing with the Office of the Chief Administrative Law Judge of the Department of Labor, Room 700, Vanguard Building, 1111 20th Street, N.W., Washington D.C. 20036. The request for hearing is effective only when mailed by certified mail return receipt requested not later than 10 days after receipt of the Grant Officer's notice and received at the Office of the Chief Administrative Law Judge. The request for hearing shall be accompanied by a copy of the grant officer's notice issued pursuant to paragraph (b) of this section. The request for a hearing shall provide essentially as follows:

UNITED STATES DEPARTMENT OF LABOR,
WASHINGTON, D.C.

In the Matter of (name) _____ CETA
Prime Sponsor. Docket No. _____

REQUEST FOR HEARING

Notice is hereby given that _____ hereby requests a hearing on the enclosed final determination of the Grant Officer entered on the _____ day of _____, 19____, and that (counsel) (if any) is authorized to represent the undersigned and to receive all further communications concerning this case.

Attorney for Requesting Party: (If any)
(name) _____ Address _____ (Re-
questing Party) _____, Address _____

(e) *Same; notification of filing.* Upon the receipt of a request for hearing by any person or organization named in the Grant Officer's final determination, the Chief Administrative Law Judge shall by order promptly notify the Grant Officer and each party named in the Grant Officer's

final determination by certified mail, return receipt requested, that the request has been filed and the date of filing, that a complaint conforming to the rules contained in § 676.87 of the regulations must be filed by the party requesting the hearing and served upon the parties by a specified date, and of the right of all other parties to answer the complaint within 20 days of service of the complaint and to appear and participate in the proceeding provided they file a notice of intent to participate with the Office of the Chief Administrative Law Judge upon such terms as the Administrative Law Judge hearing the case shall order.

(f) *Automatic participation.* Attorneys employed by the Solicitor of Labor shall represent the Grant Officer. Whenever service is required to be made upon the Grant Officer after the filing of a request for hearing, service upon the Associate Solicitor for Employment and Training Legal Services, Room N-2101, 200 Constitution Avenue N.W., Washington, D.C. 20210, shall be deemed sufficient.

(g) *Discretionary hearing.* An opportunity for a hearing may also be extended when the Secretary determines that fairness and the effective operation of CETA programs would be furthered.

(h) *Emergency sanctions.* In emergency situations as determined by the Assistant Secretary, where it is necessary to protect the integrity of the funds, or insure the proper operation of the program, the Assistant Secretary may immediately terminate or suspend a grantee's authority to obligate funds, in whole or in part and withdraw unexpended funds and make alternative, temporary arrangements to carry out the grant program. Within 30 days after such termination of suspension the Secretary shall notify the grantee of the reason for the action and provide an opportunity to request a hearing. (Section 106(e)).

§ 676.87 Rules of procedure.

(a) *Referral to the Federal Rules of Civil Procedure.* On any procedural question not regulated by this subpart, the Act, or the Administrative Procedure Act, the Administrative Law Judge shall be guided to the extent practicable by any pertinent provision of the Federal Rules of Civil Procedure.

(b) *Filing.* All papers after the request for hearing required to be served on a party shall be filed with the Administrative Law Judge either before service or within a reasonable time thereafter. The filing of pleadings and other papers with the Office of Administrative Law Judges as required by these rules shall be made by filing them with the clerk, except that the

Administrative Law Judge may permit the papers to be filed with him, in which event, he shall note thereon the filing date and forthwith transmit them to the Clerk.

(c) *Consolidated or joint hearings.* In cases in which the same or related facts are asserted to constitute non-compliance with these regulations and the regulations of one or more other federal departments or agencies, the Administrative Law Judge may, by agreement with such other departments or agencies, where applicable, provide for the conduct of consolidated or joint hearings conducted in accordance with these rules.

(d) *Amicus curiae.* A brief of an amicus curiae may be filed only if accompanied by written consent of all parties, by leave of the Administrative Law Judge granted or on motion or on the request of the Administrative Law Judge, except that consent or leave shall not be required when the brief is presented by an officer or agency of the United States, or by a state, territory or commonwealth. The brief may be additionally filed with the motion for leave. A motion for leave shall identify the interests of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The amicus curiae shall file its brief within the time allowed the party whose position the amicus brief will support unless the Administrative Law Judge for cause shown shall grant leave for later filing, in which event the Administrative Law Judge shall specify in what period an opposing party may answer. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons, and the amicus curiae shall not participate in the conduct of the hearing, including the presentation of evidence and the examination of witnesses.

(e)(1) *Discovery.* The provisions governing discovery as provided in the Rules of Civil Procedure for the United States District Courts, Title V, 28 U.S.C., Rules 26 through 37, may be made applicable in any proceeding conducted under these regulations to the extent that the Administrative Law Judge concludes upon application that their use would contribute to the just, speedy, and inexpensive determination of the proceeding. A subpoena necessary to secure the attendance of a witness at a deposition (including the production of documents or things) shall be obtained and issued as provided in section 676.88(a) of these regulations.

(2) *Prehearing conference.* The Administrative Law Judge may direct the attorneys for the parties to appear before the Administrative Law Judge for a prehearing conference to consider the simplification of the issues and

such other matters as may aid in the disposition of the proceeding. The Administrative Law Judge shall make an order which recites the action taken at the conference and the agreements made by the parties as to any of the matters considered and which limits the issues to those not disposed of by admissions or agreements of counsel, and such order when entered controls the subsequent course of the proceeding, unless modified to prevent manifest injustice.

(3) *Prehearing procedures.* Prehearing conferences may be scheduled by the Administrative Law Judge upon reasonable notice in advance of the hearing in order to permit time in which to complete any prehearing stipulation. The purpose of this conference is to make a good faith effort.

(i) Discuss the possibility of settlement;

(ii) Stipulate to as many facts or issues as possible;

(iii) Examine all exhibits or documents and other items of tangible evidence to be offered by any party at the hearing;

(iv) Exchange the names and address of all witnesses; and

(v) prepare a prehearing stipulation in accordance with subsection (4) following.

§ 676.88 Hearings.

(a) *Time and place.* Hearings shall be held at a time and place ordered by the Administrative Law Judge upon reasonable notice to the parties. Due regard shall be given to the convenience of the parties and the witnesses in selecting a place for the hearing. Subpoenas necessary to secure the attendance of witnesses and the production of documents or things shall be obtained from the Office of the Administrative Law Judges and shall be issued pursuant to the authority contained in section 133(a)(3) of the Act incorporating 15 U.S.C. § 49.

(b) *Purpose.* The hearing is directed to receiving factual evidence and expert opinion, and sworn testimony related to the issues in the proceeding. Argument will not be received into evidence and witnesses will not be permitted to read prepared testimony into the record. Brief opening statements of the parties positions and what a party intends to prove may be permitted in the discretion of the Administrative Law Judge.

(c) *Evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination, shall be applied where reasonably necessary by the Hearings Officer conducting the hearing. The Hearings Officer may ex-

clude irrelevant, immaterial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues. A transcript shall be made of the oral evidence thereof is stipulated for the record. All decisions shall be based upon the hearing record and written findings shall be made.

(d) *Amendments to conform to the evidence.* When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respect as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made on motion of any party at any time; but failure to so amend does not affect the result of the hearing of these issues. If evidence is objected to at the hearing on the ground that it is not within the issues made by the pleadings, the Administrative Law Judge may allow the pleadings to be amended and shall do so freely when the presentation of the merits of the action will be subverted thereby and the objecting party fails to satisfy the Administrative Law Judge that the admission of such evidence would prejudice him in maintaining his action or defense upon the merits. The Administrative Law Judge may grant a continuance to enable the objecting party to meet such evidence.

(e) *Non-appearance of parties.* If a party fails to appear at a hearing the Administrative Law Judge may hear the cause on behalf of the remaining parties, or may accede to the cause on the briefs or dismiss the cause. If no present party appears, the cause will be decided on the briefs unless the Administrative Law Judge shall otherwise order.

(f) *Record for decision.* The transcript of testimony, exhibits and all papers and requests filed in the proceedings (except the correspondence section of the docket), including rulings and any proposed findings of fact and conclusions of law shall constitute the exclusive record for decision. Letters expressing views or urging action and other unsponsored written material regarding matters in issue in a hearing will be placed in the correspondence section of the docket file for the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 676.89 Post-hearing procedures.

(a) *Post-hearing briefs; findings and conclusions.* The Administrative Law Judge shall fix the time for filing post hearing briefs, which may contain proposed findings of fact and conclusions

of law and, if permitted, reply briefs. Briefs should include a summary of the evidence relied upon together with references to exhibit numbers and pages of the transcript, with citations of the authorities relied upon.

(b) *Decision.* After the time for submission of post-hearing briefs has expired, the Administrative Law Judge shall render a final decision adjudicating the cause. A copy of the final decision shall be served upon all parties and each amicus curiae, if any, as provided in section 676.86(d).

(c) *Contents of final decisions.* The decision of the Administrative Law Judge on the merits shall adjudicate and may provide for suspension or termination of, or refusal to grant or continue Federal financial assistance in whole or in part, and may contain such terms, corrective action, conditions, sanctions, back pay awards, and other provisions as are consistent with and will effectuate the purposes of the Act and regulations issued thereunder, including provisions designed to insure that no federal financial assistance will thereafter be extended under such program unless and until the prime sponsor or recipient corrects its non-compliance and makes satisfactory assurance that it will fully comply with the Act and regulations.

(d) *Adjustments in payments.* When after a hearing pursuant to this subpart it appears that program funds have been expended in violation of the Act, the regulations or grant, the Administrative Law Judge may direct, in order to prevent further unauthorized expenditures, that unexpended funds be returned or that funds otherwise payable under the Act be withheld in order to recover any amount expended for unauthorized purposes in any fiscal year. When such action is taken the recipient shall neither reduce program operations, nor reduce compensation to any participant, or otherwise expend less than those sums called for in the grant. Any such reduction in expenditures may be deemed sufficient cause for emergency termination.

(e) *Termination of grant.* When the final decision terminates the grant in whole or in part after hearing pursuant to this subpart, the final decision shall specify the extent of termination and the date upon which such termination becomes effective. Upon receipt of this notice, the recipient shall:

(1) Discontinue further commitments of grant funds to the extent that they relate to the terminated portion of the grant;

(2) Promptly cancel all subgrants, agreements and contracts utilizing funds under this grant to the extent that they relate to the terminated portion of the grant;

(3) Settle, with the approval of the Secretary, all outstanding claims arising from such termination;

(4) Submit, with a reasonable period of time, after the receipt of the notice of termination, a termination settlement proposal which shall include a final statement of all unreimbursed costs related to the terminated portion of the grant.

(f) *Reallocation based on noncompliance.* When the final decision after hearing pursuant to this subpart reallocates funds based on a determination of recipient noncompliance with the Act, regulations or grant, the final decision shall specify:

(1) Any revocation of the recipient's grant for the area, in whole or in part;

(2) The extent to which no further payments shall be made under the Act to the recipient; and

(3) The amount of funds which shall be returned from unexpended funds paid to the recipient during that fiscal year.

(4) Any funds that may be reallocated to the State or another recipient to serve the area formerly served by the recipient, including the desirability of providing direct federal service to the area through appropriate means.

§ 676.90 Final action; Judicial review.

(a) The final decision of the Administrative Law Judge constitutes final action within the meaning of the Act and the Administrative Procedure Act, 5 U.S.C. § 704, and shall be deemed accomplished upon the date of service of the final decision by the Office of the Administrative Law Judge in accordance with § 676.86(d).

(d) *Judicial review.* Judicial review of final action as defined in paragraph (a) preceeding shall be in accordance with section 107 of the Comprehensive Employment and Training Act, as amended.

(c) *Savings clause.* Nothing contained in this subpart shall be deemed to prejudice the separate authority of other law enforcement officials to pursue remedies and sanctions available outside the Comprehensive Employment and Training Act, such as 18 U.S.C. § 665 and other provisions of federal, state or local law; and nothing in this subpart shall be deemed to reduce the responsibility and full liability of the prime sponsors and other recipients.

PART 677—PROGRAMS UNDER TITLE II

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AUTHORITY: Sec. 126 of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 801 *et seq.*), unless otherwise noted.

Subpart A—General Provisions

§ 677.1 Purpose.

It is the purpose of this Part to provide employment and training to ease barriers to labor force participation encountered by economically disadvantaged persons, to enable such persons to secure and retain employment at their maximum capacity, and to increase their earned income.

§ 677.2 Participant assessment.

(a) Prime sponsors shall assess each participant upon entry into the program to determine which activities and services would be appropriate. Based on the assessment, the prime sponsor, in conjunction with each participant, shall develop an Employability Development Plan shall identifying the program options and services

available and appropriate for the participant.

(b) In establishing such a plan, the prime sponsor shall consider the participant's skills, interest and career objectives, subject to the availability of services, and barriers to employment or advancement faced by the participant (sec. 205(a)).

(c) The Employability Development Plan shall include, but need not be limited to, the following: (sec. 205).

(1) Assessment data showing the participant's employability readiness;

(2) Barriers to employment faced by the participant;

(3) Specific employment and training needs;

(4) Specific services and activities to be developed and provided to meet those needs; and

(5) A specific plan for individualized transition from program activities to placement in unsubsidized employment.

(d) A copy of the plan shall be retained in the permanent record, and a copy given to the participant.

(e) The Employability Development Plan shall be reviewed periodically throughout the duration of participation, and revised accordingly. (sec. 205(b)).

§ 677.3 Agreements with State or local education agencies.

(a) The prime sponsor shall make arrangements through nonfinancial or financial agreements with State or local educational agencies or post-secondary institutions for the provision of employment and training programs. Such programs shall be designed to prepare individuals for employment. Educational agencies in the area shall be notified by the prime sponsor of the opportunity to enter into such agreements.

Specific arrangements for entering into such agreements shall be provided to those which express an interest, and the procedures in (e) shall apply to such agencies. (sec. 203(a)).

(b) In the development of the agreement, the prime sponsor shall carefully examine educational resources, consider use of services available at no cost and, where appropriate, coordinate programs with school systems.

(c) Such programs may consist of:

(1) Vocational training;

(2) Instruction in basic cognitive skills;

(3) Employment of persons in schools controlled by such agencies or in post-secondary institutions; and

(4) Other employment and training activities. (sec. 203(c)(1)).

(d) Each agreement shall contain provisions to assure that funds will not supplant State or local funds expended for the same purpose. (sec. 203(c)(2)).

(e) If a prime sponsor is unable to reach an agreement with the educational agencies or institutions, or if the agencies or institutions are dissatisfied with the utilization of their facilities proposed by the prime sponsor, they may request the RA to review such arrangements. The RA, after affording an opportunity for a hearing, may take appropriate action within 90 days after receiving such a request. (sec. 203(c)(3)).

Subpart B—Training Activities for the Economically Disadvantaged

§ 677.11 Purpose.

This subpart contains the regulations for comprehensive employment and training programs and services authorized under Title II, Part B of the Act. These regulations also implement the administrative provisions found in sections 201 through 216 of the Act.

§ 677.12 Participant eligibility.

Eligibility requirements governing this program may be found in section 675.5.

§ 677.13 Program activities under Title II B.

(a) Programs shall provide comprehensive employment and training services which are needed to enable individuals to obtain unsubsidized employment or to participate in other employment and training program activities leading to their eventual placement in unsubsidized employment.

(1) Services may include: classroom training; OJT; work experience; and services to participants as described in § 676.25. PSE as described in § 676.25 is not an allowable activity under this Subpart.

(2) Job search assistance which shall include transitional services such as job seeking skills instruction, individualized job search plans, and labor market information.

(3) Supported work programs. Supported work is a transitional work experience program directed toward those groups of people who have traditionally had great difficulty in getting or keeping a regular job, i.e., ex-offenders who have recently been released from prison or jail; ex-addicts currently in treatment; young school dropouts; youth with delinquent histories; and women who are long-time recipients of welfare payments under (AFDC) programs. Programs shall be designed to lead to full-time unsubsidized employment (sec. 211(c)).

(4) Training leading to self-employment in small business (sec. (211)(5)).

(5) Development of labor market information;

(6) Activities such as job restructuring (sec. 211(1)).

(7) Part-time, flexi-time, and other alternative work experience arrangements for individuals, who, because of age, handicap, or other factors are unable to work full-time (sec. 211(1)).

(8) Services to individuals to enable them to retain employment such as post-placement follow-up, counseling, and supportive services not to exceed thirty days (sec. 211(8); and

(9) Any programs or activities authorized by Part A of Title III, Title IV and Title VII of the Act with prior approval of the RA (sec. 211(14)).

(c) *Youth.* (1) Activities and services for youth shall be designed to assist them in overcoming barriers to employment. Such barriers include: lack of basic educational or vocational skills; insufficient preparation for labor force participation; inability to find or successfully apply for employment; financial barriers to labor for labor force participation; and lack of appropriate job opportunities (sec. 214(a)).

(2) Prime sponsors shall coordinate activities with those under Part A of Title IV of this Act, and have plans reviewed by the youth council. To the maximum extent feasible, programs similar to those authorized in Title IV, Part A, Subpart 3, except for public service employment will be utilized to serve youth under this Part (sec. 214(b)).

(d) *Older workers.* (1) Activities and services for older workers shall be designed to assist them in overcoming the particular barriers to employment experienced by older workers, including: skills that are obsolete or no longer needed in the community; physical characteristics associated with aging; employer reluctance to hire older workers; financial barriers to labor force participation; and the lack of appropriate job opportunities (sec. 215(a)).

(2) Prime sponsors shall use activities described in Section 308 of the Act and coordinate activities under this Part with programs and services provided by senior centers, area agencies on aging, and State agencies on aging (as designated under the Older Americans Act) (sec. 215(b)).

(e) *Public assistance recipients.* (1) Activities and services for public assistance recipients shall be designed to assist them in overcoming the particular barriers to employment experienced by such recipients, including: lack of basic education or vocational skills; insufficient preparation for adapting to labor force participation; inability to find or successfully apply for employment; inability to obtain satisfactory child care; and lack of appropriate job opportunities (sec. 216(a)).

(2) Prime sponsors shall coordinate services with other programs under

the Act, Work Incentive Program (WIN), and services provided by State and local public assistance agencies (sec. 216(b)).

§ 677.14 Allocations of funds.

Allocations shall be provided to States and prime sponsors, pursuant to section 202 of the Act (section 202).

§ 677.15 Annual plan subpart.

(a) *General.* To receive financial assistance under Subparts B and C of Title II, a prime sponsor shall submit the following information, which will become part of the Annual Plan described in § 676.11. This Subpart shall consist of a Narrative Description, Program Planning Summary, and Budget Information Summary specific to Subparts B and C of Title II.

(b) The Narrative Description shall include:

(1) *Objectives and needs for assistance.* A breakout of the eligible population by race, sex, national origin, and age, and the planned level of services to be provided for these significant segments in terms of the percent each group will constitute of those to be served (sec. 103(b)(2)). Where the planned level of service to any group varies by more than 15 percent above or below the group's incidence in the eligible population, an explanation must be provided.

(2) *Results and benefits.* Provide a statement on:

(i) Specific quantified performance and placement goals, by program activity;

(ii) Any performance and placement goals, with respect to groups designated to be served (sec. 103(b)(4));

(iii) Explain any variation between the prime sponsor's performance and placement goals and the Secretary's performance standards (sec. 103(b)(4));

(iv) Any non-quantifiable goals or outcomes.

(3) *Approach.* (i) Program Activities and Services.

(A) A description of the program activities and services to be provided.

(B) A description of upgrading and/or training activities including the prime sponsor's system for determining eligibility for participation, the criteria used for selection of occupations and employers, and the length of the training period (sec. 221(a) and (b)).

(ii) A description of arrangements to ensure that funds under subparts 2 and 3 of Title IV will not be used to replace opportunities available for eligible youth under Title II (secs. 421 and 431).

(iii) A description of arrangements to ensure that funds under Title VII will not be used to replace on-the-job training opportunities available under Title II (sec. 703(b)(2)).

(iv) A list of the selected service deliverers and the services or facilities to be provided by each (sec. 103(b)(7)).

(c) The prime sponsor shall attach a Program Planning Summary (PPS) which reflects the goals, objectives and activities for the program year.

(d) The prime sponsor shall attach a Budget Information Summary (BIS) containing the proposed budget for programs under Subparts A, B, and C of Title II. If any item of capital equipment which individually costs more than \$1,000 is to be purchased, a list, including quantity and prices of items, must be provided.

§ 677.16 Administrative limitations.

(a) Prime sponsors shall not use funds allocated under § 677.14 for public service employment (sec. 212(a)).

(b) Not more than 6.5 percent of each prime sponsor's allocation may be used for programs and activities under Subpart C (Upgrading and Retraining) of this Title (Sec. 203(b)).

(c) (1) At least 80 percent of the funds allocated to a prime sponsor shall be expended for wages, fringe benefits, allowances, training, and services to participants enrolled under subparts B and C of this Part.

(2) The remaining funds may be used for administrative costs incurred by the prime sponsor, program agents, project applicants, or subgrantees, or subgrantees or contractors.

(3) The RA may waive the limitations on expenditures in (1) and (2) above when adequate justification is provided in the Annual Plan Subpart.

Subpart C—Upgrading and Retraining

§ 677.21 Purpose.

This part contains the regulations for upgrading and retraining services, under Title II, Part C of the Act. Upgrading and retraining programs offer additional opportunities to those groups, particularly minorities and women, who are frequently locked into low-paying, dead-end jobs.

§ 677.22 Eligibility for participation.

Eligibility requirements governing these programs are found in § 675.5.

§ 677.23 Activities and services.

(a) Classroom training, on-the-job training (OJT), supportive services and employment and training services are the only allowable program activities and services for upgrading and retraining programs. Supportive and employment and training services are the only allowable services to participants (sec. 221(a)).

(b)(1) Prime sponsors may conduct retraining programs directly or through financial assistance to public and private employers.

Upgrading programs may be conducted only through financial assistance to such employers.

(2) Employers may conduct training through other organizations.

(c) Prime sponsors should coordinate upgrade and retraining programs with Private Industry Councils, particularly in developing and conducting upgrading and retraining programs.

(d) *Upgrading programs.* (1) The positions for which participants are being upgraded shall be those:

(i) which would not otherwise have been available to entry-level employees;

(ii) which provide opportunities for upward mobility beyond the occupation for which training is provided; and

(iii) for which adequately trained personnel are not currently available within the employing organization (sec. 221(a)(1)).

(2) The education and skill content of upgrading programs shall provide participants with qualifications for positions of greater skill, responsibility, remuneration or career advancement in the employer's own enterprise (sec. 221(3)).

(3)(i) The upgrade program must clearly qualify trainees to work at a particular occupation, identified prior to the start of training.

(ii) The training period shall be consistent with periods customarily required for comparable training (sec. 221(A)(4)).

(4) The prime sponsor shall make every effort to ensure that participants receive, upon completion, placement in the occupation for which training was provided, and at the prevailing wage rate for the occupation (sec. 221(a)(8)).

(5) Prime sponsors shall first give consideration to those employers who indicate that, for every employee to receive upgrading, at least one new individual is to be hired into unsubsidized employment at the entry level:

(i) Under this agreement, the filling of the unsubsidized, vacated or lower-level job should occur by or before the time the participant completes training; and

(ii) Employers shall hire from the prime sponsor's pool of eligible applicants or from those individuals currently enrolled in activities funded under any of the Titles.

(e) *Retraining programs.*

(1) Retraining programs must qualify participants to work at skill levels distinct from those of their previous occupations, and shall be for those occupations in which skill shortages exist (sec. 221(b)(3)).

(2) The skill training shall be for those occupations characterized by high stability which provide a reason-

able expectation of continued employment (sec. 221(b)(3)).

(3)(i) Programs are to be operated only if there is a prior commitment from the employer providing the retraining to hire the participant into the position for which the participant has been retrained (sec. 221(b)(3)).

(ii) Where an individual's current employer expresses no interest in retraining programs, the individual may seek retraining services elsewhere in anticipation of securing employment with another employer.

§ 677.24 Agreements with employers.

Prime sponsors shall enter into written agreements with the employers whose employees are to receive upgrading or with the providers of retraining services prior to the start of the programs. Those fulfilling this requirement are not obliged to enter into an OJT agreement provided for in § 676.26. The agreement shall include:

- (a) Identification of parties and a signatory page;
- (b) Training outline;
- (1) Criteria for successful completion of the program;
- (2) Occupation and wage rate of participant prior to training;
- (3) Identified occupation and wage rate upon completion of training;
- (4) Skill level of participant prior to and upon completion of training;
- (c) Methodology and maximum amount of reimbursement;
- (d) Reporting requirements.

§ 677.25 Compensation and benefits to participants.

(a) Except as provided in paragraph (b), participants in OJT, classroom training, or combined activities and receiving other services, shall receive compensation in accordance with § 676.26, as appropriate.

(b) Participants in upgrade programs shall not be compensated at a rate lower than that received before entering the program.

§ 677.26 Reimbursement to employers.

(a) Reimbursement to employers shall be as provided in § 676.25, except as provided in paragraph (b).

(b) The reimbursement rate for OJT in upgrading programs shall not exceed 40 percent of the participant's wage for the portion of time spent in OJT, except when documented in the manner described in sec. 676.25(b)(6)).

Subpart D—Special Grants to Governors

§ 677.31 Purpose.

(a) This Subpart contains the regulations for programs to be operated under the Special Grant to Governors which are authorized in Section 202(b)(c)(d) and (e) of the Act. These programs address issues of employ-

ment and training which are generally beyond the scope of local prime sponsor programs. These regulations also implement the administrative provisions found in sections 105, 110, and 204 of the Act. The regulations found in Part 676 and Subpart (B) and (C) of this part also apply to programs under the Special Grants to Governors except as indicated in this Subpart.

(b) It is the purpose of the programs under the Special Grant to:

(1) Provide supplemental vocational education assistance in areas served by prime sponsors;

(2) Encourage coordination and establish linkages between prime sponsors and appropriate educational agencies and institutions;

(3) Conduct Governors' coordination and special services within the State; and

(4) Provide support to State employment and training councils.

§ 677.32 Allocation of funds.

(a) An amount equal to 6 percent of the funds available for Parts A, B, and C of Title II shall be made available to Governors for supplemental vocational assistance in the State, as described in sec. 202(b) of the Act.

(b) An amount equal to 1 percent of the funds available for Parts A, B, and C of Title II shall be made available to Governors for costs of the State Employment and Training Council provided for in sec. 202(c) of the Act.

(c) An amount equal to 1 percent of the funds available for Parts A, B, C and D of Title II shall be made available to Governors for coordination and establishment of linkages with educational agencies as provided in sec. 202(d) of the Act.

(d) An amount equal to 4 percent of the funds available for Parts A, B, and C of Title II shall be made available to Governors for coordination and special services as provided for in sec. 202(e) of the Act.

§ 677.33 Grant application; annual plan.

(a)(1) Upon notification by the Secretary of the amount of funds available for a special grant to the State, the Governor shall submit a Special Grant Annual Plan to the RA. Copies of all forms and instructions are contained in the *Forms Preparation Handbook*.

(2) The Governor shall comply with the comment and publication requirements specified in S676.12

(3) In addition, the Governor shall 45 days prior to submission of the plan to the RA, provide: (sec. 104(a))

(i) A summary of the Annual Plan to each prime sponsor in the State and to units of general local government within the Balance of State with a population of at least 25,000;

(ii) A summary of the Annual Plan to appropriate Native American pro-

gram sponsors and to appropriate labor organizations, and

(iii) A description of any programs to be funded within a prime sponsor's area with State coordination and special services funds to the prime sponsor in whose jurisdiction the program is to be funded.

(b)(1) The Master Plan for the Special Grant shall be as described in S676.10, as applicable.

(2) The Governor may elect to use the Master Plan developed for the Balance of State program, in lieu of developing a separate Master Plan for the Special Grant, where there is a statewide BOS by submitting a certification that the Balance of State Master Plan applies except as revised in an attachment which reflects different or unique items in the Special Grant.

(c) The Annual Plan Subpart shall contain the following:

(1) Approval Request Letter.

(2) Application for Federal Assistance, Standard Form 424.

(3) Special Grant Program Planning Summary specifying numbers of participants served by vocational education projects and State Coordination and Special Services and educational linkages.

(4) Special Grant Budget Information Summary specifying funding of vocational education projects, State Employment and Training Councils, State Coordination and Special Services, activities and/or projects, and activities for establishing linkages and services between prime sponsors and educational agencies.

(5) Special Grant Program Narrative as set forth in (d) below.

(d) The Special Grant Program Narrative shall consist of:

(1) *Vocational Education Services Program Narrative*.

(i) A description of the manner in which the Governor will allocate funds to prime sponsor areas and the rationale for the method used;

(ii) A description of the arrangements for conducting the vocational education programs and activities through the State Board for Vocational Education, and for ensuring the accountability of the State Board to the Governor for these funds;

(iii) A description of the statewide activities, training or services that will be developed including, but not limited to:

(A) The utilization of funds under this Act and the Vocational Education Amendments of 1976 to enhance economic growth and development in the State (sec. 204(c)(2)(B));

(B) The extent to which information, curriculum materials, and technical assistance in curriculum and staff development will be provided to prime

sponsors by State Vocational Education agencies (sec. 204(c)(2)(E)).

(iv) A description of the activities and services provided to, or with, prime sponsors for the prime sponsor areas, including:

(A) How such funds are to be used to coordinate programs under this Act with existing vocational education programs (sec. 204(c)(2)(A));

(B) How linkages between vocational education, education, and training programs under this Act and private sector employers will be developed (sec. 204(c)(2)(C));

(C) How technical assistance will be provided to local vocational education and educational institutions to aid them in making cooperative arrangements with prime sponsors 204(c)(2)(D).

(v) An explanation of any nonfinancial agreements which have been negotiated between a prime sponsor and the State Vocational Education Board, including:

(A) The steps the Governor will use to ensure that agreement will be reached; and

(B) The process for mediating and resolving any disagreements over the provision of training or services under the nonfinancial agreements.

(2) *State Employment and Training Council Program Narrative.*

(i) A list of groups represented on the council;

(ii) A description of the Council's responsibilities pursuant to § 677.36(e).

(3) *State Coordination and Special Services Program Narrative.*

A description of arrangements or planned activities for carrying out each of the activities provided for in § 677.37.

(4) *State Coordination and Establishment of Linkages Between Prime Sponsor and Educational Agencies and Institutions Program Narrative.*

A description of arrangements for carrying out each of the activities provided for § 677.38.

§ 677.34 Governor's distribution of vocational education funds.

Upon notification of the funds available to the State for vocational education, the Governor shall inform in writing the State Vocational Education Board and each prime sponsor of the amount of funds available to be spent in each prime sponsor's area and the methodology used to determine that amount. If a prime sponsor elects not to use all or part of the funds available for its area, it shall notify the Governor, who shall redistribute the funds among other eligible prime sponsors.

§ 677.35 Nonfinancial agreement between prime sponsor and Vocational Education Board.

(a)(1) Upon notification of the funds available for its area, the prime sponsor shall develop, in a non-financial agreement in conjunction with the Vocational Education Board, consisting of a statistical, and narrative plan for the expenditure of the funds from the Governor by the Vocational Education Board in the prime sponsor's area. (sec. 204(a)(1)).

(2) Prior to making any agreement with a prime sponsor, the State Vocational Education Board shall consult with, and obtain, the written advice of the State agencies' committee involved in the formulation of the plan for vocational education required by Section 197(a)(1) of the Vocational Education Amendments of 1976. (sec. 204(a)(2)).

(b) The nonfinancial agreement shall consist of:

(1) Prime sponsor's vocational education nonfinancial agreement signature sheet;

(2) Part I of the Special Grant Program Planning Summary;

(3) Appropriate columns of the Special Grant Budget Information Summary; and

(4) Vocational educational program narrative, including the identification of the potential recipient(s) of the funds for program administration.

(c) After the agreement is signed, a copy shall be sent by the Vocational Education Board to the Governor for review and approval.

(d) The Governor shall develop procedures for modifying the nonfinancial agreement.

(e) The Governor shall ensure that the Vocational Education Board provides services consistent with the Governor's Special Grant plan for vocational education services and the non-financial agreements.

(f) If, within 90 days after the notification of available funds for the area, the prime sponsor and the Board are unable to reach an agreement, the Governor shall mediate the dispute, so that the local vocational needs of the prime sponsor's area are met. If mediation by the Governor does not result in a solution acceptable to both parties within 120 days after the notification of available funds, the RA shall arbitrate the dispute.

§ 677.36 State Employment and Training Council.

(a) The Governor shall establish a State Employment and Training Council (SETC) which shall be in addition to the Balance of State planning council, and representative of the geographic area to be served. The SETC function is advisory and does not relieve the State of its final deci-

sionmaking responsibilities under the Act.

(b) The Governor shall appoint Council members, as follows:

(1) At least one quarter of the membership of the Council shall be representatives of units or combinations of units of general local government, including those which are prime sponsors, who have been nominated their chief executive officers. (sec. 110(a)(3)(A)).

(2) One quarter of the membership of the council shall be representatives from organized labor, business and agricultural employers and workers. (sec. 110(a)(3)(B)).

(3) One quarter of the council shall be representatives of the eligible population to be served under the Act (including significant segments) and of the general public (sec. 110(a)(3)(C)). At least one half of such representatives should be economically disadvantaged at the time of appointment.

(4) Not more than one quarter of the council shall be representatives of service deliverers, including:

(i) One representative from each of the following: the State Public Employment Service; the State Advisory Council on Vocational Education; the State Board of Vocational Education; the State public assistance agency; any State agency the Governor believes has an interest in employment and training and human resource utilization within the State.

(ii) Representatives of community-based organizations, veterans organizations, and organizations representative of handicapped individuals (sec. 110(a)(3)(d)).

(c) The Governor shall, provide the Council with professional, technical, and clerical staff and other necessary support services. (sec. 110(a)(2)).

(d) The Governor shall appoint someone other than an elected official or an employee of the prime sponsor as chairperson of the Council. The Council shall meet as it deems necessary, but not less than five times annually. All meetings shall be announced in advance, and shall be open and accessible to the general public. (sec. 110(a)(2)(B)(4)).

(e) Funds not needed for the State Employment and Training Council may be used for State Coordination and special services. (sec. 202(c)).

(f) The Council shall:

(1) Review continuously (i) the operation of programs conducted by prime sponsors in the State and (ii) the availability responsiveness, and adequacy of State services provided by all employment-related agencies. The reviews conducted by SETC's shall include an emphasis upon the following: statewide and inter-prime sponsor issues of utilization and coordination; employment and training resources of

State agencies, and the coordination of plans and operations in contiguous areas. The procedures for monitoring prime sponsors and State agencies must be publicized to all prime sponsors and affected State agencies prior to being implemented;

(2) Submit a public Annual Report to the Governor no later than February of each year, with copies to the State Advisory Council on Vocational Education and the RA, and issue such other studies, reports or documents to the Governor and prime sponsors as the SETC believes necessary to effectively carry out the Act. The Annual Report shall analyze the coordination of employment and training programs during the previous fiscal year, and recommend improvements. It shall also describe any special programs or linkages.

(3) Consult with the State Advisory Council on Vocational Education to identify employment, training, and vocational education needs of the State and to assess the extent of coordination among employment and training, vocational education, vocational rehabilitation, public assistance and other programs.

(4) Comment at least once annually on the reports of the State Advisory Council on Vocational Education which shall incorporate such comments in the annual report it submits pursuant to Section 105 of the Vocational Education Amendments of 1976.

(5) Review proposed CETP modifications, and comment thereon, particularly with respect to non-utilization or duplication of existing services.

(6) Review plans of State agencies providing employment, training and related services. Provide comments and recommendations to the Governor, appropriate State agencies, prime sponsors, the general public and the appropriate Federal agencies on the relevancy and effectiveness of employment, training and related service delivery systems in the State and on means of improving effectiveness.

(7) Participate in the development of the Governor's coordination and special services plan.

(8) No later than May 15, to the maximum extent feasible, the council shall share with prime sponsors information on economic development, vocational rehabilitation, SESA activities, occupational demands and labor market demands.

(g) *Combined planning and services councils.* In any State where the State is the only prime sponsor, the prime sponsor planning council may also serve as of the State Employment and Training Council. In such instances, the membership of the prime sponsor's planning council shall reflect the membership requirements of the State Employment and Training Council, in

addition to meeting the membership requirements of a prime sponsor planning council, except that paragraph (b)(1) of this section is not applicable.

§ 677.37 Governor's coordination and special services.

(a) Funds provided under § 677.32 (d) of these regulations shall be used for the following activities (sec. 105(b)):

(1) Coordination of all employment, training, education and related services provided by the State, by prime sponsors, by State education agencies and other appropriate institutions of vocational and higher education, by State and local public assistance agencies by apprenticeship programs and by other providers of such services (sec. 105(b)(1));

(2) Coordination of programs financed under the Wagner-Peyser Act and this Act, including assisting in the negotiation of any agreement (including partnership arrangements described in section 307) between prime sponsors and State employment security agencies (sec. 105(b)(2));

(3) Minimizing the duplication of services (sec. 105(b)(3));

(4) Assistance to the Secretary in enforcing the requirements for Federal contractors and subcontractors to list all suitable employment openings with local offices of the State employment service agencies and to take affirmative action, as required in Section 202(a) of Title 38, United States Code (sec. 105(b)(4));

(5) Promotion of prime sponsor planning that takes into account conditions prevailing in labor market areas covering more than one prime sponsor area, as well as related activities such as community development, economic development, vocational education, vocational rehabilitation, and social services (sec. 105(b)(5));

(6) Exchange of information between States and prime sponsors with respect to State, interstate and regional planning for economic development, human resources development, education and other subjects relevant to employment and training planning (sec. 105(b)(6));

(7) Development and provision to prime sponsors of information on a State and local area basis regarding economic, industrial and labor market conditions (sec. 105(b)(7));

(8) Provision to prime sponsors, upon request, appropriate information and technical assistance to assist them in developing and implementing their programs (sec. 105(b)(8));

(9) Conduct of special model training and employment programs and related services which may include programs for offenders (sec. 105(b)(9));

(10) Provision of financial assistance for special programs and services designed to meet the needs of rural areas

outside major labor market areas (sec. 105(b)(11));

(11) Provision of labor market and occupational information to prime sponsors and appropriate educational agencies and institutions without reimbursement (sec. 105(b)(11));

(12) Facilitating and fostering the activities of the State Occupational Information Coordination Committee established with special emphasis on the systematic use of occupational information for prime sponsor planning as well as assisting and encouraging the development and use of career outlook information for individuals who are receiving rehabilitation services, students in local schools and individuals using the services of prime sponsors and local offices of State employment security agencies (sec. 105(b)(11));

(13) Assistance to or support of local activities under the Targeted Jobs Tax Credit program of the Revenue Act of 1978.

(c) When using funds provided under § 677.32(d) for employment and training activities (e.g., work experience, classroom training), the requirements of § 676.39, as appropriate apply.

(d) PSE may be funded only as a model or demonstration program with the approval of the RA.

§ 677.38 Coordination and establishment of linkages with education agencies.

(a) Funds provided under § 677.32(d) shall be available for encouraging coordination and establishing linkages between prime sponsors and applicable educational agencies and institutions, and institutions providing training programs approved by the Secretary such as State apprenticeship councils. Funds may be used for activities such as:

(1) Providing assistance to prime sponsors or education institutions in the development of agreements between prime sponsors and State Boards of Vocational Education and State or local educational agencies or post-secondary educational institutions as required under secs. 203(c), 433(d)(2), and 436(c) of the Act;

(2) Establishing mechanisms to increase information exchange between prime sponsors and educational agencies and institutions;

(3) Developing and disseminating models of linkages which can be shared with all prime sponsors in the State;

(4) Providing technical assistance to prime sponsors and educational agencies in the extension of educational offerings to prime sponsor jurisdictions which lack access to various education opportunities;

(5) Providing information, curriculum materials and technical assistance

in curriculum development and staff development to prime sponsors;

(6) Providing assistance in development of systems for assessment and testing of educational attainment of participants in prime sponsor programs;

(7) Providing assistance to eliminate barriers in the educational system which hamper employment and training activities, such as development of open entry/open exit courses and academic credit for CETA training.

(b) Funds for services to eligible participants shall be used for the purposes of encouraging and supporting training activities which are jointly delivered by employment and training agencies and appropriate educational agencies and institutions including apprenticeship councils, or hometown plans. Funds may be used to:

(1) Expand the size of jointly delivered programs;

(2) Enhance training and services available to participants in jointly delivered programs;

(3) Assist in the planning, development and evaluation of jointly delivered programs.

§ 677.39 Vocational education activities.

(a) The Governor shall provide vocational education funds received by special grant to the State Vocational Education Board as described in § 677.34 of this Subpart D and approve the plans for expenditure of those funds.

(b)(1) The State Vocational Education Board representatives will provide the training and services detailed in a nonfinancial agreement with the prime sponsor as described in § 677.35 of this Subpart D.

(2) If no Vocational Education Board exists within a State, the Governor may provide financial assistance to an alternate agency which serves the same purpose as a State Vocational Education Board. If the Vocational Education Board refuses to participate in this program the Governor shall make alternative arrangements to provide these services.

(c) Vocational education services which may be provided by a State Vocational Education Board include, but are not limited to, basic or general education, educational programs conducted for offenders, institutional training, and supportive services. Vocational education funds under the Act may be used for the payment of allowances to participants in vocational education training and for administrative costs incurred for the vocational education programs funded under the Act.

(d) When funds for vocational education services are used for the payment of allowances to participants, the method of payment utilized must be that of the prime sponsor whose par-

ticipants are receiving such allowances.

(1) Where the prime sponsor has an established delivery system for the payment of allowances pursuant to § 676.26, the State Vocational Education Board shall utilize the agency or agencies administering that system.

(2) Where the prime sponsor has no allowances payment delivery system, the method of payments shall be developed between the prime sponsor and the State Vocational Education Board subject to the requirements of § 676.26.

(e) For funds for vocational education assistance, not less than 85 percent shall be used only for providing vocational education services to prime sponsor's participants in programs under the Act.

(1) Of this amount, not more than 20 percent of the funds used for such education and services may be used for administration.

(2) At least fifty percent (50%) of the vocational education funds allocated to administration shall be made available to local prime sponsor areas unless adequate justification for not doing so is provided to the RA by the Governor.

(f) Subject to the limitations specified in § 676.39 and (e) above, the remaining funds may also be used for the following activities:

(1) To coordinate programs under this Act with existing vocational education programs;

(2) To coordinate the utilization of funds under this Act with the Vocational Education Amendments of 1976 to enhance economic growth and development in the State;

(3) To develop linkages between vocational education and training programs under this Act with private sector employers;

(4) To provide technical assistance to vocational education agencies to aid them in making cooperative arrangements with appropriate prime sponsors;

(5) To provide information, curriculum materials and technical assistance in curriculum development and staff development to prime sponsors.

(g) Of the total amount provided for vocational education assistance the Governor may retain the minimum funds necessary as provided in Sec. 677.39(e)(1) or (f) to carry out his/her responsibilities under § 677.39.

§ 677.40 Funding; grant administration.

(a) *Funding.* Special grants will be funded in the same way as basic grants under this Part.

(b) *Grant administration.* The requirements related to grant administration contained in Part 676 are applicable to special grants to Governors, except as provided in this Sub-

part. The overall 20 percent limitation on funds used for administration as set out in § 676.39 shall not apply to the special grant.

§ 677.41 Reporting.

(a) Financial and statistical reports, as described in the *Forms Preparation Handbook*, shall be submitted quarterly. In addition, an end of year narrative report will be submitted which describes achievement during the year.

(b) The following financial and statistical reports are required:

(1) A Special Grant Program Status Summary;

(2) A Special Grant Financial Status Report; and

(3) A Quarterly Summary of Participant Characteristics (QSPC). The QSPC shall be required only for participants where the State coordination and special services or educational linkages funds are utilized to fund training and employment opportunities. A QSPC shall not be required for vocational education services since all participants will be involved in a prime sponsor program and will be reported through regular quarterly reports.

(c) The Governor shall supply to each prime sponsor to which vocational education services are provided, a Special Grant Program Status Summary and a Special Grant Financial Status Report for funds expended in the prime sponsor's area and shall submit a summary Special Grant Program Status Summary and a Special Grant Financial Status Report to the RA.

(d) Each of the three reports in (b) above shall be submitted to the RA no later than 30 days after the end of the reporting period. The narrative report required under paragraph (a) shall be submitted no later than 30 days after the end of the fiscal year. Instructions for completion of these reports are in the *Forms Preparation Handbook*.

§ 677.42 Coordination with prime sponsor.

(a) The financial and statistical information from the approved Nonfinancial Agreement Program Planning Summary and Budget Information Summary shall be entered into the relevant columns of the Governor's Special Grant Program Planning Summary and Budget information Summary. If the Governor's Special Grant Annual Plan has been signed prior to final approval of the Vocational Education Agreement, a modified Special Grant Program Summary and Budget Information Summary shall be submitted.

(b) The prime sponsor shall provide to the State Vocational Education Board a list of the participants enrolled in classroom training under the nonfinancial agreement quarterly. The list shall include names, social se-

curity numbers, date of birth and Title under which enrolled. The State Vocational Education Board shall prepare the Vocational Education Program Status Summary and submit the report to the Governor for submittal to the RA.

(c) The prime sponsor need not report the participant or financial information on the Program Status Summary or their Financial Status Report unless prime sponsor funds are also expended.

Subpart E—Transitional Employment Opportunities for the Economically Disadvantaged

§ 677.51 Purpose.

This subpart contains the regulations for transitional employment opportunities for economically disadvantaged persons under Title II, Part D of the Act. This program provides public service employment only for unemployed, economically disadvantaged persons and provides related training and services to these individuals to enable them to move into employment or training not supported under the Act. This program targets resources to those structurally unemployed persons who lack the necessary skills and/or employment experience to enable them to successfully compete in the labor market and obtain meaningful skill-developing jobs. The program combines public service employment with other employment and training activities including employability counseling and job search assistance (sec. 231).

§ 677.52 Participant eligibility.

Eligibility requirements governing this program may be found in § 675.5

§ 677.53 Activities and services.

(a) Subject to § 677.58, prime sponsors shall use funds for entry-level public service employment, including projects carried out by project applicants, or for activities authorized under § 677.13 (secs. 232(a)(1) and 234).

(b) Prime sponsors shall periodically assess each participant in relation to that participant's employability plan to determine if the participant needs additional training or services (sec. 205(b)).

(c) (1) All public service employment participants shall be given appropriate training and services, when such training and services are available from the prime sponsor or other sources in the area (sec. 232(a)(2)).

(2) Prime sponsors should combine public service employment with training and services. However, training and services may be offered before, during, or after the public service employment to which they are related.

(3) (i) Such training shall be in the form of classroom training or individualized instruction which:

(A) provides technical skills and information required to perform a specific job or group of jobs;

(B) is designed to enhance the employability of the participant in terms of upgrading basic skills (e.g., remedial education); or

(C) provides skills in job-search techniques.

(ii) Training for public service employment participants shall not be in the form of on-the-job training.

(d) Training and services conducted by program agents shall be coordinated with those conducted by the prime sponsor.

(e) Prime sponsors should work with the Bureau of Apprenticeship and Training to develop public-sector apprenticeship programs that provide training applicable to the private sector.

(f) In carrying out PSE activities, the provisions of § 676.73, relating to maintenance of effort, shall apply.

§ 677.54 Eligibility for funds.

(a) The Secretary shall provide funds only to:

(1) Prime sponsors, and

(2) Native American recipients qualified under Section 302(c)(1)(A) of the Act (sec. 606(a)).

(b)(1) Prime sponsors shall subgrant to program agents those funds allocated to the prime sponsors for use within the program agents' jurisdictions (sec. 606(b)(1)). If a program agent declines to operate a program under Title II, Part D of the Act, the prime sponsor, with the review and concurrence of the RA, shall make other arrangements to serve that jurisdiction.

(2) Program agents shall have administrative responsibility for developing, funding, overseeing, and monitoring programs within their areas, consistent with the comprehensive employment and training plan. The subgrant shall be jointly developed by the prime sponsor and the program agent (sec. 606(b)(2)).

(3) If a program agent fails to comply with paragraph (b)(2) of this section, the prime sponsor, after review and concurrence of the RA, shall ensure compliance by such action as reallocating funds to an alternative program agent to serve the area, or serving the area itself.

(4) When two or more units of general local government qualify as program agents with respect to the same area qualifying for assistance, the provisions in § 676.5(b)(2) shall apply (sec. 606(b)).

§ 677.55 Allocation of funds.

Funds shall be allocated by the Secretary in accordance with Section 233 of the Act.

§ 677.56 Annual plan subpart.

(a) *General.* To receive financial assistance under Part D of Title II of the Act, a prime sponsor shall submit the following information, which will become part of its Annual Plan.

The subpart shall consist of a Narrative Description, Program Planning Summary, Budget Information Summary, Monthly Schedule, and PSE Occupational Summary.

(b) *Narrative description.* The narrative description shall include:

(1) Objectives and needs for assistance. A breakout of the eligible population by race, sex, national origin, and age, and the planned level of services to be provided these groups in terms of the percentage each group will constitute of those to be served (sec. 103(b)(2)). Where the planned level of service to any group varies by 15 percent above or below the group's incidence in the eligible population, an explanation must be provided.

(2) *Results and benefits.* (i) Specific quantifiable performance and placement goals by program activity.

(ii) Performance and placement goals with respect to groups designated to be served (sec. 103(b)(4)).

(iii) The relationship between the prime sponsor's performance and placement goals and the Secretary's performance standards (sec. 103(b)(4)).

(iv) Non-quantifiable goals which the prime sponsor intends to achieve.

(3) *Approach.* (i) Program Activities and Services. Program activities and services to be provided, including a description of the arrangements for the provision of training and services that will assist participants in obtaining unsubsidized employment.

(ii) How the prime sponsor will provide for an orderly transition from the number of jobs funded in the current fiscal year to the number of jobs that will be funded with the allocation for the next fiscal year (sec. 602(c)).

(iii) The wages or salaries and fringe benefits for public service employment participants and a comparison of these with the wages or salaries and fringe benefits paid to persons in similar public occupations by the same employer; levels of employment not supported under the Act; layoffs, and hiring and promotional freezes in each employing agency (sec. 103(b)(10)).

(iv) The methods to be used to ensure that, at the end of the fiscal year, the annual average wage rate meets the area's required annual average wage rate, described in § 676.26.

(v) The methods to be used to determine wage rates if wage rates for com-

parable jobs have not been established.

(vi) How the public service employment program is integrated with other programs under the Act.

(4) *Delivery Agents.* A list of the selected service deliverers and the services or facilities to be provided by each (sec. 103(b)(7)).

(c) *Program Planning Summary (PPS).* A PPS reflecting the goals and activities for the program year.

(d) *Budget Information Summary (BIS).* A BIS containing the proposed budget and a list specifying the quantity and price of each piece of capital equipment exceeding \$1,000 to be purchased during the fiscal year.

(e) *Monthly schedule.* A monthly schedule which contains an estimate of the total number of participants who will be enrolled in Title II, Part D programs at the end of each month and the total cumulative expenditures expected to have been incurred by the end of each month.

(f) *Public Service Employment Occupational Summary.* A Public Service Employment Occupational Summary which includes a listing, by employing agency, of proposed public service employment positions and wages and a comparison of such wages with those paid persons in similar unsubsidized jobs.

(g) *Project Data Summary.* Where PSE in projects is to be undertaken, the Project Data Summary, which provides a description of each project funded, shall be submitted to the RA within 30 days of the commencement of a project.

§ 677.57 Wages and wage supplementation.

Wages paid to public service employment participants and the supplementation of such wages shall be in accordance with § 676.26(a)(3) (sec. 237(a)).

§ 677.58 Special cost provisions.

(a) The following cost restrictions shall apply to the funds utilized by prime sponsors for project and non-project public service employment:

(1) Not more than 10 percent of the funds may be contributed to the administrative cost pool and used for administrative costs (sec. 232(b)(1)).

(2)(i) Prime sponsors shall use only for training for PSE participants not less than:

(A) 10 percent of such funds for fiscal year 1979;

(B) 15 percent of such funds for fiscal year 1980;

(C) 20 percent of such funds for fiscal year 1981;

(D) 22 percent of such funds for fiscal year 1982 (sec. 232(b)(2)).

(ii) Wages and/or allowances paid to PSE participants during the period of training in conjunction with their em-

ployment may be counted towards the percentage amounts that are required to be used for such training. Records of the wages shall be maintained separately by the prime sponsor and available for audit when the percentage amount expended for training for PSE participants is being confirmed.

(3) The remaining funds may be expended only for wages, fringe benefits, training and services to persons employed in public service employment (sec. 232(b)(3)).

(b) In addition to PSE, funds under this title may be utilized by prime sponsors for other activities as set forth in § 677.13 (sec. 234). Not more than 20 percent of the funds utilized for such activities may be contributed to the administrative cost pool and used for administrative costs.

PART 678—PUBLIC SERVICE EMPLOYMENT PROGRAMS UNDER TITLE VI

Sec.

678.1 Purpose.

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AUTHORITY: Sec. 126 of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 801 *et seq.*), unless otherwise noted.

§ 678.1 Purpose.

This Part contains the regulations for countercyclical public service employment under Title VI of the Act. This program provides temporary employment during periods of high unemployment when the national rate of unemployment is in excess of 4 percent. It is intended that the number of jobs funded shall be sufficient to provide jobs for 20 percent of the number of unemployed in excess of 4 percent, and, when the national rate of unemployment is in excess of 7 percent, to provide jobs for 25 percent of the number of unemployed in excess of 4 percent (sec. 601).

§ 678.2 Participant eligibility.

Eligibility requirements governing this program may be found in § 675.5.

§ 678.3 Activities and services.

(a) Prime sponsors shall use at least fifty percent of the funds received under this Part available for new hires between April 1, 1979, and September 30, 1979, for public service jobs in projects, except where the prime sponsor is, on April 1, 1979, utilizing at least fifty percent of the funds received under this Part for PSE jobs in projects and maintains a fifty percent

level in projects for the remainder of the fiscal year. After September 30, 1979, prime sponsors shall use fifty percent of the funds received under this Part for PSE jobs in projects. Public service jobs in projects are not limited to entry level positions (sec. 605(a)). To the extent feasible, all public service jobs shall be provided in occupational fields which are most likely to expand (sec. 122(m)).

(b) Each prime sponsor shall establish procedures for its own use and the use of its program agents:

(1) For notifying potential project applicants of the application process and cut-off date for acceptance of project applications;

(2) For submitting, upon receipt, a copy of each project application to the prime sponsor's planning council to allow the council to submit comments and recommendations with respect to the project application.

(c) Prime sponsors and programs agents shall consider providing a substantial portion of the project funds to project applicants that are nonprofit organizations.

(d) All projects shall be planned not to exceed eighteen months from their commencement. Projects may be extended, in increments of up to 18 months, if, after a documented review of the project, the prime sponsor determines that the project has been effective. Projects may be extended for reasons such as:

(1) Expanding the geographic area of the project; or

(2) Expanding the project to serve additional persons; or

(3) Expanding the scope and design of the original project; or

(4) Continuing weatherization projects, as described in § 676.25.

(e) In addition to providing public service employment in projects, prime sponsors may utilize funds under this Part for entry-level PSE not in such projects, in accordance with § 678.8.

(f) Prime sponsors shall periodically assess each public service employment participant to determine whether the participant needs additional training, employability counseling or other services, in order to obtain unsubsidized employment. Prime sponsors shall utilize funds in accordance with § 678.8(a)(2) to provide services, such as employability counseling, including job search techniques, intensified job development, and training for public service employment participants to enable them to obtain unsubsidized employment. Such training or services provided by program agents shall be coordinated with those provided by the prime sponsor.

(g) Activities other than PSE authorized under Title II, Part A of Title III, Title IV, and Title VII may be pro-

vided in accordance with § 678.8(b) (sec. 610).

(h) Prime sponsors should work with the Bureau of Apprenticeship and Training to develop public-sector apprenticeship programs which provide training applicable to the private sector.

(i) In carrying out public service employment activities, the provisions of § 676.4 relating to maintenance of effort shall apply.

§ 678.4 Eligibility for funds.

(a) The Secretary shall provide funds only to:

(1) Prime sponsors, and

(2) Native American recipients qualified under Section 302(c)(1)(A) of the Act (sec. 606(a)).

(b)(1) Prime sponsors shall subgrant to program agents those funds allocated to the prime sponsors for use within the program agents' jurisdictions (sec. 606(b)(1)). If a program agent declines to operate a program under Title VI of the Act, the prime sponsor, with the review and concurrence of the RA, shall make other arrangements to serve that jurisdiction.

(2) Program agents shall have administrative responsibility for developing, funding, overseeing, and monitoring programs within their areas consistent with the comprehensive employment and training plan. The subgrant shall be jointly developed by the prime sponsor and the program agent (sec. 606(b)(2)).

(3) If a program agent fails to comply with paragraph (b)(2) of this section, the prime sponsor, after review and concurrence of the RA, shall ensure compliance by such action as reallocating funds to an alternative program agent to serve the area, or serving the area itself.

(4) When two or more units of general local government qualify as program agents with respect to the same area qualifying for assistance, the provisions in § 676.5(b)(2) shall apply (sec. 606(b)(3)).

§ 678.5 Allocation of funds.

Funds shall be allocated by the Secretary in accordance with Section 604 of the Act.

§ 678.6 Annual plan subpart.

(a) *General.* To receive financial assistance under Title VI of the Act, a prime sponsor shall submit the following information which will become part of its Annual Plan. The subpart shall consist of a Narrative Description, Program Planning Summary, Budget Information Summary, Monthly Schedule, PSE Occupational Summary, and Project Data Summary.

(b) *Narrative Description.* The narrative description shall include:

(1) Objectives and needs for assistance. A breakout of the eligible population by race, sex, national origin and age, and the planned level of services to be provided these groups in terms of the percentage each group will constitute of those to be served (sec. 103(b)(2)). Where the planned level of service to any group varies by 15 percent above or below the group's incidence in the eligible population, an explanation must be provided.

(2) *Results and benefits.* (i) Specific quantifiable performance and placement goals by program activity.

(ii) Performance and placement goals, with respect to groups designated to be served (sec. 103(b)(4)).

(iii) The relationship between the prime sponsor's performance and placement goals and the Secretary's performance standards (sec. 103(b)(4)).

(iv) Any non-quantifiable goals which the prime sponsor intends to achieve.

(3) *Approach.* (i) Program Activities and Services. Program activities and services to be provided, including a description of the arrangements for the provision of training and services that will assist participants in obtaining unsubsidized employment.

(ii) How the prime sponsor will provide for an orderly transition from the number of jobs funded in the current fiscal year to the number of jobs which will be funded with the allocation for the next fiscal year (sec. 602(c)).

(iii) The extent to which the prime sponsor will supplement wages of persons other than those who were in the program on September 30, 1978, including:

(A) The maximum amounts of funds used to supplement any one particular job funded under this Part; and

(B) The total amount of funds used to supplement all jobs funded under this Part.

(iv) The wage rates or salaries and fringe benefits for public service employment participants and a comparison of these with the wages or salaries and fringe benefits paid to persons in similar public occupations by the same employer; levels of employment not supported under the Act; layoffs, and hiring and promotional freezes in each employing agency (sec. 103(b)(10)).

(v) The methods to be used to ensure that, at the end of the fiscal year, the annual average wage rate meets the area's required annual average wage rate, described in § 676.26

(vi) The methods to be used to determine wage rates if wage rates for comparable jobs have not been established.

(vii) How the public service employment program is integrated with other programs under the Act.

(4) *Delivery agents.* A list of the selected service deliverers and the services or facilities to be provided by each (sec. 103(b)(7)).

(c) *Program Planning Summary (PPS).* A PPS reflecting the goals and activities for the program year.

(d) *Budget Information Summary (BIS).* A BIS containing the proposed budget and a list specifying the quantity and price of each piece of capital equipment exceeding \$1,000 to be purchased during the fiscal year.

(e) *Monthly schedule.* A monthly schedule which contains an estimate of the total number of participants who will be enrolled in Title VI programs at the end of each month, and the total cumulative expenditures expected to have been incurred by the end of each month.

(f) *Public Service Employment Occupational Summary.* A Public Service Employment Occupational Summary which includes a listing by employing agency of proposed public service employment positions and wages and a comparison of such wages with those paid persons in similar unsubsidized jobs.

(g) *Project Data Summary.* The project Data Summary provides a description of each project funded by the prime sponsor, and shall be submitted to the RA within 30 days of the commencement of a project.

§ 678.7 Wages and wage supplementation.

(a) Wages paid to public service employment participants and the supplementation of such wages shall be in accordance with § 676.26(a)(3) (sec. 608).

(b) Wages paid to public service employee hired on or after January 26, 1979, under this Title may be supplemented by additional wages from non-CETA sources only if:

(1) The total amount of funds used in any fiscal year to provide such supplemented wages does not exceed an amount equal to 10 percent of the prime sponsor's Title VI allocation for such fiscal year; and

(2) The wage supplementation to any public service employee does not exceed:

(i) ten percent of the maximum wage applicable for the prime sponsor's area; or

(ii) twenty percent of the maximum wage applicable for the prime sponsor's area in any area where the average wage (during the fiscal year preceding the beginning of the applicable fiscal year) in employment covered under Federal or State unemployment compensation laws (without regard to any limitation on the amount of such wages subject to contribution under such law) exceeds 125 percent, but does not exceed 150 percent, of the na-

tional average wage in such employment.

(c) Any public service employee hired between September 30, 1978, and January 26, 1979, receiving wages supplemented from non-CETA sources may continue to receive such wages after January 26, 1979, only if such supplementation is in accordance with the provisions in paragraph (b) above.

(d) Any person in public service employment position on September 30, 1978, receiving wages from non-CETA sources may continue to receive such wages, so long as such person remains in the same position. These wages are not subject to the limitations of paragraph (b) of this section. However, the non-CETA portion shall not be reduced if the maximum wage has been adjusted above \$10,000 after September 30, 1978, as long as the incumbent participant is in this position or until the next prime sponsor budgetary cycle. (sec. 122(i)(4)(B)).

(e) Any person in public service employment on September 30, 1978, who was receiving wages on September 30, 1978, less than \$10,000 may have such wages supplemented above the \$10,000 from non-CETA sources after September 30, 1978, if such increase is the result of a bona-fide cost of living increase or a scheduled raise, and the person remains in the same position. These wages are not subject to the limitations of paragraph (b) above.

(f) When a public service employment participant, hired after September 30, 1978, is eligible for a promotion, a general salary increase or overtime pay, the employer shall pay from non-CETA funding sources that amount in excess of the maximum amount payable from CETA funds as well as a pro-rata share of the increased fringe benefits, unless such payments would be in violation of the limitations on public service wage supplementation contained in paragraphs 2(i) and (ii) above. If such payment would be in violation, then the participants affected must be transferred to other positions or be terminated.

§ 678.8 Special cost provisions.

(a) The following cost restrictions shall apply to the funds utilized by prime sponsors for project and non-project public service employment:

(1) At least 80 percent of such funds shall be expended for wages and fringe benefits (sec. 603(a)).

(2) At least 10 percent of such funds for fiscal year 1979, and at least 5 percent of such funds for all subsequent fiscal years, shall be expended for training and services to PSE participants employed in public service jobs under this Part (sec. 603(d)).

(3) Not more than 10 percent of such funds for fiscal year 1979, and not more than 15 percent for subsequent

fiscal years, may be contributed to the administrative cost pool and used for administrative costs.

(b) The remaining funds may be used for activities authorized under Title II, Part A of Title III, Title IV and Title VII (sec. 610) not more than 20 percent of the funds utilized for such activities may be contributed to the administrative cost pool and used for administrative costs.

PART 679—PRIVATE SECTOR INITIATIVE PROGRAM

Sec.

679.1 Scope and Purpose.

679.2 Private Industry Councils.

679.3 Allocation of Funds.

679.4 Annual Plan Subpart.

679.5 Administrative Standards and Procedures.

679.6 Program Operations.

AUTHORITY: Sec. 126 of the Comprehensive Employment and Training Act of 1973, as amended (29 U.S.C. 801 *et seq.*), unless otherwise noted.

§ 679.1 Scope and purpose.

This Part contains the regulations for activities under Title VII of the Act, known as the Private Sector Initiative Program.

(a) Title VII of the Act is a demonstration title. It authorizes a variety of approaches to increase the involvement of the business community in employment and training activities under the Act.

(b) Title VII is designed to increase private sector employment and training opportunities for persons eligible under this Part.

(c) As a primary vehicle to assist prime sponsors in meeting these goals, Title VII provides for the establishment of Private Industry Councils (PIC's) which are to participate jointly with the prime sponsor in the local development and implementation of programs under this Part, and to consult with the prime sponsor on other employment and training activities.

(d) The ultimate goal of Title VII is to increase private sector employment and training opportunities under all Titles of the Act, commensurate with reduced emphasis on public and private nonprofit subsidized employment. Title VII, then, is a shift in emphasis in CETA programs from subsidized public service employment to unsubsidized private sector jobs.

(e) An important thrust of the Act is to provide for maximum feasible coordination of programs under the Act with related functions supported by the Department and by other Federal, State and local agencies. Accordingly, prime sponsors and PIC's are encouraged to work together with State and local counterparts involved in planning and operating programs through Job Service Improvement Program (JSIP) employer committees and the

Bureau of Apprenticeship and Training, as well as the Economic Development Administration, Small Business Administration, Community Services Administration, and U.S. Department of Housing and Urban Development, among others, in order to increase the effectiveness of programs under this Part and under the Act in securing employment for economically disadvantaged persons (sec. 701).

(f) This Part, in conjunction with Parts 675 through 677, Subpart B, comprise the regulations for Title VII of the Act.

§ 679.2 Private Industry Councils (PIC's).

(a) **Purpose.** (1) To receive financial assistance under this Part, each prime sponsor shall establish a Private Industry Council (PIC). Its purpose shall be to increase the involvement of the business community, including small business, minority business enterprises, and labor organizations, in employment and training activities under the Act, and to increase private sector employment opportunities for economically disadvantaged persons (secs. 701 and 704(a)(1)).

(2) Given the diversity of local circumstances and the differing environments in which PIC's will operate, the structure, level of activity, and composition of PIC's may vary considerably from one prime sponsor jurisdiction to another. Title VII of the Act is designed to encourage the formulation of a local partnership between the private sector and the prime sponsor that will most effectively satisfy the labor demand needs of the business community and enhance the economic well-being of the community.

(b) **Appointment of PIC members.** Each prime sponsor shall appoint the members of the PIC. (sec. 704).

(1) **General.** (i) A majority of the PIC membership shall be representatives of industry and business (sec. 704(a)).

(ii) Ultimate decisions regarding the establishment of the PIC rest with the prime sponsor. In making such decisions, the prime sponsor shall solicit and consider the recommendations of the business and industrial community (sec. 704(a)).

(iii) Existing local councils or committees may be designated or adapted to serve as the PIC (sec. 704(a)).

(iv) In establishing a PIC, the prime sponsor should consult with business and industry, labor organizations, community-based organizations, educational agencies and institutions, the apprenticeship community, and existing councils and committees.

(v) In prime sponsor jurisdictions in which a National Alliance of Business (NAB) metro organization exists, it should be given consideration in the establishment of the PIC.

(vi) Nothing in this section is meant to give a presumptive role to any particular organization in the establishment of the PIC (sec. 704(2)(d)).

(2) *Business and industry members.* (i) The business and industry membership of the PIC shall be representative of the private for profit employment community in terms of the types of business represented (sec. 704(a)(1)).

(ii) Where possible, at least half of the industry and business representatives shall be representatives from small business. For purposes of this Part, "small business" means any private for profit enterprise employing five hundred or fewer employees (secs. 704(a)(1) and (2)).

(iii) Minority business enterprises shall be represented on the PIC, at least consistent with their representation in the business community (sec. 704(a)(1)).

(3) *Other required members.* The PIC membership shall include representation from the following:

(i) Organized labor. In appointing members from organized labor, the prime sponsor should consult State or central labor bodies, the Human Resources Development Institute (HRDI) and unions representing major occupations in the area.

(ii) Community-based organizations that have demonstrated a record of effectiveness in their relationships with the business community.

(iii) Educational agencies and institutions that provide education or vocational training oriented towards the needs of the business community.

(4) *Other members.* Prime sponsors may also appoint to the PIC other members such as representatives of persons eligible to participate in activities under this Part (sec. 704(a)(1)).

(c) *Chairperson.* (1) Prime sponsors should appoint a chairperson pro tem who shall be from the business and industrial community and who shall assist in identifying potential members and in establishment of the PIC.

(2) Once established, the PIC shall have a chairperson who shall be selected by the members of the PIC, from among the representatives of business and industry discussed in Section 679.2(b)(2) above.

(d) *Organizational position.* (1)(i) The organizational position occupied by the PIC within the overall employment and training delivery system shall be determined by the prime sponsor in consultation with the PIC.

(ii) Such position and relationship shall be designed to enable the PIC to carry out its responsibilities.

(2) To carry out its duties, the PIC should meet regularly, should appoint subcommittees to deal with particular areas of concern, and should secure either through its staff or other means, the expertise of persons in

the private sector having knowledge of business practices and policies (sec. 704(c)).

(3) *PIC relationship to the prime sponsor's planning council.* (i) The activities of the PIC shall be coordinated by the prime sponsor with those of the prime sponsor's planning council, and area planning bodies in the case of State prime sponsors. The planning council shall review and comment on the Title VII plan, and otherwise operate with respect to the Title VII program in the same manner as with other prime sponsor programs.

(ii) For purposes of Title VII, the PIC shall not be subordinate in its authority to the prime sponsor's planning council.

(iii) The PIC chairperson (or designee) shall, at a minimum, serve as an ex-officio, nonvoting member of the prime sponsor's planning council, and the chairperson of the prime sponsor's planning council (or designee) shall, at a minimum, serve as an ex-officio, nonvoting member of the PIC. However, this does not preclude assigning either chairperson the status of a full voting member on the respective councils (secs. 704(a)(1) and 704(b)).

(e) *Staff.* The PIC shall be appropriately staffed. It should select or hire staff commensurate with its responsibilities. The staffing composition of the PIC shall be determined through mutual agreement between the PIC and the prime sponsor.

(1) When the PIC is a subgrantee or contractor of the prime sponsor it shall hire its own staff in a manner consistent with that status and with the terms of the subgrant or contract.

(2) If the PIC is other than a subgrantee or contractor, it shall be consulted by the prime sponsor on the matter of its staffing. To the extent possible, consistent with applicable personnel rules, the PIC should be party to decisions on staff selection or hiring.

(f) *PIC's that serve more than one prime sponsor area.* Because business and industry typically draw upon the labor supply of a broad geographical area without regard to jurisdictional boundaries, prime sponsors are encouraged to join together to form PIC's that serve labor market areas. Additionally, an established PIC serving one prime sponsor jurisdiction may extend its functions to cover additional prime sponsor areas, pursuant to arrangements and agreements between the prime sponsors involved and the PIC. Such arrangements will serve to lessen the degree of duplication of activity in developing and utilizing labor market information, in soliciting participation in training programs, and in job development activities. Accordingly, financial incentives may be provided to prime sponsors that make

such arrangements, as discussed in Section 679.3(b)(2) (sec. 704(a)(1)).

(g) *Functions of the PIC.* The prime sponsor and the Private Industry Council shall determine those functions that the PIC will perform, based upon local conditions, the interests of the private sector, and the needs of the community. The PIC shall serve as an intermediary to assist the local employment and training structure to become more responsive to the business community. Those functions include the following, among others:

(1) *General.* (i) the PIC shall be a primary vehicle of the prime sponsor for redirecting employment and training activities under the Act from public and private non-profit subsidized employment of CETA participants to permanent unsubsidized positions in the private sector.

(ii) The PIC shall serve as the business and industry contact point in the local employment and training system, to present the private sector's views and recommendations for making programs more responsive to local employment needs.

(iii) The PIC shall advise and provide direction to the local employment and training system on ways to increase private sector job placements for persons eligible under this Part (secs. 701 and 704(c)).

(2) *Planning and coordination.* (i) The PIC shall, in conjunction with the prime sponsor, design and develop the Title VII program and subpart to the prime sponsor's Annual Plan (sec. 703(b)).

(ii) In designing the plan, and on a continuing basis, the PIC shall analyze private sector job opportunities, including estimates by occupation, industry, and location. The analysis should survey employment demands in the private sector and training possibilities, such as apprenticeship, in order to develop projections of short and long range labor needs, and to refine employment and training programming so that it becomes increasingly responsive to private sector labor needs. In undertaking such analysis, the PIC should assess and utilize information contained in economic development plans for the area and currently available labor market information from sources already in place, such as the State Employment Security Agency (SESA) (sec. 703(b)(3)).

(iii) The PIC should, in conjunction with the prime sponsor, develop specific private sector employment and training projects.

(iv) The PIC should, in conjunction with the prime sponsor, develop standards for the types of occupations to be selected for the expenditure of training funds.

(v) The PIC should, in conjunction with the prime sponsor, develop stand-

ards and specification for training in particular occupations.

(vi) In designing the plan, the PIC and prime sponsor should, to the extent possible, ensure that the plan is consistent with plans, funding applications and grants for programs related to private sector employment and training which are funded by other Federal agencies. For planning purposes and to coordinate PIC activities with activities under other related Federal programs, the PIC should where possible review and comment on such plans and funding applications (including those of the Economic Development Administration, Department of Housing and Urban Development, Small Business Administration and Community Services Administration) (secs. 103(a)(20), 704(c) and 705(a)(4)).

(vii) The PIC shall have the opportunity to review and comment on other Annual Plan subparts under the Act (sec. 704(c)).

(3) *Operational functions.* (i) The PIC should actively solicit public and private support for and participation in the Private Sector Initiative Program and other programs and activities designed to increase private sector employment and training opportunities for persons who are economically disadvantaged.

(ii) The PIC should market and disseminate information on the Targeted Jobs Tax Credit, created by the Revenue Act of 1978 (P.L. 95-600), and the WIN tax credit.

(iii) The PIC should, pursuant to the provisions of Section 676.23(f), enter into cooperative written agreements with the SESA, JSIP Committees, and other private sector intermediaries in order to carry out its responsibilities.

(iv) The PIC may receive funds to administer and directly operate local private sector employment and training programs. Such an operational function may involve directly marketing on-the-job and other training agreements with private employers, developing training programs, entering into contracts with private firms, community-based organizations, and educational agencies and institutions, and other related activities.

(v) Organizations represented on the PIC may be directly involved in the operation of employment and training programs funded under this Part, consistent with the conflict of interest provisions of Section 679.2(i).

(vi) The PIC may, in consultation with the prime sponsor and in accordance with section 676.37(e), develop criteria for the selection of any non-governmental organization, association, firm or other entity for the conduct of programs or activities under this Part (secs. 121(o) and 704(c)).

(4) *Monitoring and evaluation.* (i) The PIC shall, in consultation with the prime sponsor, develop standards to monitor activities under this Part. Programs under this Part are also subject to the prime sponsor monitoring responsibilities of Section 676.76 (sec. 704(c)).

(ii) The PIC may, in consultation with the prime sponsor, identify the factors to be addressed in an evaluation or assessment of activities under this Part.

(iii) In consultation with existing groups, such as Job Service Improvement program employer committees and prime sponsor's planning and youth councils, the PIC may examine the performance of the local CETA and SESA delivery system to determine how to better meet the needs of business and industry and increase private sector employment opportunities for the economically disadvantaged, and advise the prime sponsor and the SESA of its observations and recommendations (sec. 704(c)).

(5) Nothing in this section is intended to limit the functions of the PIC, with respect to assisting the prime sponsor to improve the responsiveness of employment and training programs to employment opportunities in the private sector. The business community should be involved in determining the functions of the PIC so that these will be responsive to the needs and interests of business and industry.

(h) *Accountability.* The Department holds the prime sponsor accountable for activities conducted and funds expended under this Part. The PIC, in working with the prime sponsor to develop activities under this Part, must recognize the prime sponsor's ultimate liability for such activities. The PIC and the prime sponsor are thus both responsible for program performance, and the Department will take the PIC's performance of its functions into account in conducting the annual Title VII performance assessment. Additionally, where the PIC is a contractor or subgrantee of the prime sponsor, it is financially liable to the prime sponsor for funds received.

(i) *Conflict of interest.* (1) While the members of the PIC must vote on whether they concur in the overall Title VII Annual Plan Subpart, no member may vote on any portion of the plan or on any contract or subgrant in contravention of Section 676.62(a) (sec. 121(h)(2)).

(2) Prime sponsors may provide broad administrative responsibility to the PIC, including the authority to enter into contracts and subgrants. However, contracts between the PIC and private organizations with which PIC members are associated shall be subject to the final approval of the prime sponsor.

§ 679.3 Allocation of funds.

(a) *Prime sponsor basic allocations.* Ninety-five percent of funds available under Title VII of the Act shall be allocated to prime sponsors as provided in Section 202 of the Act except that:

(1) In order to ensure that every prime sponsor receives an allocation of sufficient size to mount a viable program, a minimum allocation level may be established; and

(2) In the case of Guam, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Marianas, these shall be allocated the same percentage of Title VII funds as the percentage of Title II Parts A, B and C funds allocated to them.

(b) *Other allocations.* The remaining five percent of the funds shall be allocated in the following manner:

(1) *Assistance to Native American entities.* No less than two percent of the total funds available under Title VII of the Act will be used to support Title VII programs for Native American entities described in Sections 302(c) (1) (A) and (B) of the Act.

(2) *Assistance to prime sponsors who join together to establish a single Private Industry Council.* Additional funds shall be provided to prime sponsors who join together to establish a single Private Industry Council that serves a substantial portion of a functioning labor market area, as determined by the Secretary. Included may be:

(A) Existing consortia which qualify for incentive funds under Section 676.4(c);

(B) Two or more prime sponsors establishing a PIC that serves at least 75% of a functioning labor market area; and

(C) To the extent that funding is available, other combinations of prime sponsors forming a single PIC, based on the degree of coverage of the functioning labor market area (sec. 702(b)).

(c) Funds may be reallocated pursuant to the provisions of Section 676.47 (sec. 108).

§ 679.4 Annual plan subpart.

(a) *General.* To receive financial assistance under this Part, a prime sponsor shall submit the following information, which will become part of the Annual Plan as described in Section 676.11. This subpart shall consist of a Narrative Description, Program Planning Summary, and Budget Information Summary, specific to Title VII (sec. 103(b)).

(b) The prime sponsor shall transmit a copy of the Title VII Annual Plan subpart to the prime sponsor's planning council, to appropriate labor organizations, community-based organizations, educational agencies and institutions, Overall Economic Develop-

ment Program committees and to such other parties as are required by Section 676.12(d). The comment and publication procedures of Section 676.12 apply to this Part (secs. 703 (b) (4) and (5)).

(c) The Annual Plan Subpart shall have the concurrence of both the PIC and the prime sponsor in order to be approved. Therefore, the PIC chairperson as well as the prime sponsor shall sign the Annual Plan Subpart.

(d) *Narrative description.* The Narrative Description shall include:

(1) *Objectives and need for assistance.* (i) State the objectives and need for funding under this Part, including an identification of private sector occupations where there are labor shortages, and discuss how activities will be integrated with other training and placement activities under the Act (sec. 703(a)).

(ii) Analyze the eligible population by race, sex, national origin and age, and present the planned levels of service to be provided these significant segments in terms of the percent each group will constitute of those to be served. Where the planned level of service to any group varies by more than 15 percent below the group's incidence in the eligible population, an explanation must be provided.

(2) *Results and benefits.* Provide a statement on:

(i) Specific quantified performance and placement goals, by program activity.

(ii) Any performance and placement goals with respect to groups designated to be served.

(iii) Explain any variation between such performance and placement goals and the Secretary's performance standards (sec. 103(b)(4)).

(iv) Any nonquantifiable goals or outcomes.

(3) *Approach.* Provide a description of:

(i) The specific activities to be conducted.

(ii) The procedures and standards to be used for the selection of occupations in which training is to be provided.

(iii) The system that will be used to monitor and evaluate the success of activities, including a description of the role of the PIC in monitoring and evaluating.

(4) *Private Industry Council (PIC).* Provide the following:

(i) The responsibilities assumed and the functions to be performed by the Private Industry Council in the planning, operation and review of programs.

(ii) The procedures used to assure that meetings are held on a regular basis, that they are publicly announced, open and accessible to the

general public, and that minutes are maintained.

(iii) The procedures used to select members of the PIC.

(iv) A list of the PIC membership indicating representation from among those membership categories identified in § 679.2(b).

(v) Staffing arrangements for support of the PIC agreed upon by the PIC and the prime sponsor.

(vi) A description of procedures established to ensure periodic consultation and coordination of activity between the PIC and the prime sponsor's planning council and other appropriate agencies in the labor market area.

(e) *Program Planning Summary (PPS).* The PPS reflects the goals, objectives and activities planned under Title VII for the program year.

(f) *Budget Information Summary (BIS).* The BIS contains the planned budget under Title VII for the program year.

§ 679.5 Administrative standards and procedures.

(a) *General.* The provisions of section 676 shall apply except as otherwise indicated.

(b) *Prime sponsors who join together to establish a single Private Industry Council.* Special provisions for prime sponsors who join together to establish a single PIC, including reporting requirements, are discussed in the *Forms Preparation Handbook*.

(c) *Allowable costs and cost allocation.* The provisions of §§ 676.40 and 676.41 shall apply to programs under Title VII except as follows:

(1) *Employment generating services.*

(i) For Title VII only, costs for activities which are not directly related to the immediate provision of training or employment for participants but which are intended to result in the creation or expansion of employment opportunities for persons eligible under this Part are to be classified as employment generating services and shall be charged to the "Services" cost category. Examples are:

(A) Those items enumerated in paragraphs (b)(2) (i), (ii), (iii), (iv), (vi), (vii), (ix), (x), (xii), (xiii), (xiv), and (xv) of Section 679.6.

(B) The costs for the salaries and fringe benefits of labor market and program analysts, consultants under contract for employment generating services, and the costs for technical assistance to contractors and subgrantees.

(ii) While such activities are allowable and desirable under Title VII, no more than 50 percent of a prime sponsor's Title VII funds may be used for employment generating services.

(iii) The program activity against which the costs for employment generating services are to be allocated is

"Other Activities" described in § 676.41(f)(6).

(iv) No costs attributable to the general administration of the Title VII program shall be charged to the "Services" cost category.

(2) *Administrative costs.* (i) For purposes of Title VII, administrative costs are those costs which fall within the category of administration as defined in §§ 676.40(e)(7), 676.41(d)(6), exclusive of employment generating services.

(ii) The total amount of administrative costs incurred by all prime sponsors in carrying out programs under this Part shall not exceed 20 percent of the total cost of carrying out all prime sponsor programs. Each prime sponsor and PIC must make every effort to limit administrative costs to only those that are necessary to assure the effective operation of programs under this Part. If the prime sponsor and PIC determine that more than 20 percent is necessary to operate the planned program, a higher amount may be requested by providing a satisfactory explanation of the need for such amount in the Title VII Annual Plan Subpart. The special needs of urban and rural areas and other relevant factors shall be considered by the RA in reviewing requests for administrative costs in excess of 20% (sec. 705(b)).

(iii) It is recognized that initial startup and implementation of programs under this Part may require administrative expenditures greater than those necessary for the operation of established programs. Thus, it is anticipated that it will subsequently become possible for administrative costs to be reduced such that they are brought to a more appropriate level of 10%. Prime sponsors and PIC's should therefore plan to reduce administrative costs to no more than 10% in subsequent fiscal years.

(3) Payments to private-for-profit employers through methods not specifically authorized under Parts 676 through 677, Subpart B shall not be allowable unless and until the method of payment is explained in advance and authorization for its use is specifically granted. Prime sponsors shall transmit to the RA requests to permit such new payment methods. The RA shall transmit such requests, with comments and recommendations, to the Assistant Secretary for Employment and Training. The final decision shall be made within 60 days after the prime sponsor's submission of a request to the RA. Nothing in this paragraph authorizes wage subsidies (sec. 703(c)).

§ 679.6 Program operations.

(a) *Eligibility.* Eligibility requirements governing this program may be found in § 675.5.

(b) *Allowable activities.* Funds shall be used to provide employment and training and related activities consistent with the purposes of Title VII including:

(1) Activities authorized in Part 677, Subpart B, and

(2) The following:

(i) Coordinating programs of jobs and training and education enabling individuals to work for a private employer while attending an education or training program;

(ii) Developing a small business intern program to provide a practical training enabling youths and other individuals to work in small business firms to acquire first-hand knowledge and management experience about small business;

(iii) Developing relationships between employment and training programs, educational institutions, and the private sector;

(iv) Developing useful methods for collecting information about Federal Government procurement contracts with private employers, new and planned publicly supported projects such as public works, economic development and community development programs, transportation revitalization, alternative energy technology development, demonstration, and utilization projects, energy conservation projects, and rehabilitation of low income housing as part of a community revitalization or stabilization effort, which provide work through private sector contractors;

(v) Conducting innovative cooperative education programs for youths in secondary and postsecondary schools designed to coordinate educational programs with work in the private sector;

(vi) Developing and marketing model contracts designed to reduce the ad-

ministrative burden on the employer and model contracts to meet the needs of specific occupations and industries;

(vii) Coordinating programs under this Part with other job development, placement, and employment and training activities carried out by public and private agencies;

(viii) Providing on-the-job training subsidies on a declining ratio to wages over the period of training;

(ix) Providing followup services with employees placed in private employment and employers who hire recipients of services under the Act;

(x) Encouraging employers to develop job skill requirement forecasts and to coordinate such forecasts with prime sponsors;

(xi) Using direct contracts for training and employment programs with private for profit and private nonprofit organizations;

(xii) Developing apprenticeship or comparable high-skill training programs for workers regardless of age in occupations where such programs do not exist presently in the area;

(xiii) Increasing opportunities for upgrading from entry level jobs by providing counseling and other services to employees and employers beyond initial training periods;

(xiv) Providing technical assistance to private employers to reduce the administrative burden of employment and training programs;

(xv) Disseminating information to private employers so that they may more fully utilize programs under the Act; and

(xvi) Other program activities which demonstrate effective approaches to the training and employment of persons eligible to participate in programs under this Part (sec. 705(a)).

Signed at Washington, D.C., the 16th day of January 1979.

RAY MARSHALL,
Secretary of Labor.

[FR Doc. 79-1997 Filed 1-18-79; 8:45 am]

Registered
Federal Paper

FRIDAY, JANUARY 19, 1979

PART X



**DEPARTMENT OF
ENERGY**



**ELECTRIC AND
HYBRID VEHICLE
RESEARCH
DEVELOPMENT
AND PRODUCTION**

Loan Guaranties

[6450-01-M]

DEPARTMENT OF ENERGY

[10 CFR Part 791]

ELECTRIC AND HYBRID VEHICLES

Research, Development, Demonstration, and
Production Loan Guaranties

AGENCY: Department of Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Department of Energy proposes to amend its regulations on Electric and Hybrid Vehicle Research, Development, Demonstration, and Production Loan Guaranties in order to implement certain amendments to the Electric and Hybrid Vehicle Research, Development and Demonstration Act of 1976 contained in the Department of Energy Act of 1978—Civilian Applications, including the offering of principal as well as interest assistance and the establishment of the Electric and Hybrid Vehicle Development Fund. Written comments will be received and a public hearing will be held with respect to this proposal.

DATES: Written comments must be received by 4:30 p.m. e.s.t. on March 20, 1979. The public hearing will be held on February 20, 1979. Requests to speak at the hearing must be received by 4:30 p.m. e.s.t. on February 14, 1979, and speakers will be notified by February 16, 1979. Written copies of a speaker's statement must be received by 4:30 p.m. e.s.t. on February 19, 1979.

ADDRESSES: Send written comments and requests to speak to Public Hearing Management, Department of Energy, 2000 M Street, N.W., Room 2313, Box VO, Washington, D.C. 20461. Send copies of speaker's statement, as provided below, to Room 1214, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545. The public hearing will be held at 9:30 a.m. e.s.t. on February 20, 1979, in Room 3000A, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Anthony H. Ewing (Program Office), U.S. Department of Energy, Office of Conservation and Solar Applications, 20 Massachusetts Avenue, N.W., Washington, D.C. 20545, (202) 376-4747.

Pamela M. Pelcovits (Office of General Counsel), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-8788.

Vivian Sande (Media Relations), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20461, (202) 633-9385.

SUPPLEMENTARY INFORMATION:

I. BACKGROUND

On May 9, 1978, the Department of Energy (DOE) issued final regulations establishing policies and procedures for loan guaranties by which lenders, as well as borrowers, may participate in accelerating the development and production of electric and hybrid vehicles (43 FR 20476, May 12, 1978). These regulations were intended to provide for the implementation of section 10 ("Loan Guaranties") of the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976 (EHV Act) (Pub. L. 94-413, 15 U.S.C. 2501 *et seq.*).

Section 603 of the Department of Energy Act of 1978—Civilian Applications (DOE Act) (Pub. L. 95-238) has amended section 10 of the EHV Act in several respects. Accordingly, DOE proposes to amend its regulations in order to conform the regulations, as appropriate, to the amendments to section 10.

II. PROPOSED AMENDMENTS

Section 603(a)(1) of the DOE Act amended the EHV Act by adding at the end of section 10(e) provisions establishing the Electric and Hybrid Vehicle Development Fund. This fund is available for carrying out the loan guaranty principal and interest assistance program authorized by the EHV Act, as amended. DOE proposes to amend 10 CFR Part 791 by adding a new section, 791.41A, "Electric and Hybrid Vehicle Development Fund."

Section 603(a)(2) of the DOE Act amended section 10 of the EHV Act by adding a new subsection (j) which pledges the full faith and credit of the United States to the payment of all obligations incurred under section 10. DOE proposes to amend § 791.1 in order to reflect this pledge by adding after the words "Federal guaranty" the words "backed by the full faith and credit of the United States."

Section 10(g) of the EHV Act has been amended by section 603(b) of the DOE Act. Section 10(g)(1), as enacted, authorized the Secretary to enter into a contract to pay the lender, on behalf of the borrower, the interest charges which become due and payable on the unpaid balance of any loan guaranteed pursuant to section 10 if the Secretary made certain findings. Section 10(g)(2) authorized the Secretary to make payment in the event of a default on a guaranteed loan, and authorized the Attorney General to take appropriate action to recover the amount of these payments (including any interest payment under (g)(1)) from certain assets and surety of the borrower. Section 603(b) of the DOE Act amended section 10(g) to authorize the Secretary to enter into a contract to pay the

lender principal, as well as interest charges, and to authorize the Attorney General to recover principal, as well as interest payments. DOE proposes to amend § 791.10, which provided for the implementation of section 10(g), to conform to the amendments to that section by adding the words "principal and" before the word "interest" in the appropriate places. DOE also proposes to amend § 791.11, § 791.32, and § 791.37 in the same manner so that these sections, which referred to "interest assistance," will now refer to "principal and interest assistance."

Section 603(c) of the DOE Act amended section 10(h) of the EHV Act by extending by two years the date for making loan guaranties or entering into assistance contracts. DOE proposes to amend § 791.12 to provide for this extension.

DOE also proposes to amend § 791.9, in which the EHV Act is referenced, and the authority for Part 791, in order to make these references reflect the fact that the EHV Act has been amended.

III. OPPORTUNITIES FOR PUBLIC COMMENT

A. Written Comments. Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the amendments to Part 791 set forth in this notice to: Department of Energy, Public Hearing Management, Room 2313, Box VO, 2000 M Street NW., Washington, D.C. 20461. Comments should be identified on the outside of the envelope and on the documents submitted to DOE with the designation "Electric and Hybrid Vehicle Research, Development, Demonstration, and Production Loan Guaranties." Fifteen (15) copies should be submitted. All comments received by DOE by 4:30 p.m. e.s.t. on (60 days from publication), and all other relevant information, will be considered before final action is taken on the proposed amendments.

Any information or data considered by the person furnishing it to be confidential must be so identified and submitted on writing, one copy only. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination.

B. Public Hearing. The public hearing will be held at 9:30 a.m. e.s.t., on February 20, 1979, in Room 3000A, 1200 Pennsylvania Avenue NW., Washington, D.C.

Any person who has an interest in this proceeding or who is a representative of a group of persons that has an interest in this proceeding may make a written request for an opportunity to make an oral presentation. Such a request should be directed to DOE at

the address given at the beginning of this preamble, and must be received before 4:30 p.m. e.s.t., on February 14, 1979. A request may be hand-delivered between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Requests should be marked as for written comments, with the additional notation "Request To Speak."

The person making the request should briefly describe the interest concerned, if appropriate, state why she or he is a proper representative of a group of persons that has such an interest, and give a concise summary of the proposed oral presentation and a phone number where she or he may be contacted through February 16, 1979. Each person selected to be heard will be notified by DOE before 4:30 p.m. e.s.t., February 16, 1979. Each person selected to be heard must submit 15 copies of her or his statement to the address given above before 4:30 p.m. e.s.t., February 19, 1979. In the event that any person wishing to testify cannot provide 15 copies, alternative arrangements can be made with the hearing coordinator in advance of the hearing by so indicating in the letter requesting an oral presentation or by calling Anthony Ewing at (202) 376-4747.

C. Conduct of Hearing. DOE reserves the right to select the persons to be heard at the hearing, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based on the number of persons requesting to be heard.

A DOE official will be designated to preside at the hearing. This will not be a judicial or evidentiary-type hearing. Questions may be asked of speakers only by those conducting the hearing, and there will be no cross-examination of persons presenting statements. Any decision made by DOE with respect to the subject matter of the hearing will be based on all information available to DOE. At the conclusion of all initial oral statements at the hearing, each person who has made an oral statement will be given the opportunity, if she or he so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

Any interested person may submit questions to be asked by those conducting the hearing of any person making a statement. Questions should be received at the address given for written comments before 4:30 p.m. e.s.t., February 19, 1978. DOE will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any person making an oral statement who wishes to ask a question at

the hearing may submit the question, in writing, to the presiding officer. The presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made and the entire record of the hearing, including the transcript, will be retained by DOE and made available for inspection at DOE Freedom of Information Office, Forrestal Building, Independence Avenue and L'Enfant Plaza SW., Washington, D.C. 20585, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Any person may purchase a copy of the transcript from the reporter.

IV. SIGNIFICANCE REVIEW

It has been determined that the proposed amendments are significant, as that term is used in Executive Order (E.O.) 12044 and amplified in the DOE procedures for developing Department of Energy regulations. This determination is based upon the importance of the amendments extending the program for two years and authorizing principal assistance under certain circumstances, and upon an appreciation of the importance of the overall electric and hybrid vehicle program in encouraging the development of alternative means of transportation.

It has been further determined that this regulatory action is not likely to have a major impact, as defined by Executive Order (E.O.) 12044 and the DOE procedures governing the development of regulations; consequently, no regulatory analysis will be prepared in this instance.

(Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, as amended by the Department of Energy Act of 1978—Civilian Applications, Pub. L. 95-238; Energy Reorganization Act of 1974, Pub. L. 93-438; Department of Energy Organization Act, Pub. L. 95-91; E.O. 12009 (42 FR 46267); E.O. 12044 (43 FR 12661, 43 FR 18634)).

In consideration of the foregoing, it is proposed to amend Part 791 of Chapter III of Title 10 of the Code of Federal Regulations as set forth below.

Issued in Washington, D.C., January 15, 1979.

OMI WALDEN,
Assistant Secretary, Conservation and Solar Applications.

Chapter III of Title 10, Code of Federal Regulations, Part 791 is amended as follows:

1. § 791.1 is revised to read as follows:

§ 791.1 Purposes.

The purpose of this regulation is to set forth policies and procedures under which lenders may obtain a Federal guaranty backed by the full faith and credit of the United States on loans to qualified borrowers for purposes related to the research, development, demonstration, and commercial production of electric or hybrid vehicles in an environmentally acceptable manner.

2. § 791.9 is amended in paragraph (1) to read as follows:

§ 791.9 Loan guaranty criteria.

(1) The amount of the guaranty on any loan shall not exceed \$3,000,000 principal unless the Secretary finds that a higher guaranty level for specific loan guaranties is necessary in order to carry out the purposes of Pub. L. 94-413, as amended by Pub. L. 95-238;

3. § 791.10 is revised to read as follows:

§ 791.10 Principal and interest assistance.

With respect to any loan guaranteed pursuant to the regulation, the Secretary may enter into a principal and interest assistance contract with the borrower to pay the lender, on behalf of the borrower, the principal and interest charges which become due and payable on the unpaid balance of any such loan if the Secretary finds:

(a) That the borrower is unable to meet principal and interest payments, and that it is in the public interest to permit the borrower to continue to pursue the purposes of the project, and that the probable net cost to the Federal Government in paying such principal and interest will be less than that which would result in the event of a default;

(b) That the amount of such principal and interest charges which the Secretary is authorized to pay is no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

(c) That the borrower has agreed to repayment of principal and interest charges paid by the Federal Government, to the payment of any deferred user charge as provided in § 791.32, "User charge," and to the payment of interest on such principal, interest, and deferred user charges at an annual rate to be set by the Secretary and as stated in the principal and interest assistance contract.

4. § 791.11 is revised to read as follows:

§ 791.11 Default payment.

In the event of default by a borrower, as defined in paragraph (b) of § 791.3, "Definitions," with respect to any loan guaranteed pursuant to this regulation, and except as provided in § 791.10, "Principal and interest assistance," and paragraph (b) of § 791.31, "Loan servicing by lender," the Secretary will, as provided in § 791.37, "Default and demand," make payment of principal and accrued interest in accordance with the terms and conditions of the guaranty contract. Thereupon, the Attorney General of the United States shall take such action as deemed necessary to recover the amounts of such payments including any obligations under paragraph (c) of § 791.10, "Principal and interest assistance," from such assets of the defaulting borrower as are associated with the project or as specified in the guaranty agreement. This includes patent and proprietary rights resulting from the project as provided in § 791.44, "Patent and proprietary rights," or from any other surety, security, collateral, guaranty, asset, or bond included in the terms of the guaranty. Any recovery achieved by the Attorney General, which exceeds the cost of recovery amounts included in paragraph (c) of § 791.10, "Principal and interest assistance," and the amount paid to the lender including principal and interest on any nonguaranteed portion, in accordance with the guaranty agreement or principal and interest assistance contract, shall be returned to the borrower, unless the guaranty agreement provides otherwise.

5. § 791.12 is revised to read as follows:

§ 791.12 Period of guaranties and principal and interest assistance.

No loan guaranty agreements will be made, or principal and interest assistance contracts entered into, after September 17, 1983. Guaranty agreements in effect at that time will continue until the term of the loan is completed or until the guaranteed portion of the loan is repaid in full with accrued interest, whichever occurs first. Principal and interest assistance contracts in effect on that date will remain in effect thereafter until the contract term expires or the contract is terminated in accordance with its provisions.

6. § 791.32 is revised to read as follows:

§ 791.32 User charge.

User charges imposed on the guaranteed portion of the loan are computed at a rate of one percent per annum on the estimated outstanding balance. Payments of the user charge will be made by the lender at the time each

disbursement is made and annually on the anniversary date of closing, or at other intervals to be determined by the Secretary. The user charge will be collected from the lender and used for the purposes of defraying the cost of administration and possible Federal loss associated with the program. The user charge may be passed from the lender to the borrower, and, in such instances, may be included in the aggregate net cost. If principal and interest assistance is in effect, payments of this charge, if passed from the lender to the borrower, may be deferred for the term of the principal and interest assistance contract.

7. § 791.37 is amended in paragraph (a) to read as follows:

§ 791.37 Default and demand.

(a) The Secretary shall, pursuant to the provisions of § 791.10, "Principal and interest assistance," determine whether a principal and interest assistance contract shall be executed. In the event that principal and interest assistance is not warranted, the Secretary shall so notify the borrower and the lender. The lender shall make available without delay such documents and certifications as the Secretary may reasonably require, evidencing the lender's compliance with notification provisions of the guaranty agreement.

8. A new section, § 791.41A, is added to read as follows:

§ 791.41A Electric and hybrid vehicle development fund.

(a) As provided in section 603(a)(1) of Pub. L. 95-238, there is established in the Treasury of the United States an Electric and Hybrid Vehicle Development Fund (hereinafter referred to as the fund), which is available to the Secretary in carrying out the loan guaranty and principal and interest assistance program, including the payment of administrative expenses incurred in connection therewith.

(b) That part of the amounts appropriated pursuant to section 16 of Pub. L. 94-413, as amended by Pub. L. 95-238, as the Secretary deems necessary to carry out the purposes of the program and any amounts which may be returned to the United States pursuant to § 791.11 shall be paid into the fund.

(c) Moneys in the fund not needed for current operations may, with the approval of the Secretary of the Treasury, be invested in bonds or other obligations of, or guaranteed by, the United States.

(d) The amounts in the fund shall remain available until expended, except that after September 17, 1983, such amounts in the fund which are not required to secure outstanding guaranty obligations shall be paid into the general fund of the Treasury of the United States.

(e) If at any time the moneys available in the fund are insufficient to enable the Secretary to discharge his responsibilities under the program, he shall issue, to the Secretary of the Treasury, notes or other obligations in such forms and denominations bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary of the Treasury. This borrowing authority shall be effective only to such extent or in such amounts as are specified in appropriation acts. Such authority shall be without fiscal year limitation. Redemption of such notes or obligations shall be made by the Secretary from appropriations or other moneys available for the program. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall not be less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes or other obligations issued hereunder, and for that purpose he is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as amended, and the purposes for which securities may be issued under that act are extended to include any purchase of such notes or obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States.

(f) Business-type financial reports covering the operations of the fund shall be submitted to the Congress by the Secretary annually upon the completion of the appropriate accounting period.

9. The Authority of 10 CFR Part 791 is amended to read as follows:

(Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, as amended by the Department of Energy Act of 1978—Civilian Applications, Pub. L. 95-238; Energy Reorganization Act of 1974, Pub. L. 93-438; and Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009 (42 FR 46267).)

[FR Doc. 79-2014 Filed 1-18-79; 8:45 am]

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Property

FRIDAY, JANUARY 19, 1979
PART XI



**EQUAL
EMPLOYMENT
OPPORTUNITY
COMMISSION**



**AFFIRMATIVE ACTION
GUIDELINES**

**Technical Amendments to the
Procedural Regulations**

[6570-06-M]

Title 29—Labor

CHAPTER XIV—EQUAL EMPLOYMENT
OPPORTUNITY COMMISSIONPART 1608—AFFIRMATIVE ACTION
APPROPRIATE UNDER TITLE VII OF
THE CIVIL RIGHTS ACT OF 1964,
AS AMENDED

Adoption of Interpretative Guidelines

AGENCY: Equal Employment Opportunity Commission.

ACTION: Adoption of final Guidelines on Affirmative Action appropriate under Title VII of the Civil Rights Act of 1964, as amended.

SUMMARY: The Equal Employment Opportunity Commission wishes to encourage voluntary action to eliminate employment discrimination, and hereby publishes its final Guidelines on Affirmative Action. Proposed Guidelines were published on December 28, 1977 (42 FR 64,826) for public comment. The Commission has now analyzed those comments and taken them into consideration in preparing its final Guidelines. The Preamble, below, describes the Commission's purpose for issuing these Guidelines and explains how the issues raised by the comments have been addressed. These Guidelines clarify the kinds of voluntary actions that are appropriate under Federal law. They describe the action the Commission will take when the procedures outlined herein have been followed. By elucidating the standards for voluntary action in these Guidelines, the Commission encourages affirmative action without resort to litigation.

EFFECTIVE DATE: February 20, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter C. Robertson, Director, Office of Policy Implementation, Room 4002A, 2401 E Street, N.W., Washington, D.C. 20506, (202) 254-7469, 634-7060

SUPPLEMENTARY INFORMATION:

AN OVERVIEW OF THE GUIDELINES ON
AFFIRMATIVE ACTION

The Equal Employment Opportunity Commission ("EEOC", "the Commission") enforces Title VII of the Civil Rights Act of 1964, as amended, ("Title VII," "the Act"), which makes it illegal to discriminate in employment on the basis of race, color, religion, sex, or national origin. The Act requires the Commission to investigate complaints and attempt to correct violations it discovers, informally and through conciliation, or, if necessary,

through court action. The Act also authorizes private individuals to bring lawsuits if their complaints are not resolved to their satisfaction or within the statutory time period.

Since the enactment of Title VII of the Civil Rights Act of 1964, many employers, labor organizations, and other persons subject to the Act have altered employment systems to implement the purposes of Title VII by improving employment opportunities for previously excluded groups. Because of what Congress has called the "complex and pervasive" nature of systemic discrimination against minorities and women (see H.R. Rep. No. 92-238, 92nd Cong., 2nd Sess. 8 (1972)), these voluntary efforts often involve significant changes in employment relationships. Some of these actions have been challenged under Title VII, as conflicting with statutory language requiring that employment decisions not be based on race, color, religion, sex, or national origin considerations. Accordingly, the Commission believes it is important to announce the legal principles which govern voluntary affirmative action under Title VII and other employment discrimination laws, so that persons subject to the Act have appropriate guidance. These Guidelines constitute the Commission's interpretation of Title VII, harmonizing the need to eliminate and prevent discrimination and to correct the effects of prior discrimination with the need to protect all individuals from discrimination on the basis of race, color, religion, sex, or national origin.

Requests for guidance have been received by the Commission from persons subject to Title VII concerning the relationship between affirmative action and so-called "reverse discrimination." There is no separate concept under Title VII of "reverse discrimination." Discrimination against all individuals because of race, color, religion, sex, or national origin is illegal under Title VII. *McDonald v. Sante Fe Trail Transportation Co.*, 427 U.S. 273 (1976).

To clarify the relationship between affirmative action and a countervailing claim of discrimination, a new section 1608.1 of these Guidelines sets forth the historical and legislative foundation for the Commission's interpretation of Title VII. Section 1608.1(b) explains that Congress enacted Title VII in order to overcome the effects of past and present employment practices which are part of a larger pattern of restriction, exclusion, discrimination, segregation and inferior treatment of minorities and women in many areas of life. Congress sought to accomplish this objective by establishing a national policy against discrimination in employment and encouraging voluntary affirmative action

to eliminate barriers to equal employment opportunity. It is the Commission's interpretation that appropriate voluntary affirmative action, or affirmative action pursuant to an administrative or judicial requirement, does not constitute unlawful discrimination in violation of the Act.

It is essential to the effective implementation of Title VII that those who take appropriate voluntary affirmative action receive adequate protection against claims that their efforts constitute discrimination. The term affirmative action means those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity. Section 1608.3 of these Guidelines identifies circumstances in which voluntary affirmative action is permissible under Title VII. When such circumstances exist, and a plan or program otherwise complies with these Guidelines, the Commission will find that there is no reasonable cause to believe that the affirmative action plan or program violates Title VII. See § 1608.10(a). In addition, § 1608.10(b) provides that where the plan or program is in writing and was adopted in good faith, in conformity with, and in reliance upon these Guidelines, the Commission will provide the protection authorized under section 713(b)(1) of Title VII to the employer, labor organization, or other person taking the action. See *EEOC v. AT&T*, 419 F. Supp. 1022, 1055, n. 34 (E.D.Pa. 1976), *aff'd*, 556 F.2d 167 (3rd Cir. 1977), *cert. denied*, 98 S.Ct. 3145 (1978).

On December 28, 1977, at 42 FR 64826 the Commission published proposed "Guidelines on Remedial and/or Affirmative Action" in the FEDERAL REGISTER and invited comments from the public. Comments were received from almost 500 individuals and organizations. The paragraphs below summarize the major issues raised by the comments and indicate the way in which the final Guidelines address the concerns raised by the comments.

On December 11, 1978, the Commission voted to approve the Guidelines in final form. Pursuant to Executive Order 12067, the Guidelines were then distributed to all Federal agencies for their review. Comments received in this process are also reflected in the discussion below.

I. CHANGE OF GUIDELINES' TITLE

The proposed Guidelines were titled "Proposed Guidelines on Affirmative and/or Remedial Action" and the phrase "remedial and/or affirmative action" was utilized throughout the document. A number of comments questioned the difference, if any, between remedial action and affirmative action. The term "remedial" has been

dropped because of the possible erroneous implication that a violation of the law was required before affirmative action could be taken.

II. THE COMMISSION WILL PROCESS COMPLAINTS ALLEGING DISCRIMINATION AGAINST ANY AGGRIEVED PERSON

Many of the comments interpreted the Guidelines as indicating a Commission position that whites or males are entitled to less protection against discrimination than minorities or females, and that the Commission would either ignore complaints filed by whites or males, or process them in a different manner from those filed by females and minorities. The Commission maintains its position, articulated prior to *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976), that discrimination on the basis of race, color, religion, sex, or national origin, is prohibited under Title VII, regardless of the individual or class against whom such discrimination is directed. See, e.g., Commission Decision No. 74-31, 7 FEP Cases 1326, 1328, CCH EEOC Decisions, 16404, (1973). The Commission will follow the same procedures in processing complaints filed by all individuals, regardless of their race, color, religion, sex, or national origin.

To avoid any ambiguity on these issues, language in the proposed Guidelines suggesting that complaints filed by whites and males would be "dismissed" under certain circumstances has been amended. Proposed paragraph V stated that the Commission would "issue a notice of dismissal of the charge" when an affirmative action program conformed to the Guidelines' requirements. The word "dismissal" is a term of art used by the Commission in its procedural regulations to refer to all determinations other than "reasonable cause." Because its use was misconstrued in many comments, final sections have been amended by substituting the phrase "a determination of no reasonable cause" where such a finding is justified by the facts of the case.

III. CONSIDERATION OF RACE, COLOR, RELIGION, SEX, AND NATIONAL ORIGIN IN EMPLOYMENT DECISIONS

Some commentators objected to the draft Guidelines because of their belief that Title VII requires that all employment decisions be made without consideration of race, color, religion, sex, or national origin, regardless of the circumstances. This conclusion does not comport with United States Supreme Court decisions interpreting Title VII, nor with the recent decision in *Regents of the University of California v. Bakke*, 98 S. Ct. 2733 (1978) (discussed *infra*). In the Title VII cases, the Supreme Court has called upon

employers " . . . to self-examine and to self-evaluate their employment practices and to endeavor to eliminate, so far as possible, the last vestiges of an unfortunate and ignominious page in this country's history." *Albemarle Paper Co. v. Moody*, 422 U.S. 405, 418 (1975). See also, *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

Thus, the Supreme Court recognizes that persons subject to Title VII will consider race, sex and national origin in their analyses and evaluations. In addition, the Court has emphasized the concept of conciliation and voluntary action rather than litigation as the primary method of enforcing Title VII. See *Occidental Life Insurance Co. of California v. EEOC*, 432 U.S. 355 (1977). Voluntary action necessarily implies latitude to make a reasonable judgement as to whether action should be taken and the nature of such action.

At the same time, the Commission recognizes that considerations of race, color, religion, sex, and national origin are not permissible in other contexts. For example, in *McDonald v. Santa Fe Trail Transportation Co.*, 427 U.S. 273 (1976), the Court held that the anti-discrimination principle of Title VII could be invoked by white employees as well as minority employees. No question of affirmative action was involved. The Court held that disparate treatment violated Title VII, but specifically stated that its decision did not address any issues relating to affirmative action programs. *McDonald*, *supra*, at 280, n. 8. For the reasons set forth in § 1608.1, the Commission considers that these Guidelines are consistent with the statute, the Congressional intent behind it, and the decisions of the Supreme Court.

IV. TWO DIFFERENT JUSTIFICATIONS OF VOLUNTARY ACTION: THE RELATIONSHIP BETWEEN TITLE VII AND EXECUTIVE ORDER NO. 11246, AS AMENDED

A number of comments indicated uncertainty as to the relationship in the proposed Guidelines between the references to Title VII and the references to the Executive Order. These commentators apparently understood the Guidelines to mean that affirmative action required by Executive Order No. 11246, as amended, and its implementing regulations would be lawful under Title VII *only* where the contractor has a reasonable basis for concluding that such action is necessary under Title VII. The structure of the Guidelines has been changed to clarify the Commission's original interpretation that action taken pursuant to, and in conformity with the Executive order, as amended, and its implementing regulations, does not violate Title VII.

The legislative history of the Equal Employment Opportunity Act of 1972 shows that Congress repeatedly rejected limitations on affirmative action under the Executive Order, including the goals and timetables approach that had become by that time a central feature of the implementation of the Order. See, e.g., 118 Cong. Rec. 1385-1386 (1972) (remarks of Sen. Saxbe); 118 Cong. Rec. 1664-1665 (1972) (remarks of Sen. Javits); 118 Cong. Rec. 1676 (1972) (rejecting amendment offered by Sens. Allen and Ervin that would have prohibited requirements for certain types of affirmative action, including the goals approach, under the Executive Order); 118 Cong. Rec. 4918 (1972) (rejecting amendment offered by Sen. Ervin that would have applied section 703(j) of Title VII to the Executive Order).

The Commission concludes that Congress intended to permit the continuation of the Executive Order program which required affirmative action by government contractors. The Congress which acted to allow the Executive Order program to continue would not, in the same measure, invalidate it under Title VII. The statute should be construed to avoid such a contradictory conclusion, especially where such a conclusion would undermine the expressed Congressional purpose of opening employment opportunities to minorities and women who had in the past been denied such opportunities.

In the Equal Employment Opportunity Act of 1972, Congress recognized the contractor's right to rely on affirmative action plans that had been approved under the Executive Order. See section 718 of Title VII. Furthermore, Congress in section 715 established the Equal Employment Opportunity Coordinating Council (composed of the Secretary of Labor, the Chair of the EEOC, the Attorney General, the Chair of the U.S. Civil Service Commission, the Chair of the U.S. Commission on Civil Rights, or their respective delegates) "to minimize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among . . . branches of the Federal Government responsible for the implementation and enforcement of equal opportunity legislation, orders, and policies." 42 U.S.C. 2000e-14. This coordination responsibility now rests in the Commission by virtue of 5 U.S.C. 901 et seq., as applied by Reorganization Plan No. 1 (1978), which was implemented by Executive Order 12067 (43 FR 28,967, July 30, 1978). In order to achieve the objectives of section 715 and Executive Order No. 12067, the Commission concludes that it must recognize compliance with the requirements of Executive Order No. 11246, as amended, and

its implementing regulations, as a defense to a charge that the affirmative action compliance program is discriminatory. The Commission concludes that adherence to an affirmative action compliance program approved by an appropriate official of the Department of Labor or its authorized agencies is lawful under Title VII. This interpretation thus insures that government contractors will not be subject to inconsistent standards by the Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs.

Thus, the Commission recognizes that affirmative action by government contractors may be lawful under Title VII for either of two distinct reasons: (a) Such efforts constitute reasonable action to implement the legislative purposes of Title VII, or (b) the action was taken pursuant to, and in conformity with Executive Order No. 11246, as amended, and its implementing regulations. The Guidelines have been revised to reflect these two independent justifications for affirmative action under Title VII. A separate § 1608.5 governs affirmative action under Executive Order No. 11246, as amended.

The three step analytical process required under § 1608.4, when action is being justified under Title VII, is not necessary under § 1608.5, when action is being justified as undertaken pursuant to an approved program under Executive Order No. 11246, as amended. The circumstances in which such affirmative action is required under the Executive Order and the nature of such affirmative action are established by the Department of Labor.

V. APPROPRIATE STEPS FOR TAKING VOLUNTARY ACTION

A number of comments suggested that the Guidelines did not clearly define the steps the Commission believes are appropriate in taking voluntary affirmative action. A new § 1608.4 has been added to explain the three step process applicable to action justified under Title VII: reasonable self analysis, reasonable basis for concluding that action is appropriate, and reasonable action to correct that situation. The process set forth in § 1608.4 should be utilized to determine whether the circumstances set forth in § 1608.3 are present. Section 1608.5 covers action pursuant to Executive Order No. 11246, as amended.

VI. REASONABLE SELF ANALYSIS

Some commentators requested further elaboration on the meaning of the term "self analysis." Section 1608.4(a) has been amended to make it clear that there is no single mandatory method of conducting the self analysis, and to refer to the method-

ology used by government contractors under Revised Order 4 as a model which employers and others may use in conducting a self analysis. Whatever method is used, the primary objective must be to determine whether the employment practices operate as barriers to equal employment opportunity.

Some commentators suggested that the Guidelines may be subject to abuse unless the self analysis is required to be in writing. The Commission believes that the protection from Title VII liability which may be available under section 713(b)(1) should only be recognized where the affirmative action plan or program has been carefully and consciously developed. Accordingly, the section 713(b)(1) defense will be recognized by the Commission only where the analysis and the affirmative action plan or program are in writing and are adopted in good faith, in conformity with, and in reliance upon these Guidelines. See §§ 1608.4(d) and 1608.10.

However, a respondent who has undertaken the analysis, self-evaluation, and development of an affirmative action plan of the type described in the Guidelines, but has not reduced the analysis and plan to writing, may assert these facts as a defense to a charge of discrimination. The analysis and plan need not be in writing because the Commission does not generally require that employer defenses be based on written documents. However, employers are encouraged to have written documentation since such written evidence would make it easier to establish that an analysis was conducted and that a plan or program exists. See § 1608.4(d)(2).

In response to comments which expressed concern that adoption of a plan or program might constitute an admission of discrimination, § 1608.4(d)(1) makes it clear that it is not necessary to state in writing the conclusion that a Title VII violation exists.

VII. THE GUIDELINES DO NOT APPROVE INADEQUATE REMEDIES

A number of commentators were concerned that violators of the Act could use the Guidelines and the section 713(b)(1) defense to shield themselves from liability for the underlying discrimination inadequately addressed by an affirmative action plan or program. The Guidelines do not lend themselves to this interpretation.

The proposed Guidelines stated in paragraph VII that the Guidelines were not intended to provide standards for determining whether voluntary action had fully remedied discrimination. The analysis and plan contemplated by these Guidelines will not establish whether discrimination

existed before the plan was adopted. Furthermore, the plan cannot determine whether discrimination might take place subsequent to its adoption. In addition, the judgment as to whether affirmative action is sufficient to eliminate discrimination is a complex one which may take into account circumstances that may not have been included in the analysis which underlies the affirmative action plan. For these reasons the existence of the plan cannot provide the basis for determining whether discrimination existed, or whether the plan itself provided an adequate remedy for such discrimination. Therefore, the Guidelines state that they do not apply to a determination of the adequacy of an affirmative action plan to eliminate discrimination against previously excluded groups. Furthermore, the section 713(b)(1) defense is not involved in a determination of the adequacy of such a plan or program. Section 1608.11(a) is intended to make it clear that employers, labor organizations, or other persons who take affirmative action may still be liable under Title VII if the plan or program does not adequately remedy illegal discrimination.

VIII. NO ADMISSION OF DISCRIMINATION REQUIRED

Another group of comments stated that, because the Guidelines do not require an admission or finding of discrimination, the Commission may thereby approve affirmative action which might constitute unlawful discrimination prohibited by Title VII. This interpretation is incorrect.

The proposed Guidelines stated in paragraph II that the lawfulness of affirmative action was not "dependent upon an admission, or a finding, or evidence sufficient to prove" that the person taking such action had actually violated Title VII. After careful analysis and consideration, the Commission is of the opinion that the statement, as amended, appearing in § 1608.4(b), represents an appropriate interpretation of Federal law and policy for the reasons set forth in § 1608.1(c).

These Guidelines provide a sufficient basis to determine whether affirmative action is appropriate. Persons subject to the Act should not, by taking reasonable affirmative action, be exposed to liability under the very Act they are seeking to implement. Similarly, the law should not force the employer or other person to speculate whether an arguable defense to a Title VII charge would be recognized by a court before taking affirmative action. Section 1608.4(b) makes it clear that this reasonable basis exists without regard to arguable defenses to a Title VII action.

IX. THE SCOPE OF APPROPRIATE VOLUNTARY ACTION

Several comments raised questions concerning the appropriate scope of voluntary affirmative action intended by the Guidelines. Some perceive the Commission's use of the words "ratios and other numerical remedies" in proposed Paragraph IV, in addition to the words "goals and timetables", as indicating that the Commission was endorsing "absolute quotas" or "fixed quotas" without regard to qualifications or the circumstances in which they were used. The words "ratios and other numerical remedies" have been omitted from these Guidelines in order to avoid ambiguity and to make it clear that any numerical objective is subject to the availability of sufficient applicants who are qualified by proper, validated standards.

Affirmative Action under these Guidelines must be reasonable and must be related to the problems disclosed by the self-analysis. A new § 1608.4(c) has been added to make this clear. Affirmative action under these Guidelines may include interim goals or targets. Such interim goals or targets for previously excluded groups may be higher than the percentage of their availability in the workforce so that the long term goal may be met in a reasonable period of time. In order to achieve such interim goals or targets, an employer may consider race, sex, and/or national origin in making selections from among qualified or qualifiable applicants. Courts have ordered actions of this kind in litigated cases and in consent decrees. *Carler v. Gallagher*, 452 F.2d 315 (8th Cir. 1972), *en banc*, cert. denied (98 S. Ct. 3145 (1978)); *U.S. v. Allegheny-Ludlum Industries, Inc.*, 517 F.2d 826 (5th Cir. 1975), cert. denied, 425 U.S. 944 (1976).

X. RELEVANCE OF CERTAIN COURT CASES

A number of comments indicated that there were court decisions rendering inappropriate the approach taken by the Commission in these Guidelines. Because the proposed Guidelines were issued for comment prior to the decision of the United States Supreme Court in the case of *Regents of University of California v. Bakke*, 98 S. Ct. 2733 (1978), a number of commentators suggested that either the Guidelines were inappropriate in light of the decision of the California Supreme Court in that case, or that the Commission should wait until the U.S. Supreme Court had issued its opinion. As recommended, the Commission awaited the action of the Supreme Court in that case before promulgating these Guidelines. The Commission has reviewed these Guidelines in light of the opinions of the Justices of the Supreme Court in *Bakke*. The Commission concludes that these Guidelines

are consistent with the action of the Supreme Court in that case.

In the *Bakke* case the university did not assert reliance on any detailed guidance and procedures for crafting an affirmative action plan. These Guidelines seek to provide such guidance and thereby to establish an appropriate legal foundation for voluntary action under Title VII.

Perhaps the case most frequently cited by the commentators as conflicting with the principles articulated in the proposed Guidelines was a split decision in *Weber v. Kaiser Aluminum Corp.*, 563 F.2d 216 (5th Cir. 1977), cert. granted, — U.S. —. *Weber*, however, was decided prior to *Bakke*, and therefore did not take into account the opinions in that case. In addition, it is fundamentally unfair to expose those subject to Executive Order No. 11246 to risks of liability under Title VII when they act in compliance with government requirements or when they act voluntarily and appropriately to achieve statutory objectives. Furthermore, the clarification provided by these Guidelines is necessary because the *Weber* decision may be interpreted to unduly interfere with the range of affirmative action which Congress intended to permit under Title VII.¹

The Commission has examined all the decisions brought to its attention in the comments and other recent decisions of the United States Supreme Court and concludes that none of these decisions affect its interpretation of the circumstances in which affirmative action is lawful under Title VII.

By virtue of the authority vested in it by section 713 of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-12, 78 Stat. 265, and after due consideration of all comments received, the Equal Employment Opportunity Commission hereby issues as new Part 1608 of Title 29 of the Code of Federal Regulations its "Guidelines on Affirmative Action Appropriate Under Title VII of the Civil Rights Act of 1964, as Amended" as set forth below.

Signed at Washington, D.C., this 16th day of January 1979.

For the Commission.

ELEANOR HOLMES NORTON,
Chair.

- Sec.
1608.1 Statement of purpose.
1608.2 Written interpretation and opinion.
1608.3 Circumstances under which voluntary affirmative action is appropriate.

¹The Commission has taken the position that the decision of the Court of Appeals is incorrect and that the affirmative action program there was lawful. The Solicitor General has taken the same position, and the Supreme Court has now granted petitions for a writ of certiorari.

- 1608.4 Establishing affirmative action plans.
1608.5 Affirmative action compliance programs under executive order No. 11246, as amended.
1608.6 Affirmative action plans which are part of commission conciliation or settlement agreements.
1608.7 Affirmative action plans or programs under State or local law.
1608.8 Adherence to court order.
1608.9 Reliance on directions of other government agencies.
1608.10 Standard of review.
1608.11 Limitations on the application of these guidelines.
1608.12 Equal employment opportunity plans adopted pursuant to section 717 of title VII.

AUTHORITY: Sec. 713 of title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-12, 78 Stat. 265.

§ 1608.1 Statement of Purpose.

(a) *Need for Guidelines.* Since the passage of Title VII in 1964, many employers, labor organizations, and other persons subject to Title VII have changed their employment practices and systems to improve employment opportunities for minorities and women, and this must continue. These changes have been undertaken either on the initiative of the employer, labor organization, or other person subject to Title VII, or as a result of conciliation efforts under Title VII, action under Executive Order No. 11246, as amended, or under other Federal, state, or local laws, or litigation. Many decisions taken pursuant to affirmative action plans or programs have been race, sex, or national origin conscious in order to achieve the Congressional purpose of providing equal employment opportunity. Occasionally, these actions have been challenged as inconsistent with Title VII, because they took into account race, sex, or national origin. This is the so-called "reverse discrimination" claim. In such a situation, both the affirmative action undertaken to improve the conditions of minorities and women, and the objection to that action, are based upon the principles of Title VII. Any uncertainty as to the meaning and application of Title VII in such situations threatens the accomplishment of the clear Congressional intent to encourage voluntary affirmative action. The Commission believes that by the enactment of Title VII Congress did not intend to expose those who comply with the Act to charges that they are violating the very statute they are seeking to implement. Such a result would immobilize or reduce the efforts of many who would otherwise take action to improve the opportunities of minorities and women without litigation, thus frustrating the Congressional intent to encourage voluntary action and increasing the prospect of Title VII litigation. The Commission

believes that it is now necessary to clarify and harmonize the principles of Title VII in order to achieve these Congressional objectives and protect those employers, labor organizations, and other persons who comply with the principles of Title VII.

(b) *Purposes of Title VII.* Congress enacted Title VII in order to improve the economic and social conditions of minorities and women by providing equality of opportunity in the work place. These conditions were part of a larger pattern of restriction, exclusion, discrimination, segregation, and inferior treatment of minorities and women in many areas of life.² The Legislative Histories of Title VII, the Equal Pay Act, and the Equal Employment Opportunity Act of 1972 contain extensive analyses of the higher unemployment rate, the lesser occupational status, and the consequent lower income levels of minorities and women.³ The purpose of Executive Order No. 11246, as amended, is similar to the purpose of Title VII. In response to these economic and social conditions, Congress, by passage of Title VII, established a national policy against discrimination in employment on grounds of race, color, religion, sex, and national origin. In addition, Congress strongly encouraged employers, labor organizations, and other persons subject to Title VII (hereinafter referred to as "persons," see section 701(a) of the Act) to act on a voluntary basis to modify employment practices and systems which constituted barriers to equal employment opportunity, without awaiting litigation or formal government action. Conference, conciliation, and persuasion were the primary processes adopted by Congress in 1964, and reaffirmed in 1972,

to achieve these objectives, with enforcement action through the courts or agencies as a supporting procedure where voluntary action did not take place and conciliation failed. See § 706 of Title VII.

(c) *Interpretation in furtherance of legislative purpose.* The principle of nondiscrimination in employment because of race, color, religion, sex, or national origin, and the principle that each person subject to Title VII should take voluntary action to correct the effects of past discrimination and to prevent present and future discrimination without awaiting litigation, are mutually consistent and interdependent methods of addressing social and economic conditions which precipitated the enactment of Title VII. Voluntary affirmative action to improve opportunities for minorities and women must be encouraged and protected in order to carry out the Congressional intent embodied in Title VII.⁴ Affirmative action under these principles means those actions appropriate to overcome the effects of past or present practices, policies, or other barriers to equal employment opportunity. Such voluntary affirmative action cannot be measured by the standard of whether it would have been required had there been litigation, for this standard would undermine the legislative purpose of first encouraging voluntary action without litigation. Rather, persons subject to Title VII must be allowed flexibility in modifying employment systems and practices to comport with the purposes of Title VII. Correspondingly, Title VII must be construed to permit such voluntary action, and those taking such action should be afforded the protection against Title VII liability which the Commission is authorized to provide under section 713(b)(1).

(d) *Guidelines interpret Title VII and authorize use of Section 713(b)(1).* These Guidelines describe the circumstances in which persons subject to Title VII may take or agree upon action to improve employment opportunities of minorities and women, and describe the kinds of actions they may take which are consistent with Title VII. These Guidelines constitute the Commission's interpretation of Title VII and will be applied in the processing of claims of discrimination which involve voluntary affirmative action plans and programs. In addition, these

Guidelines state the circumstances under which the Commission will recognize that a person subject to Title VII is entitled to assert that actions were taken "in good faith, in conformity with, and in reliance upon a written interpretation or opinion of the Commission," including reliance upon the interpretation and opinion contained in these Guidelines, and thereby invoke the protection of section 713(b)(1) of Title VII.

(e) *Review of existing plans recommended.* Only affirmative action plans or programs adopted in good faith, in conformity with, and in reliance upon these Guidelines can receive the full protection of these Guidelines, including the section 713(b)(1) defense. See § 1608.10. Therefore, persons subject to Title VII who have existing affirmative action plans, programs, or agreements are encouraged to review them in light of these Guidelines, to modify them to the extent necessary to comply with these Guidelines, and to readopt or reaffirm them.

§ 1608.2 Written interpretation and opinion.

These Guidelines constitute "a written interpretation and opinion" of the Equal Employment Opportunity Commission as that term is used in section 713(b)(1) of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-12(b)(1), and section 1601.33 of the Procedural Regulations of the Equal Employment Opportunity Commission (29 CFR 1601.30; 42 FR 55,394 (October 14, 1977)). Section 713(b)(1) provides:

In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that . . . after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect

The applicability of these Guidelines is subject to the limitations on use set forth in § 1608.11.

§ 1608.3 Circumstances under which voluntary affirmative action is appropriate.

(a) *Adverse effect.* Title VII prohibits practices, procedures, or policies which have an adverse impact unless they are justified by business necessity. In addition, Title VII proscribes practices which "tend to deprive" persons of equal employment opportunities. Employers, labor organizations and other

²Congress has also addressed these conditions in other laws, including the Equal Pay Act of 1963, Pub. L. 88-38, 77 Stat. 56 (1963), as amended; the other Titles of the Civil Rights Act of 1964, Pub. L. 88-352, 78 Stat. 241 (1964), as amended; the Voting Rights Act of 1965, Pub. L. 89-110, 79 Stat. 437 (1965), as amended; the Fair Housing Act of 1968, Pub. L. 90-284, Title VII, 82 Stat. 73, 81 (1968), as amended; the Educational Opportunity Act (Title IX), Pub. L. 92-318, 86 Stat. 373 (1972), as amended; and the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103 (1972), as amended.

³Equal Pay Act of 1963: S. Rep. No. 176, 88th Cong., 1st Sess., 1-2 (1963). Civil Rights Act of 1964: H.R. Rep. No. 914, pt. 2, 88th Cong., 1st Sess. (1971). Equal Employment Opportunity Act of 1972: H.R. Rep. No. 92-238, 92d Cong., 1st Sess. (1971); S. Rep. No. 92-415, 92d Cong., 1st Sess. (1971). See also, Equal Employment Opportunity Commission, *Equal Employment Opportunity Report—1975, Job Patterns for Women in Private Industry* (1977); Equal Employment Opportunity Commission, *Minorities and Women in State and Local Government—1975* (1977); United States Commission on Civil Rights, *Social Indicators of Equality for Minorities and Women* (1978).

⁴Affirmative action often improves opportunities for all members of the workforce, as where affirmative action includes the posting of notices of job vacancies. Similarly, the integration of previously segregated jobs means that all workers will be provided opportunities to enter jobs previously restricted. See, e.g., *EEOC v. AT&T*, 419 F. Supp. 1022 (E.D.Pa. 1976), *aff'd*, 556 F.2d 167 (3rd Cir. 1977), *cert. denied*, 98 S.Ct. 3145 (1978).

persons subject to Title VII may take affirmative action based on an analysis which reveals facts constituting actual or potential adverse impact, if such adverse impact is likely to result from existing or contemplated practices.

(b) *Effects of prior discriminatory practices.* Employers, labor organizations, or other persons subject to Title VII may also take affirmative action to correct the effects of prior discriminatory practices. The effects of prior discriminatory practices can be initially identified by a comparison between the employer's work force, or a part thereof, and an appropriate segment of the labor force.

(c) *Limited labor pool.* Because of historic restrictions by employers, labor organizations, and others, there are circumstances in which the available pool, particularly of qualified minorities and women, for employment or promotional opportunities is artificially limited. Employers, labor organizations, and other persons subject to Title VII may, and are encouraged to take affirmative action in such circumstances, including, but not limited to, the following:

(1) Training plans and programs, including on-the-job training, which emphasize providing minorities and women with the opportunity, skill, and experience necessary to perform the functions of skilled trades, crafts, or professions;

(2) Extensive and focused recruiting activity;

(3) Elimination of the adverse impact caused by unvalidated selection criteria (see sections 3 and 6, Uniform Guidelines on Employee Selection Procedures (1978), 43 FR 30,290; 38,297; 38,299 (August 25, 1978));

(4) Modification through collective bargaining where a labor organization represents employees, or unilaterally where one does not, of promotion and layoff procedures.

§ 1608.4 Establishing affirmative action plans.

An affirmative action plan or program under this section shall contain three elements: a reasonable self analysis; a reasonable basis for concluding action is appropriate; and reasonable action.

(a) *Reasonable self analysis.* The objective of a self analysis is to determine whether employment practices do, or tend to, exclude, disadvantage, restrict, or result in adverse impact or disparate treatment of previously excluded or restricted groups or leave uncorrected the effects of prior discrimination, and if so, to attempt to determine why. There is no mandatory method of conducting a self analysis. The employer may utilize techniques used in order to comply with

Executive Order No. 11246, as amended, and its implementing regulations, including 41 CFR Part 60-2 (known as Revised Order 4), or related orders issued by the Office of Federal Contract Compliance Programs or its authorized agencies, or may use an analysis similar to that required under other Federal, state, or local laws or regulations prohibiting employment discrimination. In conducting a self analysis, the employer, labor organization, or other person subject to Title VII should be concerned with the effect on its employment practices of circumstances which may be the result of discrimination by other persons or institutions. See *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971).

(b) *Reasonable basis.* If the self analysis shows that one or more employment practices: (1) Have or tend to have an adverse effect on employment opportunities of members of previously excluded groups, or groups whose employment or promotional opportunities have been artificially limited, (2) leave uncorrected the effects of prior discrimination, or (3) result in disparate treatment, the person making the self analysis has a reasonable basis for concluding that action is appropriate. It is not necessary that the self analysis establish a violation of Title VII. This reasonable basis exists without any admission or formal finding that the person has violated Title VII, and without regard to whether there exists arguable defenses to a Title VII action.

(c) *Reasonable action.* The action taken pursuant to an affirmative action plan or program must be reasonable in relation to the problems disclosed by the self analysis. Such reasonable action may include goals and timetables or other appropriate employment tools which recognize the race, sex, or national origin of applicants or employees. It may include the adoption of practices which will eliminate the actual or potential adverse impact, disparate treatment, or effect of past discrimination by providing opportunities for members of groups which have been excluded, regardless of whether the persons benefited were themselves the victims of prior policies or procedures which produced the adverse impact or disparate treatment or which perpetuated past discrimination.

(1) *Illustrations of appropriate affirmative action.* Affirmative action plans or programs may include, but are not limited to, those described in the Equal Employment Opportunity Coordinating Council "Policy Statement on Affirmative Action Programs for State and Local Government Agencies," 41 FR 38,814 (September 13, 1976), reaffirmed and extended to all persons subject to Federal equal em-

ployment opportunity laws and orders, in the Uniform Guidelines on Employee Selection Procedures (1978) 43 FR 38,290; 38,300 (Aug. 25, 1978). That statement reads, in relevant part:

When an employer has reason to believe that its selection procedures have *** exclusionary effect *** it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex or ethnic 'conscious,' include, but are not limited to, the following:

The establishment of a long term goal and short range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;

A recruitment program designed to attract qualified members of the group in question;

A systematic effort to organize work and re-design jobs in ways that provide opportunities for persons lacking 'journeyman' level knowledge or skills to enter and, with appropriate training, to progress in a career field;

Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;

The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated.

(2) *Standards of reasonable action.* In considering the reasonableness of a particular affirmative action plan or program, the Commission will generally apply the following standards:

(i) The plan should be tailored to solve the problems which were identified in the self analysis, see § 1608.4(a), supra, and to ensure that employment systems operate fairly in the future, while avoiding unnecessary restrictions on opportunities for the workforce as a whole. The race, sex, and national origin conscious provisions of the plan or program should be maintained only so long as is necessary to achieve these objectives.

(ii) Goals and timetables should be reasonably related to such considerations as the effects of past discrimination, the need for prompt elimination of adverse impact or disparate treatment, the availability of basically qualified or qualifiable applicants, and the number of employment opportunities expected to be available.

(d) *Written or unwritten plans or programs—(1) Written plans required for 713(b)(1) Protection.* The protection of section 713(b) of Title VII will

be accorded by the Commission to a person subject to Title VII only if the self analysis and the affirmative action plan are dated and in writing, and the plan otherwise meets the requirements of Section 713(b)(1). The Commission will not require that there be any written statement concluding that a Title VII violation exists.

(2) *Reasonable cause determinations.* Where an affirmative action plan or program is alleged to violate Title VII, or is asserted as a defense to a charge of discrimination, the Commission will investigate the charge in accordance with its usual procedures and pursuant to the standards set forth in these Guidelines, whether or not the analysis and plan are in writing. However, the absence of a written self analysis and a written affirmative action plan or program may make it more difficult to provide credible evidence that the analysis was conducted, and that action was taken pursuant to a plan or program based on the analysis. Therefore, the Commission recommends that such analyses and plans be in writing.

§ 1608.5 Affirmative action compliance programs under Executive Order No. 11246, as amended.

Under Title VII, affirmative action compliance programs adopted pursuant to Executive Order No. 11246, as amended, and its implementing regulations, including 41 CFR Part 60-2 (Revised Order 4), will be considered by the Commission in light of the similar purposes of Title VII and the Executive Order, and the Commission's responsibility under Executive Order No. 12067 to avoid potential conflict among Federal equal employment opportunity programs. Accordingly, the Commission will process Title VII complaints involving such affirmative action compliance programs under this section.

(a) *Procedures for review of Affirmative Action Compliance Programs.* If adherence to an affirmative action compliance program adopted pursuant to Executive Order No. 11246, as amended, and its implementing regulations, is the basis of a complaint filed under Title VII, or is alleged to be the justification for an action which is challenged under Title VII, the Commission will investigate to determine:

(1) Whether the affirmative action compliance program was adopted by a person subject to the Order and pursuant to the Order, and (2) whether adherence to the program was the basis of the complaint or the justification.

(1) *Programs previously approved.* If the Commission makes the determination described in paragraph (a) of this section and also finds that the affirmative action program has been ap-

proved by an appropriate official of the Department of Labor or its authorized agencies, or is part of a conciliation or settlement agreement or an order of an administrative agency, whether entered by consent or after contested proceedings brought to enforce Executive Order No. 11246, as amended, the Commission will issue a determination of no reasonable cause.

(2) *Program not previously approved.* If the Commission makes the determination described in paragraph (a), of this section but the program has not been approved by an appropriate official of the Department of Labor or its authorized agencies, the Commission will: (i) Follow the procedure in § 1608.10(a) and review the program, or (ii) refer the plan to the Department of Labor for a determination of whether it is to be approved under Executive Order No. 11246, as amended, and its implementing regulations. If, the Commission finds that the program does conform to these Guidelines, or the Department of Labor approves the affirmative action compliance program, the Commission will issue a determination of no reasonable cause under § 1608.10(a).

(b) *Reliance on these guidelines.* In addition, if the affirmative action compliance program has been adopted in good faith reliance on these Guidelines, the provisions of section 713(b)(1) of Title VII and of § 1608.10(b), below, may be asserted by the contractor.

§ 1608.6 Affirmative action plans which are part of Commission conciliation or settlement agreements.

(a) *Procedures for review of plans.* If adherence to a conciliation or settlement agreement executed under Title VII and approved by a responsible official of the EEOC is the basis of a complaint filed under Title VII, or is alleged to be the justification for an action challenged under Title VII, the Commission will investigate to determine: (1) Whether the conciliation agreement or settlement agreement was approved by a responsible official of the EEOC, and (2) whether adherence to the agreement was the basis for the complaint or justification. If the Commission so finds, it will make a determination of no reasonable cause under § 1608.10(a) and will advise the respondent of its right under section 713(b)(1) of Title VII to rely on the conciliation agreement.

(b) *Reliance on these guidelines.* In addition, if the affirmative action plan or program has been adopted in good faith reliance on these Guidelines, the provisions of section 713(b)(1) of Title VII and of § 1608.10(b), below, may be asserted by the respondent.

§ 1608.7 Affirmative action plans or programs under State or local law.

Affirmative action plans or programs executed by agreement with state or local government agencies, or by order of state or local government agencies, whether entered by consent or after contested proceedings, under statutes or ordinances described in Title VII, will be reviewed by the Commission in light of the similar purposes of Title VII and such statutes and ordinances. Accordingly, the Commission will process Title VII complaints involving such affirmative action plans or programs under this section.

(a) *Procedures for review of plans or programs.* If adherence to an affirmative action plan or program executed pursuant to a state statute or local ordinance described in Title VII is the basis of a complaint filed under Title VII or is alleged to be the justification for an action which is challenged under Title VII, the Commission will investigate to determine: (1) Whether the affirmative action plan or program was executed by an employer, labor organization, or person subject to the statute or ordinance, (2) whether the agreement was approved by an appropriate official of the state or local government, and (3) whether adherence to the plan or program was the basis of the complaint or justification.

(1) *Previously Approved Plans or Programs.* If the Commission finds the facts described in paragraph (a) of this section, the Commission will, in accordance with the "substantial weight" provisions of section 706 of the Act, find no reasonable cause where appropriate.

(2) *Plans or Programs not previously approved.* If the plan or program has not been approved by an appropriate official of the state or local government, the Commission will follow the procedure of § 1608.10 of these Guidelines. If the Commission finds that the plan or program does conform to these Guidelines, the Commission will make a determination of no reasonable cause as set forth in § 1608.10(a).

(b) *Reliance on these guidelines.* In addition, if the affirmative action plan or program has been adopted in good faith reliance on these Guidelines, the provisions of section 713(b)(1) and § 1608.10(b), below, may be asserted by the respondent.

§ 1608.8 Adherence to court order.

Parties are entitled to rely on orders of courts of competent jurisdiction. If adherence to an Order of a United States District Court or other court of competent jurisdiction, whether entered by consent or after contested litigation, in a case brought to enforce a Federal, state, or local equal employment opportunity law or regulation, is

the basis of a complaint filed under Title VII or is alleged to be the justification for an action which is challenged under Title VII, the Commission will investigate to determine: (a) Whether such an Order exists and (b) whether adherence to the affirmative action plan which is part of the Order was the basis of the complaint or justification. If the Commission so finds, it will issue a determination of no reasonable cause. The Commission interprets Title VII to mean that actions taken pursuant to the direction of a Court Order cannot give rise to liability under Title VII.

§ 1608.9 Reliance on directions of other government agencies.

When a charge challenges an affirmative action plan or program, or when such a plan or program is raised as justification for an employment decision, and when the plan or program was developed pursuant to the requirements of a Federal or state law or regulation which in part seeks to ensure equal employment opportunity, the Commission will process the charge in accordance with § 1608.10(a). Other agencies with equal employment opportunity responsibilities may apply the principles of these Guidelines in the exercise of their authority.

§ 1608.10 Standard of review.

(a) *Affirmative action plans or programs not specifically relying on these guidelines.* If, during the investigation of a charge of discrimination filed with the Commission, a respondent asserts that the action complained of was taken pursuant to an in accordance with a plan or program of the type described in these Guidelines, the Commission will determine whether the assertion is true, and if so, whether such a plan or program conforms to the requirements of these guidelines. If the Commission so finds, it will issue a determination of no reasonable cause and, where appropriate, will state that the determination constitutes a written interpretation or opinion of the Commission under section 713(b)(1). This interpretation may be relied upon by the respondent and asserted as a defense in the event that new charges involving similar facts and circumstances are thereafter filed against the respondent, which are based on actions taken pursuant to the affirmative action plan or program. If the Commission does not so find, it will proceed with the investigation in the usual manner.

(b) *Reliance on these guidelines.* If a respondent asserts that the action taken was pursuant to and in accordance with a plan or program which was adopted or implemented in good

faith, in conformity with, and in reliance upon these Guidelines, and the self analysis and plan are in writing, the Commission will determine whether such assertion is true. If the Commission so finds, it will so state in the determination of no reasonable cause and will advise the respondent that:

(1) The Commission has found that the respondent is entitled to the protection of section 713(b)(1) of Title VII; and

(2) That the determination is itself an additional written interpretation or opinion of the Commission pursuant to section 713(b)(1).

§ 1608.11 Limitations on the application of these guidelines.

(a) *No determination of adequacy of plan or program.* These Guidelines are applicable only with respect to the circumstances described in § 1608.1(d), above. They do not apply to, and the section 713(b)(1) defense is not available for the purpose of, determining the adequacy of an affirmative action plan or program to eliminate discrimination. Whether an employer who takes such affirmative action has done enough to remedy such discrimination will remain a question of fact in each case.

(b) *Guidelines inapplicable in absence of affirmative action.* Where an affirmative action plan or program does not exist, or where the plan or program is not the basis of the action complained of, these Guidelines are inapplicable.

(c) *Currency of plan or program.* Under section 713(b)(1), persons may rely on the plan or program only during the time when it is current. Currency is related to such factors as progress in correcting the conditions disclosed by the self analysis. The currency of the plan or program is a question of fact to be determined on a case by case basis. Programs developed under Executive Order No. 11246, as amended, will be deemed current in accordance with Department of Labor regulations at 41 CFR Chapter 60, or successor orders or regulations.

§ 1608.12 Equal employment opportunity plans adopted pursuant to section 717 of Title VII.

If adherence to an Equal Employment Opportunity Plan, adopted pursuant to Section 717 of Title VII, and approved by an appropriate official of the U.S. Civil Service Commission, is the basis of a complaint filed under Title VII, or is alleged to be the justification for an action under Title VII, these Guidelines will apply in a manner similar to that set forth in § 1608.5. The Commission will issue

regulations setting forth the procedure for processing such complaints.

[FR Doc. 79-2025 Filed 1-18-79; 8:45 am]

[6570-06-M]

PART 1601—PROCEDURAL REGULATIONS

Issuance of Interpretation and Opinion

AGENCY: Equal Employment Opportunity Commission.

ACTION: Final rule.

SUMMARY: The Commission is today publishing in final form a set of Guidelines on Affirmative Action (44 FR 4422), to encourage voluntary action to eliminate employment discrimination. Section 1601.33 of the Commission's regulations is being amended to reflect a new method, contemplated by these Guidelines, by which the Commission may issue an "interpretation of opinion" of the Commission within the meaning of Section 713 of Title VII of the Civil Rights Act of 1964, as amended.

EFFECTIVE DATE: February 20, 1979.

FOR FURTHER INFORMATION CONTACT:

Peter C. Robertson, Director, Office of Policy Implementation, 2401 E Street, NW., Room 4002A, Washington, D.C. 20506 (202) 254-7639.

SUPPLEMENTARY INFORMATION: The Commission's new Guidelines on Affirmative Action contemplate that in instances where a charge of discrimination has been filed and the Commission finds that the treatment complained of occurred as a result of affirmative action procedures consistent with its Guidelines on Affirmative Action, the Commission will issue a determination of no reasonable cause. This determination may contain language stating that it is "a written interpretation or opinion of the Commission" within the meaning of Section 713(b)(1) of Title VII of the Civil Rights Act of 1964, as amended. The respondent in such a case may rely upon this determination as a defense to any subsequent complaints of discrimination which involve similar facts and circumstances, if the subsequent actions complained of were also taken by the respondent under its affirmative action procedures.

Such language will also appear in no-cause determinations whenever the Commission finds that the action complained of occurred pursuant to an affirmative action plan adopted in good faith compliance with, and reliance

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upon, the Commission's Guidelines on affirmative Action.

The Commission's procedural regulations are accordingly revised to include this specific type of no-cause finding as a type of "written interpretation or opinion of the Commission."

Signed at Washington, D.C. this 16th day of January 1979.

For the Commission.

ELEANOR HOLMES NORTON,
Chair.

Therefore, 29 CFR 1601.33 is amended to read as follows:

§ 1601.33 Issuance of interpretation or opinion.

Only the following may be relied upon as a "written interpretation or opinion of the Commission" within the meaning of Section 713 of Title VII:

(a) A letter entitled "opinion letter" and signed by the General Counsel on behalf of the Commission, or

(b) Matter published and specifically designated as such in the FEDERAL REGISTER, including the Commission's Guidelines on Affirmative Action, or

(c) A Commission determination of no reasonable cause, issued under the circumstances described in § 1608.10 (a) or (b) of the Commission's Guidelines on Affirmative Action 29 CFR Part 1608, when such determination contains a statement that it is a "written interpretation or opinion of the Commission."

[FR Doc. 79-2026 Filed 1-18-79; 8:45 am]