AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

Vol. 44—No. 88
5-4-79
BOOK 1:
PAGES
26057-26400

BOOK 2:
PAGES
26401-26730

federal register

Friday
May 4, 1979

Highlights

Principles of Regulations Writing Seminar See the Reader Aids section at the end of this issue.

Telecommunications Device for the Deaf Office of the Federal Register provides a new service for deaf or hearing impaired persons who need information about documents published in the **Federal Register.** See the Reader Aids section for the telephone listing.

26688, 26692 **Securities** SEC proposes to amend exchange rules relative to restricted off-board trading and to adopt rule providing price protection for public limit orders; comments by 6–15, 7–15, and 7–22–79; hearings on 6–20–79 (2 documents) (Part VII of this issue)

26702 **Securities** SEC proposes comment rules to require inclusion of statement on internal accounting control management in certain annual reports; comments by 7–31–79 (Part VIII of this issue)

26298 **Educational Grants** HEW/Education Division proposes general administrative regulations governing direct and State–administered programs; comments by 7–3–79 (Part II of this issue)

26554 **National Forest System** USDA/FS proposes rules to guide land and resource management planning; comments by 7–3–79 (Part V of this issue)

FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

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Area Code 202–523–5240

Highlights

26540–26550 **Federal Prisoners** Justice/U.S. Parole Commission revises paroling policy guidelines for adults and youths, and adopts rules regarding parole recommendations and determination proceedings, and governing disclosure of documents; effective 6–4–79 (4 documents) (Part IV of this issue)

26660 **Low-Income Housing** HUD establishes policies, procedures and operating guidelines for new Moderate Rehabilitation Program; effective 5–24–79 (Part VI of this issue)

26712, 26724 **Motor Gasoline Allocation** DOE/ERA issues interim final rule regarding base period and adjustments; effective 5–1–79; comments by 5–11 and 7–10–79; public conference on 5–8–79; hearings on 7–7 and 7–19–79 (2 documents) (Part IX of this issue)

26060, 26113 **Small Petroleum Refiners** DOE/ERA amends emergency allocation provisions of crude oil Buy/Sell Program and proposes amendments to current list of sellers and basis for pricing crude oil sold; effective immediately; hearing on 5–31–79; comments by 5–31–79; requests to speak by 5–16–79 (2 documents)

26075 **Aid to Families with Dependent Children** HEW/SSA adopts rules enabling State use of prospective budgeting method or retrospective budgeting method in determining program eligibility and amount of payment; effective 5–4–79

26089 **Gypsy Moth and Browntail Moth Control** USDA/APHIS announces public hearing on quarantining certain States and proposes to adopt new regulatory management concept based on pest risk; hearing on 6–19–79; comments by 7–3–79

25128 **Health Care Labor Disputes** Federal Mediation and Conciliation Service proposes giving parties options to usual Board of Inquiry procedure; comments by 7–3–79

26121 **Air Carriers** CAB proposes rules regarding direct marketing of charters; comments by 6–18–79

26258 **Sunshine Act Meetings**

Separate Parts of This Issue

26298 **Part II, HEW/Education Division**
26404 **Part III, Labor/ESA**
26540 **Part IV, Justice/U.S. Parole Commission**
26554 **Part V, USDA/FS**
26659 **Part VI, HUD**
26688 **Part VII, SEC**
26702 **Part VIII, SEC**
26712 **Part IX, DOE/ERA**
26726 **Part X, State/AID**

Contents

Federal Register
Vol. 44, No. 88
Friday, May 4, 1979

Agency for International Development
PROPOSED RULES
26726 Personnel regulations

Agricultural Marketing Service
RULES
26057 Lemons grown in Ariz. and Calif.
PROPOSED RULES
Potato research and promotion plan:
26113 Expenses and rate assessment

Agriculture Department
See also Agricultural Marketing Service; Animal and Plant Health Inspection Service; Food and Nutrition Service; Food Safety and Quality Service; Forest Service; Rural Electrification Administration.
RULES
Authority delegations by Secretary and General Officers:
26057 Rural Development Assistant Secretary; combined functions with FmHA

Animal Plant Health Inspection Service
RULES
Animal and poultry import restrictions:
26058 Swine Vesicular Disease; change in disease status of Belgium
Livestock and poultry quarantine:
26058 Brucellosis
PROPOSED RULES
Plant quarantine, domestic:
26089 Gypsy and brown tail moth; hearing

Army Department
See Engineers Corps.

Blind and Other Severely Handicapped, Committee for Purchase from
NOTICES
26147 Procurement list, 1979; additions and deletions

Civil Aeronautics Board
PROPOSED RULES
26121 Charters; direct marketing by air carriers
NOTICES
Hearings, etc.:
26135 Britannia Airways Ltd. et al.
26136 Fast Air Carrier Ltd.
26137 Florida service case
26138 New Orleans-Baltimore/Washington show-cause proceeding
26138 Northwest Alaska service investigation
26138 Piedmont Aviation, Inc.
26138 Wien Air Alaska; show cause order
26136 International baggage claims; handling; investigation of airline practices

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
26139 Kentucky
26138 Louisiana
26139 Maryland
26138 Minnesota
26259 Meetings; Sunshine Act

Commerce Department
See Industry and Trade Administration; National Oceanic and Atmospheric Administration.

Commodity Futures Trading Commission
NOTICES
26258 Meetings; Sunshine Act (2 documents)

Consumer Product Safety Commission
NOTICES
26259 Meetings; Sunshine Act

Customs Service
NOTICES
Countervailing duty petitions and preliminary determinations:
26233 Printing presses manufactured in East Germany
26233 Tapered roller bearings and components from Japan

Defense Department
See Engineers Corps; Navy Department.

Economic Regulatory Administration
RULES
Petroleum allocation and price regulations:
26060 Buy/sell program; emergency allocations
26724 Motor gasoline allocation base period; conference
26712 Motor gasoline base period and adjustments; interim rule
PROPOSED RULES
Petroleum allocation and price regulations:
26113 Buy/sell program; emergency allocations
26115 Motor gasoline allocation base period and adjustments; cross reference
NOTICES
Remedial orders:
26150 Texfel Petroleum Corp. et al.

Education Office
PROPOSED RULES
26298 Direct grant programs, State-administered programs, and general

Employment and Training Administration
RULES
26071 Classifying labor surplus areas, preference in federal procurement under Defense Manpower Policy DMP–4A and Executive Orders 12073 and 10582; modification of rules

Employment Standards Administration
NOTICES
26404 Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions, (Ala., Fla., Ill., La., Maine, Md., Mich., Minn., N.J., N.C., Ohio, Oreg., Pa., R.I., S.D., Tex. and Wash.)

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission
NOTICES
Meetings:
26149 Food Industry Advisory Committee
26149 International Energy Agency
26149 Industry Advisory Board

Engineers Corps
NOTICES
Environmental statements; availability, etc.:
26148 Roseau River flood control project, Roseau and Kittson Counties, Minn.

Environmental Protection Agency
NOTICES
Environmental statements; availability, etc.:
26157 Agency statements, weekly receipts

Environmental Quality Council
NOTICES
26258 Meetings; Sunshine Act

Equal Employment Opportunity Commission
NOTICES
26258 Meetings; Sunshine Act

Federal Communications Commission
NOTICES
26258 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Natural gas companies:
26067 Rate schedules and tariffs; research, development and demonstration projects
Natural Gas Policy Act of 1978:
26068 Prices, prescribed maximum lawful; May–July, 1979 compilation
NOTICES
Hearings, etc.:
26150 Alaska Power Administration
26150, 26151 Colorado Interstate Gas Co. (2 documents)
26151 Columbia Gas Transmission Corp.
26150 Connecticut Valley Electric Co., Inc.
26151 Consolidated Gas Supply Corp.
26152 El Paso Natural Gas Co.
26152 Georgia Power Co.
26153 Kansas Power & Light Co.
26153 Michigan Wisconsin Pipe Line Co.
26153 Minnesota Power & Light Co.
26154 Natural Gas Pipeline Co. of America
26154 Northern Natural Gas Co.
26154 Pennsylvania Power & Light Co.
26154 Public Service Co. of Oklahoma
26155 Southeastern Power Administration (2 documents)
26155, 26156 Southern Natural Gas Co. (2 documents)
26156 Southwestern Power Administration (2 documents)
26156 Tennessee Gas Pipeline Co.
26157 Texas Eastern Transmission Corp.
26258 Meetings; Sunshine Act
Natural Gas Policy Act of 1979:
26153 Determination process reports receipts

Federal Home Loan Bank Board
NOTICES
26259 Meetings; Sunshine Act

Federal Housing Commissioner—Office of Assistant Secretary for Housing
RULES
Mortgage and loan insurance programs:
26073 Fee title purchase; maximum mortgage amount

Federal Maritime Commission
NOTICES
Rate increases, etc.; investigations and hearings, etc.:
26162 Sea-Land Service, Inc.

Federal Mediation and Conciliation Service
PROPOSED RULES
26128 Health care industry collective bargaining disputes; boards of inquiry

Federal Railroad Administration
NOTICES
Petitions for exemptions, etc.:
26233 Illinois Central Gulf Railroad

Federal Reserve System
NOTICES
26259 Meetings; Sunshine Act

Federal Trade Commission
PROPOSED RULES
26127 Health spas; Presiding Officer's report; availability

Food and Drug Administration
RULES
Human drugs:
26071 Sterile tobramycin sulfate
PROPOSED RULES
Medical devices, neurological; classification:
26127 Carotid artery clamp; correction
26127 Medical devices; classification of rigidity analyzers; correction
NOTICES
Food additives, petitions filed or withdrawn:
26167 Sandoz, Inc.
Human drugs:
26165 Carisoprodol; efficacy study implementation; reevaluation
26167 Propoxyphene-containing products; hearings; correction
Medical devices:
26165 Alpha-fetoprotein RIA diagnostic kit; correction
Meetings:
26167 Advisory committees, panels, etc.
26166 Consumer exchange (2 documents)

Food and Nutrition Service
PROPOSED RULES
Food Stamp Program:
26089 State complaint procedure; correction

Food Safety and Quality Service
RULES
26059 Young chicken slaughter inspection rate maximums; delay in effective date

Forest Service
PROPOSED RULES
26554 National Forest System lands and resource management planning

General Accounting Office
NOTICES
26164 Regulatory reports review, proposals, approvals, etc. (CAB)

Health, Education, and Welfare Department
See also Education Office; Food and Drug Administration; Health Resources Administration; National Institutes of Health; Social Security Administration.
NOTICES
Meetings:
26168 Fund for Improvement of Postsecondary Education, Board of Advisors

Health Resources Administration
NOTICES
Meetings:
26167 Advisory committees; May

Housing and Urban Development Department
See also Federal Housing Commissioner—Office of Assistant Secretary for Housing.
RULES
Low-income housing:
26660 Housing assistance payments (Section 8); special procedures for moderate rehabilitation programs

Indian Affairs Bureau
NOTICES
Jurisdiction retrocession acceptances:
26169 Burns-Paiute Indian Reservation
26169 Siletz Reservation Confederated Tribes; membership rolls

Industry and Trade Administration
NOTICES
Scientific articles; duty free entry:
26144 Geological Survey et al.
26139 University of Pennsylvania
26142 University of South Carolina
26145 Veterans Administration et al.

Interior Department
See also Indian Affairs Bureau; Land Management Bureau; National Park Service; Reclamation Bureau.
NOTICES
26216 Alaska Natural Gas Transportation System; availability of stipulations

International Trade Commission
NOTICES
Import investigations:
26217 Perchloroethylene from Belgium, France, and Italy

Interstate Commerce Commission
RULES
Railroad car service orders:
26084 Grain cars; distribution
26087 Multiple-car shipments transporting less than minimum quantities
Railroad car service orders; various companies:
26086 Atlanta & West Point Rail Road Co. et al.
26085 Norfolk & Portsmouth Belt Line Railroad Co.
PROPOSED RULES
Accounts, uniform system:
26131 Annual report of motor carriers of property and passengers; disclosure of depreciation policies
NOTICES
Motor carriers:
26234 Irregular route property carriers; gateway elimination
26257 Temporary authority application; republication
26235 Temporary authority applications; notification
26234 Temporary authority decisions; by telephone
26248 Transfer proceedings

Justice Department
See Parole Commission.

Labor Department
See also Employment Standards Administration; Mine Safety and Health Administration; Pension and Welfare Benefit Programs Office; Wage and Hour Division.
NOTICES
Adjustment assistance:
26225 Amstar Corp. et al.
26224 Atomic Textiles et al.
26222 Bomar Crystal Co.
26223 Cameron Dress Co.
26223 Crazy Horse
26224 Johnson Outboard Co.

Land Management Bureau
PROPOSED RULES
Minerals leasing:
26130 Potassium, sodium, sulphur and phosphate; minimum production or royalty; extension of time
NOTICES
Alaska native selections; applications, etc.:
26214 Seward Meridian
Applications, etc.:
26215, 26216 New Mexico (3 documents)
Environmental statements; availability, etc.:
26215 Outer Continental Shelf; Central and Northern California; oil and gas lease sale
Wilderness areas; characteristics, inventories, etc.:
26215 Colorado

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modification:
26220 Beth-Elkhorn Corp

26220 Cabin Knoll Coal Co.
26220 Excel Mineral Co.
26220 Jewell Ridge Coal Corp.
26221 Jumacris Mining, Inc.
26221 Leeco, Inc.
26221 North American Coal Corp.
26222 Peerless Alma Coals, Inc.
26222 Solar Fuel Co.
26222 Youghiogheny & Ohio Coal Co.

National Aeronautics and Space Administration
RULES
Information security program:
26066 Authority delegations to make determinations in original classification matters
NOTICES
Meetings:
26228 Space Systems and Technology Advisory Committee

National Credit Union Administration
PROPOSED RULES
26115 Central liquidity facility; membership requirements and lending policies

National Institutes of Health
NOTICES
Carcinogenesis bioassay reports; availability:
26168 Azobenzene
26168 2,4,-Diaminotoluene
26168 6-Nitrobenzimidazole
26168 2,4,5-Trimethylaniline

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
26131 Trawl fishery off coast of Wash., Oreg., and Calif.; inquiry
NOTICES
Coastal zone management programs; environmental statements; meetings, etc.:
26147 Alabama
Marine mammal permit applications, etc.:
26146 Land Management Bureau
26147 Southeast Fisheries Center

National Park Service
RULES
Special regulations:
26073 Cape Cod National Seashore; private oversand vehicle operation

Navy Department
NOTICES
Meetings:
26148 Education and Training Advisory Board

Nuclear Regulatory Commission
RULES
Environmental protection; licensing and regulatory policy and procedures:
26060 Uranium fuel cycles impacts
NOTICES
Applications, etc.:
26229 Commonwealth Edison Co. et al.
26228 General Electric Co. et al.
26230 Puerto Rico Water Resources Authority
26231 Virginia Electric & Power Co.
26231 Wisconsin Public Service Corp. et al.

Parole Commission
RULES
Federal prisoners, paroling, recommitting and supervising:
26540 Youth guidelines and reparole
Prisoners, youth offenders, and juvenile delinquents; parole, release, etc.:
26548 Federal prisoners, parole of
26550 Parole, release, supervision and recommitment
26550 Prisoners right to review parole hearing and regional office

Pension and Welfare Benefit Programs Office
NOTICES
Employee benefit plans:
26226, 26227 Prohibitions on transactions; exemption proceedings, applications, hearings, etc. (2 documents)

Postal Rate Commission
RULES
Practice rules and procedures:
26074 Comprehensive Domestic Mail Classification Schedule adoption

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
26216 San Luis Valley Project, Colo., hearing

Rural Electrification Administration
NOTICES
Environmental statements; availability, etc.:
26135 Tri-State Generation and Transmission Association, Inc.

Securities and Exchange Commission
RULES
Organization, functions and authority delegations:
26067 Market Regulation Division; Director
PROPOSED RULES
26702 Annual reports on Form 10-K; internal accounting control; statement of management
26692 Public limit orders; price protection
26688 Trading restrictions; off-board; hearings
NOTICES
26259 Meetings; Sunshine Act

Small Business Administration
NOTICES
Applications, etc.:
26232 Universal Investment Corp.
Disaster areas:
26232 Mississippi
26232 Missouri
26232 South Carolina

Social Security Administration
RULES
Financial assistance programs:
26075 Aid to families with dependent children; eligibility and amount of assistance; budgeting methods for States

State Department
See Agency for International Development.

Trade Negotiations, Office of Special Representative
NOTICES
Import relief investigations; determinations:
26231 Specialty steel; inquiry

Transportation Department
See Federal Railroad Administration.

Treasury Department
See Customs Service.

Unemployment Compensation, National Commission
NOTICES
26228 Meetings

Wage and Hour Division
PROPOSED RULES
26127 Handicapped workers in competitive employment and clients in sheltered workshops; minimum wages

MEETINGS ANNOUNCED IN THIS ISSUE

CIVIL RIGHTS COMMISSION
26138 Minnesota Advisory Committee, 5–29–79
26138 Louisiana Advisory Committee, 5–25 and 5–26–79

DEFENSE DEPARTMENT
26148 Navy—Academic Advisory Board to the Superintendent, U.S. Naval Academy, Subcommittee of Secretary of the Navy's Advisory Board on Education and Training, 5–21–79

ENERGY DEPARTMENT
26149 Conservation and Solar Applications, Food Industry Advisory Committee and Subcommittees, 5–23–79
26149 Industry Advisory Board to the International Energy Agency and Subcommittees A and C, 5–8 through 5–10–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Food and Drug Administration—
26166 Consumer Participation, 5–16 and 6–7–79 (2 documents)
Health Resources Administration—
26167 National Advisory Council on Nurse Training, 5–22 through 5–24–79
Office of the Secretary—
26168 Board of Advisors to the Fund for the Improvement of Postsecondary Education, 5–17–79

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
26228 NASA Advisory Council, Space Systems and Technology Advisory Committee, 5–24–79

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION
26228 Fifteenth meeting, 6–28 through 6–30–79

RESCHEDULED MEETINGS

CIVIL RIGHTS COMMISSION
26139 Maryland Advisory Committee, rescheduled from 5–14 to 5–7–79

CANCELLED MEETING

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Food and Drug Administration—
26167 Immunoloy and Microbiology Devices Panel, Immunology Device Section, 5–17 and 5–18–79

CORRECTED MEETING

CIVIL RIGHTS COMMISSION
26139 Michigan Advisory Committee, 6–5–79, should be Kentucky Advisory Committee, 6–5–79

HEARINGS

LABOR DEPARTMENT
Wage and Hour Division—
26127 Issuance of certificates authorizing lower than minimum wages for blind or visually handicapped workers, 6–5–79

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
2 26057
910 26057
Proposed Rules:
271 26089
272 26089
301 26089
1207 26113

9 CFR
78 26058
94 26058
381 26059

10 CFR
51 26060
211 (3 documents) 26060
Proposed Rules:
211 (2 documents) 26113, 26115

12 CFR
Proposed Rules:
725 26115

14 CFR
1203 26066
Proposed Rules:
207 26121
208 26121
212 26121
214 26121
380 26121
381 26121

16 CFR
Proposed Rules:
443 26127

17 CFR
200 26067
Proposed Rules:
211 26702
229 26702
240 (3 documents) 26688, 26692, 26702
249 26702

18 CFR
35 26067
154 26067
271 26068
273 26068

20 CFR
654 26071

21 CFR
444 26071
Proposed Rules:
882 (2 documents) 26127

22 CFR
Proposed Rules:
220 26726
221 26726
222 26726

24 CFR
240 26073
882 26660

28 CFR
2 (4 documents) 26540-26550

29 CFR
Proposed Rules:
524 26127
525 26127
1420 26128

36 CFR
7 26073
Proposed Rules:
219 26554

39 CFR
3001 26074

43 CFR
Proposed Rules:
3500 26130

45 CFR
205 26075
206 26075
233 26075
Proposed Rules:
100 26298
100a 26298
100b 26298
100c 26298
100d 26298

49 CFR
1033 (4 documents) 26084-26087
Proposed Rules:
1206 26131
1207 26131

50 CFR
Proposed Rules:
611 26131

Rules and Regulations

Federal Register
Vol. 44, No. 88
Friday, May 4, 1979

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.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Revision of Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document delegates the authority of the Secretary of Agriculture to administer the Emergency Agricultural Credit Adjustment Act of 1978 and section 601 of the Powerplant and Industrial Fuel Use Act of 1978 to the Assistant Secretary for Rural Development and the Administrator of the Farmers Home Administration. This action also repeals a reservation of authority to the Secretary which is no longer viable due to amendments to affected statutes.

EFFECTIVE DATE: May 4, 1979.

FOR FURTHER INFORMATION CONTACT: Joseph Linsley, Chief, Directives Management Branch, Farmers Home Administration, U.S. Department of Agriculture, Washington, D.C. (202–447–4057). Accordingly, 7 CFR Part 2 is amended as follows:

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

1. Section 2.23 is amended by revising paragraph (a)(8) and by adding a new paragraph (a)(14) to read as follows:

§ 2.23 Delegations of authority to the Assistant Secretary for Rural Development.

* * * * *

(a) *Related to farmers home activities.*

* * *

(8) Administer the emergency loan and guarantee programs and the rural housing disaster program under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. 91–606), the Disaster Relief Act of 1969 (Pub. L. 91–79), Pub. L. 92–385 approved August 16, 1972, the Emergency Livestock Credit Act of 1974 (Pub. L. 93–357), as amended, and the Emergency Agricultural Credit Adjustment Act of 1978 (title II of Pub. L. 95–334).

* * * * *

(14) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

* * * * *

§ 2.24 [Revoked and Reserved]

2. Section 2.24 is hereby revoked and reserved as set forth above.

Subpart I—Delegations of Authority by the Assistant Secretary for Rural Development

3. Section 2.70 is amended by revising paragraph (a)(8) and by adding a new paragraph (a)(28) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) *Delegations.* * * *

(8) Administer the emergency loan and guarantee programs and the rural housing disaster program under sections 232, 234, 237, and 253 of the Disaster Relief Act of 1970 (Pub. L. 91–606), the Disaster Relief Act of 1969 (Pub. L. 91–79), Pub. L. 92–385 approved August 16, 1972, the Emergency Livestock Credit Act of 1974 (Pub. L. 93–357), as amended, and the Emergency Agricultural Credit Adjustment Act of 1978 (title II of Pub. L. 95–334).

* * * * *

(28) Administer section 601 of the Powerplant and Industrial Fuel Use Act of 1978 (Pub. L. 95–620).

* * * * *

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

For Subpart C:
Dated: April 25, 1979.
Bob Bergland,
Secretary of Agriculture.

For Subpart I:
Dated: April 25, 1979.
Alex P. Mercure,
Assistant Secretary for Rural Development.
[FR Doc. 79-13971 Filed 5-3-79; 8:45 am]
BILLING CODE 3410-01-M

Agricultural Marketing Service

7 CFR 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 May 6–12, 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: May 6, 1979.

FOR FURTHER INFORMATION CONTACT: Malvin E. McGaha, 202–447–5975.

SUPPLEMENTARY INFORMATION: *Findings.* This regulation is issued under 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. The agreement and order are effective under the Argicultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action 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 May 1, 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 active.

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 the information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.497 Lemon Regulation 197.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period May 6, 1979, through May 12, 1979, is established at 260,000 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: May 2, 1979.

D. S. Kuryloski,

Director, Fruit and Vegetable Division Agricultural Marketing Service.

[Lemon Reg. 197]

[FR Doc. 79-14199 Filed 5-3-79; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 78

Brucellosis Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments add the counties of Crittenden and Woodruff, Arkansas; Massac, Illinois; and Clay, Franklin, Lancaster, Nuckolls, Saline, Stanton, and Thayer in Nebraska to the list of Certified Brucellosis-Free Areas and delete such counties from the list of Modified Certified Brucellosis Areas. It has been determined that these counties qualify to be designated as Certified Brucellosis-Free Areas. The effect of this action will allow for less restrictions on cattle moved interstate from these areas.

EFFECTIVE DATE: May 4, 1979.

FOR FURTHER INFORMATION CONTACT: Dr. A. D. Robb, USDA, APHIS, VS, Room 805, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8713.

SUPPLEMENTARY INFORMATION: A complete list of brucellosis areas was published in the **Federal Register** (43 FR 60865–60867) effective December 29, 1978. These amendments add the counties of Crittenden, and Woodruff, Arkansas; Massac, Illinois; and Clay, Franklin, Lancaster, Nuckolls, Saline, Stanton, and Thayer in Nebraska to the list of Certified Brucellosis-Free Areas in § 78.20 and delete such counties from the list of Modified Certified Brucellosis Areas in § 78.21, because it has been determined that they now come within the definition of a Certified Brucellosis-Free Area contained in § 78.1(1) of the regulations. This list is updated monthly and reflects actions taken under criteria for designating areas according to brucellosis status.

Accordingly, Part 78, Title 9, Code of Federal Regulations, is hereby amended in the following respects:

1. In § 78.20, paragraph (b) is amended by adding: *Arkansas.* Crittenden, Woodruff; *Illinois.* Massac; *Nebraska.* Clay, Franklin, Lancaster, Nuckolls, Saline, Stanton, Thayer.

2. In § 78.21, paragraph (b) is amended by deleting: Arkansas. *Crittenden, Woodruff;* Illinois. *Massac;* Nebraska. Clay, Franklin, Lancaster, Nuckolls, Saline, Stanton, Thayer.

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

These amendments designating areas as Certified Brucellosis Free Areas relieve restrictions presently imposed on cattle moved in interstate commerce. These restrictions are no longer necessary to prevent the spread of brucellosis, and these amendments must be made effective immediately in order to permit affected persons to move cattle interstate from such areas without unnecessary restrictions.

Therefore, pursuant to 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 this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by Paul Becton, Director, National Brucellosis Eradication Program, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 26th day of April 1979.

M. T. Goff,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 79-13610 Filed 5-3-79; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 94

Change in Disease Status of Belgium; Swine Vesicular Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final Rule.

SUMMARY: This document will delete Belgium from the list of countries considered to be free of swine vesicular disease. Notice has been received that 5 outbreaks of swine vesicular disease have occurred in Belgium. The intended effect of these amendments is to restrict the entry into the United States of swine, wild swine and pork or pork products from Belgium, in order to protect the livestock of the United States.

EFFECTIVE DATE: The foregoing amendments shall become effective on May 1, 1979, except with respect to shipments of swine, wild swine and pork or pork products originating in Belgium that are on board a carrier moving to the United States on or before that date. Such shipments shall upon arrival in the United States be allowed entry only under such specific conditions, or be disposed of in such manner, as the Deputy Administrator, Veterinary Services, may determine in each specific case to be necessary and adequate to safeguard against the introduction or dissemination of the contagion of swine vesicular disease into the United States.

FOR FURTHER INFORMATION CONTACT: Dr. J. D. Roswurm, USDA, APHIS, VS, Federal Building, Room 819, Hyattsville, MD 20782, 301–436–8499.

SUPPLEMENTARY INFORMATION: Dr. R. Depierreux, Chief Veterinarian of Belgium, announced at the Biannual Meeting of the European Commission for Control of Foot-and-Mouth Disease, FAO, Rome, Italy, March 27–30, 1979, that Belgium had an outbreak of SVD on January 12, 1979, and that there have been 4 associated outbreaks. Accordingly, SVD is considered to exist

in Belgium. Therefore, these amendments will delete Belgium (1) from the list of countries in § 94.12(a) which are considered to be free of swine vesicular disease; and (2) from the list of countries in § 94.13 which are declared to be free of swine vesicular disease in § 94.12(a) but which supplement their national meat supply by the importation of fresh, chilled, or frozen meat of swine from countries, where swine vesicular disease is considered to exist; or which have a common border with such countries; or which have certain trade practices that are less restrictive than are acceptable to the United States. This action, which has the effect of further restricting the importation of certain meats and meat products of swine, and of prohibiting the importation of swine, and of restricting the importation of wild swine into the United States from Belgium, is deemed necessary to prevent the introduction or dissemination of the contagion of this disease and to protect the livestock of the United States.

Accordingly, 9 CFR Part 94 is hereby amended as follows:

1. In § 94.12(a) the name of Belgium is deleted.

2. In § 94.13 in the first sentence of the introductory paragraph the name of Belgium is deleted.

(Sec. 2, 32 Stat. 792, as amended; secs 2, 3, 4, and 11, 76 Stat. 129, 130, 132; (21 U.S.C. 111, 134a, 134b, 134c, 134f); 37 FR 28464, 28477; 38 FR 19141)

It is necessary to publish these amendments as an emergency final rule, to become effective immediately, in order to protect the livestock of the United States against the introduction of swine vesicular disease from Belgium.

Therefore, pursuant to 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 this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's Memorandum 1955. It has been determined by G. V. Peacock, Director, National Program Planning Staffs, VS, APHIS, USDA, that the emergency nature of this final rule warrants publication without opportunity for public comment and preparation of an impact analysis statement at this time.

This final rule will be scheduled for review under provisions of Executive Order 12044 and Secretary's Memorandum 1955.

Done at Washington, D.C., this 1st day of May 1979.

E. A. Schilf,

Acting Deputy Administrator, Veterinary Services.

[FR. Doc. 79-13972 Filed 5-3-79; 8:45 am]

BILLING CODE 3410-34-M

Food Safety and Quality Service

9 CFR Part 381

Young Chicken Slaughter Inspection Rate Maximums; Change in Effective Date

AGENCY: Food Safety and Quality Service, USDA.

ACTION: Change in effective date of final rule.

SUMMARY: This document changes the effective date for the mandatory application of the final rule entitled "Young Chicken Slaughter Inspection Rate Maximums" published in the **Federal Register** and made immediately effective on April 13, 1979 (44 FR 22047). This will help to avoid economic hardship and possible poultry shortages. The delay in effective date will be 60 days.

DATE: The date of the mandatory application of the regulation is changed to July 3, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Clyde S. Smithson, Acting Chief Staff Officer, Work Standards and Data Services Staff, Technical Services, Meat and Poultry Inspection, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-2987.

SUPPLEMENTAL INFORMATION: On April 3, 1979, the United States District Court for the Eastern District of Arkansas issued an injunction directing that the Department forthwith use uniform maximum inspection rates for young chickens and apply and enforce the rates uniformly in all federally inspected poultry slaughtering plants in the United States. The Department had previously conducted a study and prepared a proposed regulation, based on the study recommendations, to achieve this same objective. However, in order to comply with the court's order, while assuring that consumers were adequately protected, the regulation providing for national uniform maximum inspection rates under the traditional inspection procedure was issued on an immediately effective basis.

While many plants were able to increase production speed under this regulation, a large number of plants were required to immediately decrease their speeds, and, thus, their total production. Therefore, at that time a final rule entitled "Modified Traditional Poultry Inspection" was also published in the **Federal Register** on an immediately effective basis (44 FR 22049). It was hoped that the implementation of this new procedure, which had recently been perfected and which allows for increased production line speeds, would alleviate problems of economic dislocation of plants and of shortages of poultry availability or increases in poultry prices for consumers.

In the short time since promulgation, it appears that these regulations are working admirably. Many plants are operating efficiently under the new traditional inspection rates or are quickly converting to the modified traditional inspection procedure. However, problems have arisen that were not fully anticipated by the Department. A significant number of plants throughout the country, which were required to decrease speeds under the new traditional inspection procedure rates, have been unable to rapidly convert to the modified traditional inspection procedure because the individual peculiarities of their facilities require more extensive renovation.

Young chickens are approximately 7½ weeks old at the time of slaughter. Therefore, production levels must be set at least 7½ weeks in advance of the slaughter date. Because of these problems, it appears that millions of chickens, which are already in the growing stage, will be unable to be slaughtered under the current regulations. In addition to economic dislocation, this may result in shortages of poultry availability or increases in poultry prices at the time of year when consumer demands for chicken are the greatest. Therefore, the Department believes that immediate further measures must be taken to deal with this serious, but unforeseen, problem.

Accordingly, the mandatory application of the inspection rate maximums under the traditional inspection procedure is hereby delayed until July 3, 1979. During this period, all plants will be able to operate in accordance with these rates. However, the inspector in charge at all plants will have discretion to allow inspection rates in excess of these rates to the extent that he determines that adulterated or misbranded product will not be produced. This discretion, and all

supervisorial review thereof, will be exercised on a line by line basis in accordance with the general inspectional criteria in the Meat and Poultry Inspection Manual.[1] Conversion to modified traditional inspection, under the maximum inspection rate specified therefor, may continue during this period.

This 60 day period should allow all plants to convert their facilities or adjust their future production levels. This uniform policy will also be in accord with the requirements of the above-described court order.

Done at Washington, D.C., on May 2, 1979.

Donald L. Houston,

Acting Administrator, Food Safety and Quality Service.

[FR Doc. 79-14108 Filed 5-3-79; 8:45 am]

BILLING CODE 3410-37-M

[1] Copies of this Manual are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 51

Uranium Fuel Cycle Impacts From Spent Fuel Reprocessing and Radioactive Waste Management; Extension of Interim Fuel Cycle Rule

AGENCY: Nuclear Regulatory Commission.

ACTION: Extension of the interim fuel cycle rule.

SUMMARY: The Commission promulgated on March 14, 1977 (42 FR 13803) an interim rule identifying the environmental impact values for the uranium fuel cycle which are to be included in environmental reports and environmental impact statements for individual light water nuclear power reactors. The interim rule was made effective for 18 months with the possibility of extension for good cause. The Commission has made two extensions of the period of effectiveness of the interim rule. The most recent extension enlarged this period to April 30, 1979. The Commission now finds good cause to enlarge this period until May 15, 1979.

DATE: The interim rule published at 42 FR 13803, March 14, 1977 (10 CFR 51.20(e)) is extended until May 15, 1979.

FOR FURTHER INFORMATION CONTACT: E. Leo Slaggie, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, phone 202-634-3224.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Nuclear Regulatory Commission has extended through May 15, 1979 the effectiveness of the interim fuel cycle, 10 CFR 51.20(e) ("table S-3," as revised). The Commission finds this extension desirable to avoid disruption in licensing procedures.

Background

The status of the Commission's interim fuel cycle rule and the course of the final rulemaking up to the submission of the Hearing Board's report on the extensive evidentiary record were reviewed in the notice of September 18, 1978 (43 FR 41373), which extended the interim rule through March 14, 1979. The purpose of that extension was to retain the advantage of having a fuel cycle rule in place during the time needed for the Hearing Board to prepare its recommendations for a final rule and for the Commission to study the record and the Board's recommendations prior to reaching a final decision in the fuel cycle rulemaking.

An additional extension to April 30, 1979 proved necessary because of additional procedures which the Commission adopted in order to receive further comments from participants in the rulemaking. See notice on March 19, 1979 (44 FR 16360). The purpose of that extension was to provide adequate time for the Commission to prepare a thorough statement of consideration in support of its decision to adopt a final rule. That statement is now essentially completed but has not yet been formally adopted. Accordingly, for the reasons given in the previous notices of extension, the Commission finds good cause to extend the period of effectiveness of the interim rule through May 15, 1979.

Dated at Washington, DC, this 30th day of April, 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-14017 Filed 5-3-79; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 211

Emergency Allocation Provisions of the Crude Oil Buy/Sell Program

AGENCY: Economic Regulatory Administration, DOE.

ACTION: Final rule, Further Notice of Proposed Rulemaking.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy hereby amends, on an emergency basis, the provisions for emergency allocations for small refiners under the crude oil Buy/Sell Program. The amendments adopted today: (1) provide criteria for determining the level of emergency allocations; (2) change the reference period for determining a small refiner's current level of reduction in supplies from the most recent six-month period to the period January through October 1978; and (3) describe the information which must be submitted in an application for an emergency allocation. The amendments are effective immediately in order to permit ERA to address on a more equitable basis the crude oil supply problems of small refiners in the face of severely restricted supplies of crude oil in the world market. If the effective date of these amendments were delayed, some small refiners likely would experience serious disruptions in their operations due to the inability of the Buy/Sell Program to respond effectively to their supply needs.

The ERA is continuing this rulemaking proceeding to receive public comment on the amendments adopted today and on two additional proposed amendments to the emergency allocation provisions published elsewhere in this issue. These proposed amendments would (1) add to the current list of sellers (the 15 so-called "major" refiners), for purposes of emergency allocations only, all other refiners with in excess of 175,000 barrels per day of refining capacity and (2) provide that, with respect to emergency allocations, the price of crude oil sold to small refiners whose refining capacity is more than 50,000 barrels per day shall be based on the actual cost of the crude oil sold, rather than the seller's adjusted weighted average landed cost of imports, as currently provided.

DATES: This final rule is effective immediately. A hearing on this rule and the further proposed amendments will be held on May 31, 1979 in Washington, D.C. Written comments on the final rule and the further proposed amendments must be received by May 31, 1979. Requests to speak must be received by May 16, 1979. Copies of oral statements must be received by May 30, 1979.

ADDRESSES: All comments, copies of oral statements and requests to speak to: Public Hearing Management, ERA Docket No. ERA-R-79-*21*, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Hearing: Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:
Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, Room 2222A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.
William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634–2170.
John W. Glynn (Regulations and Emergency Planning), Economic Regulatory Administration, Room 8222, 2000 M Street, N.W., Washington, D.C. 20461, (202) 632–5133.
Robert G. Bidwell, Jr. (Fuels Regulation), Economic Regulatory Administration, Room 6128, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–9707.
Samuel M. Bradley (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6754.

SUPPLEMENTARY INFORMATION:

I. *Background*
II. *Amendments to Section 211.65(c)(2)*
III. *Request for Comments on Further Amendments*
IV. *Procedural Requirements*
V. *Comment Procedures*
A. *Written Comments*
B. *Public Hearing*

I. Background

Effective October 1, 1977, the Federal Energy Administration (FEA) significantly revised the crude oil Buy/Sell Program in 10 CFR 211.65 to limit purchases under the program to those small refiners ("refiner-buyers") with refineries which had a demonstrated need for allocations of crude oil based on lack of access to adequate supplies of domestic and foreign crude oil. Small refiners that were initially determined to have access to sufficient supplies of crude oil, and that were therefore ineligible to participate in the program, were permitted to reenter the program in the event that they experienced a significant reduction in crude oil supplies. In addition, provision was made for emergency allocation of crude oil for eligible refiners that experienced at least a 25 percent reduction in their supplies of crude oil. At the time these modifications to the Buy/Sell Program were adopted, there was a surplus of foreign crude oil available for importation into the United States, and the amendments thus were premised upon the belief that supplies of crude oil for most small refiners were and would continue to be adequate.

The current international crude oil market exhibits vastly different market conditions than those prevalent in October 1977. For the last five months, supplies available to the United States and other major petroleum consuming nations in the world market have decreased substantially. This situation has resulted primarily from the disruption and eventual cessation in late December 1978 of crude oil exports from Iran because of the political turmoil in that country. Exports from Iran have since resumed, although not at levels prior to the turmoil in Iran. An additional factor which contributed to the general tightening of world crude oil supplies is a very strong petroleum product demand worldwide, as well as substantial increases in European demand for low sulfur crude oils during the first quarter of 1979 as a result of more stringent environmental standards coming into effect. Finally, petroleum exporting countries other than Iran (for example, Saudi Arabia, Libya, Indonesia and Algeria) have effectuated or are considering reductions in crude oil production, and uncertainly remains as to whether the current worldwide supply/demand balance is temporary.

Domestic refiners dependent on imported crude oil began to experience this tightening of world crude oil supplies in November 1978. These market conditions impacted more severely on small refiners which, generally speaking, are at a disadvantage in the world crude oil markets vis-a-vis the major intergrated and large independent refiners. We received reports from many small refiners of contracts suddenly cancelled by their suppliers of imported crude oil, resulting in substantial inventory drawdowns, and forced reductions in crude oil run levels. A number of small refiners advised us that they were unable to purchase adequate foreign crude oil supplies at any price. Other small refiners were unable to pay the very high premiums commanded by certain of the light, sweet foreign crude oils in the spot market. For these crude oils, spot market transactions involving premiums of between $4.00 and $8.00 per barrel over normal contract prices were reported.

In the last five months, ERA has assigned emergency allocations of crude oil totalling 8,181,350 barrels under § 221.65(c)(2) [1] of the Buy/Sell Program to 19 small refiners that had experienced a 25 percent or greater reduction in their crude oil supplies due to the restricted supply situation in the international crude market. As a result of these emergency allocations, the total sales obligation for refiner-sellers under the program has increased by approximately 100 percent over the total sales obligation shown on the Buy/Sell List as initially published for the October 1978 through March 1979 allocation period.

The bulk of these emergency allocations were granted to small refiners that previously were ineligible to participate in the program because they had access to adequate supplies of domestic and foreign crude oil. However, these small refiners were permitted to reenter the program under the review of eligibility provisions in § 211.65(c)(1) [2] based on a significant change in their access to imported crude oil. In the preamble to the current regulations, (42 FR 42770, August 24, 1977), the Federal Energy Administration (FEA) made it clear that if, at a date subsequent to the initial determination of ineligibility, a refinery can establish that, despite the presumption of access to foreign crude oil under the criteria in section 211.65(a), that refinery does suffer a "significant change" in its access to foreign crude oil, the review procedure contained in section 211.65(c)(1) is designed to provide necessary relief. In that situation, ERA can make emergency allocations under § 211.65(c)(2) to such refiner "for one or more allocation periods, or for part of an allocation period."

The regulatory history of §§ 211.65(c)(1) and 211.65(c)(2) confirms that their purpose is to permit a flexible response to small refiner's crude oil access problems. When the regulations were promulgated, FEA recognized the major oil companies' general support of the FEA's proposal.

> To limit the scope of the program to small refiners that are able to demonstrate a *need* for allocated crude oil. 42 FR 42770, August 24, 1977 (emphases added).

And, in direct response to small refiners concerns over apparent inflexibility and "absolute" presumptions under the

[1] Section 211.65(c)(2) provides in relevant part as follows:

"(2) Upon application at any time by a refiner-buyer, the [ERA] may grant an emergency supplemental allocation for one of more of the refiner-buyer's eligible refineries for one or more allocation periods, or for part of an allocation period; *provided, that* such refiner shall be required to demonstrate that it has incurred or will incur a reduction in its crude oil supply (excluding crude oil allocated under this section or under § 211.63) for the eligible refinery for which an emergency supplemental allocation is sought equal to at least twenty-five (25%) percent of such crude oil supply in the preceding six-month period. In granting a request of a refiner-buyer for an emergency supplemental allocation, the [ERA] may also direct one or more refiner-sellers to sell a suitable type of crude oil to such refiner-buyer pursuant to paragraph (j) of this section. * * *"

[2] Section 211.65(c)(1) provides in relevant part that ERA may "* * * review the eligibility of a refinery owned by [a small refiner] where significant changes in the refinery's access to imported crude oil have occurred since the refinery was determined by [ERA] to be ineligible for an allocation; * * *"

regulations, FEA assured them that it has retained the flexibility to respond to the needs fo small refiners initially determined to be ineligible:

> [I]n the event that there are significant changes in the access of a small refiner's refinery to imported crude oil, the amendments adopted today provide that FEA may review the eligibility of that refinery for participation in the program. FEA believes that this review provision should provide sufficient protection for refineries that are initially determined to be ineligibile for an allocation. (42 FR at 42771)

Thus, the provisions of section 211.65(c)(1) were expressly intended to permit a review of not only a small refiner's access to *physical* means of transporting imported crude oil, but "significant changes" in a small refiner's *actual* access, which may be significantly affected by disruptions in the worldwide crude oil supply and distribution.

In March 1979 Iran resumed production and limited exports. However, the crude oil supply situation in the world market continues to be extremely tight and uncertain. In addition, as a result of the further significant OPEC price increase effective April 1, crude oil prices in the world market have not stabilized. Reflecting these abnormal market conditions, there are 21 applications for emergency allocations by small refiners pending before ERA requesting assignments totalling approximately 100,000 barrels per day for the months of May and June 1979.

Although we have attempted to redress the supply problems of many small refiners in this period of tight supplies under the Buy/Sell Program's current emergency allocation provision, the provision has functioned imperfectly in a number of respects. First, we believe that the regulatory requirement to use the most recent six months as the reference period for determining a small refiner's current level of reduction in supplies is not appropriate in light of the disruptions in crude oil supplies in the world market since November 1978. This is particularly true in the case of small refiners that have experienced a gradual decline in crude oil supplies over the last six months. Accordingly, we have determined that the reference period should be changed to the period January 1, 1978 through October 31, 1978, when crude oil supplies in the world markets were relatively adequate to provide a more accurate measure of small refiner's need for an emergency allocation.

Second, the emergency allocation provision in § 211.65(c)(2) does not provide specific guidance as to how to determine the amount of crude oil that should be allocated. Generally speaking, the emergency allocations recently granted to small refiners have covered between seventy-five and one hundred percent of the particular refiner's shortfall, based on its supplies for the previous period. However, the emergency allocations may, in certain cases, have permitted the recipients to operate at a rate that is higher than both the operating rate of the seller, as well as that of other small refiners that do not qualify for emergency allocations. We believe that emergency allocations under this program should not in any case permit the recipient to maintain a crude run level higher than ERA's estimate of the current national utilization rate for all refiners.

Finally, the current emergency allocation provision does not provide specific guidance as to the manner in which ERA is to apply the general eligibility criterion of a twenty-five percent reduction in crude oil supplies or the types of information that ERA requires from a small refiner to determine eligibility for an allocation. In this regard, we have received many requests from small refiners for guidance as to the contents of an application for an emergency allocation and as to how the terms of the current provision are to be applied. In addition, it frequently has been necessary for us to make several requests to applicants for additional information, causing significant delays in the processing of applications.

In the case of the allocations assigned to date, we have required each small refiner to demonstrate that its loss of crude oil supplies was involuntary, and that it is unable or cannot reasonably be expected to replace its lost supplies through its own efforts. To satisfy these requirements, we have requested each applicant to identify its historical supplies of crude oil, document the reasons for the loss of supplies, identify each firm from which crude oil has been sought and document the results of the search. We believe it is essential to revise the current emergency allocations provision to reflect these factors in order to facilitate the operation of the program.

We also believe that it is appropriate to revise the current provision to make it clear that we will take into account the price which a small refiner must pay for available crude oil supplies in determining whether a small refiner can reasonably be expected to replace its lost supplies through its own efforts. This is particularly appropriate at this time because crude oil prices in the world market are highly unstable. Consideration of the price a small refiner must pay to replace its lost supplies of crude oil is consistent with our mandate under the Emergency Petroleum Allocation Act of 1973, as amended ("EPAA"), to promote the "equitable distribution of crude oil * * * at equitable prices among all * * * sectors of the petroleum industry, including independent refiners [and] small refiners * * *" (EPAA, § 4(b)(1)(F)). This objective reflects the specific Congressional concern that crude oil supplies of small refiners be at equitable prices, consistent with the section 4(b)(1)(D) objective of preservation of the competitive viability of small refiners. Therefore, we are recognizing that in cases where a small refiner must pay a price for imported crude oil that is significantly higher than the then current normal range of posted prices in the world markets for the particular quality of crude oil required for its operations, that small refiner should not be required to purchase this high-priced crude oil and become ineligible for an emergency allocation. If we did not take into account the price which a small refiner must pay for available supplies, there would be a strong probability that small refiners would encounter strong financial barriers to maintaining the type of viable competitive business operation which the EPAA directly seeks to protect.

We believe it is necessary to change the emergency allocation provisions in § 211.65(c)(2) in the respects described above as quickly as possible to permit us to redress equitably the supply problems of small refiners under a regulation designed specifically for the current supply conditions, consistent with our mandates under the EPAA. These changes also are necessary to provide immediate guidance to small refiners and refiner-sellers regarding the criteria to be applied in determining eligibility for emergency allocations, the level of allocations, and the data requirements for applications, thereby facilitating the operation of the Buy/Sell Program. Although we have seriously considered activating one of the phases of the recently adopted standby crude oil allocation program, we have determined that the current restricted supply situation does not at this time warrant allocating crude oil to all segments of the refining industry. Certain of the reporting provisions, however, have been placed into effect, so that any necessary implementation of the standby program will be facilitated.

II. Amendments to § 211.65(c)(2)

For the reasons stated above, we are adopting the amendments to § 211.65(c)(2) described below on an emergency basis.

Under these amendments, a small refiner will be eligible for an emergency allocation if it demonstrates that it is incurring a reduction in its supply of crude oil equal to at least twenty-five percent of the volume of its crude oil runs to stills (excluding runs in excess of the refiner's DOE certified crude oil refining capacity) during the period January through October 1978 and that it is not able or cannot reasonably be expected to replace such lost supplies through its own efforts. For the reasons noted above, § 211.65(c)(2) as amended today expressly provides that ERA may determine that a small refiner "cannot reasonably be expected to replace such lost supplies through its own efforts," where the small refiner must pay an aberrational price for replacement supplies, significantly in excess of the range of prices being paid for most crude oil purchased on the world market, considering the quality of crude oil in question.

Under the current Buy/Sell Program regulations, emergency allocations are available to small refiners that receive regular allocations under the program (that is, "refiner-buyers"), as well as to other small refiners that are permitted to reenter the program on a temporary basis under the § 211.65(c)(1) review of eligibility provision by demonstrating a significant change in their access to imported crude oil. Since, generally speaking, eligibility for an emergency allocation (that is, a twenty-five percent reduction in crude oil supplies) generally satisfies the requirement under the § 211.65(c)(1) review of eligibility provision of a "significant change in access," it appears that the administrative requirement of applying for a review of eligibility is essentially redundant. Accordingly, the amendments effectively eliminate this administrative requirement by providing that ERA may assign an emergency allocation to any small refiner (except newly-constructed refineries that were not constructed or committed for prior to August 24, 1977, as currently provided) that makes the requisite showing.

In the event that a small refiner is eligible for an allocation, the amendments provide that ERA may assign a maximum allocation equal to that volume of crude oil required to maintain the refiner's volume of crude oil runs to stills at a level equivalent to ninety-five percent of the refiner's level of crude oil runs to stills in the reference period, or ninety-five percent of our estimate of the current national utilization rate for all domestic refiners, whichever is less. In computing the national utilization rate, we will divide the total of the estimated average daily crude oil runs to stills for all domestic refiners for any month or months in the allocation period by the total of the average daily crude oil runs to stills for all domestic refiners during the period January through October 1978. As is the case under the current emergency allocation provisions, we may direct one or more sellers to sell assigned allocations.

Finally, § 211.65(c)(2) as amended describes in detail the information which a small refiner must submit in its application for an emergency allocation. In particular, the application must contain a detailed explanation of the reasons for the small refiner's reduction or projected reduction in crude oil supplies; the name of each firm from which crude oil has been sought and a statement as to why the refiner believes it has exhausted all supply possibilities; and, if the applicant has rejected an offer by any firm to sell crude oil, the price quoted by the offering firm and the small refiner's reason for rejecting the offer. Applications must be submitted by the fifteenth day of the month prior to the month for which an allocation is sought.

III. Request for Comments on Further Proposed Amendments

We are continuing this rulemaking proceeding to receive public comment on two further proposed amendments to the emergency allocation provisions. The first proposed amendment would add all refiners with in excess of 175,000 barrels per day refining capacity and not currently categorized as "major" refiners to the category of sellers for emergency allocations only. The second proposed amendment would provide that, with respect to emergency allocations, the price of crude oil sold to small refiners whose refining capacity is more than 50,000 barrels per day shall not be based on the seller's adjusted weighted average landed cost of imports, as currently provided, but would be based on the actual cost of the crude oil sold. The considerations underlying these proposals are set forth below.

Since the monthly volume of emergency allocations has been increasing, it can be expected that the burden and disruptive effects of the allocations on the current group of refiner-sellers also will increase. For this reason, we have tentatively determined that the class of sellers (for emergency allocations only) should be expanded to include all refiners with refining capacity in excess of 175,000 barrels per day, rather than just the 15 "major" refiners, so as to spread the burden of allocation sales more equitably among all refiners that are large enough to have access to the world markets for a significant portion of their supplies and who thus have the capability to negotiate for these supplies on favorable terms.

Among this expanded class of sellers, we believe that the emergency allocations should be shared on the basis of each seller's proportionate share of total crude oil runs to stills of all sellers during a recent base period, rather than on the basis of each seller's proportionate share of the total of all sellers' refining capacity as of a base date, as currently provided. In our view, the latter standard may not be the most accurate measurement of a seller's ability to obtain supplies of crude oil for its refineries in a period of restricted supplies.

The second proposal relates to the price for emergency allocation sales. During this period of fluctuating foreign crude oil prices, refiner-seller's replacement costs for crude oil sold under the Buy/Sell Program have frequently exceeded the maximum permitted sales price for allocated crude oil, and thus resulted in a substantial financial penalty to the seller. We believe that small refiners with a refining capacity not exceeding 50,000 barrels per day, which is the class of refiners selected for preferential contract awards by the Small Business Administration, should continue to be permitted to purchase allocated crude oil at the average cost of imported crude oil to the seller to ensure that they remain competitive. However, we believe that it is appropriate, balancing all these considerations, that small refiners whose capacity is 50,000 barrels per day or more receive allocations where the maximum-permitted sale price more nearly reflects the market value of the allocated crude oil.

Accordingly, we have tentatively determined that the maximum permissible sale price for transactions involving emergency allocations to such small refiners with a capacity of 50,000 barrels per day or more should be, in the case of imported crude oil, the seller's actual cost in an arms-length transaction or the landed cost as defined in § 212.82 of acquiring the imported crude oil offered for sale; in the case of domestic crude oil, it would be the actual cost of

the domestic crude oil sold. This is the same rule as contained in the special price rule (Special Rule No. 1 to Subpart L, Part 212) of the Standby Mandatory Crude Oil Allocation and Refinery Yield Programs. As we stated in the preamble accompanying the Standby Regulations (42 FR 3418, January 16, 1979), by using the acquisition cost for sales to small refiners whose capacity exceeds 50,000 barrels per day, these firms will have an incentive to search for new supplies of imported and domestic crude oil.

In the event we determine on the basis of the comments in this proceeding to adopt these proposals, they would be reflected in a new Special Rule No. 11 (the "Special Rule") to Subpart C, Part 211, which is described below. The proposed regulatory language for the Special Rule is set forth in the proposed rules section of this issue.

"Seller" would be defined in the Special Rule as any refiner-seller under the current Buy/Sell Program and any other refiner that is not a small refiner. As is the case under the current regulations, the sales obligations of the current refiner-sellers with respect to emergency allocations would be in addition to their sales obligations shown on the Buy/Sell list published pursuant to § 211.65(g). For each allocation period, each seller would be required to sell a volume of crude oil equal to its "fixed percentage share" multiplied by the total of the emergency allocations assigned under § 211.65(c)(2). "Fixed percentage share" would be defined as a seller's proportionate share of the total volume of crude oil runs to stills of all sellers during the period September 1978 through February 1979.

In directing sales of assigned emergency allocations, the Special Rule would require that, to the maximum extent practicable, ERA apportion the sales among all sellers in a manner such that each seller's sales obligation with respect to emergency allocations for an allocation period does not exceed its total sales obligation for the allocation period. However, at any time during an allocation period, ERA could direct one seller to sell more than its sales obligation at that particular time to eliminate the necessity of splitting up an allocation to a small refiner among several sellers. The Special Rule would prohibit directed sales that exceed a seller's sales obligation by more than twenty-five percent.

Any seller that sells more than its share of the total sales obligation would receive a barrel-for-barrel reduction in its sales obligation under § 211.65(c)(2) for the next allocation period. Similarly, any unsold sales obligations for an allocation period would be added to the seller's sales obligation for emergency allocations for the following allocation period.

With one significant exception, transactions involving emergency allocations would continue to be governed by the "terms and conditions" in § 211.65(i) applicable to regular allocated sales. As discussed above, the exception is that the price of crude oil sold pursuant to an emergency allocation to a small refiner whose DOE certified refining capacity is greater than 50,000 barrels per day would be the seller's actual cost of the particular crude oil sold, as provided in the special pricing rule of the Standby Regulations. The handling fee for such sales would be 5¢ per barrel, as currently provided, rather than the 25¢ per barrel handling fee specified in the standby pricing provisions. Since sales at the seller's weighted average cost to small refiners whose refining capacity is 50,000 barrels per day or less result in a certain penalty for the seller, because replacement costs will in most cases exceed the seller's weighted average cost, the obligations to sell crude oil to those small refiners entitled to purchase emergency allocations at the weighted average cost would be separately distributed on a pro-rata basis among all sellers.

Finally, the Special Rule would provide that ERA would publish supplemental buy/sell lists periodically during an allocation period listing the emergency allocations assigned under § 211.65(c)(2) and the fixed percentage share for each seller. In particular, each list would specify the quantity of crude oil assigned to buyers whose DOE certified crude oil refining capacity is 50,000 barrels per day or less and the quantity of crude oil that each seller would be obligated to offer for sale to such buyers. We would anticipate publishing a supplemental buy/sell list at the beginning of each month during an allocation period.

IV. Procedural Requirements

A. *Section 501 of the DOE Act*

Under section 501(e) of the Department of Energy Organization Act (Pub. L. 95–91, DOE Act), we may waive the prior notice and hearing requirements of subsections (b), (c), and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety or welfare. We believe such a finding can and should be made in this instance since the current provision for emergency allocations functions imperfectly, as discussed above, and greatly restricts ERA's ability to respond effectively and equitably to the supply problems of small refiners during this period of severely restricted crude oil supplies. In addition, immediate adoption of these amendments is required to provide guidance to refiners regarding the criteria to be applied in determining eligibility for emergency allocations, the level of such allocations and the information required in applications for emergency allocations.

However, in accordance with section 501(e) and in order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we have scheduled a public hearing for May 31, 1979 and will receive written comments through May 31, 1979 on the amendments adopted and the further proposed amendments. We are particularly interested in receiving comments regarding the manner in which we will take into account the price of available crude oil supplies in determining a small refiner's eligibility for an emergency allocation. We will reconsider today's action with regard to the comments received and will publish in the **Federal Register** our response to these comments along with our decision whether to take any further action in this rulemaking proceeding.

B. *Section 404 of the DOE Act*

Section 404(a) of the DOE Act requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary of Energy proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of functions transferred to him under section 301 or section 306 of the DOE Act. If the FERC determines, within such period as the Secretary may prescribe, that the proposed action may significantly affect any of its functions under sections 402(a)(1), (b) and (c)(1) of the DOE Act, the Secretary shall immediately refer the matter to the FERC.

Following an opportunity to review these amendments, the FERC has declined to determine that the amendments may significantly affect one of its functions under the sections noted above.

C. *Section 7 of the FEA Act*

As required by section 7(a)(1) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275, FEA Act), a copy of this rulemaking was submitted to the Administrator of the Environmental Protection Agency for his comments

concerning the impact of the proposal on the quality of the environment. The Administrator had no comments.

D. *Section 553 of the Administrative Procedure Act*

Section 553(b) of the Administrative Procedure Act requires that general notice of proposed rulemaking shall be published in the **Federal Register**, except where the agency, for good cause, finds that notice is impracticable, unnecessary, or contrary to the public interest. In addition, section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. For the reasons stated in subsection A of this section of this preamble, we have determined that notice is impracticable and contrary to the public interest and that good cause exists to waive the section 553(d) requirement.

E. *Executive Order 12044*

The sixty-day public comment period required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 23, 1978) and DOE's implementing procedures, DOE Order 2030.1 (44 FR 1032, January 3, 1979), have been waived by the Deputy Secretary of Energy for the reasons previously stated for making the amendments to § 211.65(c)(2) effective immediately.

Executive Order 12044 also requires that a regulatory analysis to be prepared for all regulations which will result in "an annual effect on the economy of $100 million or more" or will result in "a major increase in costs or prices for individual industries, levels of government or geographic regions." We have determined that neither of these threshold criteria for the preparation of a regulatory analysis is met by the amendments adopted today. However, with respect to the further proposed amendments, we are preparing a preliminary regulatory analysis which examines the various potential impacts of these proposals. When this document is completed, we will publish a notice of its availability in the **Federal Register** and will provide you an opportunity to comment on the document. Such comments will be taken into account in the preparation of a final regulatory analysis on any further final rule that may be adopted.

F. *Office of Management and Budget Review*

The information requirements specified in the amendment adopted today have been approved by the Office of Management and Budget (OMB) in accordance with the Federal Reports Act (Pub. L. 90–620), as amended. The OMB approval number is 038–R–0407.

IV. *Written Comment and Public Hearing Procedures*

A. *Written Comments*

You are invited to participate in this proceeding by submitting data, views or arguments with respect to any matters relevant to this notice. Comments should be submitted by 4:30 p.m., d.s.t., May 31, 1979 to the address indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "Emergency Crude Oil Allocations." Ten copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. *Public Hearing*

1. *Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in this notice, you may make a written request for an opportunity to make an oral presentation by 4:30 p.m., d.s.t., May 16, 1979. You should also provide 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., d.s.t., May 21, 1979, and will be required to submit fifty copies of your statement to the appropriate address indicated in the "Addresses" section of this notice before 4:30 p.m., d.s.t., May 30, 1979.

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-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity 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. The ERA or, if the question is submitted at a hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

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 the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA–152, James 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. You may purchase a copy of the transcript of the hearing from the reporter.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, 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, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective immediately.

Issued in Washington, D.C., April 27, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Section 211.65 is amended by revising the heading of paragraph (c) and by revising subparagraph (2) of paragraph (c) to read as follows:

§ 211.65 Method of Allocation.

* * * * *

(c) *Review of eligibility for allocations, adjustments to purchase opportunities, and emergency allocations.*

(1) * * *

(2)(i) Notwithstanding any provision of this section to the contrary, any small refiner (except a small refiner with newly-constructed refining capacity or reactivated refining capacity that does not satisy the requirements of § 211.65 (a)(1)(iii) of this Chapter) which is

incurring, or will incur in the allocation period for which an allocation is sought, a reduction in its supply of crude oil equal to the lesser of twenty-five (25) percent of its DOE certified crude oil refining capacity, or twenty-five (25) percent of the volume of its crude oil runs to stills, as adjusted for increases or decreases in the refiner's crude oil refining capacity as certified by DOE, during the period January through October 1978, and which is not able or cannot reasonably be expected to replace such lost supplies through its own efforts, may apply at any time to ERA for an emergency allocation of crude oil. The ERA may determine that a small refiner cannot reasonably be expected to replace its lost supplies through its own efforts where the small refiner must pay a price for replacement supplies significantly in excess of the range of prices being paid for most crude oil purchased on the world market, considering the quality of crude oil in question.

(ii) *Applications.* Applications shall be addressed to Chief, Crude Oil Allocation Branch, Office of Fuels Regulations, Economic Regulatory Administration, P.O. Box 19028, 2000 M Street, N.W., Washington, D.C. 20461, in accordance with the procedures established in Subpart G of Part 205 of this chapter. Applications must be submitted by the fifteenth day of the month prior to the month(s) for which an allocation is sought. Each application shall contain the following information (including documentation where appropriate):

(A) The location and DOE certified refining capacity of each refinery for which an allocation is sought.

(B) The information specified in § 211.66(d) (i) through (vi) of this chapter for the period January 1, 1978 through October 31, 1978 for each refinery for which an allocation is sought, identifying each supplier, whether the purchase was under contract or in the spot market and the volumes of crude oil allocated under sections 211.63 and this section.

(C) Beginning and ending inventory by month for the period January 1, 1978 through October 31, 1978 and current inventory.

(D) The volume of and a detailed explanation of the reasons for the reduction or projected reduction in crude oil supplies.

(E) List of actual and/or prospective supplies for the current month and the next four months, identifying the volumes of domestic (separately identifying crude oil allocated under § 211.63 and this section), and imported crude oils and each supplier. Indicate the quantities of crude oil already obtained as well as offered or expected during this period.

(F) The current approximate product yields for the refinery when using a typical feedstock. With respect to each covered product, indicate the current allocation fraction.

(G) The name and location of all firms from which crude oil has been sought and the specifications of the crude oil sought from each such firm, with a statement as to why the applicant believes it has exhausted all supply possibilities.

(H) The response (including copies of correspondence) of each firm to which a request to purchase crude oil has been made, and the telephone number of the individual contacted at each such firm. If the applicant rejected an offer by any such firm to sell crude oil, state the price quoted by such firm and the reason for rejecting the offer.

(iii) *Allocations.* In the event ERA determines that a small refiner is eligible for an allocation, ERA may assign the refiner a maximum allocation for one or more months during an allocation period equal to that volume of crude oil required to maintain the refiner's volume of crude oil runs to stills at a level equivalent to the lesser of ninety-five (95) percent of the refiner's level of crude oil runs to stills during the period January through October 1978, as determined under subclause (i) of this subparagraph (2), or ninety-five (95) percent of ERA's estimate of the current national utilization rate of all domestic refiners. In granting a request of a small refiner for an emergency allocation, the ERA may direct one or more refiner-sellers to sell a suitable type of crude oil to such refiner pursuant to § 211.65(j) of this chapter.

[Docket No. ERA-R-79-21]
[FR Doc. 79-14015 Filed 5-2-79; 8:45 am]
BILLING CODE 6450-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1203

Information Security Program; Delegation of Authority To Make Determinations in Original Classification Matters

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This revision is necessary to comply with the provisions of Section 1-204, Executive Order 12065, "National Security Information" dated July 3, 1978. The purpose of the revision is to designate a limited number of NASA officials having original classification authority as prescribed by the Executive Order. This revision accomplishes the stated purpose.

DATE: May 4, 1979.

ADDRESS: Director, Security Division, National Aeronautics and Space Administration, Washington, D.C. 20546.

FOR FURTHER INFORMATION CONTACT: Ben B. Pagac, Security Division, Telephone (202) 755-3400, National Aeronautics and Space Administration, Washington, D.C. 20546.

SUPPLEMENTARY INFORMATION: This regulation involves a national security function and is exempt from the procedures of 5 U.S.C. 553.

1. In 14 CFR Chapter V, Subpart 1203.F is redesignated as Subpart 1203.H and revised to read as follows:

Subpart 1203.H—Delegation of Authority To Make Determinations in Original Classification Matters

Sec.
1203.800 Delegations.
1203.801 Redelegation.
1203.802 Reporting.

Authority: 42 U.S.C. 2451 et seq. and E.O. 12065.

Subpart 1203.H—Delegation of Authority To Make Determinations in Original Classification Matters

§ 1203.800 Delegations.

(a) The NASA officials listed in paragraph (c) of this section are authorized to make, modify, or eliminate security classification assignments to information under their jurisdiction for which NASA has original classification authority. Such actions shall be in accordance with currently applicable criteria, guidelines, laws, and regulations and they shall be subject to any contrary detemination that has been made by the Chairperson of the NASA Information Security Program Committee or by any other NASA official authorized to make such a determination.

(b) Only the NASA officials listed in paragraph (c)(1) of this section are authorized to classify any information for a period greater than six years from the date of original classification.

(c) Designated Officials.

(1) *TOP SECRET Classification Authority.* (i) Administrator.

(ii) Deputy Administrator.

(iii) Chairperson, NASA Information Security Program Committee.

(iv) Assistant for Special Projects.

(2) *SECRET and CONFIDENTIAL Classification Authority.* (i) Officials listed in paragraph (c)(1) of this section.

(ii) Associate Deputy Administrator.

(iii) Associate Administrator for Management Operations.

(iv) Associate Administrator for External Relations.

(v) General Counsel.

(vi) Director, Security Division.

(vii) Director, DOD Affairs Division.

(viii) Director, International Affairs Division.

(ix) NASA Security Classification Manager.

(x) Field Installation Directors.

(xi) Manager, NASA Resident Procurement Branch—JPL.

(xii) Installation Security Classification Officers.

(xiii) Such other officials as may be delegated original classification authority.

(d) Written requests for original classification authority shall be forwarded to the Executive Secretary, NASA Information Security Program Committee, with appropriate justification appended thereto. The Executive Secretary will submit such requests to the Committee Chairperson for a determination by the Committee regarding the validity of the requests. Findings and recommendations of the Committee will then be submitted by the Committee Chairperson to the Administrator for approval.

(e) The Executive Secretary shall maintain a list of all delegations of original classification authority by name or title of the position held.

(f) The NASA Information Security Program Committee shall conduct periodic reviews of delegation lists to ensure that the officials so designated have demonstrated a continuing need to exercise such authority.

(g) Original classification authority shall not be delegated to persons who only reproduce, extract, or summarize classified information, or who only apply classification markings derived from source material or as directed by a classification guide.

§ 1203.801 Redelegation.

Redelegation of TOP SECRET, SECRET, or CONFIDENTIAL original classification authority is not authorized.

§ 1203.802 Reporting.

The officials to whom original classification authority has been delegated herein shall ensure that feedback is provided to the Administrator through the NASA Information Security Program Committee. The Chairperson of the Committee shall keep the Administrator currently informed of all significant actions, problems, or other matters of substance related to the exercise of the authority delegated hereunder.

Subpart 1203.F [Reserved]

2. Subpart 1203.F is reserved.

Robert A. Frosch,
Administrator.

[FR Doc. 79-13966 Filed 5-3-79; 8:45 am]

BILLING CODE 7510-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

Delegation of Authority to the Director of the Division of Market Regulation

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its regulations to delegate authority to the Director of the Division of Market Regulation to grant exemptions to responsible brokers and dealers acting in the capacity of third market makers from their obligation to communicate quotation information to the National Association of Securities Dealers, Inc. for dissemination to quotation vendors.

EFFECTIVE DATE: April 19, 1979.

FOR FURTHER INFORMATION CONTACT: Stephen L. Parker, Division of Market Regulation, Securities and Exchange Commission, Room 391, 500 North Capitol Street, Washington, D.C. 20549 202-755-8949.

SUPPLEMENTARY INFORMATION: The Commission finds, in accordance with the Administrative Procedure Act ("APA") [5 U.S.C. 553(b)(3)(B)], that this amendment relates solely to agency organization, procedures or practice and that notice and procedures pursuant to the APA are therefore not necessary and that such amendment shall be adopted, effective immediately.

PART 200—ORGANIZATION, CONDUCT AND ETHICS, AND INFORMATION AND REQUESTS

Accordingly, 17 CFR Chapter II, is Part 200, is amended by adding a new paragraph (a)(28) to § 200.30-3 reading as follows:

§ 200.30-3 Delegation of authority to Director of Division of Market Regulation.

* * * * *

(a) * * *

(28) To grant exemptions from paragraph (c)(1) of Rule 11Ac1-1 ("Rule") [§ 240.11Ac1-1], pursuant to paragraph (d) of the Rule, to responsible brokers or dealers acting in the capacity of third market makers within the meaning of the Rule.

* * * * *

(Pub. L. 97-592, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2)

By the Commission.

George A. Fitzsimmons,
Secretary.

April 26, 1979.

[Release No. 34-15771]

[FR Doc. 79-13885 Filed 5-3-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 35 and 154

Final Regulation Modifying the Time Limit for Commission Action on R.D. & D. Plans

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Order amends 18 CFR 35.22(d) and 154.38(d)(5)(iv) to allow 120 days, rather than the current 90 days, for Commission action on an application for advance approval of a research, development and demonstration (R.D. & D.) program to allow for a more thorough analysis of the application.

EFFECTIVE DATE: May 29, 1979.

FOR FURTHER INFORMATION CONTACT: Bruce A. Connell, Office of General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275-4802.

SUPPLEMENTARY INFORMATION: On February 2, 1979, the Commission issued a Notice of Proposed Rulemaking in this docket, proposing to amend 18 CFR 35.22(d) and 154.38(d)(5)(iv) to allow 120 days, rather than the current 90 days, for Commission action on an application for advance approval of a research, development and demonstration (R.D. & D.) program.

Comments were invited from interested parties on or before March 15, 1979. Timely comments were received from the Gas Research Institute (GRI) and Kadane Oil Company (KOC). Comments of the people of the State of California and the Public Utilities Commission of the State of California

(California) were filed on March 26, 1979.

Background

In order to receive advance approval of an R.D. & D. program for a given year, an R.D. & D. organization or a jurisdictional company seeking such approval must submit a five year R.D. & D. plan at least 180 days prior to the commencement of the program. Under the Commission's current regulations, 18 CFR 35.22(d) and 154.38(d)(5)(iv), the Commission must act upon the R.D. & D. plan within 90 days after it is filed.

On June 30, 1978, the Gas Research Institute (GRI) submitted a proposed research and development program which was approved in Opinion No. 30.[1] The People of the State of California and the Public Utilities Commission of the State of California (California) filed a comment in the GRI docket criticizing the short timetable imposed as a result of the 90-day deadline. California suggested that the Commission's review of subsequent GRI applications would be "substantially enhanced by a modest amendment of the Commission's regulations" to allow 120 days for Commission action on an application for advance approval of an RD&D program. In Opinion No. 30 the Commission stated that it would issue a Notice of Proposed Rulemaking to obtain comments on California's proposal.

GRI supports the modification from 90 days to 120 days but would strongly oppose any period longer than 120 days. GRI objects to any schedule which would provide for the filing of comments by parties as to which GRI would not have an opportunity to reply. KOC objects to the modification from 90 days to 120 days, stating that such additional time is unnecessary. California strongly supports the modification and reaffirms its support for its proposed procedural schedule.

California also suggested a schedule for handling GRI's next annual application. Assuming that GRI submits its next application on June 4, 1979 in order to obtain Commission action by October 1, 1979, California proposed that initial comments and a staff report be filed on July 13, 1979. Reply Comments by GRI would be filed on August 3, 1979, and further comments would be filed on August 24, 1979.

In the February 2, 1979, Notice of Proposed Rulemaking, the Commission stated:

> The Commission notes, however, that comments on procedures to be followed in handling GRI's application are solicited through this Notice of Proposed Rulemaking only so that the Commission will have the comments available when it establishes a procedural schedule after GRI files its next annual application in 1979. This is not a rulemaking to establish a particular procedural schedule. The rulemaking proposed herein only revises the 90-day deadline to 120 days. (mimeo p. 3) emphasis added.

Accordingly, we will defer ruling on the appropriate schedule for GRI's next annual application at this time.

The proposed amendment to the Regulations will provide the Commission a better opportunity to review GRI's application together with the comments of interested parties without prejudice to any party. Thus, the Commission finds that good cause exists for revising the Regulations as proposed.

[Federal Power Act, as amended, 16 U.S.C. 792 *et seq.*, Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267, Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350]

In consideration of the foregoing, the Commission is amending § 35.22(d) of Part 35, Subchapter B, Chapter I, of Title 18 and § 154.38(d)(5)(iv) of Part 154, Subchapter E, Chapter I of Title 18 of the Code of Federal Regulations as set forth below, to be effective 30 days from date of issuance.

By the Commission.

Lois D. Cashell,

Acting Secretary.

§ 35.22 [Amended]

Section 35.22 of Part 35, Subchapter B, Chapter I of Title 18 of the Code of Federal Regulations is amended by revising paragraph (d) so that the phrase "90 days" is deleted and the phrase "120 days" is inserted in lieu thereof.

§ 154.38 [Amended]

Section 154.38(d)(5)(iv) of Part 154, Subchapter E, Chapter I, of Title 18 of the Code of Federal Regulations is amended by revising clause (iv) of subparagraph (5) of paragraph (d) so that the phrase "90 days" is deleted and the phrase "120 days" is inserted in lieu thereof.

[Docket No. RM79-16]

[FR Doc. 79-14045 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

[1] *Gas Research Institute*, "Opinion and Order Approving the Gas Research Institute's 1979 Research and Development Program," Docket No. RP78-76, issued September 21, 1978.

18 CFR Parts 271 and 273

Amendment to Regulations Relating to Publication of Prescribed Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

April 27, 1979.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: This rule amends certain sections of the Commission's Regulations implementing the Natural Gas Policy Act of 1978. By this amendment the Commission is issuing a compilation of Prescribed Maximum Lawful Prices under NGPA for the months of May, June and July, 1979. Section 101(b)(6) of the NGPA requires that the Commission compute and make available prices and inflation adjustments at least five days before the beginning of any month for which such figures apply.

EFFECTIVE DATE: April 27, 1979.

FOR FURTHER INFORMATION CONTACT: Mark Magnuson, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. (202) 275-4850.

SUPPLEMENTARY INFORMATION:

A. Background

On December 1, 1978, the Federal Energy Regulatory Commission (Commission) issued Interim Regulations (43 FR 56448, December 1, 1978), implementing the Natural Gas Policy Act of 1978 (NGPA), Pub. L. No. 95-621, 92 Stat. 3350.

On January 25, 1979, the Commission issued the Publication of Prescribed Maximum Lawful Prices Under the NGPA and Amendments to Regulations Relating to Minimum Rate Gas. (Docket Nos. RM79-3 and 79-4).

Sections 271.101(a), 271.202, 271.302, 271.402(a), 271.402(c)(4), 271.602, 271.702, 271.802, 271.902, and 273.201(a)(1) of the Commission's regulations under the NGPA set forth maximum lawful prices per MMBtu (Mcf for minimum rate gas) for deliveries made in December, 1978, through April, 1979. Section 271.102(c) sets forth the monthly inflation adjustment factors. Section 101(b)(6) of the NGPA requires that the Commission compute and make available maximum lawful prices and inflation adjustments at least five days before the beginning of any month for which such figures apply. Pursuant to that mandate, the Commission hereby amends its regulations implementing the NGPA to add to the existing price tables, prices

and inflation adjustments for the months of May, June, and July 1979.

B. Summary of Amended Regulations

The Commission's regulations under the NGPA are being modified to include the maximum lawful prices and inflation adjustments for May, June, and July 1979. The subparts of Part 271 of Subchapter H of the interim regulations so affected, and the types of natural gas to which these subparts apply, are as follows: Subpart A—Summary Tables and Calculations (§§ 271.101(a) and 271.102(c)); Subpart B—New Natural Gas and Certain Natural Gas Produced from the Outer Continental Shelf (§ 271.202); Subpart C—New, Onshore Production Wells (§ 271.302); Subpart D—Natural Gas Committed or Dedicated to Interstate Commerce (§ 271.402(a), (§ 271.402(c)(4)); Subpart F—Intrastate Rollover Contracts (§ 271.602); Subpart G—High-Cost Natural Gas (§ 271.702); Subpart H—Stripper Well Natural Gas (§ 271.802); and Subpart I—Other Categories of Natural Gas (§ 271.902). Further, Part 273 of Subchapter H is amended by publishing the maximum lawful prices for May, June, and July, 1979 to Subpart B—Interim Collection Authority (§ 273.201(a)(1)).

C. Effective Date

The Commission is making these amendments effective upon the date of issuance of this order upon a finding that good cause exists to proceed without compliance with the notice, public procedure and effective date provisions of 5 U.S.C. § 553. The GNP Implicit Price Deflator computed and published by the Department of Commerce for the most recent calendar quarter is published at least 8 days before the beginning of each quarter. Section 101(b)(6) of the NGPA requires that maximum lawful prices and inflation adjustments be made available by the Commission at least five days before the beginning of the month to which they apply. Unless amendments regarding rate changes for May, June and July 1979 are made effective immediately producers may bill and file incorrectly for the affected categories of gas. Thus, good cause exists to make these amendments effective upon issuance of this order. In addition, for the above mentioned reason, the Commission believes good cause exists to dispense with public comment procedures.

(Natural Gas Act, as amended, 15 U.S.C. 717 *et seq.*, Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*, Federal Energy Administration Act, 15 U.S.C. 761, *et seq.*, Natural Gas Policy Act of 1978, Pub. L. 95-621, 92 Stat. 3350, Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267).

In consideration of the foregoing, Parts 271 and 273 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, are amended as set forth below, effective immediately.

By the Commission.

Lois D. Cashell,

Acting Secretary.

PART 271—CEILING PRICES UNDER THE NATURAL GAS POLICY ACT OF 1978

1. Section 271.101(a) is amended by revising Tables I and II to read as follows:

§ 271.101 Ceiling prices for certain categories of natural gas.

(a) * * *

Table I.—*Summary of certain gas ceiling prices*

(Prices in $/MMBtu)

Subpart of part 271	NGPA section	Category of gas	Maximum lawful price for deliveries made in: May 1979	June 1979	July 1979
B	102	New Natural Gas, Certain OCS Gas	2.177	2.198	2.220
C	103	New, Onshore Production Wells	2.033	2.047	2.062
G	107	High-Cost (below 15,000' only) Natural Gas	2.177	2.198	2.220
H	108	Stripper Wells	2.329	2.352	2.375
I	109	Not Otherwise Covered	1.684	1.696	1.708

Table II.—*Certain gas committed or dedicated to interstate commerce on November 8, 1978*

Subpart of part 271	NGPA Section	Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in: May 1979	June 1979	July 1979
D	104	Post-1974 gas	All producers	1.684	1.696	1.708
		1973-1974 Biennium gas	Small producer	1.424	1.434	1.444
			Large producer	1.093	1.101	1.109
	106(a)	Interstate Rollover gas	Small producer	.715	.715	.715
			Large producer	.623	.627	.631
	104	Replacement contract gas or recompletion gas.	Small producer	.796	.802	.808
			Large producer	.612	.616	.620
		Flowing gas	Small producer	.407	.410	.413
			Large producer	.342	.344	.346
		Certain Permian Basin gas	Small producer	.477	.480	.483
			Large producer	.419	.422	.425
		Certain Rocky Mountain gas	Small producer	.477	.480	.483
			Large producer	.407	.410	.413
		Certain Appalachian Basin gas	North subarea contracts dated after 10-7-69.	.379	.382	.385
			Other Contracts	.355	.358	.361

2. Section 271.102(c) is revised to read as follows:

§ 271.102 Calculation of inflation adjustment for certain maximum lawful prices.

* * * * *

(c) *Inflation adjustment.* The following table contains the inflation adjustment applicable for each month beginning with May 1977, and ending with July 1979:

Table III.—*Inflation adjustment*

Month of delivery	Factor by which price in preceding month is multiplied
1977:	
May	1.00636
June	1.00636
July	1.00431
August	1.00431
September	1.00431
October	1.00463
November	1.00463
December	1.00463
1978:	
January	1.00597
February	1.00597
March	1.00597
April	1.00889
May	1.00889
June	1.00889
July	1.00581
August	1.00581
September	1.00581
October	1.00581
November	1.00581
December	1.00581
1979:	
January	1.00581
February	1.00667
March	1.00667
April	1.00667
May	1.00713
June	1.00713
July	1.00713

3. Section 271.202 is revised to read as follows:

§ 271.202 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
May 1979	2.177
June 1979	2.198
July 1979	2.220

4. Section 271.302 is revised to read as follows:

§ 271.302 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
May 1979	2.033
June 1979	2.047
July 1979	2.062

5. Section 271.402(a) is revised to read as follows:

§ 271.402 Maximum lawful prices.

(a) *Ceiling prices.* Unless a different rate is applicable under paragraph (c), the maximum lawful price for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

NGPA section	Category of natural gas	Type of sale or contract	Maximum lawful price per MMBtu for deliveries made in: May 1979	June 1979	July 1979
104	Post-1974 gas	All producers	1.684	1.696	1.708
	1973–1974 Biennium gas	Small producer	1.424	1.434	1.444
		Large producer	1.093	1.101	1.109
106(a)	Interstate Rollover gas	Small producer	.715	.715	.715
		Large producer	.623	.627	.631
104	Replacement contract gas or recompletion gas	Small producer	.796	.802	.808
		Large producer	.612	.616	.620
	Flowing gas	Small producer	.407	.410	.413
		Large producer	.342	.344	.346
	Certain Permian Basin gas	Small producer	.477	.480	.483
		Large producer	.419	.422	.425
	Certain Rocky Mountain gas	Small producer	.477	.480	.483
		Large producer	.407	.410	.413
	Certain Appalachian Basin gas	North subarea contracts dated after 10–7–69	.379	.382	.385
		Other Contracts	.355	.358	.361

* * * * * * *

6. Section 271.402 is amended by revising paragraph (c)(4) to read as follows:

§ 271.402 Maximum lawful prices.

* * * * *

(c) *Applicable higher rates.* * * *

(4) Notwithstanding § 270.101(b), the minimum rate for minimum rate gas (at 14.73 psia and 60° F) is the amount determined in the following table:

If delivery occurs in the calendar month of:	The rate per Mcf for minimum rate gas is:
May 1979	.208
June 1979	.209
July 1979	.210

7. Section 271.602 is revised to read as follows:

§ 271.602 Maximum lawful price.

(a) The maximum lawful price for a first sale of natural gas under an intrastate rollover contract to which section 106(b)(1) of the NGPA applies shall be the higher of:

(1)(i) The maximum lawful price paid under the expired contract, per MMBtu, in the case of the month in which the effective date of such rollover contract occurs; and

(ii) In the case of any month thereafter, the maximum lawful price, per MMBtu, prescribed under this paragraph for the preceding month adjusted for inflation in accordance with § 271.102; or

(2) The amount determined under the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
May 1979	1.160
June 1979	1.168
July 1979	1.176

(b) The maximum lawful price, per MMBtu, for natural gas to which section 106(b)(2) of the NGPA (relating to certain State or Indian natural gas production interests) applies shall be the amount determined in accordance with the following table in lieu of the amount determined under the table under paragraph (a)(2) of this section:

If delivery occurs in the calendar month of:	The maximum lawful price is:
May 1979	2.177
June 1979	2.198
July 1979	2.220

8. Section 271.702 is revised to read as follows:

§ 271.702 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
May 1979	2.177
June 1979	2.198
July 1979	2.220

9. Section 271.802 is revised to read as follows:

§ 271.802 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
May 1979	2.329
June 1979	2.352
July 1979	2.375

10. Section 271.902 is revised to read as follows:

§ 271.902 Maximum lawful price.

The maximum lawful price, per MMBtu, for natural gas to which this subpart applies shall be the amount determined in accordance with the following table:

If delivery occurs in the calendar month of:	The maximum lawful price is:
May 1979	1.684
June 1979	1.696
July 1979	1.708

PART 273—COLLECTION AUTHORITY; REFUNDS

11. Section 273.201(a)(1) is revised to read as follows:

§ 273.201 Transitional rule for certain new wells.

(a) *General rule.* (1) The price determined under the following table may be charged and collected for any first sale of natural gas from a new well to which this section applies:

If delivery occurs in the calendar month of:	The maximum lawful price is:
May 1979	1.684
June 1979	1.696
July 1979	1.708

(2) * * *

* * * * *

[Docket No. RM79-39]

[FR Doc. 79-13977 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 654

Modification of Rules for Classifying Labor Surplus Areas; Preference in Federal Procurement Under Defense Manpower Policy DMP-4A and Executive Orders 12073 and 10582

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor is modifying its rules for classifying labor surplus areas under Defense Manpower Policy DMP-4A and Executive Orders 10582 and 12073 to extend the annual date for eligibility determinations of labor surplus areas and the cutoff date of the interim labor surplus area classification provisions. The extension is necessitated by unavoidable delays in developing the required employment and unemployment statistics.

EFFECTIVE DATE: May 1, 1979.

FOR FURTHER INFORMATION CONTACT: Davis A. Portner, Office of Policy Evaluation and Research, 601 "D" Street, N.W., Room 9420, Washington, D.C. 20213, (202) 376-6274.

SUPPLEMENTARY INFORMATION: Defense Manpower Policy No. 4A (DMP-4A), 32A CFR Part 134, became effective November 3, 1977. The purpose of DMP-4A is to encourage the purchase of goods and services by the Federal Government and the placement of Federal facilities in areas of labor surplus. Under DMP-4A the Secretary of Labor is required to classify labor surplus areas and to disseminate this information for the use of all Federal agencies in directing procurement activity and locating new plants or facilities. Firms which agree to perform most of the work in labor surplus areas are eligible for preference in the award of procurement contracts and grants and the execution of agreements.

The regulations for classifying labor surplus areas in 20 CFR Part 654 were recently revised to reflect comments received on the previous regulations and to account for the Promulgation of Executive Order 12073, Federal Procurement in Labor Surplus Areas, which was signed by the President on August 16, 1978. 44 FR 1046 (January 3, 1979) and 44 FR 1688 (January 5, 1979). Among the revisions to the regulations was a change in the frequency of the classification of labor surplus areas from a quarterly to an annual basis. The purpose of this change was to provide greater stability in the contracting process. Thus, the regulations at § 654.4(d) establish May 1st as the annual date of eligibility determination and, at § 654.21, provide for an interim classification procedure during the period from January 1, 1979 through April 30, 1979.

Due to unforeseen and unavoidable delays in developing the necessary employment and unemployment statistics for classifying labor surplus areas under the new procedures, the Department will be unable to publish its annual listing by May 1st. The Department is therefore amending its regulations to extend the annual date of eligibility determinations to June 1st. The Department is also extending the interim classification of labor surplus areas beyond its expiration date of April 30, 1979. The current listing will remain in effect through May 31, 1979 when it will be replaced by the first annual listing on June 1, 1979.

The Secretary of Labor has determined that there is no need to prepare a regulatory analysis as discussed in Executive Order 12044, Improving Government Regulations. This rule is not expected to have any economic or inflationary impact.

Since these regulations involve a matter relating to "public property, loans, grants, benefits, or contracts" they are exempt from the rulemaking requirements of the Administrative Procedure Act, (5 U.S.C. § 553(a)(2)). Moreover, the Secretary of Labor has determined that it is in the public interest to publish these regulations in final form to avoid disruption of the Federal procurement process. This finding constitutes a waiver of the Department's regulation in 29 CFR 2.7. This rule will therefore become effective May 1, 1979.

Accordingly, Part 654, Chapter V, Title 20 of the Code of Federal Regulations is amended as follows:

PART 654—SPECIAL RESPONSIBILITIES OF THE EMPLOYMENT SERVICE SYSTEM

§ 654.4 [Amended]

1. Paragraph (d) of § 654.4, is amended by changing the date "May 1" to "June 1".

§ 654.21 [Amended]

2. The first paragraph of § 654.21 is amended by changing the date "May 1, 1979" to "June 1, 1979" and changing the date "April 30, 1979" to "May 31, 1979."

Signed at Washington, D.C., on May 2, 1979.

Ray Marshall,

Secretary of Labor.

[FR Doc. 79-14168 Filed 5-3-79; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

21 CFR Part 444

Certification of Sterile Tobramycin Sulfate

AGENCY: Food and Drug Administration.

ACTION: Final Rule.

SUMMARY: The Food and Drug Administration (FDA) amends the antibiotic drug regulations to provide for the certification of sterile tobramycin sulfate. The manufacturer has supplied sufficient data and information to

establish the safety and efficacy of sterile tobramycin sulfate.

DATES: Effective May 4, 1979; comments by June 4, 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: Joan M. Eckert, Bureau of Drugs (HFD–140), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4290.

SUPPLEMENTARY INFORMATION: The agency has evaluated data submitted in accordance with regulations promulgated under section 507 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 357), as amended, with respect to providing for the certification of sterile tobramycin sulfate and concludes that the data supplied by the manufacturer concerning this antibiotic drug product are adequate to establish its safety and efficacy when the drug is used as directed in the labeling and that the regulations should be amended in Part 444 (21 CFR Part 444) to provide for the drug's certification.

PART 444—OLIGOSACCHARIDE ANTIBIOTIC DRUGS

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 507, 59 Stat. 463 as amended (21 U.S.C. 357)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 444 is amended as follows:

1. In Subpart A, by adding new § 444.81a to read as follows:

§ 444.81a Sterile tobramycin sulfate.

(a) *Requirements for certification*—(1) *Standards of identity, strength, quality, and purity.* Sterile tobramycin sulfate is the sulfate salt of 0-3-amino-3-deoxy-α-*D*-glucopyranosyl-(1→4)-0-[2,6-diamino-2,3,6-trideoxy-α-*D-ribo*-hexapyranosyl-(1→6)]-2-deoxy-*L*-streptamine. It is a lyophilized powder. It is so purified and dried that:

(i) Its potency is not less than 634 micrograms and not more than 739 micrograms of tobramycin per milligram on an "as is" basis. If it is packaged for dispensing, its content is satisfactory if it is not less than 90 percent and not more than 115 percent of the number of milligrams of tobramycin that it is represented to contain.

(ii) It is sterile.

(iii) It is nonpyrogenic.

(iv) It passes the safety test.

(v) Its moisture content is not more than 2.0 percent.

(vi) Its pH in an aqueous solution containing 40 milligrams per milliliter, or when reconstituted as directed in the labeling, is not less than 6.0 and not more than 8.0.

(vii) It gives a positive identity test for tobramycin.

(viii) Its residue on ignition is not more than 1.0 percent.

(ix) Its heavy metals content is not more than 30 parts per million.

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

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

(i) Results of tests and assays on the batch for potency, sterility, pyrogens, safety, moisture, pH, identity, residue on ignition, and heavy metals.

(ii) Samples required:

(*a*) If the batch is packaged for repacking or for use in the manufacture of another drug:

(*1*) For all tests except sterility: 10 packages, each containing approximately 500 milligrams.

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

(*b*) If the batch is packaged for dispensing:

(*1*) For all tests except sterility: A minimum of 14 immediate containers.

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

(b) *Tests and methods of assay*—(1) *Potency.* Proceed as directed in § 436.106 of this chapter, preparing the sample for assay as follows: Dissolve an accurately weighed sample with sufficient sterile distilled water to obtain a stock solution of convenient concentration; also, if it is packaged for dispensing, reconstitute as directed in the labeling. Then, using a suitable hypodermic needle and syringe, remove all of the withdrawable contents if it is represented as a single dose container; or if the labeling specifies the amount of potency in a given volume of the resultant preparation, remove an accurately measured representative portion from each container. Dilute with sterile distilled water to obtain a stock solution of convenient concentration. Further dilute a portion of the stock solution with sterile distilled water to the reference concentration of 2.5 micrograms of tobramycin per milliliter (estimated).

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

(3) *Pyrogens.* Proceed as directed in § 436.32(a) of this chapter, using a solution containing 10 milligrams of tobramycin per milliliter.

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

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

(6) *pH.* Proceed as directed in § 436.202 of this chapter, using an aqueous solution containing 40 milligrams per milliliter, or if it is packaged for dispensing, reconstitute as directed in the labeling.

(7) *Identity.* Proceed as directed in § 436.318 of this chapter.

(8) *Residue on ignition.* Proceed as directed in § 436.207(a) of this chapter.

(9) *Heavy metals.* Proceed as directed in § 436.208 of this chapter.

2. In Subpart C, by adding new § 444.281 to read as follows:

§ 444.281 Sterile tobramycin sulfate.

The requirements for certification and the tests and methods of assay for sterile tobramycin sulfate packaged for dispensing are described in § 444.81a.

Because the conditions prerequisite to providing for certification of this drug have been complied with and because the matter is noncontroversial, the Commissioner finds for good cause that prior notice and public procedure are impracticable and unnecessary, and that the amendment may become effective upon the day of its publication in the **Federal Register.**

Interested persons may, on or before June 4, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments, in four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document. Comments received may be seen in the above office between 9 a.m. and 4 p.m., Monday through Friday. Any changes in this regulation justified by such comments will be the subject of a further amendment.

Effective date. This regulation shall be effective May 4, 1979.

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

Dated: April 30, 1979.

Mary A. McEniry,

Assistant Director for Regulatory Affairs, Bureau of Drugs.

[Docket No. 79 N–0074]

[FR Doc. 79–13876 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 240

Mortgage Insurance on Loans for Fee Title Purchase; Increase in Maximum Loan Amounts

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development.

ACTION: Final rule.

SUMMARY: This rule increases the maximum mortgage amount for the purchase of a fee title in Hawaii to $30,000. The increase is authorized by law and is intended to increase participation in the program.

EFFECTIVE DATE: May 24, 1979.

FOR FURTHER INFORMATION CONTACT: William A. Rolfe, Director, Single Family Insured Housing Division, Office of Single Family Housing, Department of Housing and Urban Development, Room 6124, Washington, D.C. 20410, Telephone: (202) 755-6887.

SUPPLEMENTARY INFORMATION: Section 314 of the Housing and Community Development Amendments of 1978 increased the maximum amount of loans insurable under Section 240 of the National Housing Act for the purchase of fee simple titles in Hawaii to $30,000. The Secretary has determined that in order to comply with the statutory amendment an amendment to 24 CFR Part 240 is necessary, that advance notice and public procedure are unnecessary and that cause exists for making this amendment effective less than 30 days after this publication.

A Finding of Inapplicability respecting the National Environmental Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this Finding of Inapplicability will be available for public inspection during regular business hours in the Office of Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Accordingly, the Department amends § 240.5(a) of Chapter II of Title 24 CFR as follows:

§ 240.5 Maximum loan amounts.

* * * * *

(a) The cost of purchasing the fee simple title or $10,000 ($30,000 if the property is located in Hawaii) per family unit, whichever is the lesser; or

* * * * *

(Sec. 3, Pub. L. 75-424, 52 Stat. 9 (12 U.S.C. 1715(b); sec. 7(d), Pub. L. 89-174, 79 Stat. 670 (42 U.S.C. 3535(d))); Pub. L. 95-557, 92 Stat. 2099, 12 U.S.C. 1715z-5)

Issued at Washington, D.C., April 24, 1979.

Lawrence B. Simmons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[Docket No. R-79-659]

[FR Doc. 79-14052 Filed 5-3-79; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Cape Cod National Seashore; Private Oversand Vehicle Operation

AGENCY: National Park Service.

ACTION: Final rule.

SUMMARY: The purpose of this amendment is to redesign the existing permit system for private oversand vehicles at Cape cod as a system of special recreation permits and to authorize the charging of fees for these permits, in accordance with Section 4 of the Land and Water Conservation Fund Act of 1965, as amended. The amendment also includes in the regulation, descriptive standards for the items with which vehicles must be equipped in order to qualify for permits and operate on oversand routes. In addition, there is a decrease in permitted speed on these routes.

EFFECTIVE DATE: May 4, 1979.

FOR FURTHER INFORMATION CONTACT: Herbert Olsen, Superintendent, Cape Cod National Seashore, South Wellfleet, Massachusetts 02663, Telephone: (617) 349-3785.

SUPPLEMENTARY INFORMATION:

Background

The intent of the regulations is to control vehicular use on marked oversand trails within the seashore to protect the fragile resources and to promote public safety. The Department of the Interior, National Park Service, has determined that special recreational permit fees are required at Cape Cod National Seashore. Subsection 4(c) of the Land and Water Conservation Fund Act, (86 Stat. 459, as amended, 16 U.S.C. 460*l*-6a(c)), specifically authorizes the charging of fees for these permits.

A proposal was published on Thursday, March 23, 1978 (43 FR 12042) to amend Section 7.67 of Title 36 of the Code of Federal Regulations.

Interested persons were given 30 days within which to submit written comments, suggestions, or objections to the proposed amendment. A total of thirteen letters were received commenting on the proposed revision. Of the thirteen letters, six were from individuals and six were from organized sportsmen groups located along the Atlantic Coast. Seven letters recommended the establishment of a short-term permit that would accommodate the one-time visitor. A uniform permit system for use on all eastern national seashores was suggested in five letters.

The National Park Service concurs that the establishment of a short-term permit will provide a more equitable fee structure for the occasional oversand vehicle user. Accordingly, provision for a short-term permit will be made as a part of the special recreation permit system at Cape Cod National Seashore.

As a result of the letters suggesting a uniform permit system for the use of oversand vehicles on all eastern national seashores, and both previous and subsequent requests from various off-road vehicle and sport fishing groups, the National Park Service is in the process of investigating the feasibility of a uniform permit system. This analysis will consider such items as the legality and practicality of a common permit, common equipment requirements and the criteria for permit fees contained in the Land and Water Conservation Fund Act of 1965, as amended, and implemented by Section 18.10 of title 43 of the Code of Federal Regulations.

The reduced speed limit and modified equipment standards are adopted as a result of public concern expressed both prior to and during the public comment period.

Authority

Section 3 of the Act of August 25, 1916 (39 Stat. 535, as amended, 16 U.S.C. 3); the Act of August 7, 1961, (75 Stat. 288, 16 U.S.C. 459b *et seq.*); and section 4 of the Land and Water Conservation Fund Act of 1965 (86 Stat. 459, as amended, 16 U.S.C. 460*l*-6a).

Drafting Information

The primary author of this regulation is Harry Delashmutt, Chief Ranger, Cape Cod National Seashore.

Impact Analysis

The National Park Service has determined that this document is not a significant rule requiring preparation of

a regulatory analysis under Executive Order 12044 and Part 14 of title 43 of the Code of Federal Regulations; nor is it a major Federal action significantly affecting the quality of the human environment, which would require preparation of an Environmental Impact Statement.

Richard S. Tousley,
Acting Associate Director, Management and Operations, National Park Service.

April 27, 1979.

In consideration of the foregoing, subparagraphs (c)(1) and (c)(7) of 36 CFR 7.67 are amended to read as follow:

§ 7.67 Cape Cod National Seashore.

* * * * *

(c) *Private oversand vehicle operations.* (1) The Superintendent is authorized to establish a system of special recreation permits for private oversand vehicles and to establish special recreation permit fees for these permits, consistent with the conditions and criteria of 43 CFR 18.10. Operation of privately owned motor vehicles not-for-hire (including all forms of vehicles used for travel oversand) on designated routes in the park area without a special recreation permit is prohibited.

(i) Before a permit will be issued, each vehicle will be inspected to assure that it is equipped as follows:

(A) *Shovel* of a heavy duty type equal to or better than the military folding entrenching tool.

(B) *Tow rope,* chain, cable or other similar towing device not less than 14 feet in length with a minimum working load strength of 1,400 lbs. (Chain size 5/16"; cable ¼"; hemp 1"; nylon ¾"; or polypropylene ¾".) The towing device will be equipped with grab hooks or other suitable attaching devices on both ends.

(C) *Jack support,* board or similar support, to have a surface of not less than 144 square inches and be no more than 18 inches in length. Thickness to be not less than ⅝" if plywood and not less than 1½" if of solid wood. Other materials must equal the strength and durability of the standard wood supports.

(D) *Jack* of the standard size and type as that which comes with the vehicle.

(E) *Tire gauge,* low pressure, able to register to a minimum of 5 psi.

(F) *Tire,* meeting the following standards:

(*1*) Tires for four-wheel drive vehicles will comply with standards established and made available through the Office of the Superintendent. This list is subject to continual revision due to technological and nomenclature changes by manufacturers.

(*2*) Two-wheel drive vehicles are to be equipped with tires of sufficient size and configuration to propel the vehicle over designated routes without excessive wheel spin or becoming inoperable when the vehicle is operated at speeds not to exceed 15 MPH, except that no drive tires will be less than an "H" series.

(ii) Prior to the issuance of a permit, operators must show compliance with Federal and State regulations applicable to licensing, registering, inspecting, and insuring of such vehicles.

(iii) An oversand vehicle permit must be affixed to the vehicle as specified at time of issuance.

(iv) Any vehicle being operated on designated routes must be equipped as required in (1)(i) of this paragraph.

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(7) Maximum speed shall not exeed 15 miles per hour.

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[FR Doc. 79-13886 Filed 5-3-79; 8:45 am]
BILLING CODE 4310-70-M

POSTAL RATE COMMISSION

39 CFR Part 3001

Order Amending Rules of Practice to Reflect Adoption of Comprehensive Domestic Mail Classification Schedule (DMCS) Issued April 30, 1979.

AGENCY: Postal Rate Commission.

ACTION: Final rule.

SUMMARY: This rule amends the rules of practice of the Commission to reflect the adoption of a comprehensive DMCS by the Governors of the Postal Service on April 3, 1979. This rule adds to our Rules of Practice a definition of DMCS which makes it clear that the Commission regards schedules of rates and fees that were included as part of the DMCS recommended by the Commission in Docket No. MC76-5 as integral parts of the DMCS adopted by the Governors on April 3, 1979. In addition, this rule requires that proposed changes in postal rates or classifications filed formally by the Postal Service with the Commission include all amendments to DMCS rate and fee schedules that such proposed changes would require.

EFFECTIVE DATE: April 30, 1979.

FOR FURTHER INFORMATION CONTACT: David F. Stover, Assistant General Counsel (Regulation), U.S. Postal Rate Commission, 2000 L Street, N.W., Suite 500, Washington, D.C. 20268, (202) 254-3830.

SUPPLEMENTARY INFORMATION: On April 3, 1979, the Governors of the United States Postal Service rendered their decision adopting the Recommended Decision of the Postal Rate Commission in Docket No. MC76-5 concerning the scope and extent of the Domestic Mail Classification Schedule (DMCS). The decision of the Governors does not purport to allow under protect, modify or reject the reommended decision of the Commission, as 39 U.S.C. 3625 authorizes. Nevertheless, it creates some uncertainty as to the nature and form of this and subsequent recommended decisions of the Commission. It is therefore incumbent upon us to apprise the parties and the public, of our interpretation of the form and nature of the DMCS that has been adopted as a result of the Governors' Decision, and to adopt certain "housekeeping" amendments to our rules of practice that bring them into conformity with the newly-adopted comprehensive DMCS.

The Commission's recommended decision concerning the scope and extent of the DMCS recommended the adoption of the Domestic Mail Classification Schedule set forth in Volume 2 of that decision. Volume 2 included schedules of full and phased rates for all classes of service offered by the Postal Service and was transmitted to the Governors as a single, integral schedule. The decision of the Governors adopting the schedule appearing in Volume 2, however, took the form of two physically separated documents. The Governors' Decision was attached only to pages i through v, and pages 1 through 170 of Volume 2. Pages vi and vii, and pages 171 through 259 of Volume 2, consisting of schedules of full and phased rates for all Postal Service offerings, were transmitted with the Governors' Decision, but as a separate document.

The ordering paragraph of the Governors' Decision ordered the schedule "as attached hereto" into effect. If read literally, that decision could be construed to adopt as the DMCS only pages i through v and 1 through 170 of Volume 2. Also supporting such an inference, is a statement at page 6 of that decision's narrative section asserting that the Commission attached "separate and distinct rate schedules to the Domestic Mail Classification Schedule as illustrative, and not recommended, rates and fees."

Any implication in the Governors' Decision that we did not recommend that the rate schedules set forth in Volume 2 be adopted as an integral part of the DMCS would, however, constitute a misinterpretation and modification of our recommended decision. While our

recommended decision does not regard unit rates as substantive classification requirements, it does regard schedules of rates and fees as inseparable from the remainder of the DMCS. It does so for several reasons.

In terms of regulatory theory, applicable rates and fees are no less appropriate for inclusion in the DMCS than any other term of availability of a service offering. Indeed, they should be viewed as central terms of availability, without which the remaining terms of availability have little meaning.

But rate and fee schedules are inseparable from the DMCS for several practical reasons as well.

Some conditions of rate applicability, including the presortation requirements for presorted first-class mail, and the weight threshold for priority mail, appear only in the rate schedules themselves.[1] The schedules of rates and fees, therefore, must be included if the DMCS is to contain all of the terms of availability of the various classes of service. Furthermore, there are numerous cross-references throughout the DMCS to these schedules of rates and fees. Therefore, if the schedules of rates and fees were excluded from the DMCS, the DMCS would not be an integral and self-contained statement of the terms of availability of the Postal Service's offerings.

For these reasons the Commission finds it necessary and proper to include in its Rules of Practice and Procedure a definition of "Domestic Mail Classification Schedule" that removes uncertainty as to the status of the schedules of rates and fees as integral parts of the DMCS.

The Commission notes that with the establishment of a comprehensive DMCS, the need arises to keep the schedules of rates and fees included therein current. To aid the Commission in this task, the Commission has determined to amend Rules 54 and 64 of its Rules of Practice to require all formal filings that propose changes in postal rates or classifications to include schedules, arranged in legislative format, showing any conforming changes to the rate and fee schedules of the DMCS that such proposals would require.

Accordingly, the Commission finds:

(1) The rules of practice and procedure herein adopted are necessary and proper to carry out the provisions of the Postal Reorganization Act.

(2) Since the rules herein adopted are rules of practice and procedure, the notice, hearing, and effective date provisions of the Administrative Procedure Act (5 U.S.C. 553) are not applicable.

(3) Because our experience with the comprehensive DMCS recently adopted is brief, we will consider subsequent amendments to the procedural rules herein adopted if interested parties demonstrate them to be appropriate.

The Commission, acting pursuant to the authority provided by 39 U.S.C. § 3603, and in accordance with 5 U.S.C. 552, orders:

1. Section 3001.5, Subpart A, Part 3001, Subchapter A, Chapter III, Title 39 of the Code of Federal Regulations, is amended by adding a new § 3001.5(p), which reads as follows:

§ 3001.5 Definitions.

* * * * *

(p) "Domestic Mail Classification Schedule" means the classification schedule, including schedules of full and phased rates and fees, adopted by the Decision of the Governors of the United States Postal Service Re Recommended Decision of the Postal Rate Commission Regarding the Proper Scope and Extent of the Mail Classification Schedule, issued April 3, 1979, and any amendments thereto adopted pursuant to the procedures of Subchapter III, Chapter 36, Title 39 of the United States Code.

2. Section 3001.54(b)(1), Subpart A, Subchapter A, Chapter III, Title 39 of the Code of Federal Regulations is amended by changing the first sentence thereof to read as follows:

§ 3001.54 Contents of formal requests.

* * * * *

(b) * * *

(1) Every formal request shall include schedules of the then effective rate or rates of postage and fee or fees for all postal services, and, arranged in legislative format, schedules of the rate or rates of postage and fee or fees for all postal services proposed by the Postal Service, as they would appear in the Domestic Mail Classification Schedule.

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3. Section 3001.64(b)(1), Subpart A, Subchapter A, Chapter III, Title 39 of the Code of Federal Regulations is amended to read as follows:

§ 3001.64 Contents of formal requests.

* * * * *

(b) * * *

(1) Every formal request shall include copies of the then effective Domestic Mail Classification Schedule and the proposed changes therein, including, in legislative format, all proposed changes in the schedules of rate or rates of postage and fee or fees for postal services that appear therein.

* * * * *

By the Commission.

David F. Harris,

Secretary.

[Order No. 272; Docket No. RM79-3]

[FR Doc. 79-13965 Filed 5-3-79; 8:45 am]

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[1] *See* PRC Op. MC76-5, Vol. 2, pp. 263-64. These terms of availability were contested in Docket No. MC76-5, and were the subject of findings and conclusions in the narrative opinion accompanying our Recommended Decision.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

45 CFR Parts 205, 206, 233

Budgeting Methods States May Use To Determine Eligibility and Amount of Assistance Under Aid to Families With Dependent Children Program

AGENCY: Social Security Administration, HEW.

ACTION: Final rules.

SUMMARY: These rules provide that a State may use a prospective budgeting method (using estimated income) or a retrospective budgeting method (using actual reported income) to determine eligibility for AFDC and the amount of the AFDC assistance payment. Under retrospective budgeting, income received in the prior budget month is the basis for calculating the assistance payment for the current payment month. States which choose a retrospective method but cannot make the monthly assistance payment within 25 days of the end of the budget month are required to provide supplemental payments to recipients who are eligible for them and request them. A recipient is eligible for a supplemental payment if the family's income plus assistance payment for the current month is less than at least 80 percent of the amount a State pays for a similar family with no income. All States using retrospective budgeting must require monthly income reporting from recipients who have earned income.

The rules affect recipients of AFDC in all jurisdictions and the adult assistance titles of the Social Security Act (I, X, XIV, and XVI (AABD)) administered in Guam, Puerto Rico, and the Virgin Islands.

EFFECTIVE DATE: May 4, 1979.

FOR FURTHER INFORMATION CONTACT: Mrs. Constance Katz, 330 C Street, S.W., Washington, D.C. 20201, telephone (202) 245-0982.

SUPPLEMENTARY INFORMATION: On October 4, 1978, these rules were published in the **Federal Register** as a Notice of Proposed Rulemaking (43 FR 45888).

Need for Regulations

Neither the Social Security Act nor our regulations have any specific provisions on what budgeting methods a State may use to determine the amount of AFDC assistance payments. The Social Security Act does not speak to the frequency with which income should be measured and reported or the proper correlation between an income measurement period and the date of the corresponding assistance payment. Similarly, regulations to date contain no periodic income reporting rules and do not define the interval over which income should be considered. As a result, States vary greatly in how they obtain reports of income from recipients and in their budgeting methods. (*See* Congressional Research Service, United States Library of Congress, Administration of the AFDC Program—A Report to the House Committee on Government Operations (1977)). The lack of precise rules has caused much uncertainty among the States, recipients, and HEW. These rules are intended to help clear up this uncertainty by defining two specific budgeting methods between which States may choose.

Public Involvement

We published an earlier Notice of Proposed Rulemaking on August 19, 1975 (40 FR 36141), which would have required states to adopt a retrospective, "prior month" budgeting system. This was withdrawn on October 4, 1978, and superseded by a new NPRM published on that date. We have drafted these rules with the benefit of extensive comments on both NPRM's, received from Governors, State agencies, city and county welfare agencies, legal aid groups, members of Congress, and other organizations and individuals. We have met with the staffs of States using retrospective budgeting, with staffs of some States considering adopting it, and with representatives of interested recipient groups. Provisions that respond to many of the concerns raised by written comments and in those meetings have been incorporated in these rules. In addition, recent research and demonstration projects, and further State experience with different budgeting methods, have provided evidence that has contributed to the rules.

Provisions of the Regulations

Implementing the Law

The rules specify the budgeting methods which a State is permitted to use in determining eligibility for and the amount of the assistance payment under titles I, IV-A, X, XIV, and XVI (AABD) of the Social Security Act. These rules implement Sections 402(a)(5), 402(a)(7) and 402(a)(10) of the Social Security Act covering the title IV-A program (AFDC) and parallel provisions for the other titles. Section 402(a)(5) requires a State plan to "provide such methods of administration . . . as are found by the Secretary to be necessary for the proper and efficient operation of the plan". Section 402(a)(7) requires that a State plan must "provide that the State agency shall, in determining need, take into consideration any other income and resources" of any person claiming AFDC benefits. Section 402(a)(10) requires a State plan to provide that AFDC "shall . . . be furnished with reasonable promptness to all eligible individuals."

Budgeting Methods

The rules require a State to select and identify in its plan one of two budgeting methods for computing the amount of financial assistance a recipient receives. One method is prospective budgeting, under which the amount of assistance for a month is based on an estimate of income the assistance unit will receive in that month. The second method is retrospective budgeting, under which continuing assistance is based on the recipient's income in an earlier month.

Prospective Budgeting

Under the prospective budgeting method, which is the one most widely used by states, the amount of the AFDC assistance payment for a month is based on the best estimate of the income and circumstances reasonably expected to exist during the month. The estimate is made on the basis of the agency's knowledge of past, current and future circumstances of the recipient.

We will soon be recodifying Part 233 of Chapter II, Title 45 Code of Federal Regulations. In that recodification we will provide more specific rules on prospective budgeting. In these regulations, we concentrate on rules for retrospective budgeting, because there is a more immediate need for clarity regarding what the Department will permit under that approach.

Retrospective Budgeting

Definition

Under the retrospective budgeting method, the state computes the amount of the assistance payment for each payment month based on actual income received in a prior month, defined as the "budget month". The payment thus computed is the correct payment for that payment month.

Time Requirement of Making Assistance Payments

Under retrospective budgeting, a State must make assistance payments to recipients within specific time limits. A State has two options. It may choose to make payments within 25 days after the end of the budget month, or it may choose to make payments between 25 and 45 days after the end of the budget month. Under either option, a State is required to have procedures which assure that payments will be made on schedule to all recipients who file on time a monthly report and to those who are not required to file a report.

Supplemental Payments Under Retrospective Budgeting

When a State does not meet the 25 day standard, it is required to give supplemental payments within 5 days of the request to recipients who are eligible for them and request them. We require this payment be made in order to help maintain a family during the time it takes for the assistance payment to reflect a change in circumstances, particularly when there is a loss of income. A State that pays within 25 days may provide supplemental payments but is not required to make them.

The supplemental payment must be paid to an eligible individual for the month in which it was requested. For example, it must be paid for June when it is requested in June. Conversely, a recipient may not wait until July to request a supplemental payment for June.

A recipient is eligible for a supplemental payment if the recipient's income and regular assistance payment for a month total less than 80 percent of the amount a State pays for a similar family with no income. However, a State may choose to pay from 80 to 100 percent. For example, assume that $400 is the most assistance a State will pay to a family of 4. If the State elects to meet 80 percent, then the supplement would be computed by deducting the family's income and regular assistance payment for that month from $320. If the State elected to meet 100 percent, income and regular assistance would be deducted from $400.

The supplemental payment assures that a family will receive no less than 80 percent of the amount of a State's payment to a family of similar size with no income. Although we will match supplemental payments up to 100 percent, States have the option of providing a supplement in the 80 to 100 percent range. This option recognizes

the nature of the supplemental payments as an amount which is meant to carry the family over until the budgeting system reflects the change in circumstances. The supplemental is not meant to meet all of the recipients' needs for that month, but rather merely to carry them over until their check reflects the income they had in the budget month. A State's full monthly payment includes costs which are incurred over time, such as clothing, furniture, etc. These expenses in time will be adequately met under a retrospective budgeting system. It is the immediate need for food or to pay rent or other essential needs to which the supplemental payment is addressed, and studies show that these needs account for less than 80 percent of the AFDC payment.

When the State computes the amount of the supplemental payment, it must include as income the assistance payment for that month and any income received or expected to be received by the recipient. The State may not include income which is paid for work-related expenses. This exclusion of income used for work expenses was inadvertently omitted from the October 1978 NPRM.

In computing the regular monthly assistance payments a State is required to disregard the first $30 of income and one-third of the remaining income. However, for purposes of computing the supplemental payment, the State does not have to disregard this income. The State may also choose not to disregard other kinds of income which must be disregarded in computing the regular monthly assistance payment. This rule specifies exceptions to this policy, however, when income is provided for purposes such as educational loans and relocation assistance.

The October NPRM required a State to consider liquid resources as income for purposes of the supplemental payment. This rule permits a State the option to either include or exclude as income cash in hand or available in bank accounts.

Determining Eligibility and Computing the Assistance Payment in the Initial One or Two Months

This rule provides that a State must determine eligibility and the payment for at least the first month prospectively, i.e., using its best estimate of income and circumstances which will exist in that month. A State which makes assistance payments within 25 days has the option to determine eligibility and compute assistance prospectively for the second payment month. However, a State which does not make payments within 25 days has no option and is required to continue prospectively for the second month of assistance. This position was taken in response to the concerns raised by comments to the NPRM published in the **Federal Register** on August 19, 1975. The NPRM would have mandated use of retrospective budgeting in initial months, using the 30-day period preceding application as the first budget month. Many of the commenters on the 1975 NPRM viewed the 30-day period as imposing a waiting period for assistance in violation of Section 402(a)(10) of the Social Security Act, as well as increasing the use of State-funded general assistance programs.

When a person who previously received assistance reapplies during the same month in which a termination became effective, the amount of the assistance payment will be computed retrospectively beginning with the first month of the new eligibility. This is an exception to the requirement that payment for the initial one or two months be computed prospectively. It has been included because of the potential that the requirement for prospective budgeting in the initial months would eliminate considerable income from consideration. To avoid such "gaps" in income considerations, we require that a State compute the initial payments retrospectively for people who return to the rolls during the same month in which their assistance was terminated.

Computing the Assistance Payment After the Initial One or Two Months

Following the initial one or two months of assistance, a State must compute the amount of each subsequent month's payment on the basis of earned and unearned income received in the prior budget month.

In some cases, the budget month upon which the first retrospective payment is based will include income received before the recipient applied for assistance. We do not believe this income should be considered in determining the amount of assistance. To a significant extent this is why we require that prospective budgeting be used in the first month or two.

To overcome this problem, the rule does not permit a State, in computing the first retrospective payment, to consider income received before the date of application for assistance. This prohibition does not apply to situations in which the State uses retrospective budgeting for a person who is eligible for assistance and reapplies during the month in which assistance was terminated, as described above.

Determining Eligibility After the Initial One or Two Months

A State has three options for determining eligibility before it computes the amount of the assistance payment. Under the first option, a State must consider all factors of eligibility retrospectively. For example, when a State determines eligibility for the month of June, it must consider income and circumstances which existed in the earlier budget month. If a family is eligible to receive a payment based on a previous month's (the budget month) information, the family would receive an assistance payment for the month of June.

Under the second option, a State must consider all factors of eligibility prospectively. In the above example, a State would determine eligibility for the month of June by considering income and circumstances which are reasonably expected to exist during the month of June. If the family is found ineligible for June, the State would not make payment for that month. If the family is eligible for June, the State must compute the payment based on information from the prior budget month to make the payment for June.

The third option requires a State to use a combination of the other two options. The State determines eligibility for factors other than income, by considering circumstances which are reasonably expected to exist in the payment month. For example, an unemployed father in an AFDC–UF case notifies the agency that he expects to be employed full time in June. The family would be ineligible for June. However, when the State determines whether a family has too much income to be eligible for June, the State must consider income received in the earlier budget month. If the family meets all the requirements, the State must issue a payment for June.

Monthly Reporting

In a State which uses retrospective budgeting, recipients with earned income, other than income from self-employment, must file a monthly report. The State may require recipients with unearned income, no income, or income from self-employment, to file a monthly report. In the 1978 NPRM, we did not exclude self-employment income. We have added the exclusion in response to commenters who pointed out the difficulty of computing net profit on a month to month basis.

We also specify in this regulation more detail about the format of the monthly report than was in the 1978 NPRM. The form must be easy to understand, specify whom the recipient can contact for help in completing the form, inform recipients about supplemental payments, specify the due date and explain the consequences of missing it, and include a statement, signed by the recipient, that he understands that assistance might be reduced or terminated as a result of his report.

The State must allow the recipient at least 5 days to complete the report and give the recipient at least five days after the close of the budget month to file the report. In addition, the agency must provide a stamped, self-addressed envelope for returning the monthly report.

What Notices Are Required

The monthly reporting requirement produces a number of different notices depending on when a monthly report is received and what use is made of the information:

1. If a completed monthly report is received on time, the State must notify the recipient of any changes in the assistance payment and the reasons for the changes. The notice must meet the requirements of 45 CFR 205.10(a)(4)(i)(B) on adequate notice. When assistance has been reduced or terminated, the notice must be received by the recipient no later than his or her resulting payment or in lieu of the payment. A 10-day notice is not required. However, the recipient is protected because he or she can have his or her previous month's level of assistance reinstated by requesting a fair hearing within 10 days.

2. If a completed report is not filed on time, the agency must send a notice to the recipient which informs him or her that the report is overdue or is not complete. This notice must inform the recipient that he or she has at least 10 additional days to comply. It must also inform the recipient that termination may result if that is the agency's policy, if the report is not filed within the extension period. This notice must be sent so that it reaches the recipient at least 10 days before the expected payment for which the monthly report was filed. A recipient who files within the 10 day extension receives a payment but this payment may be delayed.

If a monthly report is not received by the end of the extension period, a State may terminate assistance. If a State decides to terminate assistance it must send the recipient a notice which meets the requirement of 45 CFR 205.10(a)(4)(i)(B) for adequate notice.

3. Under both 1 and 2 above, a recipient receives a notice any time an action is taken by the agency which affects him or her. However, because of the nature of the monthly reporting requirement, it is impractical to require that the notice be sent 10 days before an action based on his or her report would become effective. A recipient who files the required reports is protected since he or she may have assistance reinstated immediately by requesting a fair hearing within 10 days after learning that assistance has been reduced or terminated. Furthermore, the recipient is informed by the monthly report that it will be used to determine the next assistance payment and therefore, if conditions are not identical, a recipient will not expect to receive the same payment each month.

Comments

Supplemental Payments Should Be Required for Both Options

Comments: Several groups stated that supplemental payments should be required under both retrospective budgeting options. Also supplemental payments should be required for changes other than reduced income.

Response: If a State using retrospective budgeting makes assistance payments within 25 days of the end of the budget month, the recipient can receive a quicker response than is required under the current prospective budgeting method, there we allow a State 2 months to adjust AFDC payments. Therefore, we do not believe it is necessary to require supplemental payments where a State meets the 25 day standard. Where States cannot meet this standard, we believe the supplemental payment is necessary to help the system provide a timely response to changes.

It should be noted that these regulations do not preclude States from using supplemental payments under both options.

Elimination or Restricted Use of Supplemental Payment Provision

Comment: There were three suggestions that the supplement be paid only when employment ends. The State would then not have to determine hardship which is very judgmental. Two States urged that supplements not be required.

Response: We believe that supplemental payments are necessary to maintain the family at any time there is a sudden change in circumstances for which the budgeting method cannot compensate within a reasonable period of time. In response to comments, we have eliminated the requirement for a determination of hardship and replaced it with less subjective criteria for supplemental payments. When a recipient's income for the month drops below a level set by the State (which must be at least 80% of the State's payment level), the recipient is entitled to request and receive a supplement. The rule also gives States some latitude in what they include as "income."

The 3-Day Time Limit for Making Supplemental Payments

Comment: Several States said that the 3-day time limit for paying the supplement is administratively difficult; it does not allow time for verification. One State suggested that the time span should be a State option. Another State asked whether FFP would be available if the supplement is paid by a voucher (i.e., a vendor payment) rather than by cash.

Response: We have revised the rule to permit 5 working days for payment of the supplement. This will permit longer processing time yet retain the value of this payment as rapid assistance in time of sudden need. Federal financial participation is available for vendor payments for supplements to the same extent it is available for the assistance payments themselves (i.e., where particular sanctions or mismanagement apply).

Denying Federal Financial Participation (FFP) for Excessive Supplemental Payments

Comment: One commenter questioned the legality of denying FFP to a State which supplements a family's gross income and resources by an amount which is more than the State's AFDC payment level for a family with no income. The commenter felt that HEW has no authority to bar a State from using a current needs system to determine eligibility for a supplemental payment.

Response: Under the final regulations States have great flexibility to determine the amount of a supplemental payment. They may issue a supplemental check in an amount which, together with the assistance payment received in the month, equals the most a State pays a family similarly situated. We do not believe the supplemental payment should be used to extend to some people total assistance greater than that available to others in the same situation. If a State wishes to pay more, it must

raise its payment level equitably for all recipients.

Adequacy of Supplemental Payments

Comment: Advocacy groups commented that the proposed amount for supplements does not sufficiently compensate for the loss or decline in income. They recommended that the supplemental payment be a least 100 percent of the amount that would be paid if the family had no income. The commenters pointed out that in many cases this is still less than the State's standard of need.

Response: We have revised the provisions on supplemental payments to eliminate the highly judgmental "hardship" requirement. We have also excluded employment expenses from what could be considered total income and dropped the requirement that liquid resources be considered.

The minimum level of the supplement has been increased from 75 percent in the NPRM to 80 percent. We will also match up to 100 percent.

The basic purpose of the supplement is to provide immediate relief to a family, after an unanticipated change of circumstances, until the budgeting system adjusts the monthly assistance payment. A supplemental payment is not intended to meet all of a recipient's needs for that month. A State's full monthly payment includes costs which occur over time, such as clothing, furniture, etc. These expenses will be adequately met under a retrospective budgeting system. It is immediate essential needs which the supplemental payment seeks to meet.

Disposing of Liquid Resources

Comment: Many commenters believe that a recipient should not have to dispose of liquid resources to be eligible for supplemental payments. This requirement discourages financial thrift by recipient families. It causes further hardship where the family must spend its resources that are needed for everyday living, and is inequitable because it doesn't apply to a family with non-liquid resources. Many commenters said that in fact very few recipients have liquid resources. Several States believes that the inclusion of liquid resources would lead to increased error.

Response: We have changed the policy so that a State may now exclude liquid assets when determining the amount of the supplemental payment.

Informing Recipients About Supplemental Payments

Comment: Several groups said that recipients should be told, orally or in writing, that the supplemental payment is available, when they can get one, and how to apply. There was one comment that the payment should be triggered automatically, when a recipient's payment and countable income fall below the State's maximum aid payment.

Response: The regulations require the report to inform recipients about the supplemental payments. There is no way, within a retrospective budgeting system, to automatically trigger a supplemental payment in the month in which there is a decline in income. Information on the decline will not normally be received until the month following the budget month. Therefore, only the recipient knows during a particular month about a change in circumstances which warrants a supplement. Under this circumstance, he or she must request one.

Quality Control Review of Supplemental Payments

Comment: Some States questioned how HEW's AFDC Quality Control Program will review the accuracy of supplemental payments.

Response: Under our quality control system, we will review the correctness of supplemental payments in accordance with this regulation, permissible State practice, and the special provisions applicable to changes in recipient's circumstances, under 45 CFR 205.40. A supplemental payment which reflects correct case facts, and which is computed in accordance with this rule, will be a correct payment.

Use of Income Before Eligibility

Comment: There was concern that under retrospective budgeting rules, determining eligibility and computing assistance payments would be based on income received before a family became eligible for assistance and, therefore, before they were in need.

Response: These regulations now provide that in determining the payment for the month in which retrospective budgeting begins, the State must not consider income received before the date of application.

Treatment of Unearned Income

Comment: Some commenters requested that unearned income be treated prospectively, even in a retrospective system.

Response: We see no reason for treating earned and unearned income differently. Under a retrospective budgeting system, the amount of the payment must always be based on known income, earned and unearned, from the budget month.

Need for Specific Standards

Comment: The regulations as published in the NPRM are vague. Standards are needed for reporting, processing, due process, and supplementation. These are necessary to protect the rights of recipients and to ensure that States properly and efficiently administer retrospective budgeting.

Response: We have added specifics to the rule in each of the areas identified by the commenters. In particular, we have been more specific regarding (1) monthly reporting of income and the scope of the reporting form; (2) use of notices before the State adjusts or terminates payments; and (3) the right to request a supplement, and when and to whom supplemental payments must be made.

10-Day Prior Notification Period

Comment: Some commenters feel that timely notice as defined under 45 CFR 205.10(a)(4), should not be required when a State intends to reduce or terminate assistance on the basis of information provided in a monthly report. Other commenters feel that the regulations should require some form of advance notice in these situations.

Response: We have not required advance notice when the agency intends to reduce or terminate assistance on the basis of information provided in the report. We do require that adequate notice be sent whenever there is a change or assistance is terminated. That notice must explain the reasons for the action. Since the agency cannot compute assistance without the monthly report, the recipient, therefore, cannot expect a check until he or she has provided the necessary information in the report. In addition, the report form will clearly indicate to the recipient that changes in the assistance payments can result from the information on the form.

A recipient is protected by the rule which requires a State to reinstate assistance immediately at the prior month's level, when a recipient requests a fair hearing within 10 days of a reduction or termination based on information in the monthly report. The payment must be made from the date that assistance was reduced or terminated.

Violation of Federal Law

Comment: Retrospective budgeting violates Federal law because the amount of the assistance payment is

based on income which is not available for current use.

Response: Neither the Social Security Act nor Federal regulations deal expressly with the budgeting methods that may or may not be used by States. This reflects, we believe, the wide latitude given the States in the administration of their respective AFDC programs. The regulation that income not available for current use not be considered is directed against premature anticipation of income and against income not actually received. However, this rule has long been accompanied by other regulations which recognize that income changes may not be reflected for one or two months. We do not believe that the Act or the regulations ties the consideration of income to the payment of assistance in a particular month. We also believe that retrospective budgeting falls within the meaning of the availability of income regulation.

Coordination Between AFDC and Food Stamp Programs

Comments: Two States urged coordination between AFDC and Food Stamps.

Response: There has been considerable discussion between HEW and the Department of Agriculture to assure that the implementation of monthly reporting and retrospective budgeting in AFDC will not hamper a State's ability to comply with Food Stamp requirements. The current Food Stamp regulations are consistent with our regulations regarding the use of monthly reports in AFDC.

Alternatives to Proposed Budgeting Methods

Comment: There were several comments that a State should be alllowed to use a variation of the methods provided in the NPRM. For example, it was suggested that the 30-day period before the date of application be the first budget period. Another suggestion was that retrospective "averaging" of several months' income be permitted.

Response: We have specified two budgeting methods, with two options under retrospective budgeting regarding payment times and three options relating to eligibility determinations. While these choices do not cover all methods which could be used, we believe they are diverse enough so that every State can reasonably be expected to conform to at least one.

In the 1975 NPRM, we proposed the use of the 30 day period before application as the first budget period. In response to numerous comments, we have dismissed that idea. Many commenters felt that such an approach resulted in a waiting period before assistance can be started, which would be contrary to the statute.

Short Breaks in Assistance

Comment: There were several suggestions that retrospective budgeting be used to determine the amount of a payment when a former recipient applies for reinstatement of assistance. There was concern that some income received would never be taken into consideration because the requirement for prospective budgeting in the initial month(s) of reeligibility would effectively eliminate some budget periods from consideration.

Response: The regulation provides that a State must compute the amount of an applicant's first assistance payment retrospectively, if the applicant reapplies for assistance during the month in which the termination became effective. This policy precludes recent income from not being counted when the recipient returns to the rolls.

Complex Reporting Forms Cause Nonreporting and Termination of Assistance

Comment: Several commenters stated that the reporting forms are difficult to understand, especially for many undereducated recipients, and it is difficult to get help at busy welfare offices. As a result, many recipients either will not complete the form or will complete it incorrectly. This results in payments being terminated, followed by hardship for recipients and an administrative burden for the agency to reinstate payments.

Response: State experience with mandatory reporting requirements indicates that recipients can manage the requirements of periodic reporting. Data from Colorado indicate that nearly 90 percent of all reports are filed within 5 days after the close of the budget month. Approximately 50 percent of all reports are processed without further action by either recipients or caseworkers.

We have modified the regulations to explicitly require that the reporting form be clearly worded, specify a due date, and tell the recipient whom he or she can contact for prompt assistance in completing the form.

In addition, we have provided explicitly for reminder notices for those people who have not filled out their forms, and have limited the extend to which an agency may consider monthly reports incomplete when they contain information adequate for a payment computation.

Retrospective Budgeting and Medicaid

Comments: The regulations must discuss the relationship between retrospective budgeting and Medicaid eligibility. Specifically, what effect does non-filing of a required report in a particular month have on the family's eligibility for Medicaid in that month? Also, how will Medicaid eligibility be determined for those who apply as medically needy and for those who apply for Medicaid as "eligible but are not receiving AFDC," in States which provide Medicaid under these options?

Response: Categorical eligibility for Medicaid is based on receipt of AFDC assistance, which relates to the month of entitlement. The final rules define "payment month" as the month established by the agency for which a particular assistance payment is made. If a recipient does not submit information required on the monthly report, the State cannot authorize assistance for that payment month because it has no basis for computing the amount of that payment. If the recipient does not receive assistance in the payment month, the recipient would not be categorically eligible for Medicaid.

For families who are not receiving AFDC, Medicaid eligibility as categorically needy must be determined in the same way that the State determine eligibility for AFDC. States that participate in the medically needy program may determine eligibility for that program prospectively even though eligibility for AFDC is determined retrospectively. The same kinds of income must be counted and disregarded under both programs.

Retrospective Budgeting and Child Support Collections

Comment: Will child support collected by the agency during a month be considered as income in that budget month, and be reflected in the payment month as income for purposes of Section 402(a)(8) of the Social Security Act? How do the regulations, which provide time frames for redetermination of eligibility on the basis of child support for a particular month, relate to retrospective budgeting?

Response: Child support collected by a State Child Support Enforcement agency is not income to the AFDC family. The Child Support Enforcement agency reports the amount of the collection to the AFDC agency so that the AFDC agency can determine whether the amount of the collection, if paid to the family, would make them ineligible. This process is unchanged by

retrospective budgeting. The date the child support collection is reported to the AFDC agency, rather than the date of the actual child support collection by the Child Support Enforcement agency, will determine the timing of the eligibility decision in which that child support collection is considered.

Payments under section 402(a)(28) of the Act are calculated on the basis of the computation of the assistance payment for which the family is otherwise eligible and the amount of the child support collection. Retrospective budgeting would not affect this calculation. The 402(a)(28) payment would be calculated using the information reported by the recipient for the budget month and current report of child support collections from the Child Support Enforcement agency.

The only time that child supported collected by the Child Support Enforcement agency can affect the amount of the assistance payment is when a portion of the support collection is distributed to the family by the Child Support Enforcement agency. This occurs under 45 CFR 302.51(a) (3) and (5) when there is an excess of support collections. In these instances, the amount distributed would be income to the family when received.

Complexity of Retrospective Budgeting

Comment: There were some comments that retrospective budgeting is to complex for applicants to understand and is difficult even for State personnel.

Response: The experience of States which have adopted retrospective budgeting has generally been that it is administratively feasible and is not unduly difficult for recipients to understand. Simple monthly reporting forms appear to be successfully used by recipients to transmit information to the agency. Caseworkers have been supportive of retrospective budgeting. In addition, as we noted in the 1978 NPRM, several States have successfully implemented a retrospective budgeting system.

Retrospective Budgeting Not Justified Now

Comment: HEW should not sanction retrospective budgeting until the Colorado project and similar studies have been completed. These projects will provide information about the effect of retrospective budgeting on recipients, the impact of improved reporting in prospective budgeting, and the impact of combining reporting changes with a retrospective system.

Response: We believe that a sufficient body of experience exists now to warrant states proceeding with the implementation of retrospective budgeting and reporting systems, if they so desire. Extensive experience in a number of States demonstrates that these systems can be administered successfully by a variety of jurisdictions, and that recipients in these jurisdictions are capable of meeting the regular reporting requirement. This experience further demonstrates that monthly reporting and retrospective budgeting can have a positive impact on error rates (California), can identify and respond to a higher incidence of changes in income and circumstance, and can lead to a reduction in total benefit outlays (Colorado) due to the more accurate and timely processing of information. This experience is summarized in greater detail in the Preamble to the October 1978 NPRM.

This does not mean that more should not be learned about these systems. For this reason, we are supporting a series of research and demonstration projects designed to refine our understanding of the impact of monthly reporting and retrospective budgeting. These projects will enable us to identify potential modifications to the system that can increase administrative efficiency or simplify the reporting requirement, and to study in detail the implementation process. While these projects are now, and will continue to be, a source of information for states considering the adoption of monthly reporting and retrospective budgeting, they have important long term value to us in terms of forming future policy for the AFDC program.

Reporting Systems Vis-a-Vis Retrospective Budgeting

Comment: One commenter indicated the belief that the benefits from retrospective budgeting should be considered separately from those of improved reporting systems.

Response: It is true that we have not studied the benefits which could be gained from implementing a monthly reporting system, independent of retrospective budgeting, as intensively as we have studied the benefits of the two together. However, there is sufficient experience in administering a monthly reporting system together with retrospective budgeting so that we feel secure in encouraging States to use the two together. Experience indicates that such systems are extremely compatible administratively. The monthly report permits the agency to be more responsive to changes in circumstances than without a monthly report, while the retrospective aspects of the system help to lower error rates by basing payments on actual rather than estimated income.

We do recognize that benefits of each can be realized separately. Indeed, States may use monthly reporting in a prospective budgeting system.

Retrospective Budgeting Is Unresponsive

Comment: Proposed retrospective budgeting is unresponsive to need and will cause irreparable harm to needy children.

Response: Retrospective budgeting (with the implementing of a monthly reporting requirement) does insure that assistance payments will be adjusted in response to changes in client circumstances. Recent data from the HEW-supported monthly reporting project in Denver, Colorado reveal that, compared to the regular Denver system, the demonstration system yielded five times as many changes in client circumstances that led to an increase in the amount of the assistance payment, but only twice as many changes that led to a decrease.

Comment: Retrospective budgeting does nothing to improve the response to a change in circumstances, and increases the delay between the occurrence of a change and reflection of such change in the family's budget.

Response: We do not claim that retrospective budgeting alone improves response to change. However, in combination with monthly reporting, it ensures that recipients can easily and efficiently report changes in circumstance, and that these changes will be reflected in the corresponding payment. States currently can take up to two months to process changes without experiencing an overpayment under quality control. But the rapidity with which this is done depends upon the administrative efficiency of the State and the presence or absence of special "rapid payment" procedures. Monthly reporting and retrospective budgeting can provide better response times without the same special procedures. The processing and payment standards incorporated into the new regulations will ensure that, on average, lags in response time will be reduced.

Errors in Retrospective Budgeting

Comment: Retrospective budgeting does not reduce errors.

Response: Retrospective budgeting reduces errors because it relates actual income received during the budget month to a payment made after the close of this budget period. Prospective

budgeting, by contrast, inevitably introduces error because a certain level of income is assumed, when in fact it may change.

The Final Rules

We have made numerous changes to the proposed rules which were in the NPRM. Most of these changes are discussed elsewhere in this preamble. In addition to those discussed changes, we have amended § 205.10 to require, in paragraph (a)(5) that a person who is denied a supplemental payment may request a fair hearing. We have also amended § 206.10 to require that a recipient of assistance be able to apply promptly for a supplemental payment in a State which provides such payments, and to require that adequate notice be sent after the State has made its determination on the recipient's request for a supplemental payment.

(Secs. 405, 406, and 1102 of the Social Security Act, as amended; 49 Stat. 629, as amended, 47 Stat. 647; 42 U.S.C. 605, 606, and 1302; 91 Stat. 1354)

(Catalog of Federal Domestic Assistance Program No. 13.761, Public Assistance—Maintenance Assistance (State Aid.)

Dated: April 26, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: April 30, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

PART 205—GENERAL ADMINISTRATION—PUBLIC ASSISTANCE PROGRAM

1. Part 205 of Chapter II, Title 45 of the Code of Federal Regulations is amended as follows:

The first sentence of § 205.10(a)(5) is revised to read as follows:

§ 205.10 Hearings.

(a) *State plan requirements.* * * *

(5) An opportunity for a hearing shall be granted to any applicant who requests a hearing because his or her claim for financial assistance (including a request for supplemental payments under §§ 233.23 and 233.27) or medical assistance is denied, or is not acted upon with reasonable promptness, and to any recipient who is aggrieved by any agency action resulting in suspension, reduction, discontinuance, or termination of assistance. * * *

* * * * *

PART 206—APPLICATION, DETERMINATION OF ELIGIBILITY AND FURNISHING ASSISTANCE—PUBLIC ASSISTANCE PROGRAMS

2. Part 206 of Chapter II, Title 45 of the Code of Federal Regulations is amended as follows:

In § 206.10, paragraph (a)(1)(vi) is added and paragraph (a)(4) is amended by changing the first sentence to read as follows:

§ 206.10 Application, determination of eligibility and furnishing of assistance.

(a) *State plan requirements.* * * *

(1) * * *

(vi) Every recipient in a State which provides a supplemental payment under § 233.27 of this chapter shall have the opportunity to request that payment without delay.

* * * * * *

(4) Adequate notice shall be sent to applicants and recipients to indicate that assistance, including supplemental payments, has been authorized (including the amount of financial assistance) or that it has been denied or terminated.

* * * * * *

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

3. Part 233 of Chapter II, Title 45 of the Code of Federal Regulations is amended as follows:

In § 233.20, paragraph (b)(4) is added and new §§ 233.21 through 233.29 are added to read as follows:

§ 233.20 Need and amount of assistance.

* * * * *

(b) *Federal financial participation; General.* * * *

(4) Federal participation is available for supplemental payments in a retrospective budgeting system. Federal participation is provided when the amount of the supplemental payment, together with the monthly assistance payment and any income specified by the State under § 233.27(b), do not exceed the amount a State pays for a similar family with no income.

* * * * * *

§ 233.21 Budgeting methods.

(a) *Requirements for State plans.* A State plan shall specify if assistance payments shall be computed using a prospective budgeting system or a retrospective budgeting system. A State electing retrospective budgeting shall specify which options it selects and the State plan shall state that it shall meet the requirements in §§ 233.21 through 233.29.

(b) *Definitions.* The following definitions apply to §§ 233.21 through 233.29:

(1) "Prospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on its best estimate of income and circumstances which will exist in that month. This estimate shall be based on the agency's reasonable expectation and knowledge of current, past or future circumstances.

(2) "Retrospective budgeting" means that the agency shall compute the amount of assistance for a payment month based on actual income or circumstances which existed in a previous month, the "budget month".

(3) "Budget month" means the fiscal or calendar month from which the agency shall use income or circumstances of the family to compute the amount of assistance.

(4) "Payment month" means the fiscal or calendar month for which an agency shall pay assistance. Payment is based upon income or circumstances in the budget month. In prospective budgeting, the budget month and the payment month are the same. In retrospective budgeting, the payment month follows the budget month and the payment month shall begin within 32 days after the end of the budget month.

(5) "Make an assistance payment." In the context of retrospective budgeting, to make an assistance payment means that the check shall be deposited in the U.S. mail, hand delivered to the recipient, or deposited with an intermediary organization, such as a bank.

(6) "Supplemental payment." In the context of retrospective budgeting, a supplemental payment is a payment which maintains a family during the time it takes for the monthly assistance payment to reflect a change in circumstances or income.

§ 233.22 Determining eligibility under prospective budgeting.

In States which compute the amount of the assistance payment prospectively, the State plan shall provide that the State shall also determine all factors of eligibility prospectively. Thus, the State agency shall establish eligibility based on its best estimate of income and circumstances which will exist in the month for which the assistance payment is made.

§ 233.23 When assistance shall be paid under retrospective budgeting.

(a) A State which uses retrospective budgeting shall specify in its plan that it will make assistance payments within the following time limits to recipients who file a completed report on time, and to those who are not required to file a report. A State shall choose one of two time periods for making assistance payments. The State plan shall provide that payment must be made—

(1) Within 25 days from the close of the budget month; or

(2) Between 25 and 45 days from the close of the budget month.

(b)(1) Where a State makes payments between 25 and 45 days from the close of the budget month, the State plan shall provide that the State will make supplemental payments as provided in § 233.27.

(2) If a State makes payments within 25 days from the close of the budget month, and also makes supplemental payments as provided in § 233.27, the State plan shall so specify.

(c) In States which issue two checks for each payment month, these time periods apply to the first check.

§ 233.24 Retrospective budgeting; determining eligibility and computing the assistance payment in the initial one or two months.

(a) States which make assistance payments within 25 days of the close of the budget month shall determine eligibility and compute the amount of the payment for all recipients prospectively for the initial month of assistance. These States may choose to determine eligibility and compute the payment prospectively for the second month, also.

(b) States which make assistance payments between 25 and 45 days from the close of the budget month shall determine eligibility and compute the amount of the payment prospectively for the initial two months of assistance.

(c) When a person who previously received assistance reapplies during the same month in which a termination became effective, eligibility shall be determined according to paragraph (a) or (b) of this section. However, the amount of the assistance payment for the month of the reapplication shall be computed retrospectively.

§ 233.25 Retrospective budgeting; computing the assistance payment after the initial one or two months.

The State plan shall provide:

(a) After the initial one or two payment months of assistance under § 233.24, the amount of each subsequent month's payment shall be computed retrospectively, i.e., shall be based on earned and unearned income received in the corresponding budget month.

(b) In these subsequent months, other factors of need which affect the amount of the assistance payment may also be based on circumstances in the corresponding budget month, or they may be based on circumstances in the payment month.

(c) For the first month in which retrospective budgeting is used, a State shall not consider income received by the recipient before the date of application. When a person reapplies during the same month in which a termination became effective, the State may consider income received before the date of application.

§ 233.26 Retrospective budgeting; determining eligibility after the initial one or two months.

(a) Under retrospective budgeting, there are three options for determining eligibility. The State plan shall specify that eligibility, following the initial one or two months under § 233.24, shall be determined by one of the following methods—

(1) A State may consider all factors, including income retrospectively, i.e., only from the budget month. For example, if a change in circumstances occurs which affects eligibility, e.g., deprivation ceases, the change may be reported at the end of the budger month and assistance shall be terminated for the corresponding payment month. Thus, even if the agency could have terminated assistance earlier than the corresponding payment month, it shall not do so under retrospective determination of eligibility.

(2) A State may consider all factors, including income, prospectively. For example, if deprivation ceases, and the family becomes ineligible, the agency shall immediately take steps to terminate assistance.

(3) A State may use a combination of the options in paragraphs (a) and (b) of this section by considering factors related to earned and unearned income retrospectively and all other factors prospectively. For example, if a change in income makes the family ineligible, the agency shall wait until the corresponding payment month to terminate assistance. On the other hand, if a change of circumstances other than income makes the family ineligible, the agency shall immediately take steps to terminate assistance.

(b) Child support collected by the IV–D agency and reported to the IV–A agency is an exception to the methods outlined in paragraph (a) of this section. When a IV–A agency receives an official report of a child support collection it shall consider that information as provided in § 232.20(a) of this chapter. (§ 233.20(a) explains the treatment of child support collections.)

§ 233.27 Supplemental payments under retrospective budgeting.

(a) *General requirements.* A State plan which provides for payments between 25 and 45 days from the close of a budget month, shall provide for supplemental payments to eligible recipients who request them. A State plan which provides for payments within 25 days may provide for supplemental payments.

(1) The supplemental payment shall be paid for the month in which it was requested.

(2) The recipient family is eligible for a supplemental payment if its income for the month is less than 80 percent of the amount the State would pay for a similar family with no income. However, this percentage of the amount the State would pay for a similar family with no income may be set between 80 and 100 percent, as specified in the State plan. The supplemental payment equals the difference between the family's income in the payment month and that percentage.

(3) Supplemental payments shall be issued within 5 working days of request.

(b) *How income is treated.* For purposes of supplemental payments, income includes that month's assistance payment and any income received or expected to be received by the recipient, but does not include work-related expenses.

(1) The amount used for the assistance payment shall be the monthly assistance payment without regard to any recoupments made for prior overpayments or adjustments for prior underpayments.

(2) The agency may include as income cash in hand or available in bank accounts. It may also include as income any cash disregarded in determining need or the amount of the assistance payment, but not cash payments that are disregarded by paragraphs (c) on relocation assistance, (d) on educational grants or loans, (g) on payments for certain services and (l) on experimental housing allowances, of § 233.20(a)(4)(ii).

§ 233.28 Monthly reporting.

(a) State plans specifying retrospective budgeting shall require that recipients with earned income, other than income from self-employment, report that income to the agency monthly. The State may require

recipients with unearned income, no income, or income from self-employment to report monthly. The agency shall provide a form for this purpose, which—

(1) Is written in clear simple language;

(2) Specifies the date by which the agency must receive the form and the consequences of a late or incomplete form, including whether the agency will delay or withhold payment if the form is not returned by the specified date;

(3) Identifies an individual or agency unit the recipient should contact to receive prompt answers to questions about information requested on the form, and provides a telephone number for this purpose;

(4) Includes a statement, to be signed by the recipient, that he or she understands that the information he or she provides may result in changes in assistance, including reduction or termination;

(5) Advises the recipient if supplemental payments are available and the proper procedures for initiating a request; and

(6) Advises the recipient of his or her right to a fair hearing on any decrease or termination of assistance or denial of a supplemental payment.

(b) The agency shall specify the date by which it must receive the monthly report. This date shall be at least 5 days from the end of the budget month and shall also allow the recipient at least 5 days to complete the report..

(c) The agency may consider a monthly report incomplete only if it is unsigned or omits information necessary to determine eligibility or compute the payment amount.

(d) The agency shall provide a stamped, self-addressed envelope for returning the monthly report.

(e) The agency shall make special provisions for persons who are illiterate or have other handicaps so that they cannot complete a monthly report form.

§ 233.29 How monthly reports are treated and what notices are required.

(a) *What happens if a completed monthly report is received on time.* When the agency receives a completed monthly report by the date specified in § 233.28 it shall process the payment. The agency shall notify the recipient of any changes from the prior payment and the basis for its determinations. This notice must meet the requirements of § 205.10(a)(4)(i)(B) of this chapter on adequate notice if the payment is being reduced or assistance is being terminated. This notice must be received by the recipient no later than his or her resulting payment or in lieu of the payment.

(b) *What happens if the completed monthly report is received before the extension deadline.* (1) If the completed monthly report is not received by the date specified in § 233.28, the agency shall send a notice to the recipient. This notice shall inform him or her that the monthly report is overdue or is not complete and that he or she has at least 10 additional days to file. It must inform the recipient that termination may result if that is the agency's policy, if the report is not filed within the extension period. This notice must reach the recipient at least 10 days before the expected payment. However, in States in which the date specified in § 233.28 is within 10 days of the expected payment date, the notice must reach the recipient on or before the expected payment date.

(2) When the report is received within the extension period, the agency may delay payment to the recipient, as follows—

(i) In a State that pays within 25 days of the budget month the payment may be delayed 10 days;

(ii) In a State that pays within 25 to 45 days of the budget month, the payment may not be delayed beyond the 45th day.

(c) *What happens if a monthly report is not received by the end of the extension period.* An agency may terminate assistance if it has not received a report or has received an incomplete report, and the 10 day extension period has expired. If the State decides to terminate assistance, it must send the recipient a notice which meets the requirements of § 205.10(a)(4)(i)(B) on adequate notice.

(d) *How a recipient may delay an adverse action based on a monthly report.* If a recipient's assistance is reduced or terminated based on information in the monthly report, and he or she requests a fair hearing within 10 days, the assistance payment shall be reinstated immediately at the previous month's level pending the hearing decision. The payment shall be made effective from the date assistance was reduced or terminated.

[FR Doc. 79-13831 Filed 5-3-79; 8:45 am]

BILLING CODE 4110-07-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

Distribution of Grain Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Second Revised Service Order No. 1301.

SUMMARY: Burlington Northern Inc., is encountering severe shortages of boxcars suitable for grain loading. Second Revised Service Order No. 1301 requires other railroads to return to BN their 40-ft., narrow-door plain boxcars. This revision excludes the Chicago and North Western Transportation Company, completely and deletes jumbo covered hopper cars of Burlington Northern ownership.

DATE: Effective 11:59 p.m., April 30, 1979. Expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided: April 30, 1979.

There is an acute shortage of plain, 40-ft., narrow-door boxcars on the Burlington Northern Inc. (BN). These shortages are preventing the orderly flow of grain to markets, both domestic and export, and are causing severe economic loss to producers and shippers of grains dependent upon the BN for transporting these products to market. A portion of the BN's fleet of these cars are loaded to points on the lines of other railroads. Such cars must be returned promptly to the BN for subsequent loading by shippers dependent upon the BN for transporting their shipments. It is the opinion of the Commission that an emergency exists requiring immediate action to promote car service in the interest of the public and the commerce of the people. Accordingly, the Commission finds that notice and public procedure are impracticable and contrary to the public interest, and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered:

§ 1033. 1301 Second Revised Service Order No. 1301.

(a) *Distribution of grain cars.* Each common carrier by railroad subject to the Interstate Commerce Act shall observe, enforce, and obey the following rules, regulations, and practices with respect to its car service:

(1) Exclude from all loading and return to owner empty except as otherwise provided in paragraphs (3 and 4) of this section, all 40-ft., narrow-door plain boxcars described in paragraph (2) of this section owned by the following railroad:

Burlington Northern Inc., Reporting Marks: BN, CBQ, GN, NP, SPS.

(2) The term "40-ft., narrow-door plain boxcars" as used in this order means freight cars listed in the Official Railway Equipment Register, ICC–RER No. 6410–A, issued by W. J. Trezise, or successive issues thereof, as having mechanical designation "XM" with inside length 40-ft., 6-in. or less and equipped with doors less than 9-ft. wide.

(3) *Exception.* Empty 40-ft., narrow-door plain boxcars located in the States of New York, Pennsylvania, Maryland, Delaware, New Jersey, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire or Maine may be loaded to any station on the lines of the Burlington Northern Inc.

(4) *Exception.* For the purpose of improving car utilization and the efficiency of railroad operations, or alleviating inequities or hardships, modifications may be authorized by the Chief Transportation Officer of the car owner, or by the Director or Assistant Director of the Bureau of Operations, Interstate Commerce Commission. Modifications authorized by the car owner must be confirmed in writing to W. H. Van Slyke, Chairman, Car Service Division, Association of American Railroads, Washington, D.C., for submission to the Director or Assistant Director.

(5) Carrier named in paragraph (1) above is prohibited from loading all 40-ft. narrow-door, plain boxcars foreign to their lines and must return such cars to the owner, either via the reverse of the service route or direct, as agreed to by the owner.

(6) *Exception.* Carrier named in paragraph (1) above is authorized to use empty 40-ft., narrow-door plain boxcars owned by other railroads which are located in the States of Colorado, Wyoming, and Montana, or west thereof, for loading to any point on its line between Kansas City, Missouri; Omaha, Nebraska; Sioux City, Iowa; Minneapolis, Minnesota; and Duluth, Minnesota; or east thereof, regardless of the provisions of Section (a)(5) of Second Revised Service Order No. 1301.

(7) *Exception.* Carrier named in paragraph (1) above is authorized to use 40-ft., narrow-door plain boxcars owned by any railroad which has made its cars exempt from Car Service Rules 1 and 2, which are identified in Interstate Commerce Commission Exemptions Nos. 12 and 129, or successive issues thereof.

(b) No common carrier by railroad subject to the Interstate Commerce Act shall accept from shipper any loaded car, described in this order, contrary to the provisions of the order.

(c) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign commerce.

(d) *Effective date.* This order shall become effective at 11:59 p.m., April 30, 1979.

(e) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

(49 U.S.C. (10304–10305 and 11121–11126)).

It is further ordered, That a copy of this order and direction 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; and that notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing it with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. Homme, Jr.,
Secretary.

[Second Rev. S.O. No. 1301]

[FR Doc. 79-13967 Filed 5-3-79; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1033

Norfolk & Portsmouth Belt Line Railroad Co. Authorized To Operate Over Tracks of Norfolk & Western Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order; Service Order No. 1377.

SUMMARY: Service Order No. 1377 authorizes Norfolk and Portsmouth Belt Line Railroad Company to operate over 3.65 miles of Norfolk and Western Railway Company tracks at South Norfolk, Virginia, in order to serve the NPB industries.

DATES: Effective 12:01 a.m., May 1, 1979; Expires 11:59 p.m., July 31, 1979.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275–7840, Telex 89–2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

Decided: April 27, 1979.

Norfolk and Portsmouth Belt Line Railroad Company, (NPB) will replace its bridge number 1 over Scuffletown Creek at South Norfolk (Chesapeake), Virginia. NPB will not be able to provide service to its customers south of the bridge during the time of construction. An alternate route is available over Norfolk and Western Railway Company (NW) tracks between NPB–NW connection at Belt Junction and NW Bridge 5 in order to serve these customers and to have necessary track room for making and breaking up NPB trains to be moved to and from its line south of the bridge.

It is the opinion of the Commission that an emergency exists requiring operation of NPB trains over these tracks of the NW in the interest of the public; that notice and public procedure are impracticable and contrary to the public interest; and that good cause exists for making this order effective upon less than thirty days' notice.

It is ordered:

§ 1033.1377 Service Order No. 1372.

(a) Norfolk and Portsmouth Belt Line Railroad Company authorized to operate over tracks of Norfolk and Western Railway Company. The Norfolk and Portsmouth Belt Line Railroad Company (NPB) is authorized to operate over tracks of the Norfolk and Western Railway Company (NW) between NPB–NW connection at Belt Junction, (NW milepost V6+2804.6) and NW Bridge 5 (NW milepost LP5+265), including switching tracks between NW milepost N2+2061.5 and NW milepost LP5+2265, near South Norfolk (Chesapeake), Virginia, a distance of approximately 3.65 miles, for the purpose of serving NPB industries.

(b) *Application.* The provisions of this order shall apply to intrastate, interstate, and foreign traffic.

(c) *Rates Applicable.* Inasmuch as this operation by the NPB over tracks of the NW is deemed to be due to carrier's disability, the rates applicable to traffic moved by the NPB over tracks of the NW shall be the rates which were applicable on the shipments at the time of shipment as originally routed.

(d) *Effective date.* This order shall become effective at 12:01 a.m., May 1, 1979.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., July 31, 1979, unless otherwise modified, changed or suspended by order of this Commission.

(49 U.S.C. (10304–10305 and 11121–11126).)

This order shall be served upon the Association of American Railroads, Car Service Division, as agent of all railroads subscribing to the car service and car hire agreement under the terms of that agreement, and upon the American Short Line Railroad Association. Notice of this order shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-13968 Filed 5-3-79; 8:45 am]

BILLING CODE 7035-01-M

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49 CFR Part 1033

Car Service Decision; Order To Show Cause

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Service Order No. 1340.

SUMMARY: The Hazard Coal Operators Association petitioned the Commission to extend Service Order No. 1340. Since the emergency no longer exists, the petition is denied and the order will expire on April 30.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Section of Rail and Pipeline Operations, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

In the matter of Atlanta and West Point Rail Road Company, Clinchfield Railroad Company, Georgia Railroad, Seaboard Coast Line Railroad Company and Western Railway of Alabama to Deliver Locomotives to Louisville and Nashville Railroad Company.

Regulations for the use of locomotives.—By petition filed April 25, 1979, the Hazard Coal Operators Association filed a motion with the Interstate Commerce Commission to extend Service Order No. 1340 beyond the current expiration date of April 30, 1979.

This motion requests an additional extension of the Service Order because the peak season for coal loading in the LN service area is the good weather months from approximately the first of April throughout the remainer of the spring and summer. LN has filled all orders for cars placed by non-unit-train shippers in Eastern Kentucky and Eastern Tennessee since the weekly period ending January 6. See Appendix A.

Since the LN is filling all orders for cars from these shippers, we do not find that an emergency now exists. LN has agreed to continue making reports to the Commission as now required by the service order. See Appendix B. The Commission will continue to monitor the supply of hopper cars and train delays on the LN. If the situation deteriortes and develops into an emergency, the Commission will consider the reinstatement of the requirements of this order in whole or in part.

We have decided to permit Service Order No. 1340 to expire as the emergency no longer exists.

It is ordered.—(1) Service Order No. 1340 be allowed to expire at 11:59 p.m., April 30, 1979.

(2) The Hazard Coal Operators Association's request that Service Order No. 1340 be extended is denied.

By the Commission. Vice Chairman Brown and Commissioners Gresham, Clapp and Christian. Chairman O'Neal and Commissioner Staffor were absent and did not participate.

H. G. Homme, Jr.,
Secretary.

Appendix "A"

DATE: April 18, 1979.

To: The Commission.
From: Railroad Service Board.
Subject: Service Order No 1340.

On August 3, 1978, the Commission entered an order requiring the six railroads which are owned or controlled by the Seaboard Coast Line Railroad Company (SCL), to show cause why the Commission should not issue two proposed service orders. One proposed service order, entitled *Regulations For The Use Of Locomotives,* would have ordered the other five members of the Family Lines collectively to deliver 100 locomotives to the Louisville and Nashville Railroad Company (LN). The other proposed service order, entitled *Regulations For The Distribution of Hopper Cars,* would have ordered the LN to supply weekly each coal mine ordering cars for single-car or non-unit-train shipments a minimum of forty percent of its daily mine rating multiplied by the number of working days in the week. The order to show cause was entered as a result of the Commission's conclusion that an acute shortage of locomotives and hopper cars for transporting single-car shipments of coal originating at stations on the LN in Eastern Kentucky existed.

Numerous responses to the show cause order were filed by the Family Lines, by producers and receivers of coal and other commodities, and by public officials in the States served by the Family Lines. The Commission held oral argument on the show cause order on September 7, 1978.

In a decision served September 22, 1978, the Commission ordered that the proposed service order entitled *Regulations For The Use of Locomotives* be issued in modified form. The Commission deferred issuance of the proposed service order entitled *Regulations For The Distribution of Hopper Cars.*

Subsequent to the issuance of this order, 54 locomotives were returned by the LN at the request of non-Family Line owners. Numerical replacement of these locomotives with locomotives furnished by SCL was not accomplished until some time between November 1 and November 15, 1978. At the time the "Show-Cause" order in this proceeding was served, on August 4, 1978, the LN was operating 120 leased locomotives, including 26 furnished voluntarily by SCL. As a result of the recall of fifty locomotives by Consolidated Rail Corporation and the Norfolk and Western the number of leased units had declined to 96 on October 15, in spite of the furnishing by SCL of 24 additional units as required by the order. On November 1, the LN was operating 103 leased locomotives, including eleven SP units.

On November 15, it was operating 127 leased locomotives including 37 SP units. (Four Detroit, Toledo and Ironton locomotives were recalled and returned between October 15 and November 15). On January 1, 1979, the LN was operating a total of 130 leased locomotives, ten more than the number operated when the proceeding was opened and 34 more than were operated on October 15, 1978, when the first report of trains held for power was due.

The largest number of hopper cars ordered was 29,942 for the week ending November 11, 1978. The number of cars ordered by these single-car shippers for the first fourteen weeks of 1979 has averaged less than 6,000 cars per week.

The car distribution reports received from the LN indicate that all orders for cars placed by non-unit-train shippers in the three Eastern Kentucky car distribution districts and in Eastern Tennessee have been filled since the weekly period ending January 6th.

The coal market has been very "soft" for the last several weeks. Indications are that the demand will increase sightly over the next several weeks, but no dramatic increase of car orders is expected.

Service Orders No. 1340 is due to expire on April 30, 1979. The order was amended on Janaury 31, 1979, authorizing LN temporarily to return to the SCL fifty of the 100 locomotives furnished by the SCL to the LN in accordance with the requirements of the order.

These fifty locomotives were required to be returned to the LN by the SCL if the LN furnishes less than forty percent of the cars ordered by single-car coal shippers in Eastern Kentucky and Eastern Tennessee. This has not been necessary as the number of cars furnished has been well above forty percent.

Listed below are cars ordered and furnished single-car coal shippers in Eastern Kentucky and Eastern Tennessee since the

week ending January 6; the number of SCL and LN trains held 12 hours or more for power since week ending January 6; and the locomotive situation on LN for October 16, the week of the first report, and weekly since January 2nd.

Memorandum to the Commission:

Hopper Cars Ordered and Furnished to Single-Car Coal Shippers in Eastern Kentucky and Eastern Tennessee:

Week ending	Ordered	Furnished
1/6	6872	6872
1/13	5527	5527
1/20	6020	6020
1/27	5262	5262
2/3	5157	5157
2/10	5230	5230
2/17	5527	5527
2/24	6410	6410
3/3	5463	5463
3/10	5710	5710
3/17	5814	5814
3/24	5708	5708
3/31	6192	6192
4/7	6452	6452

Number of Trains Held 12 Hours or More For Power Since January 1:

Week ending	SCL trains	Week ending	LN trains
1/6	17	1/6	92
1/13	32	1/13	109
1/20	20	1/21	138
1/27	15	1/28	158
2/3	15	2/4	124
2/10	8	2/11	98
2/17	8	2/18	79
2/24	8	2/25	118
3/3	23	3/4	151
3/10	12	3/11	157
3/17	11	3/18	161
3/24	22	3/25	141
3/31	16	4/1	119
4/7	22	4/8	115

Memorandum to the Commission:

Locomotive Situation on LN

Period Ending October 6, 1978	
LN	1100
Leased	46
SCL	50
Total	1196
Period Ending January 2, 1979	
LN	1098
Leased	80
SCL	50
Total	1228
Period Ending January 16, 1979	
LN	1097
Leased	79
SCL	50
Total	1226
Period Ending February 2, 1979	
LN	1095
Leased	73
SCL	50
Total	1218
Period Ending February 16, 1979	
LN	1095
Leased	68
SCL	50
Total	1213

Locomotive Situation on LN—Continued

Period Ending March 1, 1979	
LN	1099
Leased	64
SCL	12
Total	1185
Period Ending March 16, 1979	
LN	1114
Leased	60
SCL	11
Total	1185
Period Ending April 2, 1979	
LN	1122
Leased	52
SCL	10
Total	1184
Period Ending April 16, 1979	
LN	1141
Leased	52
SCL	10
Total	1203

Memorandum to the Commission:

Most of the leased locomotives are SP locomotives leased by SCL for LN in order to comply with the service order. The LN has received 52 of their new locomotives.

Since March 18th, the weekly number of trains held on LN for power has declined from 161 to 115.

In view of the improvement in the number of LN trains held for power and the current level of cars available to single-car shippers, the Railroad Service Board recommends that Service Order No. 1340 be permitted to expire on April 30, 1979.

The Section of Rail and Pipeline Operations will continue to monitor the supply of hopper cars and train delays on the LN. If the situation worsens appreciably, the Railroad Service Board will recommend the reinstatement of the requirements of this order in whole or in part.

Railroad Service Board.

Joel E. Burns,
Chairman.

Robert S. Turkington,
Member.

John R. Michael,
Member.

Louisville & Nashville Railroad Co.,
April 19, 1979.

Mr. Joel E. Burns,
Director, Bureau of Operations, Room 7115, Interstate Commerce Commission, Washington, D.C. 20423.

Service Order No. 1340.

Dear Mr. Burns: This will confirm my oral advice to you today that should the Commission determine to allow Service Order No. 1340 to expire, the Family Lines subject to the service order will continue making reports to the Commission as required by the service order. We will make these reports at least until this fall when we will have received all of our new locomotives. At that time we would like to reevaluate the situation to determine whether the reports continue to be necessary and useful.

Sincerely yours,

Fred R. Birkholz.

[Service Order No.1340]

[FR Doc. 79-13969 Filed 5-3-79; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1033

Car Service; Railroads Authorized To Forward Portions of Certain Multiple-Car Shipments Transporting Less Than Minimum Quantities Specified by Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order, Amendment No. 3 to Revised Service Order No. 1313.

SUMMARY: Many railroad tariffs require the tender of from two to twenty-four cars at one time. Because of severe car shortages the railroads are unable to furnish, at one time, all of the cars required to transport the shipment. Serious delays to cars occur while the shipper awaits receipt of the remaining cars required. Service Order No. 1313 requires railroads to accept and forward partial shipments without delay when the carrier is unable to furnish, at one time, all of the cars required to complete the multiple-car shipment before tendering additional shipments in the same kind of car. Amendment No. 3 extends the order.

DATES: Effective 11:59 p.m., April 30, 1979, expires when modified or vacated by order of this Commission.

FOR FURTHER INFORMATION CONTACT: J. Kenneth Carter, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, Telephone (202) 275-7840, Telex 89-2742.

Decided: April 27, 1979.

Upon further consideration of Service Order No. 1313 (43 FR 21893, 29126 and 56674), and good cause appearing therefor:

It is ordered:

§ *1033.1313 Revised Service Order No. 1313,* Railroads authorized to forward portions of certain multiple-car shipments transporting less than minimum quantities specified by tariffs is amended by substituting the following paragraph (g) for paragraph (g) thereof:

(g) *Expiration date.* The provisions of this order shall remain in effect until modified or vacated by order of this Commission.

Effective date. This amendment shall become effective at 11:59 p.m., April 30, 1979.

(49 U.S.C. (10304–10305 and 11121–11126))

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the **Federal Register.**

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. Homme, Jr.,

Secretary.

[Rev. S.O. 1313, Amdt. 3]

[FR Doc. 79-13970 Filed 5-3-79; 8:45 am]

BILLING CODE 7035-01-M

Proposed Rules

Federal Register
Vol. 44, No. 88
Friday, May 4, 1979

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.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

[7 CFR Parts 271 and 272]

Food Stamp Program; Outreach and Complaint Procedures; Correction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Proposed rule; Correction.

SUMMARY: This document corrects: (1) The "Date" section for receiving comments on the proposed Outreach/Complaint Procedures rulemaking which appeared on Page 21541 of the **Federal Register** of April 10, 1979. This material should read—"Comments must be received not later than May 25, 1979 in order to be assured of consideration"; and

(2) The "For Further Information" section also appearing on Page 21541 of the **Federal Register** of April 10, 1979 on the proposed Outreach/Complaint Procedures rulemaking. The telephone number of Susan McAndrew should read—"(202) 447–6535".

FOR FURTHER INFORMATION CONTACT: Sue McAndrew, (202) 447–6535.

Dated: April 30, 1979.

Carol Tucker Foreman,
Assistant Secretary.

[FR Doc. 79–13978 Filed 5–3–79; 8:45 am]
BILLING CODE 3410–30–M

Animal and Plant Health Inspection Service

[7 CFR Part 301]

Gypsy Moth and Browntail Moth Quarantine and Regulations; Public Hearing

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and public hearing.

SUMMARY: This gives notice of a public hearing to consider a proposal by the Plant Protection and Quarantine Programs (PPQ) to quarantine the State of Michigan, North Carolina, South Carolina, Virginia, Washington, West Virginia, and Wisconsin because of the presence of gypsy moth. It is also proposed to change the direction of the gypsy moth and browntail moth programs by adopting a new regulatory management concept based on pest risk. The new concept would be based on moth population levels in an area in relation to the potential for its artificial spread with regulated articles. The purpose of this proposed program change would be to provide a more practical and effective basis for controlling the pests by controlling the movement of articles which pose a high risk of artificially spreading these pests.

DATES: The hearing will be held on June 19, 1979, at 10 a.m. Comments are due on or before July 3, 1979.

ADDRESSES: The hearing will be held in Room 349, John C. Kluczyinski Federal Building, 230 S. Dearborn Street, Chicago, Ill. 60604. Submit written data, views, or arguments to: H. V. Autry, Regulatory Support Staff, Animal and Plant Health Inspection Service, Plant Protection and Quarantine Programs, U.S. Department of Agriculture, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, (301) 436–8247.

SUPPLEMENTARY INFORMATION: All written submissions made pursuant to this notice will be made available for public inspection in Room 633, Federal Building, Hyattsville, Md. 20782, during regular hours of business, unless the person makes the submission to the Regulatory Support Staff, Plant Protection and Quarantine Programs, and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in support of the request, the material will be held confidential; otherwise, notice will be given of the denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

Under this proposal, the Gypsy Moth and Browntail Moth Quarantine and regulations (7 CFR 301.45, 301.45–1, *et seq.*) would be revised to extend the quarantine to Michigan, North Carolina, South Carolina, Virginia, Washington, West Virginia, and Wisconsin because of the existence of gypsy moth infestations in those States and to incorporate a new regulatory management concept based on pest risk.

The gypsy moth, *Lymantria dispar* L., a highly destructive pest of forest trees, was brought to the United States from Europe for experimental studies in 1869. By accident the insect escaped at Medford, Massachusetts, and became established in that community and had gradually spread to at least 11 northeastern States by 1972. It has been the subject of continuous control and suppression work by the States since 1889. The Federal Government has cooperated with the States in regulatory measures since 1906. The Federal quarantine was promulgated in 1912. Currently, the infested area under Federal regulation includes the southern portion of Maine; most of New Hampshire, New York, Pennsylvania, and Vermont; the entire State of Massachusetts, Connecticut, Rhode Island, and New Jersey; and a small portion of Maryland. In the generally infested States, defoliation, tree mortality, and the nuisance of the caterpillars remain a serious problem, particularly in the high-use, high-value forest recreation areas and forested communities. The Animal and Plant Health Inspection Service has information that dangerous infestations of the gypsy moth have been found in portions of Michigan, North Carolina, South Carolina, Virginia, Washington, West Virginia, and Wisconsin. It is proposed to add these States to the Federal quarantine to prevent the artificial spread of the pest to noninfested areas of the United States.

This proposed revision of the Gypsy Moth and Browntail Moth Quarantine and regulations also would incorporate a new regulatory management concept based on pest risk. The pest risk concept is designed to improve upon efficiency of regulatory measures presently in effect and provide better distribution of

manpower and resources in the Department's effort to prevent the artificial spread of the gypsy moth and browntail moth. The objective of the pest risk concept is to determine the potential risk of artificially spreading the pest with the movement of regulated articles from an infested area to a noninfested area and to concentrate available resources and manpower on those articles in infested areas most likely to artificially spread the pest. This action should reduce the probability of artificially spreading the pest, and personnel and resources can be better utilized and allocated on the basis of risk factors, making the pest risk concept more efficient and cost productive.

The current regulations require inspection or treatment and certification of regulated articles before they are moved from a regulated area without regard to population levels of the life stages of the insects at the origin of the movement. Empirical evidence indicates that one of the most important factors in determining the risk of spreading the moths in the number of eggs, larvae, pupae, or adults in relation to the regulated articles in any particular area which move to a nonregulated area.

Therefore, it is proposed that the amount of regulatory control in an area be categorized as being high or low based on the number of eggs, larvae, pupae, or adults in any given area and the risk of artificially spreading these life stages of the pests to nonregulated areas posed by the movement of regulated articles to nonregulated areas.

When an infestation of the gypsy moth or browntail moth has been found in a State, the entire State is quarantined. Less than an entire quarantined State will be regulated only if the State has adopted and is enforcing a quarantine or regulations restricting the intrastate movement of regulated articles substantially the same as those concerning their intrastate movement under Federal regulations and regulation of less than the entire State is adequate to prevent the artificial interstate spread of the pests, as determined by the Deputy Administrator. Regulated areas are designated as being either high-risk or low-risk. All regulated areas which do not meet the criteria for designation as a high-risk area are designated low-risk areas.

This proposal would establish new criteria for classifying, in the professional judgment of the inspector, gypsy moth and browntail moth regulated areas as being a high-risk or low-risk of artificially spreading the pest based on eggs, larvae, pupae, or adults present in a given area in relation to regulated articles moving from the area to a nonregulated area. Accordingly, it is proposed that the regulations be revised to designate, gypsy moth and browntail moth regulated areas as "high-risk" or "low-risk," as determined by an inspector, according to the degree of infestation in relation to regulated articles in the area which may move to a nonregulated area.

In the proposed regulations, high-risk areas pertaining to gypsy moths are defined as those areas where there is s substantial risk of artificial spread of life stages of gypsy moth by movement of regulated articles to nonregulated areas. Substantial risk of artificially spreading life stages of the gypsy moth is based on regulated articles being located within or adjacent to areas where defoliation occurs or areas where 50 or more egg masses per acre are present. Defoliation is defined in the regulations as a condition existing when at least 10% of the leaves are stripped from the trees by gypsy moths in an area as determined by visual inspection of an inspector. Experience has indicated that defoliation in areas where the pest occurs, as determined by trapping or visual survey, is evidence of larval feeding and indicative of a substantial infestation of the gypsy moth.

From experience, it is known that when populations of the gypsy moth occur in sufficient numbers to cause defoliation and there are regulated articles available within or adjacent to such areas, there is extreme risk of artificial spread of gypsy moth. Regulated articles are known to be places where the pests lay their eggs and which may otherwise harbor various hitchhiking life stages of the pests. Therefore, the proposed regulations would designate areas as high-risk when there are regulated articles within areas of defoliation.

With regard to the gypsy moth, the proposed regulations would also designate areas as high-risk when there are regulated articles "adjacent to" an area of defoliation. Articles would be regulated if "adjacent to" an area of defoliation because it is known that life stages of the insect would occur beyond the leading edges of the area of defoliation. Such adjacent areas where life stages of gypsy moth occur would be determined by visual inspection.

Likewise, experience has indicated that if there are 50 or more egg masses of gypsy moth per acre and regulated articles are within or adjacent to such area, there is a high risk of artificial pest spread of the gypsy moth by reason of egg masses or other life stages of the pest hitchhiking on regulated articles. The regulations would propose that an area be designated high-risk if the inspector has reason to believe there are 50 or more egg masses per acre. Experience has indicated that for each egg mass found by visual inspection of crevices of trees and exposed surfaces of other ariticles, there are at least 10 egg masses not discovered. There are also other factors which would be indicative that 50 or more egg masses per acre are present, e.g. visible presence of other life stages of the gypsy moth found in conjunction with egg masses, or egg masses are readily apparent making it obvious 50 or more egg masses are present. Therefore, the regulations would state that with respect to gypsy moth, an area can be designated as high-risk when the inspector has "reason to believe that 50 or more egg masses are present."

Experience has also indicated that where there are five or more webs of browntail moth per acre and regulated articles are within such an area, there is a high risk of spreading browntail moth. A greater area would be regulated around an infestation of the gypsy moth than the browntail moth because gypsy moth larva are known to forage over a much greater area than browntail moth.

The proposal provides that when an inspector makes a determination that an area should be temporarily regulated and designated as "high-risk" or "low-risk," written notice of such designation shall be made on the owners or other persons in possession of all premises in the temporarily regulated area and regulated articles from such premises shall be subject to the applicable provisions of this subpart. As soon as practicable after such designation, such area would be added to the list in § 301.45–2a or such designation would be terminated and written notice of such action would be given to the owners or other persons in possession of all premises in such area.

In order to protect uninfested areas, regulated articles moving interstate from a high-risk area to or through a nonregulated area would be required to be treated, or inspected, or grown, produced, manufactured, stored or handled in such a manner that no infestation would be transmitted thereby, as determined by an inspector, and a certificate or permit would be required to be attached as evidence of such actions. The moths occur in both high-risk and low-risk areas and the intent of the quarantine would be to protect uninfested areas. Therefore, regulated articles moving from a high-risk area to a contiguous regulated area

or from a low-risk area to a high-risk area would not require treatment, inspection, or specified handling, since the moths would already be present in such areas and it does not appear that such movements would significantly affect such infestations.

The risk of artifically spreading the pests by moving regulated articles from low-risk areas to nonregulated areas would not appear to justify the expenditure of limited time and money thereon which could be put to better use in monitoring regulated articles moving from high-risk areas to nonregulated areas. There is a low risk that such regulated articles would contain the pests or if they do contain the pests, that they would be moved to a nonregulated area which would be a conducive environment for their multiplication and subsequent infestation.

Regulated articles moving interstate from a low-risk area to a nonregulated area would not require treatment, inspection, or specified handling, unless an inspector determines in his professional judgment that moths in any stage of development are on such regulated articles which may move to a nonregulated area. Such conditions present a high risk of artificially spreading the gypsy moth or browntail moth, if such regulated articles are not inspected or treated prior to such removal.

Gypsy moth and browntail moth regulated articles currently appear in § 301.45(b) of the regulations. In the proposed regulations, the revised list of these articles would appear in § 301.45–1(u) with the definition for regulated articles.

In relation to gypsy moth, experience over the years in inspecting regulated articles has shown that all stone and quarry products, parts of trees and shrubs, and certain timber products have rarely been known to carry gypsy moths and present minimal risk of artificial spread of this pest. Therefore, it is proposed that these articles would no longer be regulated because of gypsy moth.

Logs and pulpwood are timber products known to carry life stages of the gypsy moth, primarily egg masses, and, therefore, would continue to be regulated, but this proposal would exempt logs and pulpwood if they are moved to a designated mill operating under a compliance agreement which would minimize the risk of artificial spread of the pests. To be designated, a mill would be required to operate under a compliance agreement with the Department, and the names of such mills would be available upon request from the Deputy Administrator or an inspector. To be designated, precautions prescribed by an inspector would be required to be taken by the mill to prevent establishment of an infestation of gypsy moths. Such precautions would consist of treating with chemical sprays any host material in the mill environs, disposing of bark and other waste material to prevent a hazard of spreading the pest, or utilizing traps to detect any infestation that may occur.

Firewood is currently regulated under the category of timber products, but would be specificially listed as a regulated article under this proposal. This would alert the public that this article is hazardous and should not be moved out of a high-risk area to a nonregulated area unless treated.

In the proposed regulations, the phrase "e.g. outdoor household articles" would be added to the "any other products" clause in the list of regulated articles under § 301.45–1(u)(3). Outdoor household articles include outdoor furniture, barbecue grills, garden tools, and other such articles currently included as "any other products." This proposed addition to the regulations is intended to give added emphasis to the need to be aware of the hazard of moth spread associated with such articles when household goods are moved.

If the above-mentioned changes in the list of regulated articles are adopted, a supplementary regulation listing exempted articles would serve no useful purpose. The same objectives can be attained by stating exceptions to a regulated article beside the listed article in § 301.45–1(u)(1); e.g., "Trees with roots, and shrubs with roots and persistent woody stems, *except* if greenhouse grown throughout the year." Therefore, provision for exempting such articles would no longer be needed, and the supplemental regulation, § 301.45–2b Exempted Articles, would be deleted.

In the current regulation, mobile homes and associated equipment are regulated for gypsy moth only if moving from a site that has been declared hazardous and so listed in the regulations. In the proposal, the movement of all mobile homes and associated equipment from a high risk area to a nonregulated area would be regulated because such homes, in most instances, remain stationary for many years. This means they are continually exposed to infestation, present an extremely high-risk of spreading the gypsy moth when moved to a nonregulated area, and must be inspected and/or treated prior to being moved. Although pesticidal spray treatments could reduce gypsy moth populations around areas where mobile homes are parked, such treatments are impractical and are not usually applied since only a small number of mobile homes are moved each year. Hazardous recreational vehicle sites would continue to be listed.

Definitions for "generally infested area," "restricted destination permit," "scientific permit," and "suppressive area" would be deleted since these terms are not used in the proposed regulations.

Definitions for "defoliation," "high-risk area," "low-risk area," "outdoor household articles," and "under the direction of" would be added as pertinent to this subpart.

The current definitions for "associated equipment," "compliance agreement," "limited permit," "moved," "certificate," "person," and "Plant Protection and Quarantine Programs" would be amended for purposes of simplification and clarity.

The definition for "Deputy Administrator" would be amended for uniformity with such definition in similar regulations.

The definition of "gypsy moth" would be amended to adopt the currently accepted name for the species of *"Lymantria dispar* L." instead of the previous accepted name for the species of *"Porthetria dispar* L."

The definition for "Hazardous mobile home parks or recreational sites," and for "Mobile home; mobile home park" would be amended to remove reference to "mobile home park" because the regulations pertaining to mobile home parks would no longer be applicable.

The definition for "regulated articles" would be amended by adding to the definition the revised list of regulated articles, for a more logical arrangement of material.

The definition for "treatment manual" would be corrected to reflect a change in the name of the manual. Appropriate footnotes would be added to indicate that the Director of the Federal Register has approved the incorporation by reference of the "Plant Protectin and Quarantine Treatment Manual" and that the "Gypsy Moth and Browntail Moth Program Manual" is published as an appendix to these regulations.

The use of restricted destination permits and scientific permits would be deleted since the limited permit can be used for the same purpose. Accordingly, it is proposed that the reference in the regulations to the use of restricted destination permits and scientific permits and the definitions for such permits would be deleted.

Proposed § 301.45–3(b) of the regulations would prohibit the interstate movement of any regulated articles from a low-risk area into or through a nonregulated area unless a certificate or permit has been issued by an inspector, if he determines that any life stage of gypsy moth or browntail moth is on any of the articles and the person in possession of the articles has been so notified. As to gypsy moth, this would primarily apply to a mobile home or recreational vehicle, but could also apply to other regulated articles with regard to both pests. it is difficult to find all the life stages of the gypsy moth on a recreational vehicle or mobile home because of the many nooks and cranies on this type of vehicle. Also, other regulated articles present similar difficulties in finding life stages of the pests, and if any life stage is found on the articles it is reasonable to believe there are additional life stages on the regulated article that cannot be readily found.

Proposed § 301.45–4(a)(4) of the regulations authorizes the inspector to issue a certificate for movement of any regulated article if, among other things, the article has been grown, produced, manufactured, stored, or handled in a manner that no infestation would be transmitted, as determined by an inspector. An infestation would not be transmitted by such movement if the article was grown in an environment protected from an infestation, e.g., nursery stock grown in the protected environment of a greenhouse, or an article manufactured, stored, or handled so that no infestation would be transported, such as debarked logs.

Section 301.45–4(f) of the current regulations authorizes the Deputy Administrator or an inspector to withdraw certificates or permits for the movement of regulated articles if he determines that the holder thereof has not complied with any condition for the use of the document imposed by the regulations. Section 301.45–4(f) would be designated § 301.45–4(d) and amended to provide specifically for procedures for such withdrawals by allowing any person whose certificate or permit has been withdrawn to appeal the decision in writing to the Deputy Administrator within 10 days after receiving written notification of the withdrawal. The Deputy Administrator shall grant or deny the appeal, in writing, as promptly as circumstances permit. If there is a dispute as to any material fact, a hearing shall be held to resolve such conflict.

Section 301.45–5 of the current regulations concerning the cancellation of compliance agreements would be amended to provide for procedures for the cancellation of compliance agreements similar to those for the withdrawal of certificates and permits by allowing any person whose compliance agreement has been canceled to appeal the decision, in writing, to the Deputy Administrator within 10 days after receiving written notice of the cancelation. The Deputy Administrator would grant or deny the appeal, in writing, as promptly as circumstances permit. If there is a dispute as to any material fact, a hearing would be held to resolve such conflict.

Under requirements of the proposal, in § 301.45–6, shippers desiring to move regulated articles interstate must give notice to the PPQ inspector as far in advance as possible, but no less than 48 hours before the desired movement to allow the PPQ inspector time to arrange inspection in accordance with his work schedule.

Various other minor editorial changes would be made for clarity and simplification of the regulations.

An environmental impact statement has been prepared on the cooperative gypsy moth suppression and regulatory program. Copies are available from USDA Forest Service, Washington, DC 20013.

Accordingly, it is proposed that the regulations relating to the Gypsy Moth and Browntail Moth Quarantine (7 CFR 301.45, 301.45–1, *et seq.*) be revised to read as follows:

Quarantine and Regulations

Sec.

301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.
301.45–1 Definitions.
301.45–2 Authorization to designate, and terminate designation of, regulated areas, high-risk and low-risk areas, and hazardous sites for recreational vehicles.
301.45–2a Regulated areas: High-risk and low-risk areas.
301.45–2b [Reserved]
301.45–2c List of hazardous recreational vehicle sites.
301.45–3 Conditions governing the interstate movement of regulated articles from quarantined States.
301.45–4 Issuance and cancellation of certificates and permits.
301.45–5 Compliance agreement, and cancellation thereof.
301.45–6 Assembly and inspection of regulated articles.
301.45–7 Attachment and disposition of certificates or permits.
301.45–8 Inspection and disposal of regulated articles and pests.
301.45–9 Movement of live gypsy moths and browntail moths.

Quarantine and Regulations

§ 301.45 Notice of quarantine; restriction on interstate movement of specified regulated articles.

(a) *Notice of Quarantine.* Pursuant to the provisions of sections 8 and 9 of the Plant Quarantine Act of August 30, 1912, as amended, and section 106 of the Federal Plant Pest Act (7 U.S.C. 161, 162, 150ee), the Secretary of Agriculture heretofore determined after public hearing to quarantine the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, in order to prevent the spread of the gypsy moth (*Lymantria dispar* L.), and the States of Maine and Massachusetts to prevent the spread of the browntail moth (*Nygmia phaeorrhoea* Donov.) dangerous insects injurious to forests and shade trees and not theretofore widely prevalent or distributed within or throughout the United States. It has now been determined that, after public hearing it is also necessary to quarantine the States of Michigan, North Carolina, South Carolina, Virginia, Washington, West Virginia, and Wisconsin to prevent the spread of the gypsy moth. Therefore, under the authority of said provisions, the Secretary hereby continues to quarantine the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont and quarantines the States of Michigan, North Carolina, South Carolina, Virginia, Washington, West Virginia, and Wisconsin, because of the gypsy moth; and continues to quarantine the States of Maine and Massachusetts because of the browntail moth. The quarantine shall be in effect with respect to the interstate movement from the quarantined States of the articles described in § 301.45–1(v) pursuant to the regulations in this subpart governing such movement.

(b) *Quarantine restrictions on interstate movement of regulated articles.* No common carrier or other person shall move interstate from any regulated area any regulated article except in accordance with the conditions prescribed in this subpart.

§ 301.45–1 Definitions.

When used in this subpart, the following definitions shall apply. Terms used in the singular shall be deemed to import the plural, and vice versa, as the case may demand.

(a) *Associated equipment.* Articles associated with mobile homes and

recreational vehicles, such as, but not limited to, awnings, tents, outdoor furniture, trailer blocks, and trailer skirts.

(b) *Browntail moth.* The live insect known as the browntail moth *(Nygmia phaeorrhoea* Donov.), in any life stage of development (egg, larva, pupa, adult).

(c) *Certificate.* A document issued by the inspector, to allow the movement of regulated articles to any destination.

(d) *Compliance agreement.* A written agreement between a person engaged in growing, handling, or moving regulated articles, and the Plant Protection and Quarantine Programs, wherein the former agrees to comply with the requirements of the compliance agreement.

(e) *Defoliation.* A condition existing when at least 10 percent of the leaves are stripped from the trees by gypsy moth larvae as determined by visual inspection of an inspector.

(f) *Deputy Administrator.* The Deputy Administrator of the Animal and Plant Health Inspection Service, U.S. Department of Agriculture for the Plant Protection and Quarantine Programs, or any other officer or employee of the Department to whom authority has heretofore been or may hereafter be delegated to act in his stead.

(g) *Gypsy moth.* The live insect known as the gypsy moth (*Lymantria dispar* L.) in any life stage (egg, larva, pupa, adult).

(h) *Hazardous recreational vehicle site.* Any site where a recreational vehicle is, or may be parked, and it is determined in the professional judgment of an inspector that such site harbors populations of gypsy moth, on the basis of eggs which are present year-round, larvae and pupae which are present in spring and summer, or adults which are present in summer, that could hitchhike on and be spread by a recreational vehicle, and such site is listed by the Deputy Administrator in § 301.45–2c.

(i) *High-risk area.* That portion of a regulated area where it is visually determined in the professional judgment of an inspector that there is a substantial risk of artificial spread of gypsy moths or browntail moths in any life stage by movement of regulated articles to nonregulated areas. There is substantial risk of artificially spreading the gypsy moth when the inspector determines that regulated articles exist within or adjacent to an area where defoliation has occurred or where the inspector has reason to believe that 50 or more egg masses per acre of the gypsy moth are present. There is substantial risk of artificially spreading browntail moth when the inspector determines that regulated articles are within an area where 5 or more browntail moth webs per acre may be present.

(j) *Infestation.* (1) With regard to the browntail moth, it means the presence of eggs, larva(e), pupa(e), or adult(s) of the browntail moth. (2) With regard to the gypsy moth, it means (i) the presence of gypsy moths as determined by the trapping of male moths in accordance with the program manual in a pattern indicating an established population, or (ii) the detection of any other life stage of the gypsy moth through visual inspection.

(k) *Inspector.* An employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator to enforce the provisions of the quarantine and regulations in this subpart.

(l) *Interstate.* From any State into or through any other State.

(m) *Limited permit.* A document issued by an inspector to allow the interstate movement of regulated articles to a specified destination.

(n) *Low-risk area.* That portion of the regulated area not designated as a high risk area.

(o) *Mobile home.* A mobile home is any vehicle, other than a recreational vehicle, designed to serve, when parked, as a dwelling or place of business.

(p) *Moved (movement, move).* Shipped, offered for shipment to a common carrier, received for transportation or transported by a common carrier, or carried, transported, moved, or allowed to be moved by any means. "Movement" and "move" shall be construed in accordance with this definition.

(q) *Outdoor household articles.* Articles associated with a household that have been kept outside the home such as outdoor furniture, barbecue grills, dog houses, boats, hauling trailers, garden tools, tents, and awnings.

(r) *Person.* Any individual, partnership, corporation, company, society, association, or other organized group.

(s) *Plant Protection and Quarantine Programs.* The organizational unit within the Animal and Plant Health Inspection Service delegated responsibility for enforcing provisions of the Plant Quarantine Act, the Federal Plant Pest Act and related legislation, and quarantines and regulations promulgated thereunder.

(t) *Recreational vehicles.* Highway vehicles, including pickup truck campers, one-piece motor homes, and travel trailers, designed to serve as a temporary place of dwelling.

(u) *Regulated area.* Any quarantined State, or any portion thereof, listed as a regulated area in § 301.45–2a or otherwise designated as a regulated area in accordance with § 301.45–2(b).

(v) *Regulated articles.*—(1) Gypsy moth regulated articles:

(i) Trees with roots, and shrubs with roots and persistent woody stems, *except* if greenhouse grown throughout the year.

(ii) Logs and pulpwood, *except* if moved to a mill operating under a compliance agreement.[1]

(iii) Firewood.

(iv) Mobile homes and associated equipment.

(v) Recreational vehicles and associated equipment, moving from hazardous recreational vehicle sites listed in § 301.45–2c.

(vi) Other products, articles, and means of conveyance listed in subparagraph (3) of this paragraph.

(2) Browntail moth regulated articles:

(i) Deciduous trees, and shrubs with persistent woody stems, and parts of such trees and shrubs, with leaves attached.

(ii) Other products, articles, and means of conveyance listed in subparagraph (3) of this paragraph.

(3) Any other products, articles (e.g., outdoor household articles), or means of conveyance, of any character whatsoever when it is determined by an inspector that any life stage of gypsy moth or browntail moth are in proximity to such articles and the articles present a high risk of artificial spread of gypsy moth or browntail moth infestations and the person in possession thereof has been so notified.

(w) *State.* Any State, Territory, or District of the United States including Puerto Rico.

(x) *Treatment manual.* The provsions currently contained in the "Gypsy Moth and Browntail Moth Program Manual" [2, 4] and the "Plant Protection and Quarantine Treatment Manual." [2, 3]

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[1] Names of mills under compliance agreement are available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, or from an inspector.

[2] Pamphlets containing such provisions are available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, APHIS, U.S. Department of Agriculture, Washington, DC 20250, or from an inspector.

[3] **Note.**—Provisions for incorporation by reference of the PPQ Treatment Manual approved by the Director, Office of the Federal Register on June 15, 1978.

[4] The Gypsy Moth and Browntail Moth Program Manual is published as an appendix to these regulations.

(y) *Under the direction of.* Monitoring treatments to assure compliance with the requirements in this subpart.

§ 301.45–2 Authorization to designate and terminate designation of regulated areas and high-risk and low-risk areas and hazardous recreational vehicle sites.

(a) *Regulated areas and high-risk or low-risk areas.* The Deputy Administrator shall list as regulated areas in § 301.45–2a, each quarantined State, or each portion thereof in which a gypsy moth or browntail moth infestation has been found by an inspector, or each portion of a quarantined State which the Deputy Administrator deems necessary to regulate because of their proximity to infestation or its inseparability for quarantine enforcement purposes from infested localities. The Deputy Administrator may designate any regulated area or portion thereof as a high-risk area or a low-risk area if he determines that it meets the criteria for such area specified in §§ 301.45–i(i) and (n). Less than an entire quarantined State will be designated as a regulated area only if the Deputy Administrator is of the opinion that:

(1) The State has adopted and is enforcing a quarantine or regulation which imposes restrictions on the intrastate movement of the regulated articles which are substantially the same as those which are imposed with respect to the interstate movement of such articles under this subpart, as determined by the Deputy Administrator; and

(2) The designation of less than the entire State as a regulated area will be adequate to prevent the artificial interstate spread of infestations of the gypsy moth and browntail moth.

(b) *Temporary designation of nonregulated areas and low-risk areas as high-risk areas.* The Deputy Administrator or an inspector may temporarily designate any nonregulated area or low-risk area or portion thereof in a quarantined State in which a gypsy moth of browntail moth infestation has been found by an inspector, as a regulated area and may designate the regulated area or portions thereof as a high-risk area if an inspector or the Deputy Administrator determines that it meets the criteria for such an area, as provided in § 301.45–1(i). Written notice of such designation shall be given to the owner or person in possession of such nonregulated or low-risk areas, and, thereafter, the interstate movement of regulated articles from such areas shall be subject to the applicable provisions of this subpart. As soon as practicable, such areas shall be added to the list in § 301.45–2a or such designation shall be terminated by the Deputy Administrator or an authorized inspector, and notice thereof shall be given to the owner or person in possession of the areas.

(c) *Termination of designation as a regulated area.* The Deputy Administrator shall terminate the regulation of any area or change its designation from a high-risk area to a low-risk area whenever he determines that such redesignation is appropriate or required under the criteria specified in paragraph (a) of this section.

(d) *List of hazardous recreational vehicle sites.* The Deputy Administrator shall list as hazardous in § 301.45–2c any recreational vehicle sites in a quarantined State in which gypsy moth has been found by an inspector, or in which there is a risk of infestation of the gypsy moth because of the proximity to infestation of the gypsy moth.

§ 301.45–2a Regulated areas; high-risk and low-risk areas.

(a) The civil divisions and parts of civil divisions described below are designated as gypsy moth regulated areas within the meaning of the provisions of this subpart, and such regulated areas are hereby divided into high-risk areas or low-risk areas as follows:

Connecticut

(1) *High-risk area.*

Hartford County. The entire county.
Middlesex County. The entire county.
New London County. The entire county.
Tolland County. The entire county.
Windham County. The entire county.

(2) *Low-risk area.*

Fairfield County. The entire county.
Litchfield County. The entire county.
New Haven County. The entire county.

Delaware

(1) *High-risk area.* None.
(2) *Low-risk area.*

New Castle County. The entire county.

Maine

(1) *High-risk area.*

Androscoggin County. The entire county.
Cumberland County. The entire county.
Franklin County. The townships of Chesterville, Jay, and New Sharon.
Hancock County. The entire county except the townships of 3ND, 4ND, 41MD, and 35MD.
Kennebec County. The entire county.
Knox County. The entire county.
Lincoln County. The entire county.
Oxford County. The townships of Albany, Batchelders Grant, Brownfield, Buckfield, Canton, Denmark, Dixfield, Fryeburg, Greenwood, Hartford, Hebron, Hiram, Lovell, Mason Plantation, Norway, Oxford, Paris, Peru, Porter, Stoneham, Stow, Sumner, Sweden, Waterford, and Woodstock.
Penobscot County. The townships of Alton, Argyle, Bangor City, Bradford, Bradley, Brewer City, Carmel, Charleston, Clifton, Corinna, Cornith, Dixmont, Edinburg, Etna, Exeter, Glenburn, Greenbush, Greenfield, Hampden, Hermon, Holden, Hudson, Kenduskeag, La Grange, Levant, Milford, Newburgh, Newport, Old Town City, Orono, Orrington, Pasadumkeag, Plymouth, Stetson, Veazie-Eddington, and 1ND.
Sagadahoc County. The entire county.
Somerset County. The townships of Anson, Athens, Canaan, Cornville, Detroit, Fairfield, Harmony, Hartland, Madison, Mercer, Norridgewock, Palmyra, Pittsfield, Skowhegan, Smithfield, Solon, St. Albans, and Starks.
Waldo County. The entire county.
Washington County. The townships of Beddington, Cherryfield, Columbia, Deblois, Harrington, Milbridge, Steuben, 18MD and 24MD.
York County. The townships of Cornish and Parsonfield.

(1) *Low-risk area.*

Franklin County. The townships of Avon, Carthage, Crockertown, Dallas Plantation, Farmington, Freeman, Industry, Jerusalem, Kingfield, Madrid, Mount Abraham, New Vineyard, Perkins, Phillips, Rangeley Plantation, Redington, Salem, Sandy River Plantation, Strong, Temple, Washington, Weld, Wilton, E, D, 1 R 2, 3 R 2, 4 R 1, and 4 R 2.
Oxford County. The townships of Andover, Andover North, Andover West, Bethel, Byron, Gilead, Grafton, Hanover, Magalloway Plantation, Mexico, Milton Plantation, Newry, Richardsontown, Riley, Roxbury, Rumford, Upton, C, C Surplus, and 4 R1.
Penobscot County. The townships of Enfield, Grand Falls Plantation, Howland, Lincoln, Lowell, Mattamiscontis, Maxfield, and 1 R 7.
Piscataquis County. The townships of Abbott, Atkinson, Dover-Foxcroft, Guilford, Kingsbury Plantation, Medford, Milo, Orneville, Parkman, Sangeville, Sebec, and Wellington.
Somerset County. The townships of Bingham, Brighton Plantation, Cambridge, Concord Plantation, Embden, Highland Plantation, Lexington Plantation, Mayfield, Moscow, New Portland, Pleasant Ridge Plantation, and Ripley.
York County. The townships of Acton, Alfred, Berwick, Biddeford City, Buxton, Dayton, Eliot, Hollis, Kennebunk, Kittery, Lebanon, Limerick, Limington, Lyman, Newfield, North Berwick, North Kennebunkport, Old Orchard Beach, Saco City, Sanford, Shapleigh, South Berwock, Waterboro, Wells, and York.

Maryland

(1) *High-risk area.* None.
(2) *Low-risk area.*

Baltimore County. That portion of the county bounded by a line beginning at a point

where U.S. Highway 140 intersects with the Baltimore-Carroll County line; thence southeasterly along U.S. Highway 140 to its intersection with U.S. Interstate 695; thence easterly along U.S. Interstate 695 to its intersection with U.S. Highway 1; thence northeasterly along U.S. Highway 1 to its intersection with the Baltimore-Harford County line; thence northerly along said county line to its junction with the Maryland-Pennsylvania State line; thence westerly along said State line to its junction with the Baltimore-Carroll County line; thence southwesterly along said county line to the point of beginning.

Carroll County. The entire county.
Cecil County. The entire county.
Frederick County. The entire county.
Harford County. The entire county.
Kent County. The entire county.
Washington County. That area bounded by a line beginning at a point where U.S. Highway 40A intersects State Highway 66; thence northerly along State Highway 66 to its intersection with State Highway 64; thence west along said Highway to its intersection with the Hagerstown City limits; thence southerly, westerly, and northerly along said city limits to its intersection with U.S. Highway 40; thence west along said highway to its intersection with Interstate 81; thence southerly along Interstate 81 to its intersection with State Highway 68; thence southerly along State Highway 68 to its intersection with U.S. Highway 40A; thence southerly along U.S. 40A to point of beginning.

Massachusetts

(1) *High-risk area.*

Barnstable County. The entire county.
Berkshire County. The entire county.
Bristol County. The entire county.
Franklin County. The entire county.
Hampden County. The entire county.
Hampshire County. The entire county.
Middlesex County. The entire county.
Norfolk County. The entire county.
Plymouth County. The entire county.
Suffolk County. The entire county.
Worcester County. The entire county.

(2) *Low-risk area.*

Dukes County. The entire county.
Essex County. The entire county.
Nantucket County. The entire county.

Michigan

(1) *High risk area.*

Isabella County. Sec. 33, T. 13 N., R. 4 W.; and sec. 35, T. 14 N., R. 6 W.
Montcalm County. Secs. 7 and 18, T. 12 N., R. 5 W.; sec. 2, T. 12N., R. 6 W.; and sec. 25, T. 11 N., R. 7 W.

(2) *Low-risk area.*

Gratiot County. T. 10 N., R. 1 W.; T. 12 N., R. 1 W.; T. 11 N., R. 2 W.; sec. 31, T. 12 N., R. 2 W.; T. 10 N., R. 3 W.; T. 11 N., R. 3 W.; T. 12 N., R. 3 W.; sec. 24, T. 11 N., R. 4 W.; and T. 12 N., R. 4 W.
Isabella County. T. 13 N., R. 3 W.; T. 14 N., R. 3 W.; sec. 30, T. 16 N., R. 3 W.; T. 13 N., R. 4 W., excluding sec. 33; T. 14 N., R. 4 W.; T. 13 N., R. 5 W.; T. 14 N., R. 5 W.; T. 13 N., R. 6 W.; T. 14 N., R. 6 W., excluding sec. 35.
Midland County. Secs. 4 and 9, T. 13 N., R. 2 E.; sec. 27, T. 14 N., R. 1 E.; T. 13 N., R. 1 W.; T. 14 N., R. 1 W.; T. 13 N., R. 2 W.; T. 14 N., R. 2 W.
Montcalm County. T. 11 N., R. 5 W.; T. 12 N., R. 5 W., excluding secs. 7 and 18; T. 11 N., R. 6 W.; T. 12 N., R. 6 W., excluding sec. 2; T. 11 N., R. 7 W.; secs. 3, 4, and 5, T. 12 N., R. 8 W.
Saginaw County. Sec. 16, T. 12 N., R. 1 E.

New Hampshire

(1) *High-risk area.*

Belknap County. The entire county.
Carroll County. The entire County.
Coos County. The townships of Beans Purchase, Cutts Grant, Hadleys Purchase, Pinkhams Grant, and Sargents Purchase.
Grafton County. The townships of Alexandria, Ashland, Bridgewater, Bristol, Campton, Groton, Hebron, Holderness, Livermore, Orange, Plymouth, Rumney, Thornton, and Waterville.
Hillsboro County. Weare Township.
Merrimack County. The entire county.
Rockingham County. The townships of Deerfield and Northwood.
Strafford County. The entire county.

(2) *Low-risk area.*

Cheshire County. The entire county.
Coos County. The townships of Beans Grant, Berlin City, Cambridge, Carroll, Chandlers Purchase, Crawfords Purchase, Dalton, Dummer, Gorham, Greens Grant, Jefferson, Kilkenny, Lancaster, Low & Burbank Grant, Martins Location, Milan, Northumberland, Odell, Randolph, Shelburne, Stark, Stratford, Success, Thompson & Meserve Purchase, and Whitefield.
Grafton County. The townships of Bath, Benton, Bethlehem, Canaan, Dorchester, Easton, Ellsworth, Enfield, Franconia, Grafton, Hanover, Haverhill, Landaff, Lebanon, Lincoln, Lisbon, Littleton, Lyman, Lyme, Monroe, Oxford, Piermont, Warren Wentworth, and Woodstock.
Hillsboro County. The townships of Amherst, Antrim, Bedford, Bennington, Brookline, Deering, Francestown, Goffstown, Greenfield, Greenville, Hancock, Hillsboro, Hollis, Hudson, Litchfield, Lyndeboro, Manchester City, Mason, Merrimack, Milford, Mont Vernon, Nashua City, New Boston, New Ipswich, Pelham, Peterboro, Sharon, Temple, Wilton, and Windsor.
Rockingham County. The townships of Atkinson, Auburn, Brentwood, Candia, Chester, Danville, Derry, E. Kingston, Epping, Exeter, Freemont, Greenland, Hampstead, Hampton Falls, Hampton, Kensington, Kingston, Londonderry, Newcastle, Newfields, Newington, Newmarket, Newton, North Hampton, Nottingham, Plaistow, Portsmouth City, Raymond, Rye, Salem, Sandown, Seabrook, South Hampton, Stratham, and Windham.
Sullivan County. The entire county.

New Jersey

(1) *High-risk area.* The entire State *except* Hudson and Union Counties.

(2) *Low-risk area.*

Hudson County. The entire county.
Union County. The entire county.

New York

(1) *High-risk area.*

Broome County. The entire county.
Chenango County. The town of Afton, Bainbridge, Coventry, German, Greene, Guilford, McDonough, New Berlin, North Norwich, Norwich, Oxford, Pharsalia, Pitcher, Plymouth, Preston, Smithville, and the city of Norwich.
Clinton County. The entire county.
Columbia County. The entire county.
Cortland County. The towns of Cincinnatus, Cortlandville, Freetown, Hartford, Lapeer, Marathon, Solon, Taylor, Virgil, Willet, and the city of Cortland.
Delaware County. The entire county.
Dutchess County. The entire county.
Exxex County. The entire county.
Franklin County. The towns of Bangor, Bellmont, Bombay, Brandon, Brighton, Burke, Chateaugay, Constable, Dickinson, Duane, Fort Covington, Franklin, Malone, Moira, St. Regis Indian Reservation, and Westville.
Greene County. The entire county.
Hamilton County. The towns of Hope, Indian Lake, Lake Pleasant, and Wells.
Monroe County. The towns of Penfield, Perinton and Pittsford.
Nassau County. Tne entire county.
Orange County. The entire county.
Otsego County. The entire county.
Putnam County. The entire county.
Rensselaer County. The entire county.
Rockland County. The entire county.
Saratoga County. The entire county.
Schoharie County. The entire county.
St. Lawrence County. The towns of Brasher, Hopkinson, Lawrence, Louisville, Massena, Norfolk, and Stockholm.
Suffolk County. The entire county.
Sullivan County. The entire county.
Tioga County. The entire county.
Tompkins County. The towns of Caroline, Danby, Dryden, Enfield, Ithaca, Newfield and the city of Ithaca.
Ulster County. The entire county.
Warren County. The entire county.
Washington County. The entire county.
Westchester County. The entire county.

(2) *Low-risk area.*

Albany County. The entire county.
Allegany County. The entire county.
Bronx County. The entire county.
Cattaraugus County. The entire county.
Cayuga County. The entire county.
Chautauqua County. The entire county.
Chemung County. The entire county.
Chenango County. The towns of Columbus, Linklaen, Otselie, Smyrna, and Sherburne.
Cortland County. The towns of Cuyler, Homer, Preble, Scott, and Truxton.
Erie County. The entire county.
Franklin County. The towns of Altamont and Harrietstown.
Fulton County. The entire county.
Genesee County. The entire county.
Hamilton County. The towns of Arietta, Benson, Inlet, Long Lake, and Morehouse.
Herkimer County. The entire county.

Jefferson County. The entire county.
Kings County. The entire county.
Lewis County. The entire county.
Livingston County. The entire county.
Madison County. The entire county.
Monroe County. The towns of Brighton, Chile, Clarkson, Gates, Greece, Hamlin, Henrietta, Irondequoit, Mendon, Ogden, Parma, Riga, Rochester City, Rush, Sweden, Webser, and Wheatland.
Montgomery County. The entire county.
New York County. The entire county.
Niagara County. The entire county.
Oneida County. The entire county.
Onondaga County. The entire county.
Ontario County. The entire county.
Oswego County. The entire county.
Orleans County. The entire county.
Queens County. The entire county.
Richmond County. The entire county.
Schenectady County. The entire county.
Schuyler County. The entire county.
Seneca County. The entire county.
Steuben County. The entire county.
St. Lawrence County. The towns of Canton, Clare, Clifton, Colton, DeKalb, DePeyster, Edwards, Fine, Fowler, Gouverneur, Hammond, Hermon, Lisbon, Macomb, Madrid, Morristown, Oswegatchie, Parishville, Piercefield, Pierrepont, Pitcairn, Potsdam, Rossie, Russell, and Waddington.
Tompkins County. The towns of Groton, Lansing, and Ulysses.
Wayne County. The entire county.
Wyoming County. The entire county.
Yates County. The entire county.

North Carolina

(1) *High-risk area.* None.
(2) *Low-risk area.*

Avery County. That area bounded by a line beginning at a point where County Road 1143 intersects State Highway 194, thence northwesterly along said road to its intersection with County Road 1149, thence northerly along said road to its intersection with County Road 1150, thence northerly and northeasterly along said road to its intersection with County Road 1151, thence northerly along said road to its junction with State Highway 194, thence northerly and westerly along said highway to its intersection with County Road 1500, thence northerly and easterly along said road to its intersection with County Road 1501, thence southerly and southeasterly along said road for 1 mile, thence along a line projected due east to its intersection with the Linville River, thence southerly, westerly and northwesterly along said river to a point where it flows adjacent to State Highway 194, from that point on State Highway 194, thence northerly and easterly along said highway to the point of beginning.

Pennsylvania

(1) *High-risk area.*

Berks County. The entire county.
Blair County. The entire county.
Bucks County. The entire county.
Carbon County. The entire county.
Centre County. The entire county.
Chester County. The entire county.
Clearfield County. The entire county.
Clinton County. The entire county.
Columbia County. The entire county.
Cumberland County. The entire county.
Dauphin County. The entire county.
Delaware County. The entire county.
Huntingdon County. The entire county.
Juniata County. The entire county.
Lachawanna County. The entire county.
Lancaster County. The entire county.
Lebanon County. The entire county.
Lehigh County. The entire county.
Luzerne County. The entire county.
Lycoming County. The entire county.
Mifflin County. The entire county.
Monroe County. The entire county.
Montgomery County. The entire county.
Montour County. The entire county.
Northampton County. The entire county.
Northumberland County. The entire county.
Perry County. The entire county.
Pike County. The entire county.
Schuylkill County. The entire county.
Snyder County. The entire county.
Union County. The entire county.
Wayne County. The entire county.
York County. The entire county.

(2) *Low-risk area.* Counties not designated as high-risk area.

Rhode Island

(1) *High-risk area.* The entire State.
(2) *Low-risk area.* None.

South Carolina

(1) *High-risk area.* None.
(2) *Low-risk area.*

Horry County. That area bounded by a line beginning at a point where 17th Avenue North, Surfside Beach, joins the Atlantic Ocean and extending northwest along said avenue (the northeast city limits of Surfside Beach) to its junction with U.S. Highway 17, thence northeast along said highway to its intersection with 29th Avenue South, Myrtle Beach, thence southeast along said avenue to the Atlantic Ocean, thence southwest along the Atlantic Ocean to the point of beginning.

That area bounded by a line beginning at a point where Singleton Lake enters the Atlantic Ocean at Singleton Swash and extending northwest along a projected line to the south entrance of Cove Drive and U.S. Highway 17, thence northeast along said highway to its junction with 37th Avenue South, North Myrtle Beach, thence southeast along said avenue to the Atlantic Ocean, thence southwest along the Atlantic Ocean to the point of beginning.

Vermont

(1) *High-risk area.*

Addison County. The entire county.
Chittenden County. The entire county.
Franklin County. The entire county.
Grand Isle County. The entire county.
Lamoille County. The entire county.
Rutland County. The entire county.
Washington County. The entire county.

(2) *Low-risk area.*

Bennington County. The entire county.
Caldeonia County. The townships of Barnet, Danville, Groton, Hardwick, Kirby, Peacham, Ryegate, St. Johnsbury, Walden, and Waterford.
Essex County. The townships of Concord, Granby, Guildhall, Lunenburg, Maidstone, and Victory.
Orange County. The entire county.
Windham County. The entire county.
Windsor County. The entire county.

Virginia

(1) *High-risk area.* None.
(2) *Low-risk area.*

Clarke County. That area bounded by a line beginning at a point where the Shenandoah River crosses the Virginia/West Virginia State line, thence southerly along the Shenandoah River to its intersection with State Highway 7, thence easterly along said highway to its intersection with the Clark County/Loudoun County line, thence northerly along said county line to its junction with the Jefferson County, West Virginia County line, thence northwesterly along the Virginia/West Virginia State line to the point of beginning.

Loudoun County. That aera bounded by a line beginning at a point where State Highway 9 crosses the Virginia/West Virginia State line, thence southeasterly along State Highway 9 to its intersection with County Highway 719, thence southerly along said county highway to its intersection with State Highway 7, thence westerly along said highway to its intersection with the Loudoun County/Clarke County line, thence northerly along said county line to the point of beginning.

Washington

(1) *High-risk area.* None.
(2) *Low-risk area.*

King County. That area of the city of Renton bounded by Renton Avenue on the south, 77th Avenue on the west and Rainier Avenue on the north and east.

West Virginia

(1) *High-risk area.* None.
(2) *Low-risk area.*

Jefferson County. That area bounded by a line beginning at a point where State Highway 9 crosses the Shenandoah River, thence southerly along said river to its intersection with the Virginia/West Virginia State line, thence easterly and northerly along said State line to its intersection with State Highway 9, thence westerly along said highway to the point of beginning.

Wisconsin

(1) *High-risk area.* None.
(2) *Low-risk area.*

Outagamie County. That portion of the city of Appleton beginning at a point where Arlington Street intersects Newberry Street, thence south on Arlington Street to its intersection with Bluebird Lane, thence west on Bluebird Lane to its junction with an imaginary straight line projected across the golf course and west on said imaginary line

to its junction with Lawe Street, thence north on Lawe Street to its intersection with College Avenue, thence west on College Avenue to its junction with Newberry Street, thence west on Newberry Street to the point of beginning.

Waukesha County. N½ Sec. 2, and NE¼ Sec. 3, T. 7 N., R. 17 E; SE¼ Sec. 34, and S½ Sec. 35, T. 8 N, R. 17 E.

(b) The civil divisions and parts of civil divisions described below are designated browntail moth regulated areas within the meaning of the provisions of this subpart; and such regulated areas are hereby divided into high-risk areas or low-risk areas as follows:

Maine

(1) High-risk area.

Cumberland County. The towns of Brunswick, Cape Elizabeth, Cumberland, Falmouth, Freeport, Gray, Gorham, Harpswell, North Yarmouth, Pownal, Scarboro, Windham, and Yarmouth; the cities of Portland, South Portland, and Westbrook; and the offshore islands within the Casco Bay area of Cumberland County.

Sagadahoc County. The towns of Arrowsic, Georgetown, Phippsburg, West Bath, and Woolwich; the city of Bath; and the offshore islands within the Casco Bay area of Sagadahoc County.

York County. The entire county.

(2) *Low-risk area.* None.

Massachusetts

(1) *High-risk area.*

Barnstable County. The towns of Barnstable, Brewster, Chatham, Dennis, Eastham, Harwich, Orleans, Provincetown, Truro, Wellfleet, and Yarmouth.

(2) *Low-risk area.* None.

§ 301.45–2b [Reserved]

§ 301.45–2c List of hazardous recreational vehicle sites.

The recreational vehicle sites listed below are hereby designated as gypsy moth hazardous recreational vehicle sites within the meaning of the provisions of this subpart as indicated below.

(a) *Hazardous recreational vehicle sites.*

§ 301.45–3 Conditions governing the interstate movement of regulated articles from quarantined States.[3]

(a) A regulated article shall not be moved interstate from any high-risk area into or through any nonregulated area unless a certificate or permit has been issued and attached to such regulated article in accordance with §§ 301.45–4 and 301.45–7 of this part.

[3]Requirements under all other applicable Federal domestic plant quarantines must also be met.

(b) A regulated article shall not be moved interstate from any low-risk area into or through any nonregulated area when it is determined by an inspector that any life stage of the gypsy moth or browntail moth is on the regulated article, and the person in possession thereof has been so notified by an inspector, unless a certificate or permit has been issued and attached to such regulated articles in accordance with §§ 301.45–4 and 301.45–7 of this part.

(c) A regulated article originating outside of any high-risk area, except any regulated article in any low-risk area determined by an inspector to present a hazard of spreading the gypsy moth or browntail moth pursuant to paragraph (b) of this section, may be moved interstate directly through any high-risk area without a certificate or permit, if the point of origin of the article is clearly indicated by shipping documents, their identify has been maintained, and they have been safeguarded against infestation while in any high-risk area.

§ 301.45.4 Issuance and cancellation of certificates and permits.

(a) Certificates may be issued for any regulated article by an inspector if he determines that it is eligible for certification for movement to any destination under all Federal domestic plant quarantines applicable to such article and:

(1) It has originated in noninfested premises in a high-risk area and has not been exposed to the pests while within the high-risk area; or

(2) Upon the inspector's examination, he finds it to be free of the pests; or

(3) It has been treated under the direction of an inspector to destroy the pests in accordance with the treatment manual; or

(4) It has been grown, produced manufactured, stored, or handled in such a manner that no infestation would be transmitted thereby as determined by an inspector.

(b) Limited permits may be issued by an inspector to allow interstate movement of any regulated article under this subpart, to specified destinations for specified handling, utilization, processing, or for treatment in accordance with the treatment manual, when, upon evaluation of all of the circumstances involved in each case, the Deputy Administrator determines that such movement will not result in the spread of the gypsy moth or browntail moth becauser life stages of the moths will be destroyed by such specified handling, utilization, processing or treatment or the pest will not survive in areas to which shipped, and the requirements of all other applicable Federal domestic plant quarantines have been met.

(c) Certificate and limited permit forms may be issued by an inspector to any person for use for subsequent shipments of regulated articles provided such person is operating under a compliance agreement, and any such person may be authorized by an inspector to reproduce such forms on shipping containers or otherwise for the movement of regulated articles. Any such person may execute and issue the certificate forms or reproduction of such forms, for the interstate movement of regulated articles from the premises of such person identified in the compliance agreement if such person has treated such regulated articles to destroy infestation in accordance with the treatment manual, and if such regulated articles are eligible for certification for movement to any destination under all applicable Federal domestic plant quarantines. Any such person may execute and issue the limited permit forms, or reproductions of such forms, for interstate movement of regulated articles to specified destinations when the inspector has made the determinations specified in paragraph (b) of this section.

(d) Any certificate or permit which has been issued or authorized may be withdrawn by an inspector if he determines that the holder thereof has not complied with any condition for the use of such document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose certificate or permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the certificate or permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

§ 301.45–5 Compliance agreement and cancellation thereof.

(a) Any person engaged in the business of growing, handling, or moving regulated articles may enter into a compliance agreement to facilitate the movement of such articles under this subpart. A compliance agreement shall specify safeguards necessary to prevent spread of the gypsy moth and browntail

moth such as disinfestation practices or application of chemical materials. Compliance agreement forms may be obtained from the Deputy Administrator or an inspector.

(b) Any compliance agreement may be canceled by the inspector who is supervising its enforcement, orally or in writing, whenever he finds that such person has failed to comply with the conditions of the agreement. If the cancellation is oral, the decision and the reasons therefor shall be confirmed in writing, as promptly as circumstances permit. Any persons whose compliance agreement has been canceled may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving written notification of the cancellation. The appeal shall state all of the facts and reasons upon which the person relies to show that the compliance agreement was wrongfully canceled. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision, as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

§ 301.45-6 Assembly and inspection of regulated articles.

Persons (other than those authorized to use certificates or limited permits, or reproductions thereof, under § 301.45-4(c)) who desire to move interstate regulated articles which must be accompanied by a certificate or permit shall, as far in advance as possible, but no less than 48 hours before the desired movement, request an inspector to examine the articles prior to movement. Such articles shall be assembled at such points and in such manner as the inspector designates to facilitate inspection.

§ 301.45-7 Attachment and disposition of certificates and permits.

(a) If a certificate or permit is required for the interstate movement of regulated articles, the certificate or permit shall be securely attached to the outside of the container in which such articles are moved, except that, where the certificate or permit is attached to the waybill or other shipping document, and the regulated articles are adequately described on the certificate, permit, or shipping document, the attachment of the certificate or permit to each container of the articles is not required.

(b) All certificates or permits for the movement of regulated articles shall be furnished by the carrier to the consignee at the destination of the shipment.

§ 301.45-8 Inspection and disposal of regulated articles and pests.

Any properly identified inspector is authorized to stop and inspect, and to seize, destroy, or otherwise dispose of, or require disposal of regulated articles and gypsy moths or browntail moths as provided in section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd).

§ 301.45-9 Movement of live gypsy moths and browntail moths.

Regulations requiring a permit for and otherwise governing the movement of live gypsy moths and browntail moths in interstate or foreign commerce are contained in the Federal Plant Pest Regulations in Part 330 of this chapter.

Appendix—Gypsy Moth and Browntail Moth Program Manual [1]

Contents

Authorization and Notice
I. General Information—Gypsy Moth
A. Economic Importance
B. Distribution
C. Hosts
D. Life History
E. Description
F. Definition of Infestation
II. Survey Procedures—Gypsy Moth
A. Trapping Surveys
1. Detection—Area
2. Detection—Selected Sites
3. Delimiting
4. Monitoring—Assessing Population Trends
5. Distance Between Traps
6. Timing of Trapping Surveys
7. Training and Supervising Trap Tenders
a. Selection of Trap Sites
b. Marking Trap Locations
c. Adult Male Pheremone Trap and Lure
d. Patrolling Traps
e. Trap Removal
B. Scouting for Egg Masses
C. Defoliation Surveys
D. Handling Specimens for Determination
E. Records and Maps
III. Regulatory Procedures
A. Instructions to Inspectors
B. Authorized Chemicals
C. Approved Treatments—Gypsy Moth
1. Mobile Homes and Recreational Vehicles
2. Timber and Timber Products
Stone and Quarry Products
3. Trees and Shrubs
4. Hazardous Sites
(Mobile Home Parks and Recreational Sites)
(Timber and Timber Product Premises)
(Stone and Quarry Product Premises)
(Tree and Shrub Premises)
D. Approved Treatments—Trees and Shrubs—Browntail Moth
IV. Control Procedures—Gypsy Moth
A. Background
B. Authorized Pesticides
C. Approved Treatments
1. Aerial Application
2. Ground Application
D. General
E. Public Relations
F. Biological Control
V. Safety Precautions

[1] This manual supersedes the following which shall be discarded: 803-04.0000 Gypsy Moth—Survey (dated February 1977); *Except retain the pamphlet,* "Meet the Gypsy Moth." 805-04.0000 Gypsy Moth and Browntail Moth—Regulatory (dated August 3, 1976). 807-04.0000 Gypsy Moth and Browntail Moth—Control (dated April 1978).

Authorization

The gypsy moth and browntail moth Quarantine 45, as amended (7 CFR 301.45), sets forth conditions governing the movement of regulated articles. One of these provisions is the treatment of articles under the direction of an authorized inspector in accordance with administratively approved procedures. Procedures outlined in section III of this manual are administratively authorized for the treatment of the regulated articles. Other articles which may require treatment to prevent spread of the gypsy moth and the browntailmoth, as determined by an inspector, likewise may be treated in accordance with procedures contained herein. These treatment procedures are based on information developed by both State and Federal agencies.

Under the authority of the Organic Act (7 U.S.C. 147a) the Department may cooperate with the States or others to carry out measures to suppress or control the spread of plant pests.

Notice

Recommendations in this manual which involve the use of pesticides concern products which have been registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. Precautions on the pesticide label and all instructions in this manual must be carefully followed.

Plant Protection and Quarantine Programs personnel may not make any warranty or representations, expressed or implied, concerning the use of these pesticides and shall not be responsible for any loss, damage, or injury sustained as a result of the use of any pesticide as specified in this manual.

The use of trade names in this manual does not imply an endorsement of those products or of the manufacturers thereof by Federal/State pest control programs.

Dated: April 23, 1977.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs.

I. General Information—Gypsy Moth

A. Economic Importance

The gypsy moth, *Lymantria dispar,* Linnaeus, family Lymantriidae, is probably the most destructive insect

threatening or currently attacking hardwood forests and shade trees in the eastern United States. The larval or caterpillar stage of this insect is a leaf-eater capable of completely defoliating trees, resulting in reduced tree growth and often tree mortality as a result of excessive or repeated defoliation. Many deciduous forest, shade, fruit, and ornamental trees are susceptible to this insect. The later larval instars will also readily feed on conifers; killing the eastern hemlock for example, in one defoliation. Intangible losses include increased potential fire hazard, esthetic damage, and the impact as a public nuisance when large numbers of caterpillars occur in populated areas. The nuisance of millions of larvae in a resort area, village, or town cannot be expressed in terms of dollars; but it has historically been, and remains, the type of situation which attracts the public's attention and results in demands for the State and Federal Governments to take action.

Some indication of the impact, actual and potential, of this pest is shown by the fact that the southern New England States, New York, New Jersey, and Pennsylvania are continuing efforts on an annual basis to reduce damage by the gypsy moth in forested recreational and residential areas.

B. Distribution

Viable egg masses of the gypsy moth were introduced into this country at Medford, Massachusetts, in 1869. The purpose of this introduction was to develop a hardy race of silk-producing insects by crossing gypsy moths with silkworm moths. Spread of the insect was slow at first, but it was found in Rhode Island in 1901; Connecticut and New Hampshire in 1905; New York in 1912; and Vermont in 1915. Gradual spread was recorded over the next few decades in New Jersey, Pennsylvania and Michigan; with successful eradication efforts recorded during the intervening years to the early 1960's. The present known area of general infestation includes the New England States, New Jersey, and major portions of New York, Pennsylvania, Delaware, and Maryland. There are recently identified sites of infestation in areas outside the generally infested States where the most up-to-date methods will be used to eradicate this insect or the necessary control and regulatory measures will be used to reduce any hazard of further spread.

C. Host Plants

The gypsy moth larva is a general feeder on many kinds of trees and shrubs. Plants generally fall into four classes of preference as food. Among the most favored food plants for any larval instar are oaks of all types, apple, speckled alder, aspen, birch (except black and yellow), willows, linden, basswood, and larch. The later larval stages readily feed on all species of pine and spruse, hemlock, chestnut, blueberry, and beech. Less favored hosts on which larval development can be completed are cherry, elm, hickory, black and yellow birch, and maple. The larvae tend to avoid yellow or tulip poplar, ash, azalea, blackberry, catalpa, dogwood, elder, currant, holly, horsechestnut, poison ivy, balsam, butternut, grape, sycamore, and red cedar.

D. Life History

The gypsy moth has one generation a year. The insect overwinters in the egg stage, a period running from late July to mid-April. The female moth will lay her eggs in a cluster averaging approximately 500 eggs, but varying from 100 to 1,000, depending on the type of food available and population pressure. Egg hatching dates will vary widely according to local climatic conditions.

The normal hatching date in southern New Jersey is early April as opposed to mid-May in parts of New York and New England. The time of hatch in any given locality may spread over a 10 to 30 day period depending on egg mass location and local climatic conditions. For example, eggs exposed to the sun on a tree trunk will hatch from several days to a week earlier than eggs under a stone at the tree base.

Newly hatched larvae measure approximately 1.6 mm (1/16 inch) in length. They begin a random search for food when temperatures have moderated to above 16°C (60°F). When disturbed or in a high population density situation, the larvae will react to such stress by spinning down from the tree branches on silken threads. The insects are readily carried by the wind over considerable distances dependent on terrain, wind velocity, and other factors. This is a major source of natural spread, often exceeding distances of 16–24 kilometers (10–15 miles). Male larvae normally go through five instars and females through six. The larvae develop rapidly, and the amount of food consumed is greatest during the fifth instar. In light infestations, most feeding occurs at night. The pupal period will last about 10 days. The male moth emerges a few days earlier than the female. Mating occurs very soon after the females have emerged. Oviposition usually occurs near the empty pupal case. Once this function is completed, the female moth will die. Neither male not female adults feed.

E. Description

See the U.S. Department of Agriculture-Forest Service pamphlet, "Meet the Gypsy Moth." (Agriculture Information Bulletin No. 399.)

F. Definition of Infestation

An infestation of gypsy moth is considered established when one of the following criteria are met:

1. Trapping—The delimiting survey at a positive trap site yields a pattern of positive male moth recoveries in the year following the original find; or

2. Scouting—Inspection reveals the establishment of any other life stage of the gypsy moth in a susceptible area.

The area regarded infested will be 1.6 kilometers (one mile) beyond the site of each specimen recovery. Three consecutive negative surveys covering a span of 3 years will be required before eradication is declared.

When deemed necessary, a 1.6 kilometer (one-mile) radius from the point of specimen recovery will be regulated.

II. Survey Procedures—Gypsy Moth

The various types of survey provide information on the occurrence, abundance, and extent of gypsy moth populations.

Sex attractant or pheromone traps operated during the summer months are the most effective and economical method available for the detection of light infestations; to delimit infested areas; to check the results of control or eradication treatments; to determine the need for or intensity of egg mass survey; and to determine population trends.

Visual scouting techniques for egg masses are used to determine if an infestation has become established, or to determine population trends. This scouting is usually done after leaf-fall and in winter for best results.

Aerial defoliation surveys are conducted in the early summer, timed to coincide with pupation. This activity is recommended to determine the presence and extent of high population levels of gypsy moth.

A. Trapping Survey

1. *Detection—Area.* Trapping for detection purposes is conducted in areas well removed from known infestations. This usually involves covering a large area with a specific number of traps. The number of traps and the distribution pattern are based on the distance from

known infested areas, the likelihood of artificial introduction, hosts available, and financial resources available.

In those States where a uniform trapping array is planned, survey should occur in one-third of the total area in the State. The trap array will be one trap per 2.5 square kilometers (one square mile).

The areas designated for trapping within a State should be established by field personnel based on the location of resident Plant Protection and Quarantine Programs (PPQ) personnel, the availability of cooperator personnel, and the availability of part-time employees. The trap array within a State does not have to be restricted to a contiguous portion of the State to provide for trapping in one-third of the total area.

2. *Detection—Selected Sites.* The entire trapping program for many States may be restricted to selective site trapping. In this type of survey, special consideration should be given to those points or environs where infestations are most likely to be artificially introduced. Particular attention should be given to any location with a history of continuing commodity or vehicle movement from the generally infested area. State and Federal parks, campgrounds, tourist attractions, trailer courts, truck stops, and nurseries are examples of sites which should be considered for trap placement.

A trap array of one (1) trap per 2.5 square kilometers (one square mile) will provide an adequate survey in areas that present a high potential for infestation.

3. *Delimiting.* When a positive trap find is reported, a delimiting survey must be conducted the following year to determine if an infestation is present. If the original find is not too late in the season, a trapping survey of about 9 square miles will be conducted during the same season as the original find. This will better establish the area to be covered by the delimiting survey.

a. In the area of the positive trap find, 10, 12, or 31 traps per square kilometer (25, 32, or 81 traps per square mile) will be used in a 23.3 square kilometer (9 square mile) area. Three and one half traps per square kilometer (9 traps per square mile) should be used in a 41.4 square kilometer (16 square mile) area surrounding the core area. This area may be extended to 104 square kilometers (40 square miles).

b. One and one half traps per square kilometer (4 traps per square mile) can be used when an infestation is located over a large area (over 93 square kilometers (36 square miles)) and funds are limited. Usually, around 100 traps placed in a uniform distribution in a delimiting survey will give a fairly good picture of the location of the core of the infestation.

4. *Monitoring—Assessing Population Trends.* The pheromone trap is used to determine population trends along the leading edge of the area generally infested with gypsy moth.

Traps are placed at a rate of one per square kilometer (one and no more than two per square mile) in the 32 kilometer (20 mile) buffer zone from the area of detectable defoliation. (A larger area may be used based on historical information.)

Monitoring trapping can also be conducted in other areas where populations may be increasing, to assess risk.

5. *Distance Between Traps for Surveys.* The following table indicates distances for various trap densities.

Traps per square mile:	Distances between traps in feet
1	5,280
2	3,733
3	3,048
4	2,640
5	2,361
9	1,760
10	1,669
25	1,056
32	934
36	880
49	754
64	660
81	587

6. *Timing of trapping surveys.* Male gypsy moths emerge a few days earlier than the female and are usually present late in the season, after the females have completed their activity. At these times, there is no competition with the pheromone traps for attracting the male moth. When possible, trap placement should occur before the male moth is expected to emerge.

7. *Training and supervising trap tenders.* The correct placement of traps in a gypsy moth survey is essential to an effective program. The trapping season is only about 2 months long, and each trapper should be properly trained in trap placement procedures before the activity begins. Supervisors must teach the trap tender how to select good trap sites, to erect the traps properly and to mark trap sites in such a way that the traps may be found quickly for subsequent patrol and removal. After the traps are placed, each supervisor should periodically check to determine if the tender is checking all traps in the proper manner. Manpower limitations will dictate how often traps can be visited during the season.

A simple system should be developed to assist the supervisor in promptly locating trappers in the field. To be effective, the system should provide for a mutually convenient prearranged location used as a note station. The note will tell the supervisor where and when the trapper expects to begin the days activity. If changes in the planned route of travel occur, another note can be placed near the trap at the last scheduled site visited by the trapper. A simple and efficient system for trapping is to patrol traps in a numerical order. The date and time of inspection should be recorded on each trap visited. Each trap must have an exclusive number.

a. *Selection of Trap Sites.* The approximate trap location sites may be marked in advance on maps used in detection or delimiting surveys. The trapper should use discretion in selecting the optimum location for each trap in the vicinity of these mapped sites. Many factors enter into determining the location for traps in a given area, and these should be explained to the trapper prior to beginning the work. Several general rules to consider in selecting effective trap sites are as follows:

(1) Male moths usually follow wood edges and lines of tree growth. They do not frequent open areas where there are no trees or shrubs.

(2) Woodland edges are the best sites for trap placement. Traps generally are most effective when placed at or near a woodland corner. If there is a choice, place the trap on the windward side so prevailing wind currents will carry the scent into the woods.

(3) If there is no woodland within a reasonable distance (150 to 300 meters (500 to 1,000 feet)) from the mapped location, the best location for a trap is the end of a hedge row or tree line leading to a wooded area.

(4) Traps placed at chest height on a tree trunk are usually more effective than those on branches. In areas frequented by small children or cattle, the trap should be placed out of their reach.

(5) Traps should be placed in a shady area when available. Foliage or branches should not block the trap openings.

If possible, place the trap so that one end faces in the direction of prevailing winds.

The distance between traps will depend on the type of survey, the area to be surveyed, and the extent of favored host trees available.

Whatever the purpose of the survey, the traps must be placed in a uniform

array on a choice host or in a habitat preferred by the gypsy moth.

b. *Marking Trap Locations.* An adequate system for marking trap locations expedites trap tending as well as supervision. The trap marking system to be used combines the use of plastic ribbon and marking crayon. A length of ribbon, only the amount needed, is tied to a telephone pole, tree trunk, or other suitable object at the roadside. To the fullest extent possible, the marking ribbon should be placed so that it is readily visible when approched from either direction. In addition to the ribbon, the roadside pole, tree, or other object should be marked with crayon to indicate, with an arrow, the direction of the trap. The tree on which the trap is placed should be marked with a "T" on the side from which it is approached.

Brightly colored plastic tape has proven to be the most satisfactory ribbon marker. The marking crayon must be sufficiently soft to mark wet trees.

In urban areas where streets are named and houses are numbered, these addresses may be used rather than the tape and/or crayon markers. The trapper should also use restraint in placing ribbon markers at roadside rests, picnic areas, and other high use areas where the ribbon will detract from the site's appearance.

If traps are placed in areas close to homes, a contact should be made with the property owner, when the trappers presence may cause concern or attract attention.

c. *Adult Male Pheromone Trap and Lure.* The pheromone trap is designed to attract and retain the adult male gypsy moth. Disparlure is the common name of the synthetic sex attractant of the gypsy moth. It is a duplication of the natural attractant emitted by female moths to lure males for mating. Disparlure is incorporated into dispensers which are placed inside the trap as shown on next page and Attachment No. 1. At no time should the dispenser come in contact with the adhesive. Properly installed, the pheromone should remain active for the entire season without servicing.

Delta Insect Trap—Description and Assembly

The "Delta" trap is made of weather resistant polycoated paperboard. When assembled, the trap is approximately 18.3 centimeters (7.2 inches) long and is triangular in shape when viewed from the end. Each end has a baffled triangular opening that measures 3.2 centimeters (1¼ inches) along each edge.

Two of the inside surfaces are coated with insect trapping adhesive. For shipping and storage, these two surfaces are folded together.

A baited wick is to be attached to the third inside surface.

The trap is manufactured from a single piece of paperboard and is precreased or perforated along all bend lines.

The instructions shown on the following page are enclosed in each shipping carton.

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Assembly Instructions for "Delta" Insect Trap

1. Attach bait - See Figure 2.
2. Pull Trap open and assemble - See Figures 2 and 3.
3. Open Trap and mount - See Figure 4.
4. Trap may be mounted with soft wire through hole in top edge.
5. Materials required - stapler, hammer, nails, soft wire, pliers, and paper clips.

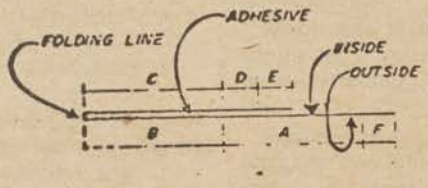


Figure 1
Trap as Received

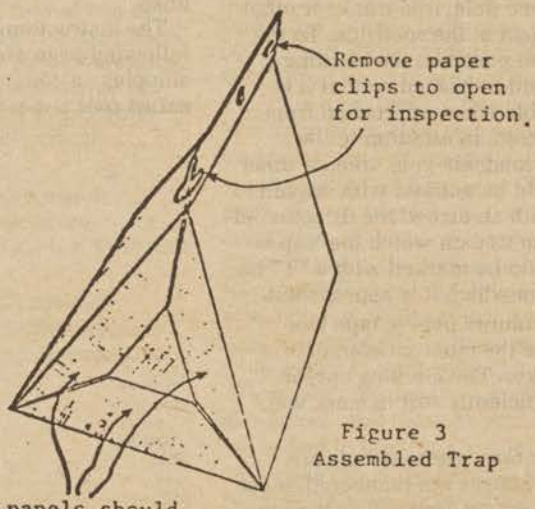


Figure 3
Assembled Trap

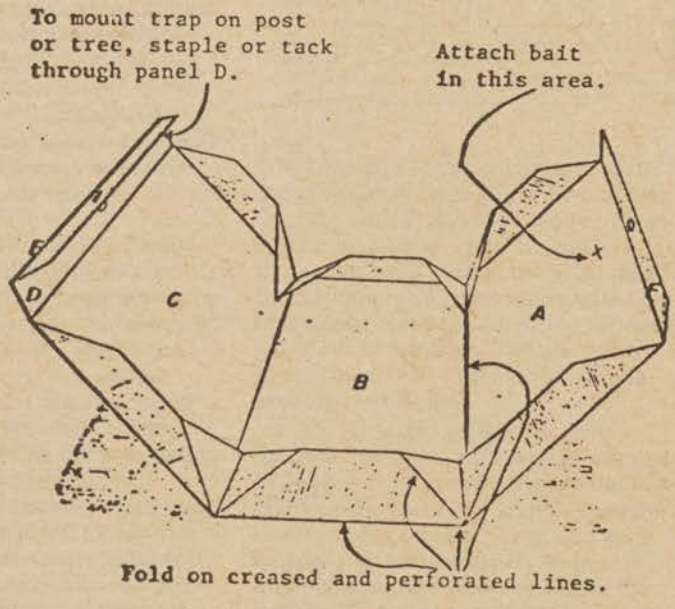


Figure 2
Open Trap

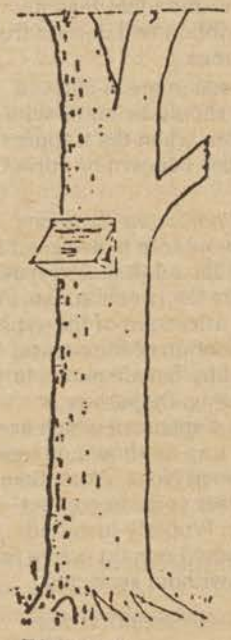


Figure 4
Trap Mounted on Tree

BILLING CODE 3410-34-C

d. *Patrolling Traps.* After a trap line is established, traps should be patrolled in a sequence which eliminates "dead-heading" or overlapping travel. The time between trap visits will depend on the initial trap distribution. Ideally, each trap should be visited at least once during the trapping season.

The steps in tending traps are as follows:

(1) Check trap for overall condition and possible presence of suspect insects. Replace badly damaged traps.

(2) When the trap contains a suspect moth, remove the trap without disturbing the specimen. Note on the trap the date of recovery and notify the supervisor according to local instructions.

(3) When a suspect gypsy moth is recovered, the find should be noted on the trap map and the field record form. The supervisor should determine that the trap records and mapped location are correct as soon as possible.

(4) Record the trap inspection by noting the date and time on the trap. Note the date and time on the trap record provided for this purpose.

(5) To avoid confusion, always be sure each trap is indentified by a number.

e. *Trap Removal.* At end of trapping season remove the trap and examine it to determine whether any specimens resembling the gypsy moth have been captured. If a trap contains a suspect moth, see section I, D. (page 12). Leave no litter at the trap site. Traps should be collected and disposed of by burning in an incinerator or burying at a sanitary landfill. Remove all materials used to mark sites *except* where markings will help to identify a positive site for subsequent inspection and egg mass surveys.

B. *Scouting for Egg Masses.* Egg mass surveys are usually conducted for one of the following reasons: to determine intensity of infestations, to determine the need for regulatory action to prevent artificial spread, and to observe population trends as a guide to control measures to prevent defoliation.

Egg masses normally are deposited in sheltered spots. A well established infestation may exist in which few, if any, egg masses are easily seen. They are found on trees under loose bark, in crevices and cavities, as well as on tree trunks and under tree limbs. Egg masses are also found on the underside of any type ground litter, on stones, in stone walls, in dumps, under the siding and eaves of buildings—in fact, anywhere in the immediate vicinity of tree growth.

There is little likelihood of finding egg masses in lightly infested areas due to the enormity of the problem of adequately examining all possible locations where the eggs may be deposited. Egg mass surveys to determine lightly infested areas are often futile.

Visual surveys for egg masses should be conducted during the winter months after leaf-fall with priority given to preferred host areas. Larval skins and pupal cases may be found even when egg masses are not readily observed.

The intensity of egg mass surveys will depend upon the objective, the nature of the terrain, and tree growth. Personnel involved with egg mass survey should adapt the intensity of their survey to the local situation. The recovery of a single male moth at a site far removed from any known infestation will usually prove negative for egg mass scouting. Such an area should receive a cursory inspection with emphasis on preferred food trees. Positive male moth recoveries in two or more traps in such an area, or multiple recoveries in one trap, should be more intensively surveyed. A more intensive survey is conducted by examining tree growth and ground litter, working in the immediate vicinity of the trap site. Where two or more single moth recovery sites are involved in close proximity, a cursory examination of likely areas lying between the trap locations may be productive. Regardless of the survey situation, the preferred flight path of the male, the usual method of roadside trap placement, prevailing wind currents, and the presence of referred food trees should be considered in any scouting effort. When the presence of egg masses is established, the area of infestation should be delimited.

When egg mass surveys are conducted for the purpose of determining population levels, a strip method of scouting woodland may be used, confined principally to areas of preferred host plants and where site conditions are favorable for rapid build-up of the insect. A classification of infestations is based on the following range:

Egg Masses		Level of Infestation
Per hectare	per acre	
1 to 124	1 to 50	Light infestation.
125 to 1,230	51 to 499	Medium infestation.
1,231 or more.	500 or more	Heavy infestation.

Severe defoliation may be expected in heavily infested areas and defoliation to a lesser degree usually occurs in areas classified as a medium infestation, particularly in those portions having 495 or more egg masses per hectare (200 or more egg masses per acre).

The criteria listed above are provided as a guide. No criteria have been developed, to date, which can uniformly predict to what extent defoliation will occur at a given level of gypsy moth population.

Egg mass surveys are also conducted in the environs of establishments handling regulated products to guide necessary quarantine action. The intensity of this activity depends on the type of products regulated and the associated hazard of spread, the terrain and tree growth involved, and the result of larval trapping surveys.

C. Defoliation Surveys. Defoliation surveys are made from aircraft to determine general population trends and the degree of defoliation over large areas. New infestations of gypsy moth have been discovered during aerial defoliation surveys for other forest insects. Defoliation will usually peak from late June to early July. All defoliated areas should be mapped by the aerial observer and followed up by observations on the ground to verify the presence of the gypsy moth. When the gypsy moth is found, all such areas should be recorded on maps and reported through regular channels.

Aerial defoliation surveys are often provided by the U.S. Forest Service and cooperating State agencies to determine general insect population trends. Information from these activities should be utilized by PPQ to determine the possible presence of the gypsy moth in remote areas where unexplained defoliation has occurred.

D. Handling Specimens for Determination. When a suspect gypsy moth is recovered, the entire trap should be removed with the specimen undisturbed. The sticky material used to retain the male moth will often destroy the specimen if removed in the field. The specimen, in the trap, should be forwarded to the designated primary identifier. Mailing tubes should be provided to each trapper with preaddressed mailing labels at the beginning of the trapping season. Always provide the following information with each suspected positive trap: State, county, town, trap number, collector, date, and collection number.

Caterpillars, pupae, and egg masses are submitted in 70 percent alcohol. A label is always placed in vials with specimens showing the collection number printed with soft lead pencil preferably on bond paper.

PPQ Form 390 Specimens for Determination, should accompany each specimen submitted from the field.

E. Records and Maps. 1. *Records.* A record should be maintained of all positive trap locations including any descriptive information needed to assist in locating the traps; dates when the traps are placed, inspected, and removed; and a record of trap catches.

A record should also be made of surveys conducted for egg masses. Local guidelines should be followed for proper record maintenance.

In developing local guidelines for survey records, it is best to determine what information is required and the most efficient manner for recording each item.

2. *Maps.* For detection surveys, county or State highway road maps are usually satisfactory. The trap pattern will determine what map scale is desirable.

A satisfactory map for delimiting surveys is a U.S. Geodetic Survey quadrangle, with a scale of 1:24,000. A recent map showing forest overlay and new construction is preferable. Maps of a different scale may be used.

Each trap location should be consecutively numbered within a given township, county, work unit, or other designated area. The type, number and distribution of maps will vary according to local needs.

When trap maps are prepared in advance, a system should be devised which will assure a proper distribution of traps. This may be accomplished through the use of a ruler, calipers, a grid overlay, or by following the square mile blocks provided on many State maps. When this system is followed, however, adjustments should be made in the field when needed to place the trap in a favorable site closest to the original mapped position. Corrections should be made on all field maps to indicate actual trap locations.

When the trapping map is not prepared in advance of the survey season, trap sites are marked on the map as they are selected in the field. After the trap line has been completed, additional copies of the map are made as needed. Adjustments should be made in the route of travel to conserve time and distance.

When supplemental traps are added to existing positive trap sites as a means of intensifying the overall distribution pattern, these should have the supplemented trap number with a letter added. If trap 25 is supplemented, the first trap will be 25a, then 25b, 25c, etc.

A map legend should be stapled or glued to each survey map indicating the program starting date, completion date, name of trapper, and any other pertinent information required at the local level.

III. Regulatory Procedures

A. *Instructions to Officers.* Officers must know and follow instructions in this manual as a basis for the treatment or other procedures to be followed in authorizing the movement of regulated products. It will serve as a basis for explaining such procedures to persons interested in moving products affected by the quarantine regulations. Only the treatment procedures authorized herein will be utilized.

Officers should be familiar with the following for regulatory purposes:

Plant Protection and Quarantine Treatment Manual
Aerial Application-Planning (807–52.0000)
Aerial Application-Operations (807–53.0000)
Instructions for Calibration of Ground Equipment (807–54.0000)
Formulas and Other General Information Useful in Control Operations (807–55.0000)
Gypsy Moth and Browntail Moth Quarantine 7 CFR 301.45

Officers should furnish complete information to anyone interested in moving regulated products. Shippers should be advised of all authorized procedures available and should be guided by the inspector in the selection of the proper procedure.

B. *Authorized Chemicals.* The following chemicals are authorized for treatment of regulated articles for gypsy moth as specifically listed on the pesticide label or in this manual.

Ovicides
Creosote
Methyl Bromide
Larvicides
Carbaryl (Sevin®)
Trichlorfon (Dylox®)
Acephate (Orthene®)
Diflubenzuron (Dimilin®)

*C. Approved Treatments—Gypsy Moth.*1. *Mobile Homes and Recreational Vehicles.*

a. Cleaning and Inspection

General. This inspection procedure can apply to both mobile homes and recreational vehicles. However, since the movement of recreational vehicles is usually contingent upon treatment of the site, the procedure is addressed to mobile homes. The inspection of mobile homes is difficult and time consuming. Thorough inspection is necessary to assure that all visible infestation has been removed from the vehicle and its associated equipment. Since we cannot be sure that all egg masses have been found, a limited permit is used whenever a mobile home is moved from a hazardous site to a point outside the regulated area.

Special Equipment. Flashlight, small hand mirror.

Method. (1) *Exterior of mobile home.* (a) Inspect the roof and eaves, window sills (top and bottom), fuse boxes, electrical connections, propane gas tanks, and other appendages.

(b) Inspect accessories, such as sheds, which may be used as storage and then dismantled to accompany the vehicle to its new destination. The interior as well as the exterior of such building should be inspected.

(c) Inspect fences used around a mobile home which may also be dismantled to accompany the vehicle.

(d) Inspect steps, trailer hitches, expandable rooms, and patios.

(e) Inspect wheels, including inside of rims and brake drums, which sometimes shelter egg masses.

(f) Inspect blocks or other material used to hold the vehicle in place.

(g) Inspect gardens and flower boxes if the mobile home has been in place for some time. It should be determined from the owner if any of these items will be moved with the mobile home.

(2) *Underside of mobile home.* Crawl beneath the mobile home. Care must be taken to examine all floor boards, frame, tubing, corners, interior of I-beams, and any other recess that could shelter an egg mass. Use flashlight and hand mirror to assist inspection.

(3) *Interior of mobile home.* The interior of the mobile home should be searched for any articles that may have been out of doors during the period of egg disposition. Inspect such articles for egg masses. Note: Permission of owner or agent must be obtained before interior inspection.

Special Information. If egg masses are found on a mobile home or its accessories, see below.

If larvae are found, see below.

All life stages of the gypsy moth should be removed from a mobile home after treatment and before its movement.

Visual and trapping surveys, in the vicinity of suspect mobile homes which have moved under limited permit, should be conducted at destination to the extent possible.

Treatments to be applied as needed.

b. *Insecticidal Treatment—Egg Masses.*

Material. Creosote—a clear, transparent formulation is preferred.

Equipment. Small brush, scraper.

Method. All egg masses on articles being inspected must be thoroughly saturated with creosote before removal. All egg masses should be removed after treatment but prior to movement.

Limitation. Creosote should not be used on marble, due to the possibility of staining.

c. *Insecticidal Treatment—Larvae.*

Material. Carbaryl.

Dosage. Actual insecticide: 12 gr. per liter (.01 lb. per gal.) Coverage 12 sq. meters per liter (5009 sq. ft. per gal.).

Formulation

Sevin[R] 80S 15 gr. per liter (⅛ oz. per gallon) (1¼ tablespoons per gallon).

Method. Spray all surfaces. Avoid treating in the presence of people or pets. Food should be covered.

Special Information The pH of water used in mixing pesticides must be checked and adjusted within a range of pH 6.0–7.0 prior to mixing.

2. *Timber and Timber Products Stone and Quarry Products.* a. *Cleaning and Inspection. General.* Piece-by-piece inspection can be used advantageously for small lots of regulated articles at establishments which ship infrequently and for noncommercial shipments. This method may be used for assembly-yard inspection of articles such as collected native plant material and for timber products.

Method. Inspect all exposed surfaces and crevices where egg masses may be attached. practicular attention should be directed to dunnage and crating material when stone and quarry shipments are involved.

If egg masses or larvae are found, see below.

b. *Insecticidal Treatment—Egg Masses.* Use treatment shown in section III., C.l.b. on page 17.

c. *Insecticidal Treatment—Larvae.* Use treatment shown in section III., C.l.c. on page 17.

d. *Fumigation. Material* Methyl bromide at normal atmospheric pressure (NAP).

Temperature	Dosage grams/meter^3 (lbs/1000 ft^3)	Exposure Hours	Concentration readings - Grams/meter^3 or oz./1000 ft^3 1/2 hr	4 hr	8 hr	12 hr	16 hr
-17 -9°C(0-15°F)	140 (8 3/4)	4	98	65	—	—	—
	80 (5)	8	60	40	28	—	—
	60 (3 3/4)	16	45	30	21	21	18
-8 -0°C(16-32°F)	100 (6 1/4)	4	75	50	—	—	—
	60 (3 3/4)	8	45	30	21	—	—
	52 (3 1/4)	16	38	26	18	18	15
1 -10°C(33-50°F)	72 (4 1/2)	4	54	36	—	—	—
	52 (3 1/4)	8	38	26	18	—	—
	40 (2 1/2)	16	30	20	14	14	12
10°C up (50°F up)	56 (3 1/2)	4	42	28	—	—	—
	40 (2 1/2)	8	30	20	14	—	—
	32 (2)	16	24	16	12	12	10

Method. A thermal conductivity unit will be used when fumigating under tarps. It is important that the enclosure be measured carefully to insure that the proper amount of fumigant is administered. Tarpaulins or other enclosures must be as gastight as possible. Fans should be run until equal distribution of the fumigant within the enclosure is noted on the TC unit. See also PPQ Treatment Manual.

Special Information. Fumigations below 5°C (40°F) are not recommended.

Certification Period. Until next egg-laying season, if not exposed to reinfestation.

3. *Trees and Shrubs.* a. *Cleaning and Inspection. General.* Piece-by-piece inspection can be used advantageously for small lots of regulated articles at establishments which ship infrequently and for noncommercial shipments. This method may be used for assembly-yard inspecton of articles such as collected native plant material and for timber products.

Method. Inspect all exposed surfaces and crevices where egg masses may be attached. Particular attention should be directed to dunnage and crating material when stone and quarry shipments are involved.

If egg masses or larvae are found, see below.

b. *Insecticidal Treatment—Egg Masses.* Use treatment shown in section III, C.1.b. on page 17.

c. *Insecticidal Treatment—Larvae.* Use treatment shown in section III, C.1.c. on page 17.

d. *Fumigation.*

Material. Methyl bromide at normal atmospheric pressure (NAP). (Must *not* contain chloropicrin.)

Temperature	Dosage Grams/meter^3 (lbs/1000 ft^3)	Exposure hours	Concentration Readings- 1/2 hour	Grams/m^3 (oz/1000 ft^3) at end
Schedule I Long exposure	Normal Atmospheric Pressure (NAP)			
5-9°C(40-49°F)	56 (3.5)	4.5	42	28
10-15°C(50-59°F)	43 (3.0)	4.0	36	24
16-20°C(60-69°F)	40 (2.5)	3.0	30	20
21-23°C(70-74°F)	32 (2.0)	2.5	24	16
24°C up(75°F up)	24 (1.5)	2.5	18	12
Schedule II Short exposure	NAP			
5-9°C(40-49°F)	80 (5.0)	2.5	60	40
10-15°C(50-59°F)	64 (4.0)	2.5	48	32
16-20°C(60-69°F)	48 (3.0)	2.5	36	24

Method. A thermal conductivity unit will be used when fumigating under tarps. It is important that the enclosure be measured carefully to insure that the proper dose of fumigant is calculated. Tarpaulins or other enclosures must be as gastight as possible. Plants in a dormant state are generally more tolerant to fumigation. When trees and shrubs are treated, wet rags or other means of introducing moisture into the chamber is required. Fans should be run until equal distribution of the fumigant is noted on the TC unit. See also PPQ Treatment manual.

Special Information. This schedule is also effective against all stages of Japanese beetles.

Precautions. There is evidence that some evergreens, especially narrow-leafed and some azaleas may be injured, under certain circumstances, by this treatment. Plant tolerance tests to methyl bromide have been conducted on most species, and this information is available in the "Handbook of Plant Tolerances to Methyl Bromide."

Certification Period. Until next egg-laying season, if not exposed to reinfestation.

4. *Hazardous Sites.* (Includes: Mobile home parks and recreational sites, timber and timber product premises, stone and quarry product premises, and tree and shrub premises.)

a. *Inspection.* Regulated articles may be moved without individual inspection and treatment if the articles and the site on which they are located have been determined not to present a hazard of spread of the infestation.

Determination of hazard—Sites and their environs will be inspected for living stages of gypsy moth. Inspections for egg masses should be made when visibility is not hampered by tree foliage.

The following guidelines are to be used to determine the hazard of any site. Topographic and vegetative conditions may vary the distance figures. The final determination of the hazard present in any site rests with the officer.

Guidelines—a. One or more egg masses found on the articles or within 3 meters (10 feet) of the articles.

b. Twelve (12) or more egg masses per hectare (5 per acre) found within approximately 30 meters (100 feet) of the articles.

c. Heavy larval infestations found within 1600 meters (1 mile) which, in the opinion of the inspector, could result in infestation through blow-in or larval migration onto the site.

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b. Insecticidal Treatment - Ground Application

Material and Dosage

MISTBLOWER

MATERIAL		MIXING DIRECTIONS Small amt.	Large Amount	APPLICATION RATE	DOSAGE (ACTUAL INSECTICIDE)
carbaryl	Sevin[R] 80S sticker* water	60 grams 3.75 ml 1 liter	11.34 kg. (25 lbs.) 710 ml. (24 oz.) 189.25 liters (50 gallons)	Use sufficient mix to obtain good coverage. (Approx. 5 gal./acre)	2.24 kg per hectare (2 lbs. per acre)
diflubenzuron	Dimilin[R] W-25 water	1.45 grams 1 liter	272.2 grams (0.6 lbs.) 189.25 liters (50 gallons)	Use sufficient mix to obtain good coverage. (Approx. 5 gal./acre)	16.8 grams per hectare (0.015 lb. per acre)
acephate	Orthene[R] 75% water	32 grams 1 liter	6.05 kg.(26.6 lbs.) 189.25 liters (50 gallons)	Use sufficient mix to obtain good coverage. (Approx. 5 gal./acre)	1.12 kg. per hectare (1 lb. per acre)
		HYDRAULIC SPRAY EQUIPMENT			
carbaryl	Sevin[R] 80S sticker* water	1.5 grams 3.75 ml 1 liter	567 grams (1 1/4 lbs.) 1.4 liter (3 pints) 378.5 liters (100 gallons)	Thoroughly wet the foliage. (Approx. 100 gal./acre)	1.12 kg. per hectare 1 lb. per acre
acephate	Orthene[R] 75% water	0.8 grams 1 liter	303 grams (10.7 oz.) 378.5 liters (100 gallons)	Thoroughly wet the foliage. (Approx. 100 gal./acre)	561 grams per hectare (1/2 lb. per acre)

* Pinolene or Chevron stickers are comparable in effectiveness.

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Equipment. Mistblowers, portable, or truck-mounted hydraulic sprayers, and hand-operated sprayers.

Method. Treat the infested portions of the site. Treat the environs of the site to a depth equal to the effective range of the spray equipment in use. A minimum depth of 21 meters (70 feet) will usually suffice to keep migrating late instar larvae from reinfesting the site. If reinfestation does occur, additional treatments may be necessary. In heavily infested sites, two applications, with a 7–10 day interval may be necessary.

Seasonal Limitation. Proper timing of the treatment is essential. The normal larval period is from about May 1 to June 15—a few days earlier in southern sections of the infested area and a few days later in more northern sections. The insecticide should not be applied until general egg hatch is complete in the area. Applications should be made when first, second, and third instar larvae are present. Best results are obtained if application can be delayed until the foliage of white oaks or other preferred hosts is ⅓ to ½ grown. When practical, applications should be made immediately prior to movement of infested articles.

Certification Period. Until the next egg-laying season, if not exposed to reinfestation.

Special Information. Ground treating of mobile home parks is not generally recommended, because of the public relations problems. If a mobile home park is treated, the same procedures apply. Campgrounds can generally be treated adequately by truck-mounted ground equipment. Coverage of the environs, however, will be limited compared to aerial application.

Carbaryl—Avoid using around beehives or in areas frequented by bees.

The pH of water used in mixing pesticides must be checked and adjusted within a range of pH 6.0–7.0 prior to mixing. The pH should be adjusted with commercially available phosphoric acid (85 percent). Generally, 31 ml. (one ounce) of phosphoric acid will adjust 1900 liters (500 gallons) of water from a pH of 9.0 to the acceptable level.

Additional Information. With mist blower application, saturation of foliage with the spray mixture should be avoided. At best, it is virtually impossible to evenly apply 1 pound of pesticide per acre to tree foliage by mist blower. The aim is to obtain an even distribution of pinhead-size droplets on the foliage. Instructions for must blower calibration are found in manual 807–54.8000. The techniques of mist blower operation are beyond the scope of this manual. Such operations should be directly supervised by experienced personnel who can thus properly train inexperienced personnel.

In using hydraulic ground equipment, the spray mixture is applied to thoroughly wet the foliage—keep dripping of the spray mixture from treated foliage to a minimum.

Water-base sprays may dry out prior to contact with the foliage under conditions of high temperatures and/or low relative humidity. Ground personnel should be alerted to detect such occurrences.

Carbaryl has a residual effectiveness for 7–10 days, Dylox for 3–5 days, when applied under similar environmental conditions. Field experience indicates that Dylox should not be applied to wet foliage or when rain may occur within 8 hours after application; rain occurring 2 hours after carbaryl application should not adversely affect the effectiveness of the material. In comparing pesticide costs, remember to include costs of additional materials that would be required with each pesticide, such as sticker or kerosene diluent.

BILLING CODE 3410-34-M

c. Insecticidal Treatment - Aerial Application

Material and Dosage

Material	Formulation	Spray mixture - per hectare (per acre)	Application rate	Dosage - Actual Insecticide
carbaryl	Sevin[R] 4 oil	Sevin[R] 4 oil 2.34 liters (1 quart) Kerosene - .58 liters (8 oz.)	2.92 liters per hectare (40 oz. per acre)	1.12 kilograms per hectare (1 pound per acre)
	Sevin[R] 80 S	Sevin[R] 80S 1.4 kilograms (1 1/4 lbs.) Sticker - 291 ml (4 oz.) Water - to make 9.35 liters (1 gallon)	9.35 liters per hectare (1 gal. per acre)	1.12 kilograms per hectare (1 pound per acre)
trichlorfon	Dylox[R] 1.5 oil	Apply undiluted	6.23 liters per hectare (5.33 pints per acre)	1.12 kilograms per hectare (1 pound per acre)
diflubenzuron	Dimilin[R] W-25*	67.22 grams (0.06 lb.) Water 4.68 liters (1/2 gallon)	4.68 liters per hectare (1/2 gallon per acre)	16.81 grams per hectare (0.015 lb. per acre)
acephate	Orthene[R] 75%	1.12 kilograms (1 lb.) Water - to make 4.67 liters (1/2 gallon)	4.67 liters per hectare (1/2 gal. per acre)	840 grams per hectare (0.75 lb. per acre)

*For eradication treatments, see section IV, C. 1. for increased water.

BILLING CODE 3410-34-C

Method. Aircraft should be used whenever possible to apply insecticides for regulatory purposes on mobile home parks and campgrounds since better insecticidal coverage is obtained.

Seasonal Limitation. Proper timing of the treatment is essential. The normal larval period is from about May 1 to June 15—a few days earlier in southern sections of the infested area and a few days later in more northern sections. Insecticides should not be applied until general egg hatch is complete in the area. Applications should be made when first, second, and third instar larvae are present. Best results are obtained if application can be delayed until the foliage of white oaks or other preferred hosts is ⅓ to ½ grown.

Certification Period. Until the next egg-laying season, if not exposed to reinfestation.

Special Information. Carbaryl—Avoid using around beehives or in areas frequented by bees.

The pH of water used in mixing pesticides must be checked and adjusted within a range of pH 6.0–7.0 prior to mixing. The pH should be adjusted with commerically available phosphoric acid (85 percent). Generally, 31 ml. (one ounce) of phosphoric acid will adjust 1900 liters (500 gallons) of water from a pH of 9.0 to the acceptable level.

Water-base sprays may dry out prior to contact with the foliage under conditions of high temperatures and/or low relative humidity. Ground personnel should be alerted to detect such occurrences.

Before and after application of Sevin 4 Oil, flush entire aircraft spray system with kerosene until system is clean. If Dylox 1.5 Oil is to be used, flush the entire aircraft spray system before and after application with *water;* drain all excess water from the system before filling with Dylox 1.5 Oil.

Carbaryl has a residual effectiveness for 7–10 days, Dylox for 3–5 days, when applied under similar environmental conditions. Field experience indicates that Dylox should not be applied to wet foliage or when rain may occur within 8 hours after application; rain occurring 2 hours after carbaryl application should not adversely affect the effectiveness of the material. In comparing pesticide costs, remember to include costs of additional materials that would be required with each pesticide, such as sticker or kerosene diluent.

Diflubenzuron—restricted to forest use (infrequently or sparsely populated areas).

D. *Approved Treatments—Trees and Shrubs—Browntail Moth.* 1. *Cleaning and Inspection.* Inspect leaves (green or dry) for webs, larvae, or egg clusters. Remove and destroy any infested leaves.

2. *Fumigation.*

Material and Dosage. Methyl bromide at normal atmospheric pressure (NAP). (Must not contain chloropicrin.)

Temperature	Dosage Grams/meter^3 (lbs/1000 ft^3)	Exposure hours	Concentration Readings- 1/2 hour	Grams/m^3 (oz/1000 ft^3) at end
Schedule I Long exposure Normal Atmospheric Pressure (NAP)				
5-9°C(40-49°F)	56 (3.5)	4.5	42	28
10-15°C(50-59°F)	43 (3.0)	4.0	36	24
16-20°C(60-69°F)	40 (2.5)	3.0	30	20
21-23°C(70-74°F)	32 (2.0)	2.5	24	16
24°C up(75°F up)	24 (1.5)	2.5	18	12
Schedule II Short exposure NAP				
5-9°C(40-49°F)	80 (5.0)	2.5	60	40
10-15°C(50-59°F)	64 (4.0)	2.5	48	32
16-20°C(60-69°F)	48 (3.0)	2.5	36	24

Method. A thermal conductivity unit will be used when fumigating under tarps. It is important that the enclosure be measured carefully to insure that the proper dose of fumigant is calculated. Tarpaulins or other enclosures must be as gastight as possible. Plants are generally more tolerant to fumigation in a dormant state. When trees and shrubs are treated, wet rags or other means of introducing moisture into the chamber is required. Fans should be run until equal distribution of the fumigant is noted on the TC unit. See also PPQ Treatment manual.

Special Information. This schedule is also effective against all stages of Japanese beetles.

Precautions. There is evidence that some evergreens, especially narrow-leafed and some azaleas may be injured, under certain circumstancs, by this treatment. Plant tolerance tests to methyl bromide have been conducted on most species, and this information is available in the "Handbook of Plant Tolerances to Methyl Bromide."

Certification Period. For the shipment if protected from reinfestation.

IV. Control Procedures—Gypsy Moth

A. *Background.* The control phase of the gypsy moth program is one of containment providing: (1) Eradicative treatments of isolated infestations found in nonregulated territory and of infestations within a suppressive area; (2) suppression treatments in nonregulated areas in the periphery of the generally infested area. Responsibility for most of the control efforts to suppress outbreak populations within the generally infested area rests with the States. Information on control of the gypsy moth for regulatory purposes is contained in section III of this manual.

Significant changes in control procedures or use of other than authorized pesticides must not be arbitraily made in the field. Experience may indicate that a particular modification would be of value in accomplishing the objective of a control program. In such cases, consult your supervisor. If a decision is not within his authority, he will know the proper office to contact.

Formulations of several chemical pesticides are currently registered with EPA for control of gypsy moth. The pesticides carbaryl, diflubenzuron, trichlorfon, and acephate have been primarily used in programs involving PPQ participation. These formulations are approved by PPQ for use on gypsy moth control programs.

While certain authorized pesticides can be used in areas involving food and forage crops, efforts should be made to keep spray deposits in such areas at a minimum consistent with attaining the desired objective of the treatment. If conditions favor drift into nontarget areas, treatment should cease. Eradication treatments should be monitored to determine if residues are present. People in the treatment areas must be notified prior to the program. An extensive public relations program is

necessary when treatments are planned over residential areas. The objectives of the treatment and the description of the chemicals should be included. (Diflubenzuron is for forest use only.)

Carbaryl is highly toxic to bees. Generally, arrangements are made with the appropriate official of the cooperating State involved in the treatment program to insure that the domestic bee problem is satisfactorily handled. If bee hives are temporarily moved from the area scheduled for treatment, a minimum of one mile outside the spray boundaries is suggested. Bees sometimes fly several miles from the apiary, but as the distance to a treated area increases, the hazard decreases. It is not necessary to remove honey bee colonies from areas that are to be treated with diflubenzuron or trichlorfon.

In recent years pollen traps installed at the entrances of bee hives have been used with some success in lieu of moving the hives. The traps prevent pesticide-contaminated pollen from being carried into the hives. Information on these traps is available from PPQ District Offices.

A Federal Bee Indemnification Program administered by the Agricultural Stabilization and Conservation Service (ASCS) provides for reimbursement to bee owners who sustain bee losses due to Federal-State treatment programs. This indemnification places certain responsibilities upon PPQ, ASCS, and bee owners before payments for bee losses are considered. PPQ District Offices should be aware of current policy and procedures related to the indemnification program and insure that fulfillment of PPQ's responsibilities is adequately considered in program planning. Guidelines on PPQ responsibility for preventing bee destruction are available from PPQ National Program Planning Staff, Hyattsville, Maryland.

Current pesticide labels contain more specific and detailed information than was required in the past. PPQ personnel charged with planning and directing pest control programs must be familiar with label information. Copies of current pesticide labels are available from the PPQ National Program Planning staff in Hyattsville, Maryland.

B. *Authorized Pesticides.* The following pesticides are authorized for control of gypsy moth in cooperative Federal-State programs as specifically listed on the pesticide lable or in this manual.

Common name:	Formulations
carbaryl	Sevin® Sprayable 80%.
	Sevin® 4 Oil.
trichlorfon	Dylox® 1.5 Oil.
diflubenzuron	Dimilin® W-25.
acephate	Orthene® Forest Spray.
	Orthene® Tree and Ornamental Spray.
pheromone	Disparlure 2.2% in gelatin microcapsules.
virus	Gypchek nucleopolyhedrosis virus.

C. *Approved Treatments—Gypsy Moth.* 1. *Aerial Application.* a. *Chemical Pesticides.* Use treatments shown in section III, C., 4.c. of this manual (page 25). Exception is diflubenzuron which must be applied at same rate, but mixed in 4.68 liters (½ gallon) water.

diflubenzuron Dimilin® W-25

Spray Mixture - per hectare (per acre)

67.25 grams (0.06 lb.)
Water 4.68 liters
(1/2 gallon)

Application rate

4.68 liters per hectare
(1/2 gallon per acre)

Dosage - Actual Insecticide

16.81 grams per hectare
(0.015 lb. per acre)

Dosages listed will be used to obtain control. Eradication programs (to reduce gypsy moth populations to below detectable levels) will require two applications of these pesticides 7–14 days apart when the larvae are active. Do not make more than two applications per year. This product restricted to forest use. Treatment must not be made to food or feed crops, pastures, urban areas, or residential areas.

b. *Disparlure—Gypsy Moth Male Confusion Technique in Isolated Infestation.* Use subject to approved experimental use permit.

Suppression of low-level populations of gypsy moth (less than 10 egg masses per acre) in isolated infestations can be used in an integrated pest management program. The micro encapsulated material is applied aerially 5 days after male pupation is noted and a second application at 14 days following the first. Methods development and other staff personnel must be consulted concerning the mixing, application, and evaluation of the treatments.

Formulation	*Spray mixture*	*Dosage—actual insecticide*
2.2% disparlure in gelatin microcapsules (NCR).	11.8 liters per hectare (1.25 gal. per acre). Add RA1645 latex sticker at 1% by weight of formulated material.	50 grams per hectare (20 grams per acre)

The formulated material must be agitated prior to mixing the sticker. Do not allow this material to settle in aircraft hopper overnight.

c. *Gypchek (virus)—Gypsy Moth Suppression in Integrated Program Utilizing Other Controls.* Suppression in gypsy moth populations below 2500 egg masses per acre has been attained by the use of the virus. In demonstration blocks, the virus may be used under the direction of methods development personnel. Careful selection of the areas to be treated and a method for evaluation is essential in the initial treatments with this new biological insecticide.

Gypchek Biological Insecticide consists of polyhedra of the gypsy moth nucleopolyhedrosis virus and inert ingredients. Care must be taken in the mixing and applications of this product.

Stickers and ultraviolet protectants may enhance performance of this product. Apply in sufficient spray mixture for thorough and uniform coverage. This spray mixture is for aerial application only. Application is at the rate of 2 gal. (U.S.) finished spray per acre. Use boom and nozzle systems designed to result in droplets with a mass media diameter of 150–400 microns. (For example: Beecomist 275 or flatfan 8006.)

Tank Mixture (per gallon)

Gypchek	Amount to result in 25.0 to 125.0 million gypsy moth potency units per acre.
Molasses	0.25 gallon.
Chevron Sticker	3 fl. oz.
Shade [R]	1.0 lb. (same amt. for 2 gal).
Water	0.72 gallon.

Important: Check pH of water from field source. If pH exceeds 7.5 or is below 5.5, add sufficient acid or base to adjust pH to approximately 7. *Never use chlorinated water in the spray formulation.*

Mixing sequence for conventional mixing equipment.

1. Fill tank with water and start agitation.

2. Add acid or base if necessary to adjust pH.

3. Add sunscreen (Shade [R]) by slowly pouring onto the surface of mixture under agitation. Avoid large lumps of powder.

4. Add molasses by slowly pouring into water and mix thoroughly.

5. Add sticker.

6. Add Gypchek. Mixing time can be reduced by premixing Gypchek with a small amount of water in a blender before adding to tank mix. Final formulation should be mixed for 10–30 minutes.

Directions for Use. For foliar protection from gypsy moth larvae make 2 applications 7 to 10 days apart at the rate of 25.0 to 125.0 million gypsy moth potency units per acre in sufficient water for thorough and uniform coverage. Stickers and ultraviolet protectants may enhance performance of this product.

Dosages listed will be used to obtain control. Eradication programs (to reduce gypsy moth populations to below detectable levels) will require two applications of these pesticides 7–14 days apart when the larvae are active.

2. *Ground Application.* Use treatments shown in section III, C.4.b. of this manual (pages 22–24). Dosages listed will be used to obtain control. Eradication programs (to reduce gypsy moth populations to below detectable levels) will require two applications of these pesticides 7–14 days apart when the larvae are active.

Diflubenzuron is restricted to forest use.

D. *General.* 1. *Size of Treatment Areas.* The size of the area to be treated will vary depending upon program objectives, degree and density of infestation, distance from other known infestation, tree growth and terrain, natural spread potentials, and other local conditions. In suppressive and in nonregulated areas, all woody growth should be treated to a minimum distance ½ mile from the infested sites. Where program objectives or local conditions so indicate, this minimum should be extended to one mile or more. Treatment of a larger area is indicated where infestation is well established and located in hilly terrain or higher elevations where the danger of spread of the insect is greater.

2. *Seasonal Limitations.* Formulations of the authorized pesticides are effective only against the larval stages of the gypsy moth. Proper timing of application is essential and is difficult to maintain in a large program. Actual spray dates will vary according to locality and insect development. The normal larval period of the moth is from about May 1 to June 15—a few days earler in southern sections of the infested area and a few days later in the more northern sections.

Pesticides should not be applied until general hatch has occurred within the area. Egg hatch period in a particular locality may extend over a period of 30 days. Generally, female larvae have six instars, male larvae have five instars. Spray applications are most effective when first, second, and third instar larvae are present; avoid treatment of late larval stages with these pesticides. Best results are obtained if applications are made when leaves of oak or other preferred host trees are ⅓ to ½ grown.

3. *Equipment.* Sevin 4 Oil and Dylox 1.5 Oil are restricted to aircraft appliction. Sevin Sprayable 80%, Dimilin, and Orthene can be applied by aircraft, mist blowers, and hydraulic spray equipment.

Due to variations of topography and woody growth in areas to be treated, more than one type of aircraft or ground equipment may be required. Multi-engine aircraft should be used to spray large unbroken forest areas and multi-engine or helicopters should be used over population centers. Small single-engine planes and helicopters should be used to treat scattered tree growth, hedgerows, and tree growth adjacent to sensitive areas. Such areas require precise, narrow-swath application. Truck-mounted mist blowers can be used for treating woody growth along roadsides and in residential sections or recreational areas. Backpack mist blowers or sprayers can be used in areas inaccessible to other types of ground equipment.

E. *Public Relations.* Publicity on program operations is handled at the local level by cooperating agencies, who develop rural and community contacts in the immediate area of operation through various communications media available. These activities must be coordinated between agencies concerned to provide uniform, factual information to all segments of public interest. An extensive public relations program is necessary when treating populated areas to inform the public about the pesticides being used. Information on pesticides is available from the manufacturers and the Hyattsville staff. All inquiries or complaints on program operations must be checked or investigated promptly and documented.

F. *Biological Control.* Many natural control factors reduce gypsy moth populations. Winter temperatures of −20°F. or lower kill eggs that are unprotected by snow or similar cover; and late spring frosts often reduce larval populations. Insectivorous birds feed to some extent on the caterpillars, and rodents eat larvae and pupae found on the forest floor. During severe outbreaks, when woodlands are entirely stripped of foliage, many larvae die of starvation. The "wilt," a polyhedral virus disease, attacks and kills caterpillars and pupae. During some seasons it kills an enormous number of caterpillars and reduces localized infestation.

Numerous species of gypsy moth parasites and predators have been imported from Europe and Asia and released in the infested area in this country. Eleven parasites and two predators have been established. They have been helpful in keeping populations reduced but have not been effective in preventng serious outbreaks and resultant damage.

Formulations of *Bacillus thuringiensis* (Bt), a bacterium that infects and kills many species of lepidopterous larvae, are regustered for control of gypsy moth. Bt has not been used operationally on PPQ control programs but has been used by some States on their control programs. The major objections to Bt to date have been the need for multiple applications to obtain foliage protection (which can still leave many larvae in the treated area) and the relatively high cost of the material compared to chemical pesticides.

An ongoing research and development program is studying and testing various potential controls other than conventional chemical pesticides. These include the synthetic sex pheromone dispalure, and sterile moths.

V. Safety Precautions

Personnel safety must a prime consideration at all times. Safety practices should be stressed in preprogram planning and supervisors must enforce on-the-job safety procedures.

Pesticides authorized for use vary in toxicity. If improperly used, they may injure people, wildlife, bees, etc. Specific safety precautions for each pesticide are listed on the product label. In addition, any special precautions listed in this manual shall be observed.

Keep pesticides in closed, properly-labeled containers in a dry place. Store them where they will not contaminate food or feed and where children and animals cannot reach them.

When handling a pesticide, follow all precautionary labeling.

Should there be contact through spillage or otherwise, wash immediately with soap and water. Should clothing become contaminated, launder before wearing again. Refer to PPQ Treatment Manual Section X for additional information.

Empty pesticide containers should be disposed of in an approved sanitary landfill, by incineration, or by other satisfactory methods approved by the Federal Environmental Protection Agency whereby they will not present a hazard or problem. Arrangements for disposal of such containers should be completed and thoroughly understood by all parties directly involved with a program prior to actual start of operations. PPQ District Offices should be consulted for pertinent information in States where operations are planned.

When applying a pesticide, it is essential to consider the potential impact of the pesticide on all components of the total environment which includes humans, crops, livestock, wildlife, aquatic life, and domesticated honey bees. Avoid contamination of lakes, streams, or ponds.

First Aid Suggestions

In case of accidental poisoning or as soon as any person shows symptoms of having been affected by any pesticides:

1. Remove the victim to a place where he/she will be safe from any further contact with the pesticide.

2. Cause the victim to lie down and keep quiet.

3. Call a physician and inform him/her of the name and formulation of the pesticide in use and as to any first aid given.

4. If needed, the local poison control center telephone number may be found on the inside front cover of the local telephone directory.

This proposal has been reviewed under the USDA criteria established to implement E.O. 12044, "Improving Government Regulations," and has been designated "significant." A Draft Impact Analysis Statement has been prepared and is available from PPQ, APHIS, Room 633, Federal Building, Hyattsville, MD 20782. The alternatives considered during the analysis are listed in the draft impact analysis statement. That list of alternatives is made part of this document by this reference to its availability.

Done at Washington, D.C., this 30th day of April 1979.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

[FR Doc. 79-14020 Filed 5-3-79; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service

[7 CFR Part 1207]

Potato Research and Promotion Plan; Proposed Expenses and Rate of Assessment

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rulemaking.

SUMMARY: This notice invites written comments on proposed expenses for the functioning of the National Potato Promotion Board. It would enable the Board to collect assessments from designated handlers on all assessable potatoes and to use the resulting funds for its expenses.

DATES: Comments due by June 2, 1979.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077 South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submitted and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone (202) 447-6393.

SUPPLEMENTARY INFORMATION: The Potato Board is the administrative agency established under the Potato Research and Promotion Plan (7 CFR 1207). This program is effective under the Potato Research and Promotion Act (7 U.S.C. 2611-2627).

The proposed budget and rate of assessment has not been determined significant under USDA criteria for implementing Executive Order 12044. They should be approved before the beginning of the Board's fiscal period beginning July 1, 1979, because the program requires that the rate of assessment for a fiscal period should apply to all assessable potatoes from the beginning of such period.

It is proposed to amend 7 CFR part 1207 by adding § 1207.408 to read as follows.

§ 1207.408 Expenses and rate of assessment.

(a) The reasonable expenses that are likely to be incurred during the fiscal period beginning July 1, 1979, and ending June 30, 1980, by the National Potato Promotion Board for its maintenance and functioning and for such purposes as the Secretary determines to be appropriate will amount to $2,178,000.

(b) The rate of assessment to be paid by each designated handler in accordance with the provisions of the Plan shall be one cent ($0.01) per hundredweight of assessable potatoes handled by him during said fiscal period.

(c) Unexpended income in excess of expenses for the fiscal period may be carried over as an operating monetary reserve.

(d) Terms used in this section have the same meaning as when used in the Potato Research and Promotion Plan.

Dated: April 30, 1979.

William T. Manley,

Deputy Administrator, Marketing Program Operations.

[FR Doc. 79-14019 Filed 5-3-79; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

[10 CFR Part 211]

Emergency Allocation Provisions of the Crude Oil Buy/Sell Program

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 is amending today, on an emergency basis, the provisions for emergency allocations for small refiners under the crude oil Buy/Sell Program. The amendments adopted today: (1) provide criteria for determining the level of emergency allocations; (2) change the

reference period for determining a small refiner's current level of reduction in supplies from the most recent six-month period to the period January through October 1978; and (3) describe the information which must be submitted in an application for an emergency allocation. The amendments are effective immediately in order to permit ERA to address on a more equitable basis the crude oil supply problems of small refiners in the face of severely restricted supplies of crude oil in the world market. If the effective date of these amendments were delayed, some small refiners likely would experience serious disruptions in their operations due to the inability of the Buy/Sell Program to respond effectively to their supply needs.

The ERA is continuing this rulemaking proceeding to receive public comment on the amendments adopted today and on two additional proposed amendments to the emergency allocation provisions. These proposed amendments would (1) add to the current list of sellers (the 15 so-called "major" refiners), for purposes of emergency allocations only, all other refiners with in excess of 175,000 barrels per day of refining capacity and (2) provide that, with respect to emergency allocations, the price of crude oil sold to small refiners whose refining capacity is more than 50,000 barrels per day shall be based on the actual cost of the crude oil sold, rather than the seller's adjusted weighted average landed cost of imports, as currently provided.

DATES: A hearing on the proposed amendments will be held on May 31, 1979 in Washington, D.C. Written comments on the proposed amendments must be received by May 31, 1979. Requests to speak must be received by May 16, 1979. Copies of oral statements must be received by May 30, 1979.

ADDRESSES: All comments, copies of oral statements and requests to speak to: Public Hearing Management, ERA Docket No. ERA–R–79–21, Department of Energy, Room 2313, 2000 M Street, N.W., Washington, D.C. 20461. Hearing: Room 2105, 2000 M Street, N.W., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Hearing Procedures), Economic Regulatory Administration, Room 2222A, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–5201.
William L. Webb (Office of Public Information), Economic Regulatory Administration, Room B110, 2000 M Street, N.W., Washington, D.C. 20461, (202) 634–2170.
John W. Glynn (Regulations and Emergency Planning), Economic Regulatory Administration, Room 8222, 2000 M Street, N.W., Washington, D.C. 20461, (202) 632–5133.
Robert G. Bidwell, Jr. (Fuels Regulation), Economic Regulatory Administration, Room 6128, 2000 M Street, N.W., Washington, D.C. 20461, (202) 254–9707.
Samuel M. Bradley (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, S.W., Washington, D.C. 20585, (202) 252–6754.

SUPPLEMENTARY INFORMATION: Supplementary information concerning the final rules adopted today and the additional proposed amendments to the provisions for emergency allocations for small refiners under the Crude Oil Buy/Sell Program (10 CFR 211.65) is set forth in the final rules section of this issue.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, 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, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is proposed to be amended as set forth below.

Issued in Washington, D.C., April 27, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

Part 211 is amended by adding to the Appendix to Subpart C a new Special Rule No. 11 to read as follows:

Special Rule No. 11—Supplemental Provisions for Emergency Crude Oil Allocations

1. *Scope.* This Special Rule No. 11 to Subpart C. Part 211, sets forth supplemental provisions for emergency crude oil allocations under § 211.65(c)(2) of this chapter.

2. *Applicability.* (a) This Special Rule is effective on the date of its issuance.

(b) During the time period this Special Rule is in effect, it supplements the provisions of §§ 211.62 and 211.65 of this chapter.

3. *Definitions.* For the purposes of allocations under § 211.65(c)(2) of this chapter:

"Fixed percentage share" means a seller's proportionate share, expressed as a percentage, of the total volume of crude oil runs to stills of all sellers during the period September 1978 through February 1979, as reported to ERA pursuant to § 211.66(h) of this chapter.

"National utilization rate" means the total of the estimated average daily crude oil runs to stills for all U.S. refiners for any month or months in an allocation period divided by the total of the average daily crude oil runs to stills for all U.S. refiners during the period January through October 1978.

"Seller" means any refiner that is a refiner-seller as defined in § 211.62 of this chapter and any other refiner that is not a small refiner as defined in § 211.62 of this chapter.

4. *Supplemental Provisions for Emergency Crude Oil Allocations.* Notwithstanding any provision of §§ 211.62 and 211.65 of this chapter to the contrary, the following provisions shall be applicable to allocations assigned under § 211.65(c)(2) of this chapter:

(a) *Sales Obligations and Directed Sales.* (1) The sales obligation with respect to allocations assigned under § 211.65(c)(2) for a refiner-seller for an allocation period shall be in addition to any sales obligation for such refiner-seller under paragraph (f) of § 211.65 of this chapter for such allocation period. For each allocation period, sellers shall be required to offer for sale, directly or through exchange, to small refiners assigned allocations under § 211.65(c)(2) a quantity of crude oil equal to the sum of the quantities of crude oil allocated under § 211.65(c)(2).

The sales obligation for each seller for an allocation period shall be equal to that seller's fixed percentage share multiplied by the total of the allocations assigned under § 211.65(c)(2), adjusted by any carryovers of unsold sales obligations and reductions in sales obligations for sales in excess of sales obligations in previous allocation periods; *provided, that,* at any time during an allocation period a seller may be directed under subparagraph (2) of this paragraph (a) to sell more than its sales obligation at that time; *provided further, that,* the sales obligations with respect to buyers that have a DOE certified crude oil refining capacity of 50,000 barrels per day or less shall be distributed on a pro-rata basis among all sellers, and each seller's pro-rata share of such sales obligations shall be equal to its fixed percentage share multiplied by the total allocations assigned to such small refiners under § 211.65(c)(2).

(2) In assigning an allocation to a small refiner under § 211.65(c)(2), the ERA may direct one or more sellers to sell a suitable type of crude oil to such refiner. In directing sellers to make such sales, the ERA shall apportion, to the

maximum extent practicable, the sales among all sellers in a manner such that each seller's sales obligation for an allocation period does not exceed that seller's fixed percentage share multiplied by the total of the allocations assigned under § 211.65(c)(2); *provided, that,* the ERA may issue one or more directed sales orders that would result in one or more sellers selling more than their sales obligations for that allocation period; *provided further, that,* no such directed sale shall increase any seller's sales obligation under § 211.65(c)(2) by more than twenty-five percent (25%).

(3) For any allocation period, if the sales of any seller exceed its total sales obligation for that allocation period, such seller shall receive a barrel-for-barrel reduction in its sales obligation with respect to allocations assigned under § 211.65(c)(2) for the next allocation period, and the volume of each seller's unsold sales obligation under § 211.65(c)(2) in an allocation period shall be added to that seller's sales obligation for the next allocation period.

(b) *Supplemental Buy/Sell Notice.* From time to time during an allocation period, ERA shall publish a supplemental buy/sell notice, in addition to the buy/sell notice specified in § 211.65(g) of this chapter, listing the quantity of crude oil assigned to each small refiner under § 211.65(c)(2), the fixed percentage share of each seller, the quantity of crude oil that each seller shall be obligated to offer for sale to small refiners whose DOE certified crude oil refining capacity exceeds 50,000 barrels per day, and the quantity of crude oil that each seller shall be obligated to offer for sale to small refiners whose DOE certified crude oil refining capacity is 50,000 barrels per day or less.

(c) *Terms and Conditions of Sales.* The provisions of § 211.65(i) of this chapter shall be applicable to all sales made pursuant to § 211.65(c)(2); *provided, that,* with respect to sales of crude oil pursuant to § 211.65(c)(2) to refiners whose DOE certified refining capacity is greater than 50,000 barrels per day, the pricing rules set forth in Special Rule No. 1 to Subpart L, Part 212 shall apply, except that the handling fee shall be 5 cents per barrel rather than 25 cents per barrel.

5. *Provisions of Subpart C.* The provisions of Subpart C of Part 211 shall remain in full force and effect except as expressly modified or supplemented by the provisions of this Special Rule.

[Docket No. ERA-R-79-21]
[FR Doc. 79-14016 Filed 5-2-79; 8:45 am]
BILLING CODE 6450-01-M

[10 CFR Part 211]

Mandatory Petroleum Allocation Regulations: Motor Gasoline Allocation Base Period and Adjustments

Cross Reference: The Department of Energy is proposing to adopt on a permanent basis the interim rule published in Part IX of this issue. See FR Doc. 79-14054.

[Docket No. ERA-R-79-23]
BILLING CODE 6450-01-M

NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 725]

National Credit Union Administration Central Liquidity Facility; Membership and Lending

AGENCY: National Credit Union Administration.

ACTION: Proposed Rule.

SUMMARY: These proposed regulations would establish the membership requirements and lending policies and procedures of the National Credit Union Administration Central Liquidity Facility ("Facility"). The Facility was created by Title XVIII of Pub. L. 95-630 as a corporation within the National Credit Union Administration ("NCUA") to provide credit unions with a reliable source of funds to meet their liquidity needs. These proposed regulations provide credit unions with information on the policies and requirements regarding membership and lending under which the Facility will operate.

DATES: Comments must be received on or before June 18, 1979.

ADDRESS: Send comments to Robert S. Monheit, Senior Attorney, Office of General Counsel, National Credit Union Administration, 2025 M Street, NW, Washington, D.C. 20456.

FOR FURTHER INFORMATION CONTACT: Michael Fischer, Chief Accountant, Office of Examination and Insurance (Membership); Layne L. Bumgardner, Chief, Credit Union Operations, Office of Examination and Insurance (Lending); or Mark S. Medvin, Attorney-Advisor, Office of General Counsel, National Credit Union Administration, 2025 M Street, NW, Washington, D.C. 20456. Telephone: (202) 254-8760 (Mr. Fischer and Mr. Bumgardner) or (202) 632-4870 (Mr. Medvin).

SUPPLEMENTARY INFORMATION:

1. *Background.* The National Credit Union Administration Central Liquidity Facility ("Facility") was established as a corporation within the National Credit Union Administration ("NCUA") by the National Credit Union Administration Central Liquidity Facility Act ("Act"), Title XVIII of Public Law 95-630. It will be managed by the 3-person NCUA Board and will have as its purpose the improvement of general financial stability by meeting the liquidity needs of credit unions.

Banks and savings and loan associations have long had access to loans from the Federal Reserve System "discount window" and the Federal Home Loan Banks, respectively, to meet their liquidity needs, but there has been no similar Government-sponsored source of funds available to credit unions. The Central Liquidity Facility was established by Congress to fill this void. The Facility is presently in its organizational phase and will begin operation on October 1, 1979. It is anticipated that the Facility will open its books for stock subscriptions in mid to late summer, 1979. These proposed regulations address membership in and loans from the Facility.

2. *Regulatory Approach.* The general approach of these regulations is dictated, for the most part, by the Act. In the sections on membership, most of the provisions merely reflect the statutory membership provisions in 12 U.S.C. 1795c and 1795d. The lending sections are less reflective of *specific* statutory provisions (12 U.S.C.1795e), but nevertheless were dictated, to a large degree, by the statutory provisions which:

(a) provide only for loans to meet liquidity needs of *natural person credit unions* (12 U.S.C. 1795a(a)), and

(b) provide that loans may be made only to members of the Facility (12 U.S.C. 1795e), without any provision for direct dealings between the Facility and credit unions served by Agents.

These provisions account for the structure of the lending process when Agents are involved (e.g., the documentation structure and the "two-tier" loan process of CLF loans to Agents and corresponding loans to natural person credit unions).

The regulations were drafted with the intent of keeping the paperwork burden to a minimum. Although the membership application will include a number of agreements and authorizations, these

requirements are included so that the paper flow in the lending process can be kept to a minimum. All necessary authorizations will be required at the inception and there will be no need for the signing of a note and security agreement each time an advance is made. Any changes to the master agreements will be accomplished by amending § 725.21 and giving notice of the amendments (§ 725.22). This avoids the need to sign new documents when changes are made. After the agreements and authorizations are filed, it is anticipated that, under normal circumstances, the only paper flowing in connection with loans will be an application for the loan and a confirmation form to be sent upon disbursal of the funds. The application will require only enough information to insure that the loan is for a liquidity need and to judge credit worthiness as required by the statute (12 USC 1795e(a)(2)).

A draft regulatory analysis has been prepared and is available for comment upon request.

Membership

3. *Types of Membership.* Membership in the Facility is available to both Federal and State chartered credit unions. Two types of membership in the Facility are provided for in the Act and the proposed regulations: *Regular* membership and *Agent* membership. Regular membership is available only to the traditional type of credit unions which primarily serve natural persons (Section 725.3(a)). Agent membership, on the other hand, is open only to credit unions or groups of credit unions which primarily serve other credit unions (Section 725.3(b)). For purposes of distinguishing these two types of credit unions, the Facility proposes to use a "50 percent of activity test"—that is, a credit union with more than 50 percent of its activity (basically the sum of shares and loans) devoted to natural persons will be classified as a "natural person credit union" (Section 725.2(k)), while a credit union with more than 50 percent of its activity devoted to other credit unions will be considered to be a "central credit union" (Section 725.2(d)).

4. *Access to Loans.* The Central Liquidity Facility was established to provide a source of funds to meet the liquidity needs of *natural person credit unions* only, and this is reflected in the definition of "liquidity needs" (Section 725.2(g)) which tracks the statutory definition. The statutory scheme provides natural person credit unions which desire access to Facility loans a choice as to how to deal with the Facility. A natural person credit union can join the Facility directly as a Regular member, in which case the credit union will submit its loan applications directly to, receive its loans directly from, and, in general, communicate and carry on its dealings directly with the Facility.

In the alternative, a natural person credit union can gain access to Facility loans by joining a central credit union which is an Agent member of the Facility. In this case, the natural person credit union would not itself be a member of the Facility, but would have access to Facility loans "through" the Agent member. Credit unions choosing to gain access to Facility loans in this manner would deal only with the agent member and not directly with the Facility. The fact that a credit union is a member of a central credit union which is an Agent does not prevent that credit union from choosing Regular membership and dealing directly with the Facility.

Regardless of the way in which a natural person credit union chooses to gain access to Facility loans, the terms of the loans to the credit union will be the same (§ 725.20(b)).

5. *Regular Membership.* "Regular" membership is, by statute, available to natural person credit unions and this is reflected in § 725.3(a). In order to become a Regular member of the Facility, a natural person credit union must submit an application, copies of its charter and bylaws (unless these are already on file with NCUA), and its most recent month-end financial and statistical report. The credit union must also subscribe to the capital stock of the Facility in an amount equal to one-half of 1 percent of its "paid-in and unimpaired capital and surplus," a term defined in § 725.2(m) of the proposed regulations. It should be emphasized that only one-half of the required stock subscription—in other words, one-quarter of 1 percent of paid-in and unimpaired capital and surplus—must be paid to the Facility, while the other one-half of the stock subscription may be held by the member on call o fthe NCUA Board and invested in specified assets (§ 725.5(b)). Section 725.5(a)(2) provides that the amount of the stock subscription will be adjusted annually based on changes in the member's paid-in and unimpaired capital and surplus.

The Act does not provide for any discretion on the part of the NCUA Board in approving an application to become a Regular member of the Facility. Any natural person credit union that complies with the application and stock subscription requirements will be accepted as a Regular member of the Facility. Consequently, § 725.3(a)(2) requires that an applicant for Regular membership forward the portion of its stock subscription which must be paid to the Facility with its application.

6. *Agent Membership.* "Agent" membership is, by stature, available only to "a credit union or group of credit unions primarily serving other credit unions," and this is reflected in § 725.3(b). Thus, a single central credit union or a group of central credit unions can apply to become an Agent member of the Facility.

Section 725.3(b) of the proposed regulation sets out the steps which must be taken by a central credit union or group of central credit unions desiring Agent membership. As in the case of Regular members, a prospective Agent member must submit an application, copies of its charter and bylaws (unless already on file at NCUA), and its most recent month-end financial and statistical report. When a group of central credit unions applies for Agent membership, these documents and reports must be submitted by each central credit union in the group.

Agent members must also subscribe to captial stock of the Facility. The amount of the stock subscription is one-half of 1 percent of the paid-in and unimpaired capital and surplus of all the natural person credit unions which are members of the applicant central credit union or, in the case of a group of central credit unions, which are members of any central credit union in the group. In order to prevent double stock subscriptions, Agent members do not have to consider the paid-in and unimpaired capital and surplus of any of their members which choose to join the Facility as Regular members. Section 725.3(b)(2) provides for the Agent stock subscription.

As in the case of Regular members, only one-half of the stock subscription must be *paid* to the Facility, while the remainder will be on call of the NCUA Board and may be invested in specified assets (§§ 725.3(b)(2) and 725.5(b)). Agent applicants must receive approval from the NCUA Board before becoming and Agent member and, therefore, § 725.3(b)(2) does not require Agent applicants to forward the amount representing one-half of their stock subscription until the NCUA Board approves them as Agent members. Prospective Agents should note that, from the Facility's viewpoint, it is the Agent which is responsible for paying the required portion of the stock subscription, although the Agent is not prohibited from passing the cost of the

stock subscription through to its members.

Section 725.3(b)(6) requires that applicants for Agent membership receive approval of the NCUA Board in order to become an Agent. This requirement is imposed because Agent members will be operating essentially as an arm of the Facility and it is necessary that the Facility be assured that the management, operations, and financial position of its Agent members are sound. Criteria which will be considered by the NUCA Board in determining whether to approve an applicant to become an Agent member are specified in § 725.4(a). In the case of a group of central credit unions, each central credit union in the group must meet these criteria.

In addition, to insure the continued integrity of Facility operations, Agents must agree to comply with all regulations and reporting requirements that may be imposed by the Facility on Agent members (§ 725.3(b)(4)), and to submit to unrestricted examination by the NCUA Board or its designee (§ 725.3(b)(5)).

7. *Capital Stock.* The Central Liquidity Facility is a corporation and, as such, it will issue capital stock. Members of the Facility must subcribe to Facility capital stock in specified amounts (§§ 725.3(a)(2) and 725.3(b)(2)) and are actually shareholders/owners of the Facility. The stock is nonvoting, but is entitled to share in dividend distributions without preference Dividends will be paid on the issued captial stock (that is, on the paid-up portion of the total stock subscription) at rates and times determined by the NCUA Board (§ 725.5(d)).

8. *Termination of Membership.* The proposed regulations provide for both voluntary and involuntary termination of membership. The provisions on voluntary withdrawal from membership (§ 725.6(a), (b), (d)) provide for the redemption of stock at the purchase price after a waiting period fo 24 months for large members (over 5 percent of subscribed Facility stock) and 6 months for other members.

Section 725.6(c) reflects the statutory provision for involuntary termination of membership in the Facility. The proposed regulations give a member the right to a hearing before having its membership terminated. Regulations to govern the conduct of such hearings are currently being drafted and will amend 12 CFR Part 747. A credit union whose membership is involuntarily terminated will not be permitted to rejoin the Facility until the NCUA Board is satisfied that the credit union will comply with all applicable laws and regulations.

LENDING

9. *Liquidity Needs.* The Central Liquidity Facility will make loans to meet "liquidity needs," as defined in § 725.2(g). This definition tracks the definition in the statute and indicates the three types of credit which will be available from the Facility. These are:

(a) Short-term adjustment credit—for example, credit to meet a temporary shortage of funds due to a delay in receiving payroll deduction funds from a sponsor;

(b) Seasonal credit—for example, credit to meet a shortage of funds due to summer share withdrawals from a teachers' credit union; and

(c) Protracted adjustment credit—for example, a long term funds shortage due to the closing of a factory and the resulting unemployment of members.

The Facility is authorized only to make loans to meet liquidity needs and is specifically prohibited from making loans "to expand credit union portolios" (12 USC 1795e(a)(1)).

The definition of liquidity needs includes only the liquidity needs of *natural person credit unions.* Although central credit unions are eligible for Agent membership in the Facility, their borrowings from the Facility must be based on documented liquidity needs of the natural person credit unions which they serve. This means that Facility advances cannot be used by Agents for their own purposes.

10. *Applications for extension of credit to Regular members.* Those natural person credit unions which choose to become Regular members will deal directly with the Facility. Regular members will submit their applications for credit to a Facility lending officer (§ 725.17(d)) either at the Washington office, a Regional office, or at some other designated location. The application will be reviewed and the creditworthiness of the applicant will be considered (§ 725.18(a)) as required by the statute. Section 725.17(d) provides that applications for advances will be approved or denied within five working days after they are received.

11. *Applications for extensions of credit to Agent members.* Agent members will apply directly to the Facility for extensions of credit, but only to meet the documented liquidity needs of their member natural person credit unions. Thus, § 725.17(b) requires that, prior to applying for a Facility advance, the Agent must have received an application from one or more of its member natural person credit unions for an advance(s) to meet liquidity needs.

Natural person credit unions which choose to gain access to Facility loans through an Agent will submit their applications for advances to meet liquidity needs to the Agent. The Facility will provide the Agents with guidelines, and the Agent will have the authority to review applications and approve or deny them without any involvement of the Facility. Any applications which fall outside the established guidelines will be referred to the Facility for final action.

Upon approval by an Agent of one or more applications from its members for advances to meet liquidity needs, the Agent will request funds from the Facility in the amount of the approved application(s). Section 725.17(b) requires the Agent to certify in the application that it has received applications from its members for funds to meet liquidity needs in the amount requested from the Facility and that it has considered the creditworthiness of the credit unions on whose applications the request is based. The Facility will then advance funds to the Agent which, in turn, will advance the funds to the natural person credit union(s) which requested them.

In general, applications for extensions of credit must be in writing, although other forms of application may be developed later. In any event, § 725.17(c) permits verbal applications in the case of emergencies.

Agent members will be compensated for the services they perform for the Facility in a manner to be specified by the NCUA Board (§ 725.4(e)).

12. *Creditworthiness.* Prior to any advance of Facility funds, Section 725.18 requires the Facility or the Agent, as appropriate, to consider the creditworthiness of the natural person credit union to which the funds will be advanced. Sources of information pertaining to an applicant's creditworthiness include Federal and State supervisory and/or insurance agencies and lenders associated with the applicant. Section 725.18(c) lists some of the factors which will be considered in assessing creditworthiness, and § 725.18(d) indicates that applicants that do not meet the creditworthiness standards will either be denied the advance or limited in its use.

13. *Collateral for Advances.* Advances of Facility funds by the Facility or an Agent will normally be secured by an interest in the general assets (notes receivable chattel paper, securities, instruments, etc.) of the natural person credit union which receives the advance

(§ 725.19). The Facility will not require a security interest in specific assets unless circumstances suggest the need. Section 725.19(c) provides that the Facility and Agents will have the right at any time to perfect any security interest held by them by filing or taking possession of the collateral, but in most cases the security interest will not be perfected and the collateral will remain in the possession of the borrowing credit union so as not to interfere with the normal operation of the credit union.

14. *Repayment, Security and Credit Reporting Agreement.* In order to eliminate the need to sign documents each time an advance is made, the Facility will require all its members, both Regular and Agent, to sign a repayment, security and credit reporting agreement governing all advances made by the Facility (§§ 725.21(a) and (b)). Additionally, the Facility will require its Agent members to enter into a repayment, security and credit reporting agreement with all the natural person credit unions which they serve (§ 725.21(c); the terms of this agreement will be essentially the same as those of the agreement between the Facility and its Regular members.)

The agreements will include a promise to repay all advances, a security agreement, and such other loan terms as can be known in advance (§ 725.21). Other more specific terms, such as the amount, maturity, and interest rate, will be disclosed in a confirmation form that will be sent out at the time each advance is made, and/or in Operating Circulars of the Facility (§ 725.20(a)). The agreements will also include a credit reporting agreement which will set reporting requirements for recipients of Facility funds to enable the Facility to obtain information bearing on the status of the advances and on any problem which may arise.

When the final regulations are published, the repayment, security, and credit reporting agreements will be incorporated into the regulation in § 725.21. Section 725.22 and the agreements signed by the credit union will provide that any amendments made to an agreement in § 725.21 will, after notice, constitute an amendment to the agreement signed by the credit union. This provides a means of updating all existing agreements without necessitating the signing of new agreements by all credit unions with access to Facility loans each time a change is made in the agreement terms.

15. *Other Facility Advances.* The provisions of § 725.23 implement Section 1795f(16) of the Act. Advances to State insurance funds, etc., are not intended to provide a means of circumventing the membership requirements of the Facility to those credit unions which do not join the Facility as Regular members or gain access to loans through an Agent. A credit union which receives loans through a State insurance fund, etc. will receive them subject to stringent conditions.

The provisions of § 725.24 provide for expanded Facility lending authority when in the national interest. The authority for lending under this section is based on the following remarks of Congressman St Germain on this aspect of Pub. L. 96–630:

> Additionally, the committee believes the Facility should be available to enhance the Federal Government's ability to improve economic well-being and expects the Facility to be operated in close consultation with the Federal Reserve Board and Department of Treasury. At present, recession avoidance depends on appropriate fiscal and monetary policies and credit extensions supportive of the mortgage market by the Federal Home Loan Bank System.
>
> To assure the Facility is able to contribute to national economic well-being by stimulating consumer lending when it is in the national interest, your committee expects the non-expansionary provision not to apply if a determination is made by the Federal Reserve Board, Department of the Treasury, and National Credit Union Administration, that the national economic interest would be served by stimulating consumer buying by expanding the loan base of credit unions through expansionary Facility lending. In this way, the availability of the Facility to enhance economic well-being would be preserved while at the same time assuring that this capability would be exercised only with the concurrence of the Department of Treasury and the Federal Reserve Board.
>
> Your committee expects the Administrator to promulgate regulations as necessary to give effect to the full range of lending activities that are appropriate for the Facility (124 *Cong. Rec.* E5953 (11/9/78)).

16. *Abbreviated comment perod.* It is the Administration's normal practice to provide a 60 day public comment period for proposed regulations. The comment period has been shortened in this instance, however, (to June 18, 1979) so that it will be possible to issue a final regulation and open the books of the Facility for stock subscriptions sufficiently in advance of the October 1, 1979, effective date.

Accordingly, it is proposed that new Part 725, as set forth below, be added to Chapter VII of Title 12 of the Code of Federal Regulations.

April 30, 1979.

Lawrence Connell,

Administrator.

Authority: Sections 301–307 of the Federal Credit Union Act, 92 Stat. 3719–3722 (12 U.S.C. 1795–1795f).

New Part 725, as follows, is added to Chapter VII of Title 12 of the Code of Federal Regulations:

PART 725—NATIONAL CREDIT UNION ADMINISTRATION CENTRAL LIQUIDITY FACILITY

§ 725.1 Scope.

(a) This Part contains the regulations implementing the National Credit Union Administration Central Liquidity Facility Act, Subchapter III of the Federal Credit Union Act. The National Credit Union Administration Central Liquidity Facility is a mixed-ownership Government corporation within the National Credit Union Administration. It is managed by the National Credit Union Administration Board and is owned by its member credit unions. The purpose of the Facility is to improve the general financial stability of credit unions by meeting their liquidity needs and thereby encouraging savings, supporting consumer and mortgage lending and providing basic financial resources to all segments of the economy.

(b) Subpart A contains the regulations governing membership in the Facility, and Subpart B contains the regulations governing lending by the Facility.

(c) The regulations contained in this Part are promulgated pursuant to Sections 301–307 of the Federal Credit Union Act (12 U.S.C. 1795–1795f).

§ 725.2 Definitions.

As used in this Part:

(a) "Agent" means an Agent member of the Facility.

(b) "Agent group" means an Agent member of the Facility consisting of a group of central credit unions.

(c) "Chief officer" means the officer who has primary responsibility for the operation of a credit union, such as the President or the Chairman of the Board of Directors.

(d) "Central credit union" means a Federal or State chartered credit union primarily serving other credit unions. A credit union is primarily serving other credit unions when the total dollar amount of the shares and deposits that it has received from other credit unions plus loans to other credit unions exceeds 50 percent of the total dollar amount of all shares and deposits plus loans to members during the qualifying

period, as defined in subsection (n) of this section.

(e) "Facility" or "Central Liquidity Facility" means the National Credit Union Administration Central Liquidity Facility.

(f) "Facility lending officer" means any employee of the Facility or the National Credit Union Administration who has been designated by the NCUA Board as a Facility lending officer.

(g) "Liquidity needs" means the needs of credit unions primarily serving natural persons for:

(1) Short-term adjustment credit available to assist in meeting temporary requirements for funds or to cushion more persistent outflows of funds pending an orderly adjustment of credit union assets and liabilities;

(2) Seasonal credit available for longer periods to assist in meeting seasonal needs for funds arising from a combination of expected patterns of movement in share and deposit accounts and loans; and

(3) Protracted adjustment credit available in the event of unusual or emergency circumstances of a longer term nature resulting from national, regional or local difficulties.

(h) "Management policies" means policies of a credit union with respect to membership, shares, deposits, dividends, interest rates, lending, investing, borrowing, safeguarding of assets, hiring, training and supervision of employees, and general operating and control practices and procedures.

(i) "Member" means a Regular or Agent member of the Facility, unless the context indicates otherwise.

(j) "Member natural person credit union," when used with reference to Agents, means a member of an Agent or of any central credit union in an Agent group. Member natural person credit unions are not members of the Facility unless they are also Regular members of the Facility.

(k) "Natural person credit union" means a Federal or State chartered credit union primarily serving natural person. A credit union is primarily serving natural persons if it is not a central credit union.

(l) "NCUA Board" or "Board" means the National Credit Union Administration Board.

(m) "Paid-in and unimpaired capital and surplus" means the balance of the paid-in share accounts and deposits as of a given date, less any loss that may have been incurred for which there is no reserve or which has not been charged against undivided earnings, plus the credit balance (or less the debit balance) of the undivided earnings account as of a given date, after all losses have been provided for and net earnings or net losses have been added thereto or deducted therefrom. Statutory reserves or special reserves required by regulation or special agreement between the credit union and its regulatory authority or between the credit union and its member account insurer shall not be considered as part of surplus.

(n) "Qualifying Period" means:

(1) for initial qualification, any 7 months out of the 12 months immediately preceding the month in which application is made to become a member of the Facility; and

(2) for subsequent period qualifications, any 7 months out of the previous calendar year.

Subpart A—Membership

Sec.

725.3 Applications for membership.
725.4 Agent member requirements.
725.5 Capital stock.
725.6 Termination of membership.
725.7—725.16 [Reserved].

§ 725.3 Applications for membership.

(a) A natural person credit union may become a Regular member of the Facility by:

(1) Making application on a form approved by the Facility which shall be signed by the chief officer and the secretary of the credit union;

(2) Subscribing to capital stock of the Facility in an amount equal to one-half of 1 percent of the credit union's paid-in and unimpaired capital and surplus, as determined in accordance with subsection 725.5(a) of this Part, and forwarding with its completed application funds equal to one-half of this stock subscription; and

(3) Furnishing the following reports and documents with the completed membership application:

(i) A copy of the credit union's financial and statistical report for the most recent month-end; and

(ii) Copies of the credit union's charter and bylaws, unless such credit union is federally chartered.

(b) A central credit union or a group of central credit unions may become an Agent member of the Facility by (in the case of a group of central credit unions, each central credit union in the group must do each of the following except for paragraph (2), which shall be done by the group):

(1) Making application on a form approved by the Facility which shall be signed by the chief officer and the secretary of the central credit union;

(2) Subscribing to the capital stock of the Facility in an amount equal to one-half of 1 percent of the paid-in and unimpaired capital and surplus (as determined in accordance with § 725.5(a) of this Part) of all the central credit union's or central credit union group's member natural person credit unions which are not Regular members of the Facility. Upon approval of the application, the Agent shall forward funds equal to one-half of this initial stock subscription to the Facility.

(3) Furnishing the following reports and documents with the completed membership application:

(i) A copy of the central credit union's financial and statistical report for the most recent month-end; and

(ii) Copies of the central credit union's charter and bylaws, unless such credit union is federally chartered;

(4) Agreeing to submit to the supervision of the NCUA Board and to comply with all regulations and reporting requirements which the NCUA Board shall prescribe for Agent members;

(5) Agreeing to submit to periodic unrestricted examinations by the NCUA Board or its designee; and

(6) Obtaining the approval of the NCUA Board which shall be in writing and shall specify the services that shall be performed for the Facility.

(c) All applications, agreements, reports, and documentation required for becoming a member of the Facility shall be filed with the National Credit Union Administration Central Liquidity Facility, 2025 M St., NW. Washington, DC 20456.

(d) A credit union or credit union group that becomes a member of the Facility, or a credit union that becomes a member of an Agent of the Facility, later than six months after the Facility opens its books for capital stock subscriptions may not receive advances from the Facility (directly or through an Agent) without approval by the NCUA Board for a period of six months after beoming a member. This subsection (d) shall not apply to any credit union which becomes a member of the Facility within six months after such credit union is chartered or which has converted from Regular membership in the Facility to membership in an Agent, or vice versa, within a six month period.

§ 725.4 Agent member requirements.

(a) The NCUA Board may approve a central credit union or group of central credit unions as an Agent member of the Facility, provided the NCUA Board is satisfied that such credit union or credit union group meets certain criteria, including but not limited to the following (in the case of a group of central credit

unions, each central credit union in the group must meet these criteria):

(1) The management policies are in writing, approved by the central credit union's board of directors, and reviewed annually by such board;

(2) Adequate internal controls are in place to assure accurate and timely reporting of transactions and the safeguarding of assets;

(3) The financial condition of the central credit union is sound with adequate reserves for losses;

(4) Surety bond coverage provides protection for the central credit union's employees while performing the duties of an Agent of the Facility; and

(5) Management has demonstrated its ability to use such techniques as cash flow analysis, budgeting and projections of sources and uses of funds to manage the affairs of the central credit union efficiently and in conformity with sound business practices.

(b) Upon approval as an Agent member of the Facility, the Agent member shall obtain from each of its member natural person credit unions which is not a Regular member of the Facility, and retain on file the following:

(1) A repayment, security, and credit reporting agreement as specified in § 725.21(c) of this Part; and

(2) An authorization to borrow and to enter into and be bound by the terms of the repayment, security, and credit reporting agreement.

The Agent shall also obtain and retain on file the documents specified in paragraphs (1) and (2) of this subsection from each natural person credit union which becomes a member of the Agent or of any central credit union in the Agent group subsequent to its becoming an Agent member of the Facility.

(c) Each Agent, or in the case of an Agent group, each central credit union in the group, must:

(1) Maintain records related to Facility activity in conformity with requirements prescribed by the NCUA Board from time to time; and

(2) Submit such reports as may be required by the Facility to determine financial soundness, quality and level of service, and conformity with established guidelines and procedures.

(d) Each Agent, or in the case of an Agent group each central credit union in the group, must have on an annual basis, a third party independent audit of its books and records and provide the Facility with copies of such audit reports. The auditor selected must be recognized by a state or territorial licensing authority as possessing the requisite knowledge and experience to perform audits.

(e) Agent members will be compensated for the services they perform for the Facility in a manner to be specified by the NCUA Board.

§ 725.5 Capital stock.

(a) The capital stock subscriptions provided for in § 725.3 shall be:

(1) Based on an arithmetic average of paid-in and unimpaired capital and surplus over the six months preceding applicaton for membership, and

(2) Adjusted at the close of each calendar year in accordance with an arithmetic average of paid-in and unimpaired capital and surplus over the twelve months in such calendar year. Payments for adjustments to the capital stock subscription must be received no later than March 31 of the following year.

(b) That part of a member's stock subscription which is not paid-in may be held by the member on call of the NCUA Board and shall be held in demand deposits or invested in such other assets as the NCUA Board may from time to time prescribe.

(c) Any member may at any time purchase additional capital stock in the Facility.

(d) Dividends will be paid on capital stock at such times and rates as are determined by the NCUA Board. All issued (paid for) capital stock shall share in dividend distributions without preference.

§ 725.6 Termination of membership.

(a) A member of the Facility whose capital stock subscription constitutes less than 5 percent of subscribed Facility stock may withdraw from membership in the Facility six months after notifying the NCUA Board of its intention to do so.

(b) A member of the Facility whose capital stock subscription constitutes 5 percent or more of subscribed Facility stock may withdraw from membership in the Facility twenty-four months after notifying the NCUA Board of its intention to do so.

(c) The NCUA Board may terminate membership in the Facility if, after the opportunity for a hearing as provided for in Part 747 of this Chapter, the NCUA Board determines the member has failed to comply with any provision of the National Credit Union Administration Central Liquidity Facility Act or any regulation issued pursuant thereto. If membership is terminated under this subsection, the credit union will be required to obtain the approval of the NCUA Board before becoming a member of the Facility again. Such approval will be granted only if the NCUA Board is satisfied that the credit union will comply with such Act and regulations.

(d) In the event that membership is terminated under any provision of this section, the terminated member's stock shall be redeemed at the price originally paid for the stock. In such event, the Facility may retain any amount owed by the member to the Facility.

§§ 725.7 through 725.16 [Reserved]

Sections 725.7 through 725.16 are reserved for future use.

Subpart B—Lending

Sec.

725.17 Applications for extensions of credit.
725.18 Creditworthiness.
725.19 Collateral requirements.
725.20 Terms and conditions.
725.21 Repayment, security, and credit reporting agreements.
725.22 Modification of agreements.
725.23 Advances to insurance organizations.
725.24 Other advances.

§ 725.17 Applications for extensions of credit.

(a) A Regular member of the Facility may apply for an extension of credit to meet its liquidity needs by filing an application on a Facility-approved form, or by any other method approved by the Facility.

(b) An Agent member of the Facility may apply for an extension of credit to meet the liquidity needs of its member natural person credit union(s) by filing an application on a Facility-approved form, or by any other method approved by the Facility. The Agent's application shall certify that:

(1) the Agent has approved an application(s) from its member natural person credit union(s) which requests an extension(s) of credit for liquidity needs in the amount requested by the Agent; and

(2) the Agent has considered the creditworthiness of the member natural person credit union(s) which requested the extension(s) of credit.

(c) In emergency circumstances, the application for an extension of credit may be verbal, but must be confirmed within five working days by an application as required by subsection (a) or (b) of this section.

(d) Applications of Regular and Agent members shall be filed with a Facility lending officer. Each application for credit which is completed and properly filed will be approved or denied within five working days after the day of receipt.

§ 725.18 Creditworthiness.

(a) Prior to approval of each application by a Regular member for an extension of credit, the Facility shall consider the creditworthiness of such member.

(b) Prior to approval of each application of a member natural person credit union for an extension of credit, an Agent shall consider the creditworthiness of such member natural person credit union.

(c) Specific characteristics of an uncreditworthy credit union include, but are not limited to, insolvency as defined by § 700.1(k) of this Chapter, unsatisfactory practices in extending credit, lower than desirable reserve levels, high expense ratio, failure to repay previous Facility advances as agreed, excessive dependence on borrowed funds, inadequate cash management policies and planning, or any other relevant characteristics creating a less than satisfactory position. The mere presence of one or more of these characteristics will not necessarily mean that a credit union will be considered uncreditworthy.

(d) A natural person credit union (whether a Regular member of the Facility or a member natural person credit union of an Agent) which does not meet the creditworthiness standards established by the Facility may be limited in or denied the use of advances for its liquidity needs.

§ 725.19 Collateral requirements.

(a) Each advance of Facility funds to a natural person credit union, whether by the Facility or an Agent, shall be secured by a security interest in the general assets of the credit union, whenever acquired, and/or at the discretion of the Facility, in specific assets of the credit union.

(b) Each advance of Facility funds to an Agent member shall be secured by the obligations and security interests arising out of the Agent's advances of Facility funds to its member natural person credit unions, whenever arising.

(c) The Facility or the Agent, as applicable, shall have the right to perfect its security interest at any time by filing or taking possession of any or all of the assets covered by its security agreement(s).

§ 725.20 Terms and conditions.

(a) Advances of Facility funds shall be subject to such terms and conditions as shall be established from time to time by the NCUA Board. These terms and conditions are specified in § 725.21 of this Part. Other terms and conditions, such as amount, maturity, and interest rate, will be specified in the Facility's Operating Circulars and/or in confirmations of credit provided in connection with each advance.

(b) The terms, including rates, on advances of Facility funds to natural person credit unions shall be the same regardless of whether the advance is received directly from the Facility or through an Agent member.

(c) Each member of the Facility (Regular or Agent) shall sign a repayment, security, and credit reporting agreement as specified in § 725.21 of this Part.

(d) In the case of an Agent member which is an Agent group, each central credit union in the Agent group shall be jointly and severally liable on each repayment obligation of the Agent member to the Facility.

§ 725.21 Repayment, security, and credit reporting agreements.

(a) The repayment, security, and credit reporting agreement under which extensions of credit are made to Regular members of the Facility is as follows:

(A copy of the repayment, security, and credit reporting agreement will be included in the final regulations).

(b) The repayment, security, and credit reporting agreement under which extensions of credit are made to Agent members of the Facility is as follows:

(A copy of the repayment, security, and credit reporting agreement will be included in the final regulations).

(c) The repayment, security, and credit reporting agreement under which Agents shall make extensions of credit to their member natural person credit unions is as follows:

(A copy of the repayment, security, and credit reporting agreement will be included in the final regulations).

§ 725.22 Modification of agreements.

The terms of the repayment, security, and credit reporting agreements reflected in paragraphs (a), (b), and (c) of § 725.21 of this Part shall be subject to modification from time to time as the NCUA Board may determine. Any modification to such agreements shall be published in the **Federal Register** and shall become a term of the corresponding agreement which was signed by the credit union as of the effective date specified in the **Federal Register** The new term shall apply to all advances disbursed by the Facility after the effective date.

§ 725.23 Advances to insurance organizations.

(a) In accordance with policies established by the NCUA Board, the Facility may advance funds to a State credit union share or deposit insurance corporation, guaranty credit union, or guaranty association. Requests for such advances shall be supported by an application which sets forth and supports the need for the advance.

(b) Advances under subsection (a) shall be subject to the approval of the NCUA Board and shall be made subject to the following terms:

(1) the advance shall be fully secured,

(2) the maturity of the advance shall not exceed 12 months,

(3) the advance shall not be renewable at maturity, and

(4) the funds advanced shall not be relent at an interest rate exceeding that imposed by the Facility.

§ 725.24 Other advances.

(a) The NCUA Board may authorize extensions of credit to members of the Facility for purposes other than liquidity needs if the NCUA Board of Governors of the Federal Reserve System, and the Secretary of the Treasury concur in a determination that such extensions of credit ar in the national economic interest.

(b) Extensions of credit approved under the conditions of paragraph (a) of this section shall be subject to such terms and conditions as shall be established by the NCUA Board.

[FR Doc. 79-13963 Filed 5-3-79; 8:45 am]

BILLING CODE 7535-01-M

CIVIL AERONAUTICS BOARD

[14 CFR 207, 208, 212, 214, 380 and 381]

Direct Marketing of Charters by Air Carriers

Dated: April 26, 1979.

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The CAB is proposing, at its own initiative, to allow control relationships between direct air carriers and charter operators, to allow direct air carriers to market charter tours to individuals, and to allow direct air carriers to substitute their surety bond or depository agreement provisions for the similar consumer protection provisions now required of charter operators.

DATES: Comments by: June 18, 1979. Reply comments by: July 3, 1979.

Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

Requests to be put on the Service List by: May 14, 1979. Docket Section prepares the Service List and sends it to each person listed, who then serves comments on others on the list.

ADDRESSES: Twenty copies of comments should be sent to Docket 34965, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 714, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. as soon as they are received.

FOR FURTHER INFORMATION CONTACT: Mark Frisbie, Office of the General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202–673–5442.

SUPPLEMENTARY INFORMATION: The Board discussed the consequences of allowing sales of charter tours by direct air carriers and allowing control relationships between direct carriers and charter operators in a request for public comments issued March 8, 1979 (44 FR 14609, March 13, 1979). The request for comments was designed to aid the Board in preparing a report to Congress required by section 108 of the Federal Aviation Act, as amended by Public Law 95–504, the Deregulation Act of 1978. The issuance also asked for comments on whether the Board should adopt rules allowing direct sales of charters, subject to restrictive conditions, in the interim while Congress considers the Board's report.

On April 2, 1979, the Board heard argument from air carriers, charter operators, and travel agents on the pros and cons of vertical integration between direct carriers and independent charter operators.

This rulemaking proposes to allow vertical integration and direct sales of charters by air carriers. The type of service that could be marketed under this rule would be similar to Public Charters, except for a 7-day advance purchase requirement.

The proposal also suggests changes to the Public Charter rule (14 CFR Part 380) allowing direct air carriers to assume the consumer protection requirements now placed on charter operators. In light of the fact that we are proposing to allow any type of relationship to exist between charter operators and direct air carriers, the available options should allow the most efficient arrangement to be worked out between them, without degrading the protection provided to consumers.

Direct Sales and Vertical Integration

The Federal Aviation Act has since 1968 prohibited charter (formerly supplemental) air carriers from selling or offering for sale "an inclusive tour in air transportation by selling or offering for sale individual tickets directly to members of the general public, or to do so indirectly by controlling, being controlled by, or under common control with, a person authorized by the Board to make such sales." Before the Deregulation Act, that prohibition was part of the definition of "supplemental air transportation," found in section 101 of the Act. The Deregulation Act moved the prohibition from section 101 to section 401(n)(4). The Conference Report noted that this shift "permits the Board to exercise its exemption authority with respect to this prohibition." (H.R. Report No. 95–1779, 95th Cong., 2d Sess. 68 (1978), *reprinted in* [1978] U.S. Code Cong. & Ad. News 5523, 5536).

The prohibition on direct sales of charters by air carriers was included in Pub. L. 90–514, enacted September 26, 1968, which expressly allowed supplemental air carriers to operate inclusive tour charter trips through independent charter operators. According to the House Report, the prohibition on direct sales "keeps [supplemental] carriers out of the business of offering individually ticketed services in competition with the scheduled carriers." (H.R. Report No., 1639, 90th Cong. 2d Sess. 2 (1968).) At that time, the policy of Congress was to prevent supplemental carriers from diverting traffic from scheduled carriers, on the ground that the latter were under service obligations on all of their routes and needed revenues from their profitable routes to subsidize their unprofitable ones. The supplemental carriers, which had no route obligations, were seen as a threat to the scheduled carriers' profitable routes, and therefore to the entire regulated system, if they were allowed to sell individual tickets for inclusive tours in competition with individually-ticket service by carriers. Although the prohibition, read literally, applies only to inclusive tours, and not to air-only and one-way trips, the Board's regulations have always extended the prohibition to all forms of charter travel.

It is clear from the emphasis of the Deregulation Act on competition that potential diversion of traffic from scheduled carriers is no longer a persuasive reason for limiting the type of service that other carriers provide. Thus, the original reason for the prohibition on direct sales by charter carriers is obsolete. We have tentatively decided that a relaxation of the prohibition, using the Board's exemption power as contemplated by Congress, would allow increased efficiencies in the provision of charter service to the public, which could result in lower prices. We are not convinced by arguments that allowing direct sales or sales through tour operator affiliates would reduce competition or stifle creativity in developing new markets.

Direct carriers are not now permitted an independent role in deciding which charter markets will be served and developed. Although they may offer flight programs in developed markets, they evidently are not likely to attempt to develop a market themselves unless an independent operator is involved. Efficient large-scale charter programs typically entail back-to-back, season-long utilization of aircraft, and today depend on a charter's willingness and ability to make dependable large-scale commitments for aircraft. Independent charter operators may not always be willing to make such commitments. Allowing direct carriers the freedom to make basic marketing decisions might therefore increase the variety or reduce the price of charter offerings to the public.

The ability to market tours themselves would also give carriers some protection against cancellations of charter contracts by independent operators. Commitments for charter aircraft are typically made months in advance of scheduled use. Subsequent cancellations of a commitment by one operator may endanger a charter program in which other operators are involved, and leave the direct carrier with expenses for underutilized aircraft and ferry mileage. Although the direct carrier can encourage other operators to take up the slack caused by the cancellation, it cannot take direct action itself. Allowing carriers to market tours themselves could add a measure of stability and certainty to the planning of charter programs, since the direct carrier could take quick action (through an affiliate or by itself) to mitigate cancellations. The economies of more stable charter operations should also benefit the consumer.

Independent operators have expressed concern that allowing direct sales will lead to discriminatory practices in the allocation of aircraft capacity. We are not convinced, however, that discrimination against independent operators is a significant problem. We have substantial enforcement powers to prevent unfair or deceptive practices, and any preference

given to an affiliate but withheld from others may be considered unfair or deceptive. Discrimination against independent operators would injure participants as well as the operators, and both could bring potential problems to our attention.

Independents have argued that allowing direct sales will lead to concentration of the tour industry in the hands of a few direct carriers, resulting in less competition, higher prices, and fewer choices for consumers. They claim that if direct carriers come to dominate the heavily travelled markets, the expenses and risks to independents of developing new and exotic markets will be prohibitive. Also, they argue that direct carriers will have a vested interest in *not* developing new markets, out of a desire to protect their established markets.

We are not persuaded that these fears are well-founded. In Great Britain and Canada, where vertical integration between carriers and tour operators is permitted, there continues to be a large number of tour operators. Although vertical integration in this country may reduce the existing number of independents, we have confidence in the adaptability and resourcefulness of most of the industry, and in its ability to survive, thrive, and promote competition. Judging from the number of tour operators in Canada and Britain,[1] the charter travel business does not seem subject to strong economies of scale, and the relatively low capital costs of starting a new tour operator business present no serious obstacles to the entry of new entrepeneurial talent.

If independents could not compete successfully with direct carriers in the established markets, it could mean that carriers could provide significant economies of service and thus there would be further economic justification for allowing these new types of charter activity. It is true that independent operators have played a major role in developing new markets. But, if new markets cannot provide a sufficient promise of an economic return to be worth developing for their own sake, it does not make economic sense to cross-subsidize them, in effect, with the profits of established markets.

We are therefore asking for comments on a proposal to permit direct air carriers to market charter tours of all types to individuals, directly or through affiliated tour operators. We are proposing to grant an exemption for charter air carriers from section 401(n)(4) of the Act, and to grant an exemption for both scheduled route carriers and charter air carriers from section 408 and 409 of the Act, permitting them to control and acquire Public Charter operators. We are also proposing to amend the exemption in § 380.20 of the Public Charter rule to permit controlling and interlocking relationships where the charter operator is the dominant party.

Nothing in the Act now specifically prohibits direct sale of charters by foreign air carriers or their affiliates, so no explicit exemption is necessary for them. However, since it has been the Board's policy, expressed through case law and interpretation, to prohibit direct sales of charters by foreign air carriers or their foreign charter operator affiliates, we would expressly change that policy. We would also delete § 380.10(a), which states that "the charter shall be arranged and sold by a charter operator as an independent principal with respect to the air transportation included in the charter and not as an agent for a direct air carrier."

We are also proposing to amend Parts 207, 208, 212, and 214, and add a new Part 381 to our Special Regulations, to allow all direct carriers to market charter transportation directly to the general public, without using a charter operator middleman. The type of charter service that could be marketed by direct carriers would bear most of the same charcteristics as Public Charters. One-way flights and intermingling of passengers would be permitted, with no minimum stay restrictions, although as at present a participant would have to contract for a specific return date on round-trip charters. However, we would apply a 7-day advance purchase requirement to all charters by a direct carrier or affiliate; this restriction would not apply to charters by unaffiliated operators. The direct carrier would have to meet all the responsibilities and limitations applicable to charter operators, including prospectus filing, participant contracts with consumer protection provisions, escrow or bonding arrangements (discussed below), and solicitation restrictions.

The minimum contract size of 20 persons would not apply to charters by direct carriers, since there would be no contract with a charter operator middleman. Also, since charter operators are not required to sell all the seats that they charter, a direct carrier would not have to fill every seat on a directly-sold charter. We are, therefore, proposing to add a paragraph to the charter flight limitations of Parts 207, 208, 212, and 214, that would allow the direct air carrier to provide a charter trip without all the seats on the plane being sold.

The resulting directly-sold charter service would be distinguishable from individually-ticketed scheduled service in several ways. First, it would require a written contract, signed by the participants at least 7 days before the flight. The contract would specify the rights and duties of the participant and the carrier, including cancellation penalties and the carrier's rights to change the time and place of departure. An ordinary scheduled service ticket is less informative, and can be purchased up to the time of departure. Traditionally, scheduled service has also been distinguishable from charter service in that it permits ticket cancelation without penalty, and the risk of flight cancelation for lack of sales is virtually nil. Second, directly-sold charter service could only be marketed after complying with the prospectus-filing, solicitation, and depository protection or bonding requirements of the Public Charter rule, none of which are ordinarily applicable to scheduled flights. Thus, from the carrier's point of view as well as from the participant's, directly-sold charter service would retain significant differences from scheduled service.

The advance purchase restriction would prevent the charter operator or carrier from entering into any participant contracts less than 7 days before scheduled departure. In accordance with the existing rules for Public Charters, substitutions at any time prior to departure would be permitted for participants who have signed a contract but wish to drop out.

Surety Bond and Escrow Arrangements

Under the Public Charter rule, charter operators must maintain either a surety bond for the entire charter price or the combination of a smaller surety bond and an escrow agreement with a bank for the protection of customer deposits. The bonding and escrow agreements guard against misallocation of participant deposits and insure against insolvency of the charter operator. The surety and bonding agreements cover all parts of the tour package, including ground accommodations and services such as hotels and car rentals.

Under our charter regulations governing direct air carriers, they must maintain either an unlimited surety bond or an escrow agreement with a bank for the protection of payments

[1] A study by Transportation Analysis International, Ltd., of Shannon, Ireland, indicates that there are over 450 tour operator license holders in Great Britain. International Vacations, Ltd., claims that there are about 120 tour operators in Canada.

made by charterers to the carrier. These arrangements protect only money paid for air transportation, not for ground services.

We are proposing to change these escrow and bonding requirements in two ways. First, since we would allow direct carriers to market charter tours, including ground services, directly to the public, we would require them to change their bonding or escrow arrangements to protect the ground portion of participant payments and the obligations of the carrier under the charter contract. If an escrow were used, participants would pay money directly to the escrow account, and the bank would pay vendors of ground services upon presentation of bills and certification by the direct carrier. The bank would pay refunds to participants in accordance with the terms of the participant contract. Under the existing rule, escrowed money is accounted for by flight, and the bank may not release escrowed funds to the carrier until the charter flight is completed. These provisions would remain in effect. The direct carrier would have to supplement its escrow arrangement with a limited surety bond, as charter operators are currently required to do. As an alternative to the escrow/limited bond combination, the carrier could use an unlimited surety bond without any escrow provision.

The second change relates to charters sold through tour operators, independent or otherwise. In many cases it may be more efficient and less expensive to have only one set of bonding and escrow arrangements applicable to a charter tour. Under the present rules, the money for air transportation must usually go through two escrow accounts, each time with separate charges. This proposal would allow the direct carrier to eliminate one of the escrow/bonding layers by agreeing to take responsibility for the obligations of a charter operator doing business with it. Direct carriers may especially want to do this with closely-controlled affiliates, but our proposal would not restrict the option to affiliates. On the other hand, affiliates could use the existing separate bonding and depository provisions if they wished. Charter operators who wished to take advantage of the new option would have to include in their charter prospectus a statement from the direct carrier agreeing to take responsibility for the operator's obligations, along with evidence of a properly modified bond or escrow agreement reflecting the change.

If an escrow account were used, the participant would pay money directly to the escrow bank. The payment would be allocated to the various flight accounts in proportions specified by the direct carrier, as long as each account received at least the pro rata seat price. Vendors' bills would be paid by the bank upon presentation and certification by the charter operators. After completion of the flight, the balance in the account would be disbursed by the bank to the direct carrier, who would deduct the charter price and transmit the remaining profit to the charter operator.

Cancellation of Charters by Direct Carriers

We are proposing an addition to the Public Charter rule providing that the direct air carrier may not cancel a charter flight less than 10 days before scheduled departure, except for reasons that make the flight physically impossible. The existing Public Charter rule provides that the charter operator may not cancel less than 10 days before departure, but is silent about the carrier's responsibilities. Since the charter operator need not actually pay the carrier before departure, it would arguably be permissible for the carrier to cancel at the last minute for lack of payment. However, the Board has stated in a recent order [2] its position that the direct carrier is obligated to perform the flight to the same extent as the charter operator. We would make this requirement explicit by the addition of a new § 380.43.

Accordingly, the Civil Aeronautics Board proposes to amend 14 CFR Parts 207, 208, 212, 214, and 380, and to add a new 14 CFR Part 381, as follows:

PART 207—CHARTER TRIPS AND SPECIAL SERVICES

New paragraphs (b)(12) and (c)(10) would be added to § 207.11, to read as follows:

§ 207.11 Charter flight limitations.

Charter flights (trips) in air transportation shall be limited to the following:

* * * * *

(b) * * *

(12) By a direct air carrier in accordance with Part 381 of this chapter.

(c) * * *

(10) By a direct air carrier in accordance with Part 381 of this chapter;

* * * * *

[2] Order 79-4-117

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENGAGE IN SUPPLEMENTAL AIR TRANSPORTATION

1. The table of contents would be amended to read as follows:

Sec.

* * * * *

208.30 Exemption.

208.31 Suspension of exemption authority.

* * * * *

2. New pargraphs (b)(11) and (c)(10) would be added to § 208.6, to read as follows:

§ 208.6 Charter flight limitations.

Charter flights in air transportation performed by supplemental air carriers shall be limited to the following:

* * * * *

(b) * * *

(11) By a direct air carrier in accordance with Part 381 of this chapter.

(c) * * *

(10) By a direct air carrier, in accordance with Part 381 of this chapter;

* * * * *

3. New § 208.30 and § 208.31 would be added, to read as follows:

§ 208.30 Exemption.

Charter air carriers are hereby exempted from section 401(n)(4) of the Act.

§ 208.31 Suspension of exemption authority.

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

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

New paragraphs (a)(12) and (b)(10) would be added to § 212.8, to read as follows:

§ 212.8 Charter flight limitations.

Charter flights (trips) shall be limited to foreign air transportation performed by a foreign air carrier holding a foreign air carrier permit issued pursuant to section 402 of the Act authorizing such carrier to engage in foreign air transportation on an individually ticketed or individually waybilled basis—

(a) * * *

(12) By a foreign direct air carrier in accordance with Part 381 of this chapter.

(b) * * *

(10) By a foreign direct air direct air carrier in accordance with Part 381 of this chapter:

* * * * *

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

New paragraph (a)(9) would be added to § 214.7, to read as follows:

§ 214.7 Charter flight limitations.

Charter flights shall be limited to air tranportation performed by a direct foreign air carrier on a time, mileage, or trip basis where—

(a) * * *

(9) By a foreign direct air carrier in accordance with Part 381 of this chapter.

(b) * * *

(9) By a foreign direct air carrier in accordance with Part 381 of this Chapter;

PART 380—PUBLIC CHARTERS

1. The Table of Contents would be amended to read as follows:

Sec.

* * * * *

380.25a Charters by direct air carrier affiliates.

* * * * *

380.34a Substitution of direct air carrier's surety bond and depository agreement.

* * * * *

380.43 Cancellations by direct air carriers.
380.44 Exemption.
380.45 Suspension of exemption authority.

* * * * *

Appendix E

§ 380.10a [Reserved]

2. Section 380.10(a) would be revoked and reserved.

3. Section 380.20 would be amended to read as follows:

§ 380.20 Exemption.

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

(1) Section 401.

(2) Section 403.

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

(4) Section 405(b).

(5) Section 407 (b) and (c).

(b) Charter operators (other than foreign charter operators) are hereby relieved from section 408(a), 409, and 412 of the Federal Aviation Act of 1958, as amended, only if and so long as they comply with the provisions of this part and the conditions imposed herein.

4. A new § 380.25a would be added, to read as follows:

§ 380.25a Charters by direct air carrier affiliates.

A charter operator controlling, controlled by, or under common control with a direct air carrier may not enter into any operator-participant contract for a charter trip provided by the affiliated direct carrier less than 7 days before the scheduled departure date. For the purposes of this section, "control" means any ownership, common management, debtor-creditor, or other relationship between the two entities by which one entity could influence the other's business decisions other than by arms-length business transactions.

5. A new § 380.34a would be added, to read as follows:

§ 380.34a Substitution of direct air carrier's surety bond and depository agreement.

(a) A charter operator may comply with the following requirements of this section instead of complying with § 380.34, but only for charter trips in which all the air transportation is provided by one direct air carrier.

(b) The charter prosectus shall, instead of information regarding the charter operator's surety bond or escrow agreement, include:

(1) A statement in the form set out in Appendix E of this part by each direct air carrier providing air transportation that it will take responsibility for all charter participant deposits (including those for ground accommodations and services) and for the fulfillment of all the charter operator's contractual and regulatory obligations to the charter participants, and

(2) The statement described in either paragraph (c) or (d) of this section.

(c) (First alternative) A statement from the charter operator, the direct air carrier, and the direct air carrier's depository bank (under §§ 207.17, 208.40, 212.15, or § 214.9c), in the form set out in Appendix D, that:

(1) They have entered into a depository agreement covering the proposed flight schedule that provides, in addition to existing requirements under §§ 207.17, 208.40, 212.15, or § 214.9c, that:

(i) The bank shall pay funds from a flight account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter flight, upon presentation to the bank of vendors' bills and upon certification by the person who contracted for the ground accommodations or services of the amounts payable and the persons or companies to whom payment is to be made; and

(ii) Charter participants, or travel agents with whom they deal, shall make payments direct to the escrow account. The depository bank shall pay refunds to participants according to the terms of the operator-participant contract and this rule.

(2) The bank has received a copy of the proposed flight schedule, identified by the schedule number assigned by the charter operator under this part.

(d) (Second alternative) A statement from each direct air carrier providing air transportation and its surety company (under §§ 207.17, 208.40, 212.15, or § 214.9c), in the form set out in Appendix C to this part, that:

(1) They have entered into a surety bond rider or amendment assuring the direct air carrier's responsibilities to charter participants under this section, in an unlimited amount (except that the liability of the surety with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant);

(2) The surety has received a copy of the proposed flight schedule, identified by the schedule number assigned by the charter operator under this part.

(e) If a depository agreement is used, the prospectus shall include a statement from each direct air carrier providing air transportation and a surety company meeting the qualifications in § 380.34(c), in the form set out in Appendix C to this part, that:

(1) They have entered into a surety bond assuring the direct air carrier's responsibilities to charter participants under this section. The bond shall be in an amount of at least $10,000 times the number of flights, except that the amount need not be more than $200,000, and the liability of the surety to any charter participant shall not exceed the amount paid by the participant to the charter operator for that charter;

(2) The surety has received a copy of the proposed flight schedule, identified by the schedule number assigned by the charter operator under this part.

(f) A copy of the depository agreement under paragraph (c) of this section shall be filed with the Board, and it shall not be effective until approved by the Board.

(g) A copy of the surety bond rider or amendment under paragraph (d) of this section, or a copy of the surety bond under paragraph (e) of this section, shall be filed with the Board. It shall insure the financial responsibility of the direct air carrier for supplying the transporation and all other accommodations, services, and facilities in accordance with the contract between the charter operator and the charter participants. Such bond shall meet all the other requirements of § 380.34(c) and (d).

6. New § 380.43, § 380.44, and § 380.45 would be added, to read as follows:

§ 380.43 Cancellations by direct air carriers.

The direct air carrier may not cancel any charter flight under this part less than 10 days before the scheduled departure date, except for circumstnaces that make it physicaly impossible to perform the charter trip.

§ 380.44 Exemption.

Air carriers (other than foreign air carriers) are hereby relieved from section 408(a), 409, and 412 of the Federal Aviation Act of 1978, as amended, to the extent necessary to permit them to acquire, control, have interlocking relationships with, or market charter tours in conjunction with charter operators, but only so long as they comply with the provisions of this part and the conditions imposed herein.

§ 380.45 Suspension of exemption authority.

The Board reserves the power to suspend the exemption authority of any air carrier, withour hearing, if it finds that such action is necessary in order to protect the rights of the traveling public.

5. Appendix B, C, and D would be amended to read as follows:

Appendix B

Statement of Charter Operator and Direct Air Carrier Flight Schedule Number ———

1. Name and address of charter operator:

2. Name and address of direct air carrier:

3. Proposed Date and routing of each flight:

4. Type of aircraft and number of seats engaged:

5. Charter price for each flight:

6. Tour itinerary (if any) including hotels (name and length of stay at each), and other ground accommodations and services:

Appendix C

Statement of Charter Operator or Direct Air Carrier and Surety Company

We, ——— (charter operator) (direct air carrier) and ——— (surety company), certify that we have entered into a (surety bond) (surety bond rider), No. ———, in the amount of $———, on ——— (date). This bond covers proposed flight schedule number ———, a copy of which has been received by ——— (surety company). This bond complies with (§ 380.34) (§ 380.34a) of the Civil Aeronautics Board's Special Regulations (14 CFR § 380.34 or § 380.34a).

(check one, unless bond is in unlimited amount)

——— There are no outstanding claims against this bond.

——— There are outstanding claims against this bond in the amount $———. We have executed a rider to the bond on ——— (date) increasing the bond by this amount.*

Appendix D

Statement of Charter Operator, Direct Air Carrier and Depository Bank

We, ——— (charter operator, if any *), ——— (direct air carrier), and ——— (depository bank) certify that we have entered into a depository agreement on ——— (date). This depository agreement covers proposed flight schedule number ———, a copy of which has been received by ——— (depository bank). The depository agreement complies with (§ 380.34) (§ 380.34a) of the Civil Aeronautics Board's Special Regulations (14 CFR § 380.34 or § 380.34a).

Charter Operator

By: ———
Title: ———
Address: ———

Depository Bank

By: ———
Title: ———
Address: ———

Direct Air Carrier

By: ———
Title: ———
Address: ———

7. A new Appendix E would be added, to read as follows:

Appendix E

Statement of Direct Air Carrier

I, ——— (direct air carrier), hereby promise that I will take responsibility for all obligations owed by ——— (charter operator) to participants on charter flight No. ——— (or other designation of charter trip), including obligations for ground services and accommodations.

Direct Air Carrier

Signature and date: ———
Title: ———
Address: ———

*In place of this sentence, the following statement may be used: "——— (surety company) will separately pay any claims for which it may be liable without impairing the bond or reducing the amount of coverage."

* Write "N.A." if there is no charter operator.

PART 381—CHARTER SALES BY DIRECT AIR CARRIERS

A new part to the Board's Special Regulations would be adopted, to read as follows:

Sec.
381.1 Applicability.
381.2 Terms of service.
381.3 Board powers.

§ 381.1 Applicability.

This part applies to direct air carriers that provide charter trips, including trips with ground accommodations and services, directly to individuals.

§ 381.2 Terms of service.

(a) Charter trips under this part shall bear only such characteristics as are permitted for Public Charters under Part 380 of this title, except:

(1) They may be arranged and sold by a direct air carrier;

(2) There is no minimum contract size; and

(3) The participant contracts shall all be signed not less than 7 days before scheduled departure of the outbound flight.

(b) Each direct air carrier operating a charter trip under this part shall comply with all the requirements and limitations of Part 380 of this chapter, *Public Charters,* applicable to direct carriers and to charter operators of the same citizenship as the direct air carrier under this part, except that:

(1) Those provisions of Part 380 relating to the existence of a contract between a charter operator and a direct carrier do not apply;

(2) Section 380.34 does not apply;

(3) The statement of responsibility in § 380.34a(b)(1) need not be filed;

(4) If a depository agreement is used, it shall comply with § 380.34a; and

(5) If a surety bond rider or amendment is used, it shall:

(i) Protect charter participant deposits (including those for ground accommodations and services) and assure the direct air carrier's contractual and regulatory responsibilities to charter participants in an unlimited amount (except that the liability of the surety with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant);

(ii) Otherwise comply with § 380.34a.

(c) For the purposes of this section, "charter trip" includes charter tours with or without ground accommodations and services.

§ 381.3 Board powers.

The Board retains, with respect to charters under this part, all powers that it has under Part 380 of this chapter with respect to Public Charters.

(Secs. 102, 204, 401, 402, 416 of the Federal Aviation Act of 1958, as amended, 92 Stat. 1706, 72 Stat. 743, 754, 757, 92 Stat. 1731; 49 U.S.C. 1302, 1324, 1371, 1372, 1386.)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[EDR-374; SPDR-68; Docket No. 34965]

[FR Doc. 79-13988 filed 5-3-79; 8:45 am]

BILLING CODE 6320-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 443]

Health Spas; Publication of Presiding Officer's Report Regarding Proposed Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Publication of Presiding Officer's Report.

SUMMARY: On May 24, 1977, the presiding officer published in the **Federal Register** final notice of the proposed trade regulation rulemaking proceeding. The presiding officer's report, which is required by the Commission's Rules of Practice for Rulemaking and consists of his summary, findings and conclusions with regard to the issues designated by him in this proceeding, has been made public and placed on the public record.

DATE: The Commission's Rules of Practice for Rulemaking also provide a 60-day period for public comment on both the report by the presiding officer and the report of the staff. This will not commence until the staff's report has been made public and placed on the public record.

ADDRESS: Copies of the presiding officer's report may be obtained by written request to the Federal Trade Commission/SSD, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Roger J. Fitzpatrick, Presiding Officer, Office of the General Counsel, Federal Trade Commission, Washington, D.C. 20580, (202)-724-1054.

SUPPLEMENTARY INFORMATION: On May 24, 1977, the presiding officer published in the **Federal Register** (42 FR 26432) final notice of the proposed trade regulation rulemaking proceeding. The presiding officer's report, required by the Commission's Rules of Practice for rulemaking (16 CFR 1.13(f)) consisting of his summary, findings and conclusions with regard to those issues designated by him, has been made public and placed on the Public Record 215-50. A limited number of copies of the presiding officer's report have been printed for distribution; to obtain a copy, address a request to the Federal Trade Commission/SSD, Washington, D.C. 20580.

When completed, the staff's report on the rulemaking record and its recommendations to the Commission also will be made public and notice thereof published in the **Federal Register.** The Rules of Practice for Rulemaking (16 FR 1.13(h)) provide a 60-day period, for public comment on both the report by the presiding officer and the report of the staff. This comment period will not commence until the staff's report has been made public and placed on the public record. Comment on the presiding officer's report alone would be considered premature at this time. The presiding officer's report has not been reviewed or adopted by either the Bureau of Consumer Protection or the Commission itself and its publication should not be interpreted as reflecting the present views of the Commission or any indivdual Commissioner.

Issued: May 1, 1979.

Roger J. Fitzpatrick,

Presiding Officer.

[FR Doc. 79-14046 Filed 5-3-79; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 882]

Medical Devices; Classification of Carotid Artery Clamps

Correction

In FR Doc. 78-32935, appearing at page 55701 in the issue of Thursday, November 28, 1978, the ninth line of the first complete paragraph in the second column should read, "[pa-]tients out of a series of 220 (15.5 per-[cent]".

[Docket No. 78N-1079]

BILLING CODE 1505-01-M

[21 CFR Part 882]

Medical Devices; Classification of Rigidity Analyzers

Correction

In FR Doc. 78-32859, appearing at page 55645 in the issue of Tuesday, November 28, 1978, the second and fourth lines of the second paragraph under the heading "Proposed Classification" should read, "Drug, and Cosmetic Act (secs. 518," and "(21 U.S.C. 360c, 371(a)) and under au-[thority]" respectively.

[Docket No. 78N-1001]

BILLING CODE 1505-01-M

DEPARTMENT OF LABOR

Wage and Hour Division

[29 CFR Parts 524 and 525]

Special Minimum Wages for Handicapped Workers in Competitive Employment and Employment of Handicapped Clients in Sheltered Workshops Notice of Hearing on Petition

AGENCY: Wage and Hour Division, Labor.

ACTION: Notice of Hearing on Petition and Advanced Notice of Possible Proposed Rulemaking.

SUMMARY: The Wage and Hour Division of the Department of Labor will be conducting a hearing to determine approprate action on a petition filed with the Department of Labor by the National Federation of the Blind to have the Department revise Regulations, 29 CFR Parts 524 and 525 so that no certificates authorizing wages lower than the applicable minimum wage under the Fair Labor Standards Act could be issued for blind or otherwise visually handicapped workers.

DATES: A public hearing is to be held beginning at 10:00 a.m. on June 5, 1979. Interested parties desiring to testify in person should notify the Administrator in writing no later than May 25, 1979 of their desire to testify. Interested persons desiring to comment should submit their comments to the Administrator on or before June 5, 1979.

ADDRESS: The hearing will be held in Conference Room S-4215, A, B, C, U.S. Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20210, which is an accessible building. Parties desiring to testify and parties desiring to submit comments should submit their requests or comments to the Administrator, Wage and Hour Division, U.S. Department of Labor, NDOL, 200 Constitution Avenue, NW, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Arthur H. Korn, Director, Division of Special Minimum Wages, Wage and Hour Division, U.S. Department of

Labor, 200 Constitution Avenue, N.W., Room C–4316, Washington, D.C. 20210, (202) 523–8727.

SUPPLEMENTARY INFORMATION: Section 14(c) of the Fair Labor Standards Act provides that the Secretary of Labor, to the extent necessary to prevent the curtailment of opportunities for employment, shall by order or regulation provide for the employment under special certificates of individuals whose earning or productive capacity is impaired by age or physical or mental disability at wages which are lower than the minimum wage applicable under section 6 of the Act. The minimum wage under section 6 is $2.90 an hour and will be increased to $3.10 an hour beginning January 1, 1980, and to $3.35 an hour beginning January 1, 1981. Title 29 of the Code of Federal Regulations Parts 524 and 525, the regulations the petition proposes to amend, were issued pursuant to section 14(c). Part 524 established the terms and conditions for authorizing lower minimum wages for handicapped workers employed in competitive industry and Part 525 established the terms and conditions for authorizing lower minimum wages for handicapped workers employed in sheltered workshops.

The hearing is being held to obtain information which will be helpful in determining whether the petition of the National Federation of the Blind shall be granted. The issues to be decided are whether the discontinuance of lower minimum wages for the blind and otherwise visually impaired individuals (1) will curtail their employment opportunities or (2) is not justified in light of their earning or productive capacity. The comments should be directed to presenting factual information on these issues. If, as a result of the hearing, it is determined that the present regulations should be amended, a specific proposal will be published in the **Federal Register.**

Copies of the petition, the Fair Labor Standards Act and Regulations Parts 524 and 525 may be obtained by contacting Arthur H. Korn at the address in this notice.

Interested parties desiring to testify in person are requested to notify the Administrator in writing. They should furnish the following information:

(1) The name, address, and telephone number of the person(s) appearing.

(2) If appearing in a representative capacity, the person(s) appearing should provide the name(s) and address(es) of the person(s) or organization(s) being represented.

(3) The length of time required for the presentation.

(4) Where written data or comments are to be provided for the record, they should be furnished in triplicate.

Interested parties who do not desire to testify in person but who wish to submit written data, proposals or other related material for the record should provide such, in triplicate, to the Administrator, Wage and Hour Division, U.S. Department of Labor, Washington, D.C. 20210, not later than June 5, 1979.

In an endeavor to hear all interested parties, those persons who have not previously advised the Administrator that they wish to be heard will be heard following those who have so advised the Administrator, but they may be limited to ten minutes for their presentation.

This document was prepared under the direction and control of Herbert J. Cohen, Assistant Administrator, Office of Fair Labor Standards, Wage and Hour Division, U.S. Department of Labor.

Signed at Washington, D.C., May 1, 1979.

C. Lamar Johnson,

Deputy Administrator, Wage and Hour Division.

[FR Doc. 79–14044 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–27–M

FEDERAL MEDIATION AND CONCILIATION SERVICE

[29 CFR Part 1420]

Boards of Inquiry in Health Care Industry Collective Bargaining Disputes; Proposed Regulations

AGENCY: Federal Mediation and Conciliation Service.

ACTION: Publication of Proposed Regulations for Public Comment.

SUMMARY: The Federal Mediation and Conciliation Service ("the Service") is proposing regulations under the authority of the Labor-Management Relations Act, as amended in 1974, to give the parties to collective bargining disputes in the health care industry the option of having some input into the selection of any Board of Inquiry that may be appointed by the Service. The Service is also proposing under the same authority, regulations under which the Service would defer to the parties' own privately agreed to factfinding or arbitration procedure and decline to appoint a Board of Inquiry as long as the parties' own procedure meets certain conditions so as to satisfy the Service's responsbilities under the statute. Both of these procedures would be entirely optional on the parties and the Service would not intend to impose such procedures on any party(s) that does not desire to use them. Interested persons are invited to submit comments concerning these proposed regulations.

DATES: Comments must be submitted on or before July 3, 1979.

ADDRESSES: Comments should be addressed to Scott A. Kruse, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, D.C. 20477.

FOR FURTHER INFORMATION CONTACT: Scott A. Kruse (202) 653–5305, General Counsel, Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, D.C. 20427.

SUPPLEMENTARY INFORMATION:

Functions of the Service in Health Care Industry Bargaining Under the Labor-Management Relations Act, as Amended (Section 1420.1)

This section merely describes the two functions of the Federal Mediation and Conciliation Service in health care industry collective bargaining as provided for in the Labor-Management Relations Act ("the Act"). The first function is the Service's authority to receive notice of such bargaining disputes and to attempt to mediate those disputes. The second function is the Service's authority to appoint a Board of Inquiry to conduct factfinding and make recommendations to the parties to such disputes where the Service determines that such a Board of Inquiry is appropriate. The language of this section of the proposed regulations is taken directly from the Act, except for some shortening in the interest of brevity and simplicity. It is intended simply as a useful introduction to subsequent sections.

Optional Input of Parties to Board of Inquiry Selection (Section 1420.2)

A number of parties in the health care industry have expressed to the Federal Mediation and Conciliation Service their desire for some input to the process by which the Service selects an individual(s) to serve as a Board of Inquiry ("BoI") under Section 213 of the Labor-Management Relations Act in a collective bargaining dispute. Such expressions have been made by many representatives from both management and unions.

The proposed regulations would give the parties an option to have input into the selection process if that input comes well in advance of the Board of Inquiry appointment date and the negotiation process and if it is done in a feasible manner. The Service is proposing making available to the parties in the

health care industry an optional procedure under which the parties may, if they so desire, jointly submit to the Service a list of arbitrators or other impartial individuals who would be acceptable BoI members to both parties. The submission of this list could occur at any time at least 90 days prior to the contract expiration date in a contract renewal dispute, or at any time prior to the statutory notice to the Service in an initial contract dispute. The Service will then make every effort to select any BoI that might be appointed from that jointly submitted list, although the Service cannot promise that it would select a BoI from such list.

Submission or receipt of any such list would not in any way constitute an admission of the appropriateness of appointment of a BoI nor an expression of the desirability of a BoI by any party or by the Service.

The jointly submitted list could be worked out and submitted by a particular set of parties for a particular dispute between them, or by a particular set of parties for use in all future disputes between them, or by a group of health care employers and unions in a community or geographic area for use in all disputes between any two or more of those parties.

It should be emphasized that this procedure would be a purely optional one to the parties, and not one which the Service would intend to impose on the parties. It would be solely to provide the parties with an opportunity to have some input into the selection of a BoI if they so desire.

FMCS Deferral to Parties' Own Private Factfinding or Interest Arbitration Procedures (Sections 1420.8 and 1420.9)

A number of parties in the health care industry have expressed to the Service their desire to establish and utilize their own privately agreed to factfinding or interest arbitration procedures, rather than be forced into the statutory Board of Inquiry procedure. The reasons for this desire by the parties range from avoiding the timing and time limits of the statutory BoI procedure to gaining control over the selection of the third party neutral. In some cases, the parties simply prefer interest arbitration as a last resort if they cannot settle their differences, rather than the non-binding BoI factfinding procedure.

In a number of specific disputes, the parties have jointly agreed to their own alternative procedures which were submitted to the Service. The Service has in effect deferred to some such private procedures and declined to appoint a BoI.

The proposed regulations establish a written policy of deferral to such private factfinding and interest arbitration procedures as long as such procedures meet certain conditions so as to satisfy the Service's responsibilities under the Labor-Management Relations Act. The Service will decline to appoint a BoI and leave the selection and appointment of a factfinder or arbitrator to the parties if the parties have agreed in writing to their own factfinding or interest arbitration procedure which is consistent with the intent of the Act. The conditions for deferral stated in the proposed regultions are based upon the responsibilities of the Service under the Act.

This deferral policy by the Service would only come into play if both parties desired to establish their own alternative procedure to the BoI procedure.

Advance Notice of Proposed Rulemaking on which these proposed regultions are based was published in the **Federal Register** on March 13, 1979.

Title 29 of the Code of Federal Regulations is prepared to be amended by adding a new Part 1420.

PART 1420—FEDERAL MEDIATION AND CONCILATION SERVICE—ASSISTANCE IN THE HEALTH CARE INDUSTRY

Sec.

1420.1 Functions of the Service in Health Care Industry bargaining under the Labor-Management Relations Act, as amended (hereinafter "the Act").
1420.2–1420.4 [Reserved]
1420.5 Optional input of parties to Board inquiry selection.
1420.6–1420.7 [Reserved]
1420.8 FMCS deferral to parties' own private factfinding procedures.
1420.9 FMCS deferral to parties' own private interest arbitration procedures.

Authority: Secs. 8(d), 201, 203, 204, and 213 of the Labor Management Relations Act, as amended in 1974 (29 U.S.C. 158(d), 171, 173, 174 and 183).

§ 1420.1 Functions of the Service in Health Care Industry Bargaining Under the Labor-Management Relations Act, as Amended (hereinafter "the Act").

(a) *Dispute Mediation.* Whenever a collective bargaining dispute involves employees of a health care institution, either party to such collective bargaining must give certain statutory notices to the Federal Mediation and Conciliation Service (hereinafter "the Service") before resorting to strike or lockout and before terminating or modifying any existing collective bargaining agreement. Thereafter, the Service will promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be called by the Service for the purpose of aiding in a settlement of the dispute. (29 U.S.C. Sections 158(d) and 158(g).)

(b) *Boards of Inquiry.* If, in the opinion of the Director of the Service a threatened or actual strike or lockout affecting a health care institution will substantially interrupt the delivery of health care in the locality concerned, the Director may establish within certain statutory time periods an impartial Board of Inquiry. The Board of Inquiry will investigate the issues involved in the dispute and make a written report, containing the findings of fact and the Board's non-binding recommendations for settling the dispute, to the parties within 15 days after the establishment of such a Board. (29 U.S.C. 183.)

§ 1420.5 Optional Input of Parties to Board of Inquiry Selection.

The Act gives the Director of the Service the authority to select the individual(s) who will serve as the Board of inquiry if the Director decides to establish a Board of Inquiry in a particular health care industry bargaining dispute (29 U.S.C. 183). If the parties to collective bargaining involving a health care institution(s) desire to have some input to the Service's selection of an individual(s) to serve as a Board of Inquiry (hereinafter "BoI"), they may jointly exercise the following optional procedure: (a) At any time at least 90 days prior to the expiration date of a collective bargaining agreement in a contract renewal dispute, or at any time prior to the notice required under clause (B) of Section 8(d) of the Act (29 U.S.C. 158(d)) in an initial contract dispute, the employer(s) and the union(s) in the dispute may jointly submit to the Service a list of arbitrators or other impartial individuals who would be acceptable BoI members both to the employer(s) and to the union(s). Such list submission must identify the dispute(s) involved and must include addresses and telephone numbers of the individuals listed and any information available to the parties as to current and past employment of the individuals listed. The parties may jointly rank the individuals listed. The parties may jointly rank the individuals in order of preference if they desire to do so.

(b) The Service will make every effort to select any BoI that might be appointed from that jointly submitted list. However, the Service cannot promise that it will select a BoI from

such list. The chances of the Service finding one or more individuals on such list available to service as the BoI will be increased if the list contains a sufficiently large number of names and if it is submitted at as early a date as possible. Nevertheless, the parties can even preselect and submit jointly to the Service one specific individual if that individual agrees to be available for the particular BoI time period. Again the Service will not be bound to appoint that individual, but will be receptive to such a submission by the parties.

(c) The jointly submitted list may be worked out and agreed to by: (1) A particular set of parties in contemplation of a particular upcoming negotiation dispute between them, or (2) a particular set of parties for use in all future disputes between that set of parties, or (3) a group of various health care institutions and unions in a certain community or geographic area for use in all disputes between any two or more of those parties.

(d) Submission or receipt of any such list will not in any way constitute an admission of the appropriateness of appointment of a BoI nor an expression of the desirability of a BoI by any party or by the Service.

(e) This joint submission procedure is a purely optional one to provide the parties with an opportunity to have input into the selection of a BoI if they so desire.

(f) Such jointly submitted lists should be sent jointly by the employer(s) and the union(s) to the appropriate regional office of the Service. The regional offices of the Service are as follows:

Region 1, Federal Building, Room 2937, 26 Federal Plaza, New York, NY 10007.
Region 2, Mall Building, Room 401, Fourth and Chestnut Streets, Philadelphia, PA 19106.
Region 3, Suite 400, 1422 West Peachtree Street, N.W., Atlanta, GA 30309.
Region 4, Superior Building, Room 1525, 815 Superior Avenue, N.E., Cleveland, OH 44114.
Region 5, Insurance Exchange Building, 16th Floor, 175 West Jackson Boulevard, Chicago, IL 60604.
Region 6, Chromalloy Plaza, Fifth Floor, 120 South Central Street, St. Louis, MO 63105.
Region 7, Francisco Bay Building, Suite 235, 50 Francisco Street, San Francisco, CA 94133.
Region 8, Fourth and Vine Building, Room 444, 2615 Fourth Avenue, Seattle, WA 98121.

§ 1420.8 FMCS Deferral to Parties' own Private Factfinding Procedures

(a) The Service will defer to the parties' own privately agreed to factfinding procedure and decline to appoint a Board of Inquiry (BoI) as long as the parties' own procedure meets certain conditions so as to satisfy the Service's responsibilities under the Act. The Service will decline to appoint a BoI and leave the selection and appointment of a factfinder to the parties to a dispute if both the parties have agreed in writing to their own factfinding procedure which meets the following conditions:

(1) The factfinding procedure must be invoked automatically at a specified time (for example, at contract expiration if no agreement is reached).

(2) It must provide a fixed and determinate method for selecting the impartial factfinder(s).

(3) It must provide that there can be no strike or lockout and no changes in conditions of employment (except by mutual agreement) prior to or during the factfinding procedure and for a period of at least seven days after the factfinding is completed.

(4) It must provide that the factfinder(s) will make a written report to the parties, containing the findings of fact and the recommendations of the factfinder(s) for settling the dispute, a copy of which is sent to the Service.

The parties to a dispute who have agreed to such a factfinding procedure should jointly submit a copy of such agreed upon procedure to the appropriate regional office of the Service at as early a date as possible, but in any event prior to the appointment of a BoI by the Service. See § 1420.5(f) for the addresses of the regional offices.

(b) Since the Service does not appoint the factfinder under paragraph (a) of this section, the Service cannot pay for such factfinder. In this respect, such deferral by the Service to the parties' own factfinding procedure is different from the use of stipulation agreements between the parties which give to the Service the authority to select and appoint a factfinder at a later date than the date by which a BoI would have to be appointed under the Act. Under such stipulation agreements by which the parties give the Service authority to appoint a factfinder at a later date, the Service can pay for the factfinder. However, in the deferral to the parties' own factfinding procedure, the parties choose their own factfinder and they pay for the factfinder.

§ 1420.9 FMCS Deferral to Parties' Own Private Interest Arbitration Procedures

(a) The Service will defer to the parties' own privately agreed to interest arbitration procedure and decline to appoint a Board of Inquiry (BoI) as long as the parties' own procedure meets certain conditions so as to satisfy the Service's responsibilities under the Act. The Service will decline to appoint BoI if the parties to a dispute have agreed in writing to their own interest arbitration procedure which meets the following conditions:

(1) The interest arbitration procedure must provide that there can be no strike or lockout and no changes in conditions of employment (except by mutual agreement) during the contract negotiation covered by the interest arbitration procedure and the period of any subsequent interest arbitration proceedings.

(2) It must provide that the award of the arbitrator(s) under the interest arbitration procedure is final and binding on both parties.

(3) It must provide a fixed and determinate method for selecting the impartial interest arbitrator(s).

(4) The interest arbitration procedure must provide for a written award by the interest arbitrator(s).

The parties to a dispute who have agreed to such an interest arbitration procedure should jointly submit a copy of their agreed upon procedure to the appropriate regional office of the Service at as early a date as possible, but in any event prior to the appointment of BoI by the Service. See § 1420.5(f) for the addresses of regional offices.

This publication of proposed regulations is issued under the authority of sections 8(d), 201, 203, 204, and 213 of the Labor Management Relations Act, as amended in 1974 (29 U.S.C. Section 158(d) 171, 173, 174 & 183).

Issued in Washington, D.C., on April 23, 1979.

Wayne L. Horvitz,
Director, Federal Mediation and Conciliation Service.

[FR Doc. 79-14018 Filed 5-3-79; 8:45 am]
BILLING CODE 6732-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[43 CFR Part 3500]

Leasing of Minerals Other Than Oil and Gas, General; Fees, Rentals and Royalties; Requirement of Minimum Production or Minimum Royalty Payments in Potassium, Sodium, Sulfur and Phosphate; Extension of Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of Comment Period.

SUMMARY: The comment period on the proposed rulemaking on Fees, Rentals

and Royalties; Requirement of Minimum Production or Minimum Royalty Payments in Potassium, Sodium, Sulfur and Phosphate is extended for an additional 90 day period as requested by the comments.

DATE: Comment period extended to August 6, 1979.

ADDRESS: Send comments to: Director (210), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 at the above address during regular business hours (7:45 a.m.–4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: David M. Carty, (202) 343–7753.

SUPPLEMENTARY INFORMATION: In response to requests for an extension of 90 days of the comment period on this proposed rulemaking, an extension of 90 days is authorized to permit the public to carefully study the proposed rulemaking and make adequate comments.

Gary J. Wicks,
Acting Assistant Secretary of the Interior.
April 30, 1979.
[FR Doc. 79–13935 Filed 5–3–79; 8:45 am]
BILLING CODE 4310–84–M

INTERSTATE COMMERCE COMMISSION

[49 CFR Parts 1206 and 1207]

Disclosure of Depreciation Policies in the Annual Report of Motor Carriers of Property and Motor Carriers of Passengers

AGENCY: Interstate Commerce Commisison.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing to expand the disclosure of depreciation policies in the footnotes of the annual reports for motor carriers of property and passengers. This is the result of increasing concern over excessive depreciation rates used by motor carriers of property and passengers. The additional disclosure will facilitate ratemaking analyses and enable the Commission to evaluate the need for prescribed depreciation rates.

DATES: Written comments must be received by June 30, 1979.

ADDRESSES: Send comments (with 15 copies, if possible) to the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Bryan Brown, Jr., Phone No.: 202–275–6236.

SUPPLEMENTARY INFORMATION: The Commission has become increasingly concerned with excessive depreciation rates used by motor carriers of property and passengers. The number of audit exceptions taken involving depreciation policies has substantially increased. A growing number of motor carriers are using depreciation rates that materially exceed the practical life of the asset. As a result, depreciation expense is overstated and operating income is understated.

The Commission does not prescribe depreciation rates for motor carriers. However, depreciation is an operating expense that can have a significant impact on a carrier's operating income and ratemaking. Excessive depreciation of operating equipment or property can lead to the imposition of higher rates. In order to facilitate ratemaking analysis and the evaluation of the impact of different depreciation policies on carrier financial statements more detailed disclosure is necessary.

The Commission is also aware that certain State regulatory bodies are considering prescribing motor carrier depreciation rates as a result of excessive depreciation practices. With the additional depreciation policy disclosure, we will be able to monitor depreciation policy and determine if there is a need for prescribed depreciation rates. If necessary, the Commission and State regulatory bodies could jointly prescribe rates to minimize the carriers' accounting and reporting burden.

We propose to require the following disclosures to be added in the footnotes to the financial statements in Annual Report Form M and Form MP.

Depreciation Policy for Carrier Operating Property

(a) Describe company's depreciation policy including maintenance policy towards revenue equipment, retention period for revenue equipment, and circumstances under which deviations from the prescribed depreciation policy would occur.

(b) Describe how the service life and salvage value depreciable assets is determined, and

(c) Give the percentage of fully depreciated assets in these categories: (1) Structures, (2) Revenue equipment, and (3) Service cars and equipment.

Item (a) is designed to disclose the carrier's attitude toward fixed assets. For example, a management commitment to regularly scheduled maintenance programs and asset retention periods of long duration should be reflected in the depreciation rates. Excessive depreciation of assets should be minimal in these carriers. Item (b) is designed to disclose how depreciable asset lives and salvage values are determined. Carriers employing guidelines developed by the industry or Internal Revenue Service are less likely to have excessive depreciation. Carriers employing guidelines based on management profit objectives or other criteria instead of economic realities are more likely to have excessive depreciation policies. Item (c) will disclose the number of assets in use but fully depreciated. If the percentage of fully depreciated assets in service is large, this would be a strong indicator that the carrier's depreciation policy is excessive.

The public and the affected carriers are requested to study the proposed changes in the forms, and to submit their views and comments. After the comments are reviewed, the Commission will publish a further notice which will contain the decision in this matter.

The Commission will serve this notice on all Class I motor carriers, the Governor of every State, all State agencies, having jurisdiction over transportation and all interested parties.

This proposal does not significantly affect the quality of the human environment.

This proposal is made under the authority of 49 U.S.C. 11142.

Decided April 6, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,
Secretary.
[No. 37109]
[FR Doc. 79–13973 filed 5–3–79; 8:45 am]
[BILLING CODE 7035–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

Preliminary Fishery Management Plan

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Approval of Preliminary Fishery Management Plan Amendment, Proposed Regulations and Request for Comments.

SUMMARY: The Assistant Administrator for Fisheries has approved an amendment to the preliminary fishery management plan (PMP) for the foreign trawl fishery in the fishery conservation zone (FCZ) off the coasts of Washington, Oregon and California.

Regulations affecting foreign fishermen which implement the amended PMP are proposed. Comments on the proposed regulations are invited.

DATE: Comments are invited until May 26, 1979.

ADDRESS: Comments should be addressed to: Assistant Administrator for Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

FOR FURTHER INFORMATION CONTACT: Donald R. Johnson, Director, Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109. Telephone: (206) 442–7575.

SUPPLEMENTARY INFORMATION: The Assistant Administrator for Fisheries (Assistant Administrator) approved the amendment to the PMP on April 25, 1979. The amended PMP, as approved, provides the basis for the regulations published here, and is available for public inspection at the Northwest regional office of the National Marine Fisheries Service (address above). Subpart E of the 1979 foreign fishing regulations which were published in the **Federal Register** on December 19, 1978 (43 FR 59292) was reserved. These proposed regulations would be inserted as Subpart E of the 1979 foreign fishing regulations, and would govern all foreign fishing during 1979 in the FCZ seaward of Washington, Oregon, and California. While they are similar to those regulations which were in effect during 1978, there are some significant differences. Those differences are summarized here:

—Based upon recent stock assessments, the initial total allowable level of foreign fishing (TALFF) would increase from 89,000 metric tons of hake to 109,120 metric tons.

—Based upon application of three criteria set forth in the proposed regulations, an additional reserve of 39,780 mt of hake (20% of the total allowable catch) could be allocated to the foreign fishery after August 1.

—No directed fishery would be allowed for jack mackerel. However, an incidental catch allowance of 3.0% of the hake catch would be permitted.

—A separate incidental catch allowance would be established for Pacific ocean perch (POP) of 0.062% of the hake catch.

—The Klamath River Pot Sanctuary would be expanded. This is an area which has been closed to foreign fishing.

—Hake catch would be reported to the nearest 0.1 m.t. rather than to the nearest metric ton.

Pacific Ocean Perch

The 1978 regulations inlcuded POP in the incidental catch allowance for "rockfish". That category includes several species found in the FCZ where the foreign trawl fishery for hake is conducted.

POP are important to domestic fishermen, and concern has been expressed as to whether the inclusion of POP within the "rockfish" category afforded adequate protection for that species. A separate incidental catch allowance for POP is therefore proposed. That allowance is expressed in the PMP in terms of a percentage of the hake, catch, as are the allowances for several other species caught incidentally to hake. The proposed percentage for 1979 is based on the best scientific evidence of the condition of the POP stock. It is intended to both protect POP and allow a reasonable opportunity for foreign fishermen to harvest their hake allocation with the attendant unavoidable catch of small quantities of POP. These regulations propose a POP catch allowance of 0.062%, which is higher than the 0.048%, which appeared in the draft PMP amendment and in the final supplemental environmental impact statement (SEIS). The final SEIS also contained a provision for a possible midseason adjustment of up to 0.08%, if warranted by reassessment of POP stock abundance. The final amendment to the PMP, as approved by the Assistant Administrator includes a catch allowance of 0.062%, but eliminates the provision for potential ajustment.

Another mechanism for protecting POP also is proposed in these regulations. If, at the time the release of the hake reserve is being considered, the total harvest (domestic and foreign) of the the POP is greater than 80 percent of the equilibrium yield, and if it is determined that a further harvest of POP would be detrimental to the conservation requirements of the Columbia area POP stock, no release of reserve hake to foreign fishermen would be made.

Criteria for Release

These regulations would establish a set of criteria for apportionment of the hake reserve at midseason, and procedures for that apportionment. The reserve is intended to allow for uncertainty respecting both resource abundance and domestic harvest levels. The proposed criteria call for apportioning the reserve to the foreign fishery after August 1, unless:

(1) Soviet hake catch rate is less than expected, indicating lower than projected stock abundance. This is intended to protect the hake stock. The increase in abundance of hake should allow a greater harvest of that species in 1979. However, uncertainty exists concerning the total abundance of that stock. Therefore, a margin of error must be provided in favor of the resource.

(2) All or part of the reserve is expected to be harvested by United States fishermen. This criterion recognizes that while the domestic harvest of hake is increasing, the exact level of that harvest cannot be predicted.

(3) The combined foreign and domestic catch of POP is approaching the equilibrium yield of that species, requiring curtailment of further harvest. This criterion reflects concern with both the impact of the increased hake harvest on POP and uncertainty with regard to total POP abundance. Application of this criterion would require re-evaluation of current POP abundance estimates.

The proposed regulations would allow interested persons to submit comments up to July 15 on matters relevant to application of the reserve criteria.

Other Provisions

The proposed expansion of the Klamath River Pot Sanctuary reflects the need to further reduce the possibility of gear conflicts between foreign and domestic vessels and gear. The proposed elimination of the directed fishery for jack mackerel, and its replacement with an incidental catch allowance, reflects increasing domestic harvest of hake, with resultant increase in the incidental catch of jack mackerel. All other provisions are essentially the same as those in effect in 1979.

The Assistant Administrator for fisheries has determined that these regulations are not significant under Executive Order 12044.

Signed at Washington, D.C., this 26th day of April, 1979.

Winifred H. Meibohm,

Executive Director, National Marine Fisheries Service.

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

§ 611.20 [Amended]

1. Table I to 50 CFR § 611.20 is proposed to be amended by deleting all entries under Washington, Oregon, California Trawl Fishery and footnote 1 and replacing them with the following:

Fishery	Species	Species code	TALFF (metric tons)
Washington, Oregon, California Trawl	Hake, Pacific	704	[5] 109,120
Do	Flounders	129	[1] 109
Do	Mackerel, jack	208	[1] 3,274
Do	Rockfishes, including Pacific ocean perch	849	[1] 873
Do	Perch, Pacific ocean	780	[1] 68
Do	Sablefish	703	[1] 109
Do	Other species	499	[1] 546

[1] Unavoidable incidental catch only. Amount will be increased if amount of Pacific hake held in reserve is released to TALFF.

2. 50 CFR Part 611 is proposed to be amended by adding the following Subpart E:

Subpart E—Northeast Pacific Ocean

§ 611.70 Washington, Oregon, California trawl fishery.

(a) *Purpose.* This subpart regulates all foreign fishing conducted under a Governing International Fishery Agreement in the fishery conservation zone seaward of Washington, Oregon and California.

(b) *Authorized fishery*—(1) *TALFFs and reserves.* (i) *TALFFs.* The total allowable levels of foreign fishing (TALFFs) and the amounts of fish set aside as reserves are set forth in Table I of this section.

Table I.—*Washington, Oregon, California Trawl Fishery: TALFF and Reserve by species* [1]

[In metric tons]

Species	TALFF	Reserve	Total
Pacific hake	109,120	39,780	148,900
Flounders [2]	109	40	149
Jack mackerel [2]	3,274	1,193	4,467
Rockfishes, including Pacific Ocean perch [2]	873	318	1,191
Pacific Ocean perch [2]	68	25	93
	9		
Sablefish [2]	109	40	149
Other species [2 3]	546	199	745

[1] The TALFFs specified in this table may be modified during the year if reserves are apportioned to TALFF.

[2] Unavoidable incidental catch only. Reserve amounts may be apportioned to TALFFs to the extent the Pacific hake reserve is apportioned to TALFF during the year.

[3] The category "other species" includes all species of fish except: (A) the other fish listed in the table; and (B) billfish, Pacific halibut, salmon, scallops, sharks [except dogfish), shrimp, steelhead trout, and Continental Shelf fishery resources.

(ii) *Reserves*—(A) *Apportionment of reserves.*—As soon as practicable after August 1, the Regional Director shall apportion all or a part of the reserves to TALFF. The Regional Director may withhold all or part of the Pacific hake reserve based on the criteria in paragraph (b)(1)(ii)(B) of this section. Apportionment of the reserves for other species shall be based on the following maximum incidental catch rates.

Species:	*TALFF* [1]
Flounders	0.1
Jack mackerel	3.0
Rockfishes, including Pacific ocean perch	0.8
Pacific ocean perch	0.062
Sablefish	0.1
Other species	0.5

[1] Percentage of Pacific hake.

(B) *Criteria.* The Regional Director my withhold all or part of the Pacific hake reserve if, as of July 15:

(1) The Average catch rate of Pacific hake by vessels of the U.S.S.R. is less than 27 m.t. per trawler per day; or

(2) All or part of the Pacific hake reserve will be harvested by vessels of the United States during the rest of the fishing year, as determined by the following factors:

(i) Reported U.S. catch and effort compared to previously projuected U.S. harvesting capacity; and

(ii) Projected U.S. catch and effort for the rest of the fishing year; or

(3) The all-nation catch of Pacific ocean perch in the Columbia Area (see Appendix II to § 611.9) is greater than 80 percent of the equilibrium yield for that species in that area and the Regional Director determines that further catch of Pacific ocean perch by foreign vessels would not be consistent with conservation of that species. Factors which shall be considered in this determination are:

(i) Catch per unit of effort;

(ii) Any new or proposed State restrictions on domestic catch of Pacific ocean perch in the Columbia Area during the rest of the fishing year;

(iii) Condition of the stocks within the Columbia Area; and

(iv) Any other factors relevant to abundance of Pacific ocean perch.

(C) *Public comment.*

(1) Comments may be submitted to the Regional Director concerning all matters relevant to the determinations made by the Regional Director under paragraph (b)(1)(ii)(B) of this section. (Address: NMFS, 1700 Westlake Avenue North, Seattle, Washington 98109.)

(2) Comments must be submitted no later than July 15.

(3) The Regional Director shall consider any timely comment filed in accordance with this section in making the determinations specified in paragraph (b)(1)(ii)(B) of this section.

(4) The Regional Director shall compile, in aggregate form the most recent available reports on: *(i)* foreign catch of Pacific hake per unit of effort; *(ii)* catch and effort by vessels of the U.S. fishing for hake seward of Washington, Oregon, and California; and *(iii)* catch, effort, and abundance of Pacific ocean perch in the Columbia Area. This data shall be available, as it is compiled, for public inspection during business hours at the National Marine Fisheries Service, Northwest Regional Office, 1700 Westlake Avenue North, Seattle, Washington, during the period July 1–15.

(D) *Procedure.* As soon as practicable after August 1, the Regional Director shall publish in the **Federal Register:** *(1)* the amounts of reserves to be apportioned to the TALFFs; *(2)* the reasons for the determinations regarding apportionment to TALFF of the Pacific hake reserve; and *(3)* responses to comments received.

(2) *Fishing permitted.* The catching and retention of any species for which a nation has an allocation is permitted, provided that:

(i) The vessels of that nation have not caught:

(A) the allocation of that nation for Pacific hake, or

(B) the maximum allowable incidental catch limitation of that nation for any species or species group (e.g., "other species"). When vessels of a foreign nation have caught a maximum allowable incidental catch limitation, all further fishing (as defined in § 611.2(r)(1)) by vessels of that nation must cease, even if the Pacific hake allocation has not been reached. Therefore, it is essential that a foreign nation plan its fishing strategy to ensure that the reaching of an incidental catch limitation does not close its Pacific hake fishery.

(ii) A directed fishery is not conducted for species or species groups other than Pacific hake.

(iii) The fishery has not been closed for other reasons under § 611.15.

(c) *Open season.* Foreign fishing authorized under this subpart may begin at 0700 G.m.t. on June 1 and will terminate not later than 0800 G.m.t. on November 1, except as specified otherwise in a permit.

(d) *Open areas.* Except as prohibited in paragraph (e) of this section, foreign fishing under this Subpart is permitted beyond twelve nautical miles from the

baseline used to measure the U.S. territorial sea between 39°00′ N. latitude and 47°30′ N. latitude, and as otherwise specifically authorized by permit.

(e) *Closed areas.* Trawling by foreign vessels is prohibited in the following areas:

(1) "Columbia River Recreational Fishery Sanctuary"—that area between 46°00′ N. latitude and 47°00′ N. latitude and east of a line connecting the following coordinates in the order listed: 46°00′ N. lat., 124°55′ W. long.; 46°20′ N. lat., 124°40′ W. long.; and 47°00′ N. lat., 125°20′ W. long.

(2) "Klamath River Pot Sanctuary"—that area between 41°20′ N. latitude and 41°37′ N. latitude and east of a line connecting the following coordinates in the order listed: 41°20′ N. lat., 124°32′ W. long.; and 41°37′ N. lat., 124°34′ W. long.

(f) *Gear restrictions.* (1) No foreign vessel may use any gear other than a pelagic trawl with a minimum mesh size of 100 mm, stretched measure. No liners are permitted in the cod end of the trawl.

(2) Except as specifically authorized in writing by the Regional Director, no foreign fishing vessel may:

(i) attach any device to pelagic fishing gear or use any other means that would, in effect, make it possible to fish on the bottom; or

(ii) use any device or method which would have the effect of reducing mesh size.

(g) *Statistical reporting.*

(1) *Daily fishing log.* The basis for all reports shall be a daily fishing log. On-deck estimates of catch shall be logged prior to the next fishing operation, and adjusted, if necessary, with processed catch information within 24 hours. The following information must be included in the log.

(i) Date.

(ii) Times of commencement and completion of each set.

(iii) Vessel's positions in degrees and minutes of latitude and longitude at the time of commencement and completion of each set.

(iv) Bottom depth, averaged over length of tow.

(v) Depth of gear during tow.

(vi) Catch, to the nearest tenth of a metric ton (0.1 m.t.), of the following species:

(A) Pacific hake.

(B) Jack mackerel.

(C) Pacific ocean perch.

(D) Other rockfishes.

(E) Sablefish.

(F) Flounders.

(G) Other species.

(vii) Catch, in numbers of fish, of the following prohibited species:

(A) Pacific halibut.

(B) Salmon.

(2) In addition to the requirements of § 611.9, the owner or operator of each foreign fishing vessel shall maintain catch and effort statistics and shall submit reports as follows to the Regional Director. (Address: Northwest Region, National Marine Fisheries Service, 1700 Westlake Avenue North, Seattle, Washington 98109.)

(i) *Daily report.* From the time the NMFS estimates that 90 percent of a nation's allocation of any species (directed or incidental) has been reached, and so notifies the designated representative of that nation, the information required under § 611.9(e) (Weekly Catch Report) shall be submitted on a daily basis and must reach the Regional Director not later than three days after the reported fishing day.

(ii) *Annual report.* Each nation whose fishing vessels operate in the fishery shall report by May 30 of the following year, annual catch and effort statistics, in tabular form, as follows:

(A) *Effort* in hours trawled, by vessel-class, by gear-type, by month, by ½° latitude by 1° longitude statistical area;

(B) *Catch* by vessel-class, by gear-type, by month, by ½° latitude by 1° longitude statistical area: *(1)* to the nearest tenth of a metric ton (0.1 m.t.) for the following species or species groupings: Pacific hake, jack mackerel, Pacific ocean perch, other rockfishes, sablefish, flounder, and any other species taken in excess of 1,000 metric tons; and *(2)* in numbers of fish for Pacific halibut and salmon.

(g) *Additional report.* Each foreign vessel entering this fishery with fish on board shall report to the Regional Director, before operating in this fishery, the species and amounts of fish on board which were harvested in any other fishery. Any fish on board not so reported will be presumed to have been harvested in this fishery. Such reports shall be submitted in accordance with the procedures specified in § 611.4(b).

[FR Doc. 79-13775 Filed 5-3-79; 8:45 am].

BILLING CODE 3510-22

Notices

Federal Register
Vol. 44, No. 88
Friday, May 4, 1979

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

Tri-State Generation & Transmission Association, Inc., Negative Determination for Environmental Impact Statement

Notice is hereby given that the Rural Electrification Administration (REA) has made a negative determination on the need for an environmental impact statement by REA in connection with a proposed loan from REA for Tri-State Generation and Transmission Association, Inc., of Thornton, Colorado, to construct 12 miles of 230 kV transmission line. The construction will consist of stringing 12 miles of 230 kV conductor on the west side of the Department of Energy's (DOE) existing 230 kV steel pole structures with double circuit capability, from the DOE Ault substation to the DOE/Public Service Company Weld substation. Three single circuit 230 kV structures will be erected to support one-fourth mile of the 230 kV conductor between the DOE's double circuit structures and the Weld substation. Also, approximately one-half mile of 115 kV single pole transmission structures will be constructed for a segment of the existing DOE Cheyenne to Fort Collins 115 kV circuit, which will be displaced from the west side of the 230 kV double circuit structures by the proposed 230 kV circuit. Tri-State will also make additions to the Ault and Weld substations to accommodate the transmission line.

The route proposed uses the existing DOE 230 kV double circuit structures to minimize the effects of the construction. The environmental impact of this DOE transmission line was considered in the *Final Environmental Statement, Archer-Weld 230 kV Transmission Line and Weld Substation, Colorado River Storage Project, Colorado,* prepared by the Department of the Interior, Bureau of Reclamation, Region 7, October 5, 1971. The additional single pole 115 kV structures will be constructed adjacent to the existing 230 kV line right-of-way.

The borrower has prepared a brief environmental report covering the proposed transmission line. Tri-State has considered alternatives and has thoroughly examined the environmental impact of the project and shown that the proposed action is best from an environmental standpoint. There are no known historical or archaeological sites in the vicinity of the proposed project. The Colorado State Historical Society and the State Archaeologist concur that no historical or archaeological sites will be affected by this project.

Our independent evaluation of the proposed project leads us to conclude that REA's proposed financial assistance for this project does not represent a major Federal action that would significantly affect the quality of the human environment, and a negative determination was made under Section V., paragraph K of REA Bulletin 20–21.

Copies of the brief environmental report may be secured on request, submitted to Mr. Joseph S. Zoller, Assistant Administrator—Electric, Rural Electrification Administration, United States Department of Agriculture, Washington, D.C. 20250.

Final REA action with respect to this matter may be taken on or before May 21, 1979, but only after REA has reached satisfactory conclusions with respect to its environmental effects and after procedural requirements set forth in the National Environmental Policy Act of 1969 have been met.

Dated at Washington, D.C., this 30th day of April 1979.

Robert W. Feragen,
Administrator.

[FR Doc. 79–13975 Filed 5–3–79; 8:45 am]
BILLING CODE 3410–15–M

CIVIL AERONAUTICS BOARD

Britannia Airways Ltd. et al.; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause: Order 79–4–177.

SUMMARY: The Board proposes to amend the foreign air carier permits held by the following airlines of the United Kingdom:

Britannia Airways Limited
British Airtours Limited
British Airways Board
British Caledonian Airways Limited
British Midland Airways Limited
Dan-Air Services Limited
International Aviation Services, (U.K.) Ltd. d.b.a. IAS Cargo Airlines
Laker Airways Limited
Tradewinds Airways Limited
Transmeridan Air Cargo Limited

These carriers' present permits are not consistent with the charter provisions of the recently renegotiated Air Transport Services Agreement between the United States and the United Kingdom ("Bermuda 2"). Some of the permits contain restrictions or limitations which, for reasons outlined in the order no longer need be retained. In addition to the permit changes made on the Board's initiative, pending permit amendment applications of two of the carriers are treated in this order: British Airtours Docket 30402 and International Aviation Services (U.K.) Ltd., d.b.a. IAS Cargo Airlines, Docket 33137.

Most of the changes in these ten carriers' permits are technical and minor. They do, however, authorize the charter only passenger carriers to originate Fifth Freedom charter flights in the United States and remove certain directional limitations and numerical allowances for which the Board had waived prior application requirements for Fifth Freedom charters (those between a U.S. point and a point or points neither in the United States nor the United Kingdom). The proposal also would require advance application and Board approval of all U.K. Fifth Freedom charters here, in keeping with the U.K. regulatory practice with respect to U.S. airlines operating there. This prior-approval requirement was suggested by President Carter in his December 28, 1978, letter to the Chairman of the Civil Aeronautics Board, returning without action the Board's previously amended permit for British Airtours in Docket 30402.

Persons interested in the above changes in authority and regulatory practice should obtain a copy of the complete show-cause order, as provided below, before filing comments.

Objections: All interested persons having objections to the Board's

tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall file a statement of such objections NO LATER THAN May 24, 1979, with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of the United Kingdom in Washington D.C. A statement of objections must cite the appropriate docket number and must include a summary of testimony, statistical data, or other such supporting evidence. If objections concern only British Airtours, cite Docket number 30402. If only IAS Cargo, cite Docket 33137. Objections to any other carriers' proposed authority, or to more than one, should cite Docket 35414; addresses for carriers other than those shown may be obtained from the Regulatory Affairs Division, below. If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permits.

ADDRESSES FOR OBJECTIONS:

Docket 35414, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

(Docket 30402), British Airtours, c/o Condon & Forsyth, 1251 Avenue of the Americas, New York, New York 10020.

(Docket 33137), IAS Cargo Airlines, c/o Bridgeman & Nerenberg, 210 United Unions Bldg., 1750 N.Y. Ave., N.W., Washington, D.C. 20006.

To get a copy of the complete order, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

For further information, or a service list, contact the Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board, (202) 673–5880.

By the Civil Aeronautics Board: April 26, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–13986 Filed 5–3–79; 8:45 am]

BILLING CODE 6320–01–M

Fast Air Carrier LTDA; Order To Show Cause

AGENCY: Civil aeronautics Board.

ACTION: Notice of Order to Show Cause: ORDER 79–4–158.

SUMMARY: The Board proposes to approve the following application:

Applicant: FAST AIR CARRIER LTDA.

Application Date: December 1, 1978. Docket 34152.

Authority Sought: A foreign air carrier permit to carry property and mail on a nonscheduled basis between a point or points within the Republic of Chile, various intermediate points in South and Central America and the coterminal points Miami, Florida and New York, New York.

Objections: All interested persons having objections to the Board's tentative findings and conclusions that this authority should be granted, as described in the order cited above, shall, NO LATER THAN May 22, 1979, file a statement of such objections with the Civil Aeronautics Board (20 copies) and mail copies to the applicant, the Department of Transportation, the Department of State, and the Ambassador of the Republic of Chile in Washington, D.C. A statement of objections must cite the docket number and must include a summary of testimony, statistical data, or other such supporting evidence.

If no objections are filed, the Secretary of the Board will enter an order which will, subject to disapproval by the President, make final the Board's tentative findings and conclusions and issue the proposed permit or certificate.

ADDRESSES FOR OBJECTIONS:

Docket 34152, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

Fast Air Carrier Ltda., c/o Fisher, Gelband & Sinick, P.C., Suite 440, 2020 K Street NW., Washington, D.C. 20006.

TO GET A COPY OF THE COMPLETE ORDER, request it from the C.A.B. Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Persons outside the Washington metropolitan area may send a postcard request.

FOR FURTHER INFORMATION CONTACT: The Regulatory Affairs Division of the Bureau of International Aviation, Civil Aeronautics Board; (202) 673–5880.

By the Civil Aeronautics Board: April 26, 1979.

Phyllis T. Kaylor,

Secretary.

[Order 79–4–158; Docket 34152]

[FR Doc. 79–13979 Filed 5–3–79; 8:45 am]

BILLING CODE 6320–01–M

Florida Service Case; Order

Issued under delegated authority April 27, 1979.

By Order 78–7–128, July 25, 1978, the Board delegated to the Administrative Law Judge the authority to consolidate any applications which conform to the scope of the above-styled proceeding.

Trans World Airlines, Inc. (TWA) filed a motion on April 5, 1979, to consolidate amendment number one to its application originally filed in Docket 33261 and consolidated into this proceeding by Order 78–9–122, September 28, 1978.

Eastern Air Lines, Inc., and Allegheny Airlines, Inc., have filed answers opposing TWA's motion.

TWA's motion is denied. The Board's Rules of Practice require that motions to consolidate "be filed not later than the prehearing conference in the proceeding with which consolidation . . . is requested." Rule 12(b), 14 CFR 302.12(b). The prehearing conference in this proceeding was held on October 12, 1978. TWA's motion was filed on April 5, 1979, over five months after the prehearing conference. Moreover, the hearing has already been held and briefs to the Judge were filed on April 3, 1979. Under these circumstances, grant of TWA's motion would prejudice the rights of the other parties.

Accordingly, it is ordered:

1. That the motion of Trans World Airlines, Inc. to consolidate amendment number one to its application in Docket 33261 be denied;

2. Persons entitled to petition the Board for review of this order pursuant to the Board's Regulations, 14 CFR 385.50, may file such petitions within ten days after the date of service of this order; and

3. This order shall be effective and become the action of the Civil Aeronautics Board upon expiration of the above period unless before that date a petition for review thereof is filed or the Board gives notice that it will review this order on its own motion.

This order shall be published in the **Federal Register.**

William H. Dapper,

Administrative Law Judge.

Phyllis T. Kaylor,

Secretary.

[Order 79–4–191; Docket No. 33091]

[FR Doc. 79–13984 Filed 5–3–79; 8:45 am]

BILLING CODE 6320–01–M

Order Instituting Informal Nonpublic Investigation of Airline Practices in Handling International Baggage Claims

Issued under delegated authority April 27, 1979.

The Bureau of Consumer Protection has received numerous consumer complaints concerning the practices of

air carriers and foreign air carriers in settling claims for lost, pilfered, or damaged checked baggage accepted for international transportation, as that term is used in the Warsaw Convention (49 Stat. 3000). Passengers have reported many instances where the compensation they received was considerably less than their actual losses. In other cases, claims for damaged fragile or perishable items and for lost jewelry, or other high value items have not been honored at all.

A preliminary review of the complaints indicates carriers may be improperly limiting their liability, and may be misleading claimants about the extent of their legal responsibility to passengers for the losses incurred. Under the Warsaw Convention, which is made applicable to carriers through their respective certificates or permits issued by the Board under section 401 or 402 of the Federal Aviation Act of 1958, as amended (Act), carriers may limit their liability for baggage accepted for international transportation. However, in order to avail themselves of the limited liability provision in the Convention, they must record the weight and the number of pieces of baggage on the passenger's baggage check and must use that weight in computing the limitation on liability. To the extent that carriers have limited or denied liability for baggage carried under the Convention without observing these requirements, or have misinformed passengers about their obligation to comply with these requirements before being able to assert the liability limitations, the carriers may have engaged in unfair or deceptive practices within the meaning of section 411 of the Act and may have violated the conditions in their certificates or permits.

The Board is especially interested in ensuring that consumers are fairly treated with respect to compensation for loss or damage to their baggage, and that their rights established under international law are observed by air carriers and foreign air carriers operating under the Board's authority. Obtaining information on whether claims are settled in conformity with the law is of substantial concern to us. In this connection we have determined that the public interest requires the institution of an informal nonpublic investigation, in accordance with Part 305 of the Board's Procedural Regulations, to obtain such information. The investigation is being initiated pursuant to authority granted under sections 204, 411, 415, 1001, 1002, and 1004, of the Act and § 305.5 of the Board's Regulations and the authority delegated to the Director, Bureau of Consumer Protection, by § 385.22(b) of the Regulations.

Petitions for review of this order may be filed by any person who discloses a substantial interest that would be adversely affected by this investigation. Such petitions shall conform to the requirements of section 385.51 of the Regulations and shall be filed on or before May 14, 1979.

Accordingly,

1. We institute an informal nonpublic investigation under Part 305 of the Board's Procedural Regulations, for the purpose of obtaining information to determine:

(a) whether air carriers or foreign air carriers have been or are improperly limiting or denying liability or misinforming claimants about the extent of their responsibility for losses incurred to baggage accepted for international transportation under the Warsaw Convention; and

(b) whether formal enforcement action or any other appropriate course of action should be taken.

2. We designate Howard M. Schmeltzer, Michael K. Nolan, Paul W. Wallig, and Ronald A. Brown, staff attorneys of the Bureau of Consumer Protection, as Investigation Attorneys for the purpose of conducting this investigation.

3. This order shall be published in the **Federal Register** as provided in § 305.10 of the Board's Regulations.

Phyllis T. Kaylor,
Secretary.

[Order 79–4–194; Docket No. 35425]
[FR Doc. 79–13982 Filed 5–3–79; 8:45 am]
BILLING CODE 6320–01–M

Texas International et al.; New Orleans–Baltimore/Washington Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79–4–119, *New Orleans–Baltimore/Washington Show-Cause Proceeding,* Docket 35362

SUMMARY. The Board is proposing to grant nonstop authority between New Orleans, on the one hand, and Baltimore-Washington International, Dulles International and Washington National Airport, on the other, to Texas International, Braniff, Allegheny, Northwest and Ozark, and between New Orleans and Dulles and National Airports to Continental. The Board also proposes to grant the authority in issue to any other fit, willing and able applicants whose fitness can be established by officially noticeable data.

The order proposed to award authority at each of the Washington airports separately. Therefore, each carrier will have to serve each airport, or its authority at that point will be declared unused authority.

The Board rejected arguments advanced by various incumbents and civic associations opposed to additional authority at National Airport. The Board granted such authority despite the existence of an FAA-imposed ceiling on the number of landing and take-off slots, and a 650-mile limitation on flights to and from the airport. The Board stated that the decision of which Washington airport to serve was up to the carrier; the existence of restrictions is not a valid reason for the Board to deny operating authority to new entrants. To do so would be discriminatory and anti-competitive. We declined to institute a large-scale investigation of service to National, saying that we intend to consider applications on a case-by-case basis.

The Board also rejected objections that applications for authority at National should be denied for environmental reasons. It reports that its analysis on the carriers' environmental evaluations demonstrated that the noise and pollutant thresholds established by the Board's regulations will not be exceeded by the proposed service. Although new service would be sanctioned, the Board reasoned, the added competition would lead to few if any additional flights.

DATES: Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all persons listed below, no later than June 1, 1979, a statement of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

Additional Data: All existing and would-be applicants who have not filed (a) illustrative service proposals, (b) environmental evaluations, and (c) an estimate of fuel to be consumed in the first year are directed to do so no later than May 17, 1979.

ADDRESSES: Objections or Additional Data should be filed in Docket 35362, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Mark Atwood, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428 (202) 673–5333.

SUPPLEMENTARY INFORMATION: Objections should be served upon the following persons: Texas International

Airlines, Braniff Airways, Northwest Airlines, Allegheny Airlines, Continental Air Lines, Ozark Air Lines, Delta Air Lines, Eastern Air Lines, the City of New Orleans, the Chamber of Commerce of New Orleans, Neighbors Opposed to Irritating Sound Emissions, the Foxhall Community Citizens Association, and Mr. Joel G. Joseph.

* * * * *

The complete text of Order 79–4–119 is available from our Distribution Section Room 516, 1825 Connecticut Avenue, N.W., Washington, D. C. Persons outside the metropolitan area may send a postcard request for Order 79–4–119 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: April 19, 1979.

Phyllis T. Kaylor,

Secretary.

[Order 79–4–119; Docket No. 35362]

[FR Doc. 79–13985 Filed 5–3–79; 8:45 am]

BILLING CODE 6320–01–M

Piedmont Aviation; Removing Restriction in the Nashville–Knoxville Market

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79–4–160, removing restriction in the Nashville-Knoxville market by Order to Show-Cause.

SUMMARY: The Board is proposing to remove Piedmont's restriction in the Nashville-Knoxville market (Docket 35408) and to grant unrestricted multiple authority in the market. The complete text of this order is available as noted below.

DATES: Objections to the issuance of an order making final our proposed action should be filed no later than May 31, 1979, and answers should be filed no later than June 11, 1979.

ADDRESSES: Documents should be filed in Docket 35408, Docket Section, Room 516, Civil Aeronautics Board, Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Nancy B. Rosenbaum, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20248, 202–673–5345.

SUPPLEMENTARY INFORMATION: Objections should be served on Piedmont Aviation.

The complete text of Order 79–4–160 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, N.W., Washington, D.C. Persons outside the Washington metropolitan area may send a postcard request for Order 79–4–160 to the Distribution Section.

By the Civil Aeronautics Board: April 26, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79–13983 Filed 5–3–79; 8:45 am]

BILLING CODE 6320–01–M

Northwest Alaska Service Investigation; Oral Argument

Notice is hereby given, pursuant to the provisions of the Federal Aviation Act of 1958, as amended, that oral argument in this proceeding is assigned to be held before the Board on May 23, 1979, at 10:00 a.m. (local time), in Room 1027, Universal Building, 1825 Connecticut Avenue, N.W., Washington, D.C.

Each party which wishes to participate in the oral argument shall so advise The Secretary, in writing, on or before May 11, 1979, together with the name of the person who will represent it at the argument.

Dated at Washington, D.C., April 27, 1979.

Phyllis T. Kaylor,

Secretary.

[Docket No. 31571]

[FR Doc. 79–13981 Filed 5–3–79; 8:45 am]

BILLING CODE 6320–01–M

Wien Air Alaska; Order To Show Cause

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order to Show Cause (79–4–162)

SUMMARY: The Board is proposing to award new and improved authority between the points Seattle and Kenai, Alaska to Wien Air Alaska and any other fit, willing and able applicant whose fitness, willingness and ability can be established by officially noticeable date. The complete text of this order is available as noted below.

DATES: All interested persons having objections to the Board issuing an order making final the tentative findings and conclusions shall file, by May 31, 1979, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections. Such filings shall be served upon all parties listed below.

ADDRESSES: Objections to the issuance of a final order should be filed in the Docket Section, Civil Aeronautics Board, Washington, D.C., 20428, in Docket 35409. In addition, copies of such filings should be served on Wien Air Alaska.

FOR FURTHER INFORMATION CONTACT: Arthur B. Barnes, Bureau of Pricing and Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW. Washington, D.C. 20428, (202) 673–5198.

SUPPLEMENTARY INFORMATION: In the event no objections are filed, the Secretary of the Board will enter an order making final the tentative findings and conclusions contained in the show-cause order.

The complete text of Order 79–4–162 is available from the Distribution Section, Room 516, Civil Aeronautics Board, 1825 Connecticut Avenue NW. Washington, D.C. 20428. Persons outside the metropolitan area may send a postcard request for Order 79–4–162 to that address.

By the Civil Aeronautics Board, April 26, 1979.

Phyllis T. Kaylor,

Secretary.

[Order 79–4–162]

[FR Doc. 79–13980 Filed 5–3–79; 8:45 am]

BILLING CODE 6320–01–M

CIVIL RIGHTS COMMISSION

Minnesota Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Minnesota Advisory Committee (SAC) of the Commission will convene at 5:00 pm and will end at 8:00 pm., on May 29, 1979, at Capp Towers, 77 East 9th Street, St. Paul, Minnesota 55119.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Midwestern Regional Office of the Commission, 230 South Dearborn Street, 32nd Floor, Chicago, Illinois 60604.

The purpose of this meeting is to discuss interviews and hearing plans for Police Study; Indian Subcommittee to report on decisions made regarding follow-up activities or actions on the Indian Study recommendations.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., April 30, 1979.

John I. Binkley,

Advisory Committee Management Officer.

[FR Doc. 79–13931 Filed 5–3–79; 8:45 am]

BILLING CODE 6335–01–M

Louisiana Advisory Committee; Agenda and Notice of Open Meeting

Notice is hereby given, pursuant to the provisions of the rules and regulations

of the U.S. Commission on Civil Rights, that a factfinding meeting of the Louisiana Advisory Committee (SAC) of the Commission will convene at 8:00 am and will end at 6:00 pm, on May 25–26, 1979, at the Convention Hall Annex, 500 River Parkway, Shreveport, Louisiana 71101.

Persons wishing to attend this open meeting should contact the Committee Chairperson, or the Southwestern Regional Office of the Commission, Heritage Plaza, 418 South Main Street, San Antonio, Texas 78204.

The purpose is the Louisiana Advisory Committee will hold a hearing on the Community Development Block Grant program.

This meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, D.C., May 1, 1979.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 79-13932 Filed 5-3-79; 8:45 am]

BILLING CODE 6335-01-M

Kentucky Advisory Committee; Meeting; Amendment

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Kentucky Advisory Committee (SAC) of the Commission carried the heading *Michigan Advisory Committee* (FR Doc. 79-139094) page 24900.

The heading now should be changed to Kentucky Advisory Committee. The date, time and place remain the same.

Dated at Washington, D.C., May 1, 1979.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 79-13933 Filed 5-3-79; 8:45 am]

BILLING CODE 6335-01-M

Maryland Advisory Committee; Meeting; Amendment

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting of the Maryland Advisory Committee (SAC) of the Commission originally scheduled for May 14, 1979 (FR Doc. 79-13092) on page 24899 has been changed to May 7, 1979.

The meeting place and time will remain the same.

Dated at Washington, D.C., May 1, 1979.

John I. Binkley,
Advisory Committee Management Officer.

[FR Doc. 79-13934 Filed 5-3-79; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Industry and Trade Administration

University of Pennsylvania; Decision on Application For Duty Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 A.M. and 5:00 P.M. in Room 735, 666-11th Street NW., Washington, D.C.

Docket Number: 78-00157. Applicant: University of Pennsylvania, 3451 Walnut Street, Philadelphia, PA 19104. Article: Mass Spectrometer, Model CH-7A and Accessories. Manufacturer: Varian Mat GmbH, West Germany. Intended use of article: The article will be used for investigation in respiratory physiology, particularly of gaseous exchanges, at the whole body, organ, cellular and molecular levels. The pertinent projects are as follows: (1) Measurement of CO Production and Catabolism; (2) Metabolism of Oxygen; and (3) Measurement of very low absolute concentration of gases such as O_2, CO and CO_2, in solution; (4) exchanges of CO between blood and alveolar gas in the lungs and between maternal and fetal blood in the placenta to determine the transfer characteristics of these capillary surfaces. This work will be carried out in the Department of Physiology in the Medical School in which there are at any one time about 20 Postdoctoral Research Fellows and 30 graduate students in Physiology and/or Bioengineering and/or Biophysics and Biochemistry.

Comments: No comments have been received with respect to this application. A letter dated April 28, 1978 was received from the Instrument Products Division of E. I. du Pont de Nemours & Company (Inc.) (Du Pont) after the expiration of the comment perior. This letter is being treated as an offer to provide additional information in accordance with Subsection 301.10(a) of the regulations (15 C.F.R. 301.10(a)(1978)). Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (November 29,1976). Reasons: This application is a resubmission of Docket Number 77-00205 which was denied without prejudice to resubmission on October 14, 1977 for informational deficiencies. The applicant in response to question 8 alleges that certain features of the article are pertinent to its intended use. The applicant assumed that the domestic Nuclide Corporation (Nuclide) could meet these requirements on a custom basis but claims a critical need for production of the required instrument in significant numbers and for available experience with its operation. However, the Department of Health, Education, and Welfare (HEW) advises in its memorandum dated June 28, 1978 that the inability to see and inspect an exactly equivalent instrument in service does not establish inadequancy and the National Bureau of Standards (NBS) advises in its memoranda of August 11, 1978 and December 13, 1978 that Nuclide could have satisfied all of the applicant's requirements with instuments such as the Model 12-90-G or 6-60-G equipped with available options. A discussion of the key issues in this application including each of the features alleged to be pertinent follows.

AVAILABLE DOMESTIC INSTRUMENT

The applicant in response to question 8 states in part:

A critical requirement for our purposes is that the mass spectrometer be a standard off-the-shelf model of which a significant number have been made and kept in operation for several years so that the manufacturer obtained experience concerning performance in the field and in maintenance. [Personnel at this institution] have used several mass spectrometers in biochemical and physiological research over the period since 1950. Even though these instruments were produced by the experienced manfacturers * * * a great deal to time had to be spent initially on the instrument rather than on the biological or interfacing aspects of the research. We are not physicists or physical chemists, or are not interested per se in the mass spectrometer. * * * We are anxious not to be compelled to reinvest laboratory time in modifications. We do not believe that a significant number of instruments embodying all capabilities specified have been produced by the domestic manufacturers and kept in operation but that this is true of the Varian Mat CH-7A [the foreign article]. The scientific leadership of Nuclide is superb and we were aware of their well known reputation for custom-made instruments

in contrast to their statement dated July 22, 1977 (see pp–246, Roboz, J., Mass Spectrometry: Interscience: New York, 1968). * * * Our concern was not whether they could produce an instrument to our specifications, we assumed they could, but whether they had already done so and in fact had already produced a number of such instruments so that we could be sure our laboratory would not be shut down for a considerable period while the inevitable bugs were taken out. While delivery time in the formal sense is not a preeminent requirement (4–6 months is acceptable), once the new mass spectrometer arrives, the time required to set it up, to have it operating up to specifications and to interface it with our biological experimental apparatus, which we have to do ourselves, is lost from our research effort. It is the time we are mainly concerned with.

As a possibility we could obtain two or more instruments to carry out our research programs. Practically, this is impossible for a large instrument such as a mass spectrometer. * * *

In connection with these allegations, the Department notes the following:

1. The legislative history to Pub. L. 89–651 and the Department's regulations (15 CFR 301.11(1978)) require the Departments to take into account the capability of a manufacturer to produce an instrument with certain specifications, even if it is not previously done so. As will be shown below (in the discussion of features of the article alleged to be pertinent) Nuclide specifications, literature and past shipments indicate that this firm had considerable experience producing the type of instrument required by the applicant. New development would not be required by Nuclide to meet the applicant's needs. Even if some customization would be required, Nuclide literature (e.g., PUBS 1151–0771) indicates that this firm tests its instruments prior to delivery to eliminate performance problems. No evidence has been supplied to support the applicant's claim that Nuclide would not have been willing and able to supply a ready-to-use instrument providing all of the pertinent specifications of the foreign article within a reasonable time. Nuclide was not sent a formal request for quote (RFQ) even though the applicant acknowledges Nuclide's ability to meet the specifications of the foreign article. Installation, confirmation of specifications and biological interface would be required on both the foreign and domestic intruments. Nuclide could also provide operational expertise and/or training to save time. Thus, while applicant's interest in procuring on an off-the-shelf model may be an operational or economic consideration in purchasing a scientific instrument, this is not a basis under the Department's regulations for duty-free entry.

2. In response to question 9 the applicant stated, ". . . only Nuclide and Varian [Varian Mat GmbH, the foreign manufacturer] were serious choices and we picked the latter because they have already produced instruments with our precise specifications and we were able to obtain data on their performance . . ." In support of this statement the applicant provided test data stated to have been obtained on the foreign article (serial number 190) *prior* to the decision to purchase. However, these data are dated December 22, 1976, which is *after* the purchase date, and do not specify the sensitivity at which the resolution was obtained. Further, no evidence was presented to show that Varian had produced more than one CH–7A having the key features of serial number 190.

As to the contention that Nuclide could meet the applicant's needs with an instrument presenting minimal problems after delivery (because that firm did not have an instrument meeting the applicant's technical requirement in service at the time of contact), the Department of Health, Education, and Welfare (HEW) advises in its memoranda dated June 28, 1978 and February 8, 1979 that the inability to see and inspect an exactly equivalent instrument in service does not establish inadequacy and, considering the applicant's requirements, there is no doubt that Nuclide could easily supply the needed instrument. HEW also notes that to be eligible for duty-free entry the choice of the foreign article cannot be based on matters of convenience which are not pertinent within the meaning of § 301.2(n) of the regulations.

3. In the initial submission (Docket Number 77–00205) the applicant stated that Nuclide's 6–60–RMS (ratio mass spectrometer) "appears to be a custom built instrument whereas [the foreign article] is the latest in a series of well known catalog instruments." The applicant later added that to incorporate the alleged pertinent features of the foreign article into a Nuclide instrument would require development of a "one-of-a-kind" special instrument. Nuclide in its letter dated July 27, 1977 alleged, among other things, that its 6–60–RMS had been offered longer than the CH–7 (since 1956) that the 6–60–RMS is marketed as a standard system (listing a variety of options), that customization (which Nuclide also offers) would not be necessarily to meet the applicant's needs in a single instrument and that the applicant's representative was assured that the institution's needs could be met with a standard Nuclide instrument outfitted with standard accessories (either a 12–90 or a 6–60). Nuclide also claimed that (a) the applicant's representative indicated that purchase of two instruments was being considered (depending on finding), (b) this individual had been assured that two instruments would not be necessary but system recommendation would depend on actual funding when known and (c) Nuclide was not advised (as expected) when the University set up a budget. A copy of Nuclide's letter was forwarded to the applicant as a part of the Department's Denial Without Prejudice to Resubmission (DWOP) of the initial application.

The applicant, on resubmission (Docket Number 78–00157), did not deny specific allegations made in Nuclide's letter of July 27, 1977 and provided no positive evidence to support continued reference to Nuclide's products as "custom made". As a matter of fact the only tangible data on this subject provided by the applicant (in two submissions) supports Nuclide's claims. Page 246 of Roboz's "Mass Spectrometry" clearly indicates that even before 1968 Nuclide produced a full line of single and double focusing magnetic mass spectrometers and, in addition, provided custom made instruments. To provide some idea of standard products covered in its full line, Nuclide outlined many of these products (but certainly not all the products or options known to be available from Nuclide"s more detailed literature) in the "short form" catalog "Nuclide Instrument Guide" (PUBS 1377–1073). The applicant attached pages two and three of this Guide to both the initial submission and this submission. No other material from Nuclide was provided by the applicant.

Nuclide literature and other factual information in the Department's possession clearly indicates that (starting with the 6–60–RMS which was first produced in 1956) Nuclide had been producing a number of standard mass spectrometers with a variety of standard options many years before the foreign article was ordered. Further, much of this material stipulates that, like the foreign article, Nuclide's 6–60 and 12–90 are modular instruments with many interchangeable options and parts which can be applied to basically different kinds of studies with no compromise in

performance or can be readily expended to increase basic specifications.

4. The applicant addresses the possibility of obtaining two or more instruments on the assumption that Nuclide could not provide RMS capability and high resolution in a single instrument without new development. The applicant also assumes that Nuclide does not have experience interfacing turbo pumps to mass spectrometers. The Department notes that Nuclide has shipped high resolution RMS instruments in the past. Several of these were cited by Nuclide in its letter of July 27, 1977. Nuclide has also accepted orders for mass spectrometers interfaced to turbo pumps in the past. Nuclide's ability to provide high resolution, RMS and turbo pumps will be covered under the discussion of each of these features below.

Applicant's Contact With Nuclide

Question 8.c. of the application form provides guidelines needed for justification of duty-free entry. The applicant is asked to identify the particular domestic instrument(s) that were compared with the foreign article and to list the features of that article that are both pertinent to the intended program and unmatched in domestic instrument(s) to be compared with the foreign article depends on the information that the appplicant obtains on the instrumentation available from the domestic manufacturer. However, the information that one obtains from manufacturers can vary greatly with the manner in which one approaches them. Question 9 of the application form and §§ 301.7 and 301.9(c)(7) of the regulations are intended, in part, to ascertain whether the domestic manufacturers were made sufficiently aware of the applicant's needs to furnish the required information. Both question 9 and subsection 301.7 request that documentation be enclosed with the application to support the applicant's statements relative to the nature of the contact with the domestic manufacturers. Nuclide's ability to build an instrument analogous to the foreign article from modular components designed and constructed (to Nuclide specifications) in the past is similar to Varian's. Many of Nuclide's products are "produced on order" as defined in § 301.2(j) and § 301.11(b) of the regulations. The applicant's conclusion that Nuclide's products are all custom made (i.e., built to customer specifications) and that any mass spectrometer combining RMS, high resolution and turbo pumping capabilities from this firm would be the result of a new development effort appears to be a misunderstanding on the applicant's part. The applicant alleges that Nuclide was contacted by phone roughly 8–15 months before purchases of the foreign article to obtain technical data and that Nuclide forwarded its most recent brochures, technical notes and product bulletin. If the last call to Nuclide occurred 8 months before purchase, Nuclide (a firm whose scientific leadership is acknowledged by the applicant) could have substantially increased its capabilities long before the necessity of purchase decision (and capabilities could have been increased even more if the last call had been made 15 months prior to purchase). The data available shows that Nuclide could meet the applicant's needs well before the foreign article was ordered. Further, the only Nuclide literature provided by the applicant was the "short form" catalog which could not be expected to describe Nuclide's capabilities in detail. Finally, the applicant did not afford Nuclide an opportunity to respond to a formal RFQ. Had this been done, the applicant would have been informed that one of Nuclide's instruments, such as the 12–90–G, could have satisfied all the institution's technical requirements.

The Department notes that, to allay fears associated with possible defects after delivery, RFQ could address damages for such shortcomings, performance bonds, etc. In addition, any questionable or negotiable matters in a manfacturer's response to a RFQ can be clarified through correspondence.

Double Collector

In response to question 8 of the initial application (Docket Number 77–00205) the applicant alleged that a double collector was pertinent to the planned use of the foreign article and indicated that both the foreign article and Nuclide's 6–60–RMS provided the required double collector. At the same time the applicant doubted Nuclide's ability to produce a trouble-free instrument providing both the required double collector and high resolution without taking time for development. HEW, in its memorandum of August 10, 1977, pointed out how Nuclide could provide all of the features claimed pertinent. HEW's memorandum was forwarded to the applicant as part of the denial without prejudice to resubmission of the initial application.

In this resubmission, (Docket Number 78–00157) the application changed the description of the double collector feature alleged pertinent to: *"Cup to Cup double collector* for isotope ratio measurements able to determine changes in $1/10^{-8}$". Although it is not clear what the applicant means by "able to determine changes in $1/10^{-8}$" and the foreign manufacturer's literature does not cover this aspect of the double collector feature, it is clear from the applicant's response to HEW's memorandum of August 10, 1977 (and from Table I which the applicant attached to both submissions) that the applicant acknowledges the ability of the 6–60–RMS to fulfill the isotope ratio measurement requirement of the institution but not the resolution requirement.

Nuclide literature (e.g., PUBS 1002A–0172) states that the same dual inlet and dual collector system components are used in the 3–60, 6–60, and 12–90 versions of its RMS instruments which, equipped with accessories, can be used for other applications. Nuclide has previously specified double Faraday cup collectors (e.g., PUBS 1151–1771) and even triple cup collectors (e.g., Nuclide publication no. 1661–1076). Nuclide currently offers a 12–90 version of the RMS that would permit isotope ratio measurement at the resolution required by the applicant and has previously delivered instruments which combine the high resolution of 12–90–G and RMS capability. NBS advises that the Nuclide 12–90–G, capable of resolving power exceeding that of the foreign article was available with a dual inlet/cup to cup dual collector system satisfying the applicant's requirements at the time that the artile was ordered. In veiw of the discussion above and this NBS advice, the Department finds that the Nuclide 12–90–G with accessories could match the double collector of the foreign article at the time of order.

Resolution

The foreign article provides a resolution of 6000 (10% Valley). Nuclide specifications for the 12–90G dated 1975 indicate that this instrument normally provides a resolution of 10,000 (10% Valley). Higher resolution (up to 20,000) is also available at a higher price. NBS has also advised that the 12–90–G satisfies the applicant's resolution requirement as well as the other requirements listed in Table I. Based on the above information and advice, the Department finds that the resolution of the 12–90–G matches that of the foreign article.

Flexibility

The applicant alleges that a turbo pump system is necessary for switching mode of operation from such modes as double collector to high resolution. In connection with the availability of turbo

pumps, the applicant stated that: (1) because of the possibility of unexpected difficulties in interfacing turbo pumps to mass spectrometers effects of the instrument background, vibration and electrical noise must be demonstrated in practice situations; (2) only after conversations with individuals who had been using the Varian CH7 with turbo pumps at NBS in Gaithersburg, Maryland and the Food and Drug Administration in Washington, D.C. was there confidence that the Varian product would not give significant trouble; (3) turbo pumps are available as a standard item with the CH–7A and are listed in their (sic) catalog; (4) and there is no clear statement in Nuclide's letter of July 27, 1977 (in which Nuclide pointed out, among other things, that it had accepted orders for turbo pumped mass spectrometers) that "they supplied a mass spectrometer with turbo pumps that is in operation at this time." Discussion of these statements follows.

In conversation with the concerned agencies the Department has been advised that neither NBS in Gaithersburg nor FDA in Washington had a CH–7 or any other mass spectrometer equipped with a turbo pump prior to the time the foreign article was ordered. FDA, in 1977, and NBS, in 1978, did have turbo pumps on other models, however.

The applicant has not furnished any literature showing that turbo pumps were standard or optional with the CH–7A. Literature in the Department's files on this instrument (including literature dated March 1977) does not list a turbo pump option and although requested, Varian has not been able to supply the Department with any literature verifying such an option. On the other hand, Nuclide specifications received in 1975 indicated that a turbomolecular pump could be specified for the 12–90–G and Nuclide publication no. 16611–1076 lists a turbo pump option for its RMS instruments. In view of the information given above and NBS advice that the 12–90–G can be fitted with turbo pumps such as those available on the foreign article in order to facilitate the flexibility specified by the applicant, the Department finds that the 12–90–G matches the foreign article with respect to flexibility.

Based on the foregoing consideration, NBS advice and our own review of the application as well as other factual information in our possessions specification, textbooks, etc.), we find that the Nuclide Model 12–90–G with accessories was of equivalent scientific value to the foreign article for such purposes as this article is intended to be used at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79–13877 Filed 5–3–79; 8:45 am]

BILLING CODE 3510–25–M

University of South Carolina; Decision on Application for Duty-Free Entry of Scientific Article

The following is a decision on an application for duty-free entry of a scientific article pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897) and the regulations issued thereunder as amended (15 CFR 301).

A copy of the record pertaining to this decision is available for public review between 8:30 a.m. and 5:00 p.m. in Room 735, 666 11th Street NW., Washington, D.C.

Docket Number: 78–00269. Applicant: University of South Carolina, Department of Geology, Columbia, South Carolina 29208. Article: Isotope Ratio Mass Spectrometer, Model 602D and Accessories. Manufacturer: V.G. Micromass, United Kingdom. Intended Use of Article: The article is intended to be used for studies carried out to investigate the history of Antarctic circulation as recorded in biogenic sediments on the sea floor. Microscopic fossils composed of calcium carbonate will be isotopically analyzed for their $^{18}O/^{16}O$ and $^{13}C/^{12}C$ ratios. The $^{18}O/^{16}C$ and $^{13}C/^{12}C$ ratios of the tests of living foraminifera from plankton tows, fossil foraminifera from deep-sea sediments, as well as coccoliths and benthonic foraminifera from laboratory cultures will be determined to ascertain the magnitude of non-equilibrium fractionation in these forms and its relationship to various environmental parameters. In addition, an investigation will be made of the paleo-hydrographic potential of $S^{18}O/S^{13}C$ ratios of fossil foraminifera. It is also proposed to derive an emperical relationship between temperature and $^{18}O/^{16}O$ fractionation in pteropods (aragnite) and foraminifera (calcite). Routine analyses of extremely minute quantities of gas for S and N isotopes as well as C and O will be conducted. The article will also serve as an education tool for courses "Geochemistry", "Isotope Geology and Geochronology", "Geochemistry of Salt Marshes" and "Hydrogeology".

Comments: Comments dated August 8, 1978 were received from the Nuclide-Corporation (Nuclide). Nuclide alleged, among other things, that (1) the performance capabilities of the Nuclide 3–60–RMS (ratio mass spectrometer) in the applicant's application area exceed those of the foreign article, (2) in the November 1977 contact (cited by the applicant in response to question 9), representatives of the applicant were advised of the superiority of the 3–60–RMS over the foreign article, (3) experience with a Nuclide instrument of the individual consulted by the applicant is not relevant to Nuclide capability at the time the foreign article was ordered because that individual used an ancient instrument delivered in 1967 that had a glass inlet system and did not include Nuclide's small sample option, and (4) the applicant included erroneous information on the 3–60–RMS in the table submitted in response to question 8.c.(2).

Decision: Application denied. An instrument or apparatus of equivalent scientific value to the foreign article, for such purposes as this article is intended to be used, was being manufactured in the United States at the time the foreign article was ordered (March 9, 1978).

Reasons: The applicant alleges in response to question 8 that certain features of the foreign article are pertinent to its intended use (within the meaning of Subsection 301.2(n) of the regulations) that are not available in any domestic instrument including those manufactured by Nuclide. However, the National Bureau of Standards (NBS) advises in its memorandum dated September 26, 1978 that either Nuclide's 3–60–RMS or its 6–60–RMS, which are comparable to the foreign article, was of equivalent scientific value to the foreign article for its intended use at the time the foreign article was ordered. A discussion of the key issues in this application including each of the features alleged by the applicant to be pertinent follows.

Applicant's Contact With Nuclide

Question 8.c. of the application form provides guidelines needed for justification of duty-free entry. The applicant is asked to identify the particular domestic instrument(s) that were compared with the foreign article and to list the features of that article that are both pertinent to the intended program and unmatched in domestic instrument(s) being compared. An important facit in selection of the instrument(s) to be compared with the foreign article depends very much on the information that the applicant obtains on the instrumentation available from the domestic manufacturer. However,

the information that one obtains from manufacturers can vary greatly with the manner in which one approaches them. Question 9 of the application form as well as §§ 301.7 and 301.9(c)(7) of the regulations are intended, in part, to ascertain whether the domestic manufacturer was made sufficiently aware of the applicant's needs in order to furnish the appropriate information. Both question 9 and Section 301.7 request that documentation be enclosed with the application to support the applicant's statements relative to the nature of the contact with the domestic manufacturer.

The record contains no evidence that Nuclide (a firm long established as a manufacturer of comparable ratio mass spectrometers (RMS) was made aware of the complete specifications alleged by the applicant to be pertinent to the article's intended use. In its decision relating to Docket Number 76–00460, the Department noted that, in the case of applications relating to the Model 602 Series, applicants almost never afford Nuclide an opportunity to respond to a formal request for quote (RFQ) prior to purchase. This application represents one more example of this phenomena.

Although the applicant acknowledges that Nuclide is the only domestic manufacturer of an isotope RMS, Nuclide was not sent a formal RFQ. Two other domestic firms, which do not manufacture RMS instruments, received an RFQ and declined to bid. In the past, Nuclide has responded affirmatively to requests for specifications at issue in this case (as indicated in the discussion of the specifications below) and has even offered to exceed some of these specifications. Further, the Department has no knowledge of failure on Nuclide's part to offer the specifications in question after receipt of a formal RFQ or failure to provide them after acceptance of an order based on such an offer. In this regard, it is noted that the legislative history to Pub. L. 89–651 and the Department's regulations (15 CFR 301.11 (1978)) require the Department to take into account the capability of a domestic manufacturer to produce an instrument with certain specifications, even if it has not previously done so. No evidence is supplied which suggests that Nuclide was not able to supply the pertinent specifications of the article at the time it was ordered (March 9, 1978).

All Metal Bakeable Inlet

NBS advises in the memorandum cited above that the specific choice of materials of which the inlet system is made is a design feature which is not pertinent to the applicant's intended use of the article but that a bakeable inlet system is pertinent. Dated specifications show that Nuclide has been delivering glass or metal bakeable inlets since 1965 or earlier.

The inlet system of the foreign article is bakeable to 250°C. As the Department noted in its decision relating to Docket Number 76–00460, a Nuclide system, available at the time the foreign article was ordered, could provide bakeability to 400°C. The Department also notes that Nuclide has demonstrated its willingness to match the all metal inlet of the foreign article without reservation in response to a formal RFQ. For example, attachments to Docket Number 78–00046 indicate that, on March 11, 1977, Nuclide offered such an inlet in response to a formal RFQ patterned on the specifications of the foreign article.

Furthermore, NBS advises that either the 3–60–RMS or the 6–60–RMS could match the bakeable inlet specification of the foreign article with glass or metal designs which have been available from that firm for many years. Based on a review of the above, the Department finds that either the 3–60–RMS or the 6–60–RMS is scientifically equivalent to the article with respect to this pertinent feature.

Vacuum System background Pressure in the 10^{-9} torr Range

NBS notes that the term "10^{-9} torr range" is ambiguous as it is not a quantitiative definition but advises that the best available vacuum, at least 10^{-9} torr, is pertinent to the applicant's intended use. Specifications for the foreign article state that its vacuum system provides a typical residual vacuum for the analyzer of 10^{-9} torr, read on the Bayard-Alpert gauge. Attachments to Docket Number 78–00046 indicate that Nuclide offered to match this specification on its 3–60–RMS (which is modularly similar to the higher capability 6–60–RMS) on March 11, 1977. Further, NBS advises that at the time the foreign article was ordered, Nuclide's 3–60–RMS and 6–60–RMS were both available with ion pumps capable of producing a vacuum of better than 10^{-9} torr. In view of the above the Department finds that either the 3–60–RMS or the 6–60–RMS was capable of matching the vacuum system background pressure of the foreign article.

Accelerating Voltage of 5000 Volts

Nuclide, in its comments, states that the accelerating voltage (v) of both the 3–60–RMS and the 6–60–RMS is 5000 v standard and 10,000 v optional. Prior to the time the foreign article was ordered, Nuclide, bidding against specifications tailored to those of the foreign article, offered 5000 v for both the 3–60–RMS (March 11, 1977) and the 6–60–RMS (ordered from Nuclide on June 20, 1974). Based on this information and on the recommendation of NBS, the Department finds that Nuclide could match the ion accelerating voltage of the foreign article at the time or order with either the 3–60–RMS or the 6–60–RMS.

Minimum Sample Size of 0.025 Atmosphere Cubic Centimeter (atm.cm ^{3})

Nuclide publication 1661 dated October 1976 (before the foreign article was ordered) states that a small sample option for the analysis of 0.01 ml STP (0.01 atm. cm ^{3}) range samples of noncondensable and condensable gases is available. The Department notes that Nuclide met a 1974 RFQ (and subsequent order) by providing the capability for analysis of 0.025 atm.cm^3. Nuclide also offered 0.01 atm. cm^3 on March 11, 1977 in response to a formal RFQ. Both of these RFQ's were based on the specifications of the foreign article. Further, NBS advises that Nuclide was capable of satisfying the applicant's 0.025 atm.cm^3 small sample requirement at the time the foreign article was ordered. Based on review of the above, the Department finds that Nuclide was capable of satisfying the applicant's small sample requirement at the time of order in either the 3–60–RMS or the 6–60–RMS.

Durability

The applicant alleges that an all metal inlet system is stronger and more durable than a glass inlet system. The applicant further alleges that durabililty is pertinent since the article will be used by many investigators and students. But, as has been shown above, Nuclide could provide an all metal inlet system at the time the foreign article was ordered. Moreover, NBS advises that durability is a feature of convenience which is not pertinent within the meaning of subsection 301.2(n) of the regulations to the applicant's intended program. In view of the above, the Department finds that Nuclide instruments were scientifically equivalent to the article with respect to durability.

Based on the foregoing considerations, NBS advice and our own review of the applications as well as other factual information in our possession (specifications, textbooks etc.), we find that the Nuclide Models 3–60–RMS and 6–60–RMS were each of equivalent scientific value to the foreign article for such purposes as this article is intended

to be used at the time the foreign article was ordered.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79-13942 Filed 5-3-79; 8:45 am]

BILLING CODE 3510-25-M

U.S. Geological Survey et al.; Applications for Duty-Free Entry of Scientific Articles

The folowing are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before May 24, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 735, 666 11th Street, NW., Washington, D.C.

Docket Number: 79-00188. Applicant: U.S. Geological Survey, 345 Middlefield Road, Menlo Park, California 94025. Article: Magnetic Susceptibility Meter. Manufacturer: Ustav uzite geofyziky, Brno, Czechoslovakia (Geophysical Instrumentation Institute). Intended use of article: The article is intended to be used to distinguish between the magnetite-free and magnetite-bearing intrusive rocks which are impossible to differentiate in the field by any other means. Application received by Commissioner of Customs: March 20, 1979.

Docket Number: 79-00190. Applicant: Brookhaven National Laboratory, Upton, L.I., N.Y. 11973. Article: 8 (each) Neutron Guide Tubes and Accessories. Manufacturer: Munich Technical University, West Germany. Intended use of article: The article is intended to be used in a research program involving the study of the properties of solids using slow neutrons from the Brookhaven High Flux Beam Reactor. A narrow beam of neutrons impinging on a solid will be broadened due to the interaction of the neutrons and the various inhomogeneities. The following are representative areas of research in the sciences for which experiments utilizing the neutron guide tubes, are planned:

Precipitation in glasses
Defects in irradiated crystals
Metal-nonmetal phase transitions
Guinier-Preston Zones in alloys
Local strain around imperfections in semiconductors
Magnetic coercivity in spherical crystal
Study of the vortex lattice in superconductors
Dislocation scattering in cold-worked metals
Structure of microcrystalline and amorphous materials.

Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79-00191. Applicant: University of Chicago of Argonne National Laboratory, 9700 S. Cass Avenue, Argonne, Illinois 60439. Article: Klystrons Tubes, Electromagnet and Accessories. Manufacturer: Thomson—CSF, France. Intended use of article: The article is intended to be used to produce the electromagnetic waves in the waveguides that accelerate the electrons to the required energy for experimental purposes. Basic research will be conducted in the following two areas:

(1) Photoneutron experiments in which neutron spectra near threshold are observed with high resolution, thus enabling a better understanding of neutron-nuclei interations with applications directed toward reactor physics, readiological physics and physics in general;

(2) Pulse radiolysis experiments, utilizing fast pulse domain of less than 50 picoseconds to study fast rections related to reaction kinetics, free radical and unstable ion chemistry, reaction chemistry, radiation biology, photosynthesis, combustion, and pollution and atmospheric chemistry.

Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79-00192. Applicant: University of Florida—College of Pharmacy, Box J-4, J. Hillis Miller Health Center, Gainsville, Florida 32610. Article: Model J-500 Automatic Recording Spectropolarimeter and Accessories. Manufacturer: Japan Spectroscopic Co., Ltd., Japan. Intended use of article: The article is intended to be used in experiments to obtain circular dichroism spectra of the complexes under various conditions of temperature and concentration. Primarily, proteins and nucleic acids will be studied to quantitiatively assess the structure of macromolecules, to study stubtle changes of the environment of the macromolecules, to study the interaction of drugs and macromolecules in a quantitative manner and to compare predicted and experimental structures. Application received by Commissioner of Customs: March 13, 1979.

Docket Number: 79-00193. Applicant: Mount Sinai School of Medicine, 1 Gustave Levy Place, New York, New York 10029. Article: BAF 301 High Vacuuum Freeze Etch Unit and Accessories Without High Current Supply. Manufacture: Balzers High Vacuum Corp., Switzerland. Intended use of article: The article is intended to be used for the study of airways mucosal permeability to protein macromolecules in guinea pigs exposed to nitrogen dioxide and in "allergic" asthma. The information obtained is by freeze-etched replicas of the respiratory tract mucosa which will be correlated with data obtained by radioimmunoassay of plasma for the tracer protein and by monitoring of the various parameters of respiratory mechanics (tidal volume, resistance, dynamic compliance and frequency of respiration). Such studies may further the understanding of the fundamental phenomenon underlying response of airways to environmental pollutants and bronchial asthma. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79-00194. Applicant: University of California, Los Angeles, Department of Chemistry, 405 Hilgard Avenue, Los Angeles, CA 90024. Article: Rare Gas-Halide Excimer UV Laser, Lumonics Model TE-261-2 and Accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended use of Article: The Article is intended to be used in the photolysis of gaseous HI to determine the energy partitioning in the reaction of hydrogen atoms with hydrogen iodide. The concentration of product hydrogen molecules in various vibrational states will be observed using a conventional vacuum ultraviolet absorption spectrometer. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79-00195. Applicant: University of Rochester School of Medicine and Dentistry, 601 Elmwood Avenue, Rochester, N.Y. 14642. Article: Three-color Ink Jet Plotter with Accessories. Manufacturer: Colorjet AB, Sweden. Intended use of article: The article is intended to be used to create color renditions of ultrasonic pulse-echo data in order to extract more information from the ultrasonic echoes than currently being obtained. The Color plots are expected to provide data elucidating the flow of blood in heart chambers and also the position of structure within the heart. Application

received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00196. Applicant: State University of New York at Binghamton, Vestal Parkway East, Binghamton, New York 13901. Article: Model 150XR UV excimer Laser and Accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: The article is intended to be used to study materials such as diazomethane, dioxetane and hemoglobin derivates which are known to dissociate photochemically. The experiments will consist of photolyzing crystals of these chemical at very low temperatures with the laser and examining the changes in magnetic properties that accompany the photochemical dissociation. In addition, the article will be used by graduate and undergraduate students enrolled in the courses Independent Study, Thesis Research, and Dissertation Research. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00197. Applicant: Montana State University, Department of Veterinary Science, Bozeman, Montana 59717. Article: Electron Microscope, Model JEM–100CX and Accessories. Manufacturer: JEOL Ltd., Japan. Intended use of Article: The article is intended to be used in the diagnoisis of many animal diseases, for identification of certain poorly differentiated neoplastic cells, for identification of viral particles, and certain environmental elements in lungs of affected animals. Specifically, the research purposes involve the study and identification of heavy elements in clinical cases of environmental lung diseases and in experimentally, induced pulmonary lesions. Other research will involve study and trace selenium and other elements in cellular malfunction both in vivo and in vitro experimental models. In addition, the article will be used for training students and staff in the principles, operation and applications of the techniques of TEM, SEM, STEM and X–ray microanalysis. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00198. Applicant: Woods Hole Oceanographic Institution, Water Street, Woods Hole, MA 02543. Article: Hydraulic Manipulator. Manufacturer: International Submarine Engineering Ltd., Canada. Intended use of article: The article will be attached to the forward structure of the deep-diving research submarine ALVIN and be used to hold and position underwater cameras used to make still photographs and motion pictures in color or black-and-white; it will also be used to hold and operate a hydraulic rock crusher used for obtaining geological samples; it will further be used to move and position specially designed containers for obtaining samples. Application received by Commissioner of Customs: March 15, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79–13879 Filed 5–3–79; 8:45 am]

BILLING CODE 3510–25–M

Veterans Administration Medical Center et al.; for Duty-Free Entry of Scientific Articles

The following are notices of the receipt of applications for duty-free entry of scientific articles pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651; 80 Stat. 897). Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the article is intended to be used is being manufactured in the United States. Such comments must be filed in triplicate with the Director, Statutory Import Programs Staff, Bureau of Trade Regulation, U.S. Department of Commerce, Washington, D.C. 20230, on or before May 24, 1979.

Regulations (15 CFR 301.9) issued under the cited Act prescribe the requirements for comments.

A copy of each application is on file, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, in Room 735, 666—11th Street, NW, Washington, D.C.

Docket Number: 79–00199. Applicant: Veterans Administration Medical Center, Laboratory Service (113), Electron Microscope Unit, Hines, Illinois 60141. Article: LKB 2128–010/Ultrotome IV Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of plant, animal and fungal specimens. Investigations will include ultrastructural studies on normal and pathologic plant and animal tissues, developmental studies of fungal systems, cyto and histochemical studies on enzyme and subcellular organelle localization in cells and tissues, membrane interactions at host-parasite interfaces, and subcellular changes in cells induced by changes in their biochemical and physical environments. The objective pursued in the course of these investigations is to understand early pathological alterations in tissues (as induced in animal models) and to correlate these changes with clinical alterations seen in human diseased tissues. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00200. Applicant: Surgical Neurology Branch NINCDS/ National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20014. Article: LKB 2088 Ultrotome V Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used for studies of various biological materials including normal, neoplastic and injured (post traumatic and ischemic) neurons and glia. Scientific problems to be studied will include:

1. The ultrastructural characteristics of gliomas and other types of brain tumors.

2. Quantitative ultrastructural surface and cytoplasmic characteristics of chromatolytic and regenerating neurons and quiescent, hypertrophic and mitotic post-injury microglia, oligodendroglia and astroglia.

3. Quantitative ultrastructural surface and cytoplasmic characteristics of arachnoidal cells under quiescent and various experimental conditions.

4. Surface membrane characterization of gliomas and other brain tumors.

5. Analysis of lectin and other receptor movement after alterations of membrane fluidity and cytoskeletal organization; surface and cytoplasmic events in transformation as well as nerve regeneration.

6. Quantitative analysis of fine structural changes in glioma cells after treatment with various chemotherapeutic agents such as CCNU, BCNU, phenytoin, procarbazine, methotrexate (TEM with quantitative image analysis).

Post-doctoral fellows as well as medical students and neurological and neurosurgical residents will be trained to use the instrument as part of the research training in the laboratory. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00201. Applicant: Duke University Medical Center, Box 3011, Anatomy Department, Durham, North Carolina 27710. Article: Double Tilt-lift Device. Manufacturer: Siemens and Halski Company, West Germany. Intended use of article: The article is intended to be used with an electron microscope to permit high resolution electron micrographs to be taken of biological membranes and membrane

structures at large angles of tilt. The experiments that are to be done involve taking minimal dose electron micrographs at large angles of tilt followed by computer image analysis procedures and three-dimensional reconstruction of membrane components. The techniques will be applied particularly to the communicating junction structure (gap junction) derived from liver tissue and to a three-dimensional reconstruction of the highly organized membrane placque structures in mammalian urothelial cell fusiform vacuoles. The article will also be used for stereoscopic studies of freeze-fracture-etch preparation of several types of membranes including urothelial cell membranes and the purple membrane of *Halobacterium halobium*. In addition, the article will be used for training graduate students and postdoctoral fellows in the techniques of three-dimensional reconstruction by low dose electron microscopy. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00202. Applicant: NASA Headquarters, Washington, DC 20546. Article: Mark–I Microelectrophoresis Apparatus and Accessories. Manufacturer: Rank Brothers, United Kingdom. Intended use of article: The article is intended to be used to determine the precise mobility distribution of biological cells. Mobility distributions as a function of buffer properties (pH, ionic strength, misc. constituents) will be measured. Mobility variations of 0.01 micron cm/volt sec. need to be measured. Application received by Commissioner of Customs: March 16, 1979.

Docket Number: 79–00203. Applicant: University of North Carolina, Department of Medicinal Chemistry, School of Pharmacy, Beard Hall 315, Chapel Hill, N.C. 27514. Article: Model DCC–A, Droplet Countercurrent Chromatograph and Glass Columns. Manufacturer: Tokyo Rikakikai Co. Ltd., Japan. Intended use of article: The article is intended to be used for studies of extracts from plants, animals and fungus metabolites. Countercurrent chromatographic separation (with a droplet mechanism) of the mixture extracts will be conducted. The overall objective is to separate and isolate the pure active component from the mixture extracts, especially the water-soluble polar active substances. A limited number of post-doctoral and pre-doctoral graduate students will be instructed individually in Droplet Countercurrent Chromatography (DCC) when their research requires this technique. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00204. Applicant: UCLA Lab. of Nuclear Medicine, 900 Veteran Ave., Los Angeles, California 90024. Article: DC Power Supply. Manufacturer: Fuji Denpa Kohki Co., Ltd., Japan. Intended use of article: The article is an electrical transformer—DC Power Supply for providing moderately high current at high voltage (1,250 volts) to the anode of a compact cyclotron which is used for medical research purposes for producing radioactive isotopes. These radionuclides, in turn, are used in developing and applying new techniques for diagnosis of various human diseases. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00205. Applicant: Uniformed Services University of the Health Sciences, 4301 Jones Bridge Road, Bethesda, Md. 20014. Article: Model J–500A Automatic Recording Spectropolarimeter and Accessories. Manufacturer: Japan Spectroscopic Co., Japan. Intended use of article: The article is intended to be used for studies of proteins, nucleic acids, chemical carcinogens, and pharmaceuticals. Experiments will be conducted to obtain circular dichroism spectra of the proteins, carcinogen and drug metabolites, and carcinogen-bound nucleic acids, carcinogen and drug metabolites. The objectives pursued in these investigations are:

(i) To develop quantitative methods of assessing the structure of proteins in solution.

(ii) To study the absolute configuration of chemical carcinogen and drug metabolites.

(iii) To study the circular dichroic properties of chemical carcinogen-bound nucleic acids and nucleosides.

Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00206. Applicant: College of Medicine and Dentistry of New Jersey, P.O. Box 10146, Newark, New Jersey 07101. Article: Electron Microscope, Model Elmiskop 102 and Accessories. Manufacturer: Siemens AG, West Germany. Intended use of article: The article is intended to be used for the study of diseased human and animal tissues and cells, and viruses. Observations will be carried out on the fine structural pathology of certain nervous system disorders in man and in experimental animals. The article will also be used for training graduate students in Neuroanatomy and Neurosciences, and residents in Neuropathology and Neurology who wish to acquire experience in the fine structural pathology of the nervous system and in electron cytochemistry and immunocytochemistry. Application received by Commissioner of Customs: March 15, 1979.

Docket Number: 79–00207. Applicant: The Pennsylvania State University, Department of Chemistry, Whitmore Laboratory, University Park, PA 16802. Article: TEA–103–2CO_2 Laser with Accessories. Manufacturer: Lumonics Research Ltd., Canada. Intended use of article: The article is intended to be used for research in the infra-red photo-chemistry of gaseous molecules. Application received by Commissioner of Customs: March 15, 1979.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials.)

Richard M. Seppa,

Director, Statutory Import Programs Staff.

[FR Doc. 79–13878 Filed 5–3–79; 8:45 am]

BILLING CODE 3510–25–M

National Oceanic and Atmospheric Administration, National Marine Fisheries Service; Issuance of Permit To Take Endangered Marine Mammals

On March 20, 1979, Notice was published in the **Federal Register** (44 FR 16951, and on April 2, 1979, a correction was published 44 FR 19220), stating that an application had been filed with the National Marine Fisheries Service by Bureau of Land Management, P.O. Box 1159, Anchorage, Alaska 99510, for a Scientific Research/Scientific Purposes Permit to take 575 gray whales and 2,590 bowhead whales. Of these, 100 gray whales and 500 bowhead whales would be taken by harassment per year for 5 years. Specimen materials would be collected from 15 dead beached gray whales per year. Specimen materials would be collected from 18 bowhead whales taken during the course of the Alaskan Native subsistence hunt or animals which have beached themselves.

Notice is hereby given that on April 26, 1979, the National Marine Fisheries Service issued a Scientific Research/Scientific Purposes Permit, as authorized by the provisions of the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973 to the Bureau of Land Management subject to certain conditions set forth therein.

Issuance of this Permit, as required by the Endangered Species Act of 1973, is based on a finding that such Permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which are the subject of this Permit; and (3) will be

consistent with the purposes and policies set forth in Section 2 of the Endangered Species Act of 1973. This Permit was also issued in accordance with, and is subject to, Parts 220 and 222 of Title 50 CFR, the National Marine Fisheries Service regulations governing endangered species permits.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Alaska Region, P.O. Box 1668, Juneau, Alaska 99802.

Dated: April 26, 1979.

Winfred H. Meibohm,

Executive Director, National Marine Fisheries Service.

[FR Doc. 79-13889 Filed 5-3-79; 8:45 am]

BILLING CODE 3510-22-M

National Marine Fisheries Service; Receipt of Application for Marine Mammals Permit

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531–1543), the National Marine Fisheries Service regulations governing endangered fish and wildlife permits (50 CFR Parts 217–222).

1. Applicant: a. Name: Southeast Fisheries Center, National Marine Fisheries Service. b. Address: 75 Virginia Beach Drive, Miami, Florida 33149.

2. Type of Permit: Scientific Research.

3. Name and Number of Animals: Atlantic bottlenose dolphins (*Tursiops truncatus*), 10,400.

4. Type of Take: Applicant proposes to conduct population censusing which will involve bottlenose dolphins throughout the study area over a 3 year period. During the course of censusing, up to 10,000 individual animals may be harassed. Up to 400 animals will be surrounded and captured. Of these, 275 will be marked, tagged, have specimen materials taken, and be injected with oxytetracyline to combat infection and to provide future age information. All 400 animals will be release to the wild.

5. Location of Activity: Southeast U.S. coastline from Texas to North Carolina.

6. Period of Activity: 3 years.

Concurrent with the publication of this notice in the **Federal Register** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235, on or before June 4, 1979. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 3300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, National Marine Fisheries Service, Southeast Region, Duval Building, 9450 Koger Boulevard, St. Petersburg, Florida 33701.

Dated: April 24, 1979.

Richard B. Roe,

Acting Deputy Director, Office of Mammals/Endangered Species, National Marine Fisheries Service.

[FR Doc. 79-13888 Filed 5-3-79; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration

Public Hearings on Draft Environmental Impact Statement

Notice is hereby given that the Office of Coastal Zone Management, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, will hold a public hearing for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) prepared on the proposed Alabama Coastal Area Management Program.

The hearing schedule is: June 6, 1979—2:00 p.m., Killian Room, International Trade Center, Mobile, Alabama.

The views of interested persons and organizations on the adequacy of the impact statement and the proposed Alabama Coastal Area Management program are solicited, and may be expressed orally or in written statements. Persons or organizations wishing to be heard on this matter should contact the Office of Coastal Zone Management (OCZM), National Oceanic and Atmospheric Administration, 3300 Whitehaven Street, N.W., Washington, D.C. 20235 (phone: 202/634–4253) so that an appearance schedule may be prepared. In addition, requests for presentations will be accepted immediately prior to the hearing. Presentations are scheduled on a first-come, first-served basis, and should be limited to ten minutes in order to assure that all views can be heard. Office of Coastal Zone Management staff may wish to question speakers following the conclusion of his/her statement. If time permits, additional statements (and general discussion) may be scheduled at the conclusion of presentation. No verbatim transcript of the hearing will be maintained, but staff present will record the general thrust of the remarks.

As part of the review of the proposed Alabama Coastal Area Management Program, the Assistant Administrator for Coastal Zone Management will consider fully all comments received at these hearings, as will as as written statements submitted to and received by OCZM, on or before June 18, 1979. As part of the procedures leading toward approval of this program, a Final Environmental Impact Statement will be prepared pursuant to the National Environmental Policy Act of 1969 and its implementing guidelines which reflect consideration of these comments. All written comments received by OCZM prior to the deadline will be included in the FEIS.

Dated: April 30, 1979.

R. L. Carnahan,

Acting Assistant Administrator for Administration.

[FR Doc. 79-13894 Filed 5-3-79; 8:45 am]

BILLING CODE 3510-08-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1979 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: May 4, 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 February 16, 1979, and March 9, 1979, the Committee for Purchase From the Blind and Other Severely Handicapped published notices (44 FR 10103 and 44 FR 13061) of proposed additions to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement list 1979:

Class 5120

Screwdriver, Cross-Tip
5120–00–820–2995
5120–00–060–2004
5120–00–224–7370
5120–00–529–3101
5120–00–227–7293
5120–00–234–8913
5120–00–542–3438
5120–00–224–7375
5120–00–596–0866
5120–00–237–8174
5120–00–580–2361
5120–00–357–7175
5120–00–580–0334

Class 7530

Paper, Teletypewriter Roll
7530–00–223–7966
(For GSA Regions 1, 2, 3, 7, 8, 9, 10).

C. W. Fletcher,
Executive Director.
[FR Doc. 79–13948 Filed 5–3–79; 8:45 am]
BILLING CODE 6820–33–M

DEPARTMENT OF DEFENSE

Intent To Prepare a Draft Supplement Environmental Impact Statement for the proposed Roseau River Flood Control Project, Minnesota

AGENCY: St. Paul District, U.S. Army Corps of Engineers.

ACTION: Notice of Intent To Prepare a Draft Supplement Environmental Impact Statement (EIS).

SUMMARY: The proposed action would provide damage reduction for flood events with a recurrence frequency of once in 30 years in th city of Roseau, once in 50 years in the agricultural area between Roseau and the Roseau Lakebed (approximately 8 miles), and once in 10 years for the remaining project area. This protection would be accomplished through channel modifications along 46.2 miles of the Roseau River between the Canadian border and the city of Roseau in northwestern Minnesota. The major modifications would include: channel widening, mainly along one bank; nine channel cutoffs totalling 5 miles with diversion structures to pass low flows through 11¾ miles of existing channel; construction of two levees (7.7 miles); and placement of five channel plugs in abandoned loops. A total of 87 side ditch inlets would be fixed for erosion and drainage control.

In addition to the proposed action, the following reasonable alternatives have been identified:

1. No action, i.e., no reduction in frequency or duration of flooding.

2. Non-structural methods, i.e., temporary or permanent evacuation of the floodplain, floodwarning and emergency protection, or floodproofing of buildings.

3. Floodwater storage, i.e., impounded storage in the drained bed of Roseau Lake with or without tributary storage on Sprague Creek, or storage in the downstream Big Swamp area, all of these with or without channel modification from the city of Roseau to the impoundment.

4. Channel modification with bypass, i.e., excavating a high-flow bypass channel along the alignment of existing State Ditch 51, to avoid excavation in a 6-mile-high gradient reach containing the majority of the walleye-spawning habitat in the project area.

5. Levees, i.e., the effective height of the channel banks would be raised to accommodate flood flows.

6. Floodway, i.e., increased width of excavation and decreased depth limited to a level above the ordinary low-flow channel elevation.

7. Increased urban protection, i.e., providing protection against 50- and 100-year flood events for the entire urban area.

Copies of the Draft and Final Environmental Impact Statement were provided for coordination to all concerned Federal, State, and local agencies; affected Indian tribes; and private organizations and individuals. Copies of the Draft Supplement EIS will be provided to all those identified above. Anyone else who is interested in reviewing this supplement is invited to do so and should contact the St. Paul District, Corps of Engineers, to assure that they are included on the mailing list.

Significant issues to be analyzed in the Draft Supplement EIS include:

1. Project design modifications completed since publication of the Final EIS.

2. An expanded discussion of alternatives considered.

3. Measures to mitigate project-induced losses.

4. A Section 404(b) Evaluation of the discharge into U.S. water of dredged or fill material.

Our review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, Council on Environmental Quality Regulations (40 CFR Part 1500–1508), and applicable Corps of Engineers regulations and guidance. A Draft Environmental Impact Statement is currently being prepared by the Minnesota Department of Natural Resources.

A scoping meeting will not be held for the preparation of this supplement since its preparation was initiated early in 1978. Significant issues to be discussed in this supplement were identified through coordination with Federal, State, and local government agencies; interested citizens' groups; and individual citizens.

We estimate that the Draft Supplement EIS will be available to the public by June 1979.

Questions concerning the proposed action and the Draft Supplement EIS can be directed to:

Colonel Forrest T. Gay III, District Engineer, St. Paul District, Corps of Engineer, 1135 U.S. Post Office and Custom House, St. Paul, Minnesota 55101.

Dated: April 26, 1979.

Forrest T. Gay III,
Colonel, Corps of Engineers, District Engineer.
[FR Doc. 79–13880 Filed 5–3–79; 8:45 am]
BILLING CODE 3710–CY–M

Department of the Navy

Academic Advisory Board to the Superintendent, U.S. Naval Academy, a Subcommittee of the Secretary of the Navy's Advisory Board on Education and Training; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Academic Advisory Board to the Superintendent, United States Naval Academy, a subcommittee of the Secretary of the Navy's Advisory Board on Education and Training, will meet on May 21, 1979, at conference room 4E714, The Pentagon, Washington, D.C. The meeting will commence at 10:00 a.m. and terminate at 3:00 p.m.

The purpose of the meeting is to advise and assist the Superintendent of the Naval Academy concerning the education of midshipmen. To

accomplish this objective, the Board will review academic policies and practices of the Naval Academy and will submit their proposals to the Superintendent to aid him in improving educational standards and in solving Academy problems.

For further information concerning this meeting contact: Major Donald W. Nelson, USAF, Military Secretary to the Academic Advisory Board, Division of English and History, United States Naval Academy, Annapolis, MD 21402. Telephone number (301) 367–2170.

Dated: May 1, 1979.

P. B. Walker,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Administrative Law).

[FR Doc. 79–13941 Filed 5–3–79; 8:45 am]

BILLING CODE 3810–71–M

DEPARTMENT OF ENERGY

Conservation and Solar Applications; Food Industry 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 Food Industry Advisory Committee and Subcommittees will meet Wednesday, May 23, 1979, at 9:00 a.m. to approximately 5:00 p.m., at the Conrad Hilton, 720 South Michigan Avenue, Chicago, Illinois.

The Committee was established to provide the Secretary of Energy with recommendations and advice with respect to the development and implementation of policies and programs affecting the food industry.

The tentative agenda and room locations for the meetings are as follows:

9:00–10:00 a.m.: Opening Remarks, Phil Zeidman—Lower Summit Room, Reorganization Briefing.
10:00–12:00 noon: Subcommittee Meetings. Parlor 412, Technology Subcommittee; Parlor 413, Conservation and Commercialization Subcommittee; Parlor 414, Supply Subcommittee; Parlor 419, Transportation and Distribution Subcommittee.
12:00–1:30 p.m.: Lunch.
1:30–2:30 p.m.: Presentation of Subcommittee Plans—Lower Summit Room.
2:30–3:00 p.m.: Presentation of Agriculture Priorities for Natural Gas.
3:30–4:00 p.m.: President's Energy Contingency Plans.
4:00–4:30 p.m.: Presentation by Food Industry, Agriculture, and Consumer Groups.
4:30–5:00 p.m.: Public Comment (10 Minute Rule).

The full Committee and Subcommittee meetings are open to the public. The Chairman of the Committee, and each Subcommittee is empowered to conduct each meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the 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, 202/252–5187, 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, SW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. 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 number above.

Issued at Washington, D.C., on April 30, 1979.

Georgia Hildreth,

Director, Advisory Committee Management.

[FR Doc. 79–14047 Filed 5–2–79; 8:45 am]

BILLING CODE 6450–01–M

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (Pub. L. 94–163), notice is hereby provided of the following meetings:

I. A meeting of Subcommittee C of the Industry Advisory Board to the International Energy Agency (IEA) will be held on May 8, 1979, at the offices of Exxon Corporation, 1251 Avenue of the Americas, New York, New York, beginning at 9:30 a.m. The agenda is as follows:

1. Opening remarks.
2. Pricing in an emergency.
3. Extraordinary costs.
4. Dispute Settlement Center.
5. Legal clearances: A. U.S. Voluntary Agreement; B. EEC Commission and interface with IEA.
6. Future work program.

II. A meeting of Subcommittee A of the Industry Advisory Board to the International Energy Agency (IEA) will be held on May 9, 1979, at the offices of Exxon Corporation, 1251 Avenue of the Americas, New York, New York, beginning at 9:30 a.m. The agenda is as follows:

1. Opening remarks.
2. Possible activation and role of Subcommittee B.
3. Base Period Final Consumption—seasonality, demand growth and other factors affecting the trigger calculation.
4. Role of government observers in an emergency.
5. Review Secretariat papers: A. Counterseasonal adjustments and time shift of demand in crisis management; B. Distortions in Questionnaire A and B data.
6. Questionnaire A and B reporting instructions—report of meeting between IEA, IAB (BP and VERA), Dutch, German and Swiss administrations, March 29, 1979.
7. Report by IEA secretariat on: A./IEA and EEC interface; B. Procedures and problems in preparing quarterly oil forecasts.
8. Standard format for voluntary offer submission—Sun Oil and IEA Secretariat proposal.
9. Preparation for ISAG training session and product imbalance workshop.
10. Demand restraint measures—role of companies.
11. Closing remarks.

III. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency (IEA) will be held on May 10, 1979, at the offices of Exxon Corporation, 1251 Avenue of the Americas, New York, New York, beginning at 9:30 a.m. The agenda is as follows:

1. Opening remarks by Chairman, including: A. Subcommittee B Chairmanship and Membership and ISAG staffing; B. Communications to and from the IEA and Reporting Companies.
2. Matters arising from the Record Note of IAB meeting on February 15, 1979.
3. Report on SEQ meetings:
   A. February 19, 1979.
   B. March 22, 1979.
   C. March 23, 1979 (Joint with SOM).
   D. April 24, 1979.
   E. April 25, 1979 (Joint with SOM).
4. Worldwide supply outlook.
5. Report by IEA on procedures and problems in preparing quarterly oil forecasts.
6. Subcommittee C report:
   A. Disputes Settlement Center.
   B. Legal clearances: (1) IEA and EEC interface; (2) Survey of IEA countries.
   C. Pricing in an emergency.
   D. Extraordinary costs.

E. Future work program.

7. Subcommittee A report:

A. Possible activation and role of Subcommittee B.

B. Base Period Final Consumption—seasonality, demand growth and other factors affecting the trigger calculation.

C. Role of government observers in an emergency.

D. Review Secretariat papers: (1) Counterseasonal adjustments and time shift of demand in crisis management; (2) Distortions in Questionnaire A and B data; (3) Consumer stocks.

E. Questionnaire A and B reporting instructions.

F. IEA/EEC interface.

G. Standard format for voluntary offer submissions.

H. Preparation for ISAG training session and product imbalance workshop.

I. Demand restraint measures—role of companies.

J. Future work program.

8. ISAG Manager's report.

9. Position of Reporting Companies under: A. EEC competition regulations; B. U.S. Voluntary Agreement.

10. Future work programs.

11. Dates and venues of future meetings of the IAB and subcommittees.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, these meetings will not be open to the public. As provided by section 209.32 of DOE regulations, IEP requirements and unanticipated procedural delays in processing this notice require the usual 7-day notice period to be shortened.

Issued in Washington, D.C., May 1, 1979.

Robert C. Goodwin, Jr.,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 79-13938 Filed 5-1-79; 3:58 pm]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Texfel Petroleum Corp. and I.U. International Oil & Gas, Inc.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to the Texfel Petroleum Corporation, 10889 Wilshire Boulevard, Suite 1440, Los Angeles, CA 90024 and I.U. International Oil and Gas, Inc. 1500 Walnut Creek, Philadelphia, PA 19102. This Proposed Remedial Order charges Texfel Petroleum and I.U. International with pricing violations in the amount of $647,967.29, connected with the sale of domestic crude oil during the time period november 16, 1973, through December 31, 1975, in the State of California.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Lyle L. Nelson, Acting District Manager of Enforcement, 111 Pine Street, San Francisco CA 94111, phone 415/556-7200. On or before May 21, 1979, any aggrieved person may file a Notice of Objection with the Office of Hearings and Appeals in accordance with 10 CFR 205.193.

Issued in Los Angeles, CA, on the 20th day of April 1979.

Lyle L. Nelson,

Acting District Manager of Enforcement, Western District.

[FR Doc. 79-13937 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Alaska Power Administration; Filing

April 30, 1979.

Take notice that the Assistant Secretary for Resource Applications of the Department of Energy on March 15, 1979, tendered for filing, for the confirmation and approval on a final basis by the Commission, pursuant to the authority vested in the Commission by the Delegation Order No. 0204-33, Rate Schedule SN-F-1 for wholesale firm power service from the Snettisham Project, Alaska Power Administration, which was confirmed and approved by the Assistant Secretary for Resource Applications, by Rate Order No. APA-1, effective April 1, 1979.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. EF79-1021]

[FR Doc. 79-13998 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Connecticut Valley Electric Co., Inc.; Tariff Change

April 30, 1979.

The filing Company submits the following:

Take notice that Connecticut Valley Electric Company Inc., on April 23, 1979, tendered for filing proposed changes in its Transmission Service Agreement with the New Hampshire Electric Cooperative, Inc. The proposed changes would decrease revenues from jurisdictional sales and service by $72 based on the 12 month period ending May 1979. The Company has requested a waiver of the Commission's 60 day notice requirement so that the reduction may become effective on June 1, 1979.

The filing is made to comply with the provisions of the Transmission Agreement (FPC No. 8) which requires that charges shall be modified annually to incorporate the applicable cost data contained in the Company's current FERC Form No. 1.

Copies of the filing were served upon the New Hampshire Electric Cooperative, Inc., and the New Hampshire Public Utilities Commission.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. ER79-329]

[FR Doc. 79-13999 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Colorado Interstate Gas Co.; Compliance Filing

April 30, 1979.

Take notice that Colorado Interstate Gas Company, on April 27, 1979, tendered for filing proposed modifications to its April 1, 1979, PGA filing. The filing was made according to the Company in compliance with the Commission's March 28, 1979, Order in Docket No. RP72-122 (PGA79-1).

CIG respectfully requests that the instant filing be made effective on April 1, 1979.

Copies of the filing have been served upon the Company's jurisdictional customers and other interested persons, including public bodies.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. RP72-122 (PGA79-1)]
[FR Doc. 79-14000 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Colorado Interstate Gas Co.; Certification of Joint Motion of Designated Parties for the Acceptance of Stipulation

April 30, 1979.

Take notice that on April 17, 1979, Administrative Law Judges Lotis and Lewnes certified to the Commission a stipulation and joint motion filed by designated parties [1] on April 16, 1979. The stipulation would sever the issue of the prudence of the Nueces gathering fee from Docket Nos. RP78-51 and RP79-1 and resolve the issue in Docket No. RP72-122 (PGA78-3).

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 10, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket Nos. RP72-122 (PGA 78-3); RP 78-51; RP 79-1]
[FR Doc. 79-14001 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

[1] Colorado Interstate Gas Company, Public Service Company of Colorado, City of Colorado and Commission Staff.

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 30, 1979.

Take notice that Columbia Gas Transmission Corporation (Columbia) on April 11, 1979, tendered for filing proposed changes in its FERC Gas Tariff, Original Volume No. 1, as follows:

Substitute Original Sheet No. 66

Columbia states that the foregoing tariff sheets is being filed in compliance with requirement to meet the standards set forth in the Commission's Order issued on March 30, 1979, in Docket No. RP79-31, *et al.*, that the tracking provision for the Louisiana First Use Tax (LFUT) should reflect a methodology for calculating volumes subject to the first use tax consistent with the pipeline's PGA methodology for calculating volumes to develop current adjustments. Section 22.4 of Substitute Original Sheet No. 66 has been revised to provide for the determination of volumes in the same manner as provided in Columbia's presently effective Purchased Gas Adjustment clause (§ 20.3). Section 22.3 has also been revised to indicate that the estimated volumes subject to LFUT shall be at a 15.025 psia.

Copies of the filing were served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. RP73-65 (PGA79-1)(AP79-1)]
[FR Doc. 79-14003 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Consolidated Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

April 30, 1979.

Take notice that Consolidated Gas Supply Corporation (Consolidated), on April 20, 1979, tendered for filing proposed changes to its FERC Gas Tariff, Third Revisd Volume No. 1. The proposed changes, shown on Second Substitute Eleventh Revised Sheet No. 16, to be effective March 1, 1979, reflect a rate reduction filed by Texas Eastern Transmission Corporation on April 4, 1979 at Docket No. RP78-87.

Consolidated also tendered for filing Second Substitute Twelfth Revised Sheet No. 16 proposed to be effective April 1, 1979. Second Substitute Twelfth Revised Sheet No. 16 includes the aforementioned rate reduction and incorporates the Louisiana First Use Tax Surcharge as originally submitted March 1, 1979 at Docket No. RP79-47.

Additionally, Consolidated included a comparison of the calculation of the NGPA Surcharge as originally filed January 30, 1979 and as revised March 30, 1979.

Consolidated requests a waiver of any of the Commission's Rules and Regulations as may be deemed necessary by the Commisison to permit the revised tariff sheets to become effective as proposed.

Copies of this filing were served upon Consolidated's jurisdictional customers, as well as interested State Commissions.

Any persons desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 14, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petiton to intervene. Copies of this filing are on file

with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

Docket nos. RP72-157 (PGA No 79-4); RP79-4]
[FR Doc. 79-14002 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

El Paso Natural Gas Co.; Revised Purchased Gas Cost Adjustment Filing

April 30, 1979.

Take notice that on April 24, 1979, El Paso Natural Gas Company ("El Paso") tendered for filing, pursuant to Part 154 of the Commission's Regulations Under the Natural Gas Act, the following revised tariff sheets in accordance with the Commission's letter order dated March 30, 1979, in the captioned proceeding, to become effective April 1, 1979:

Original Volume No. 1

Second Substitute Twenty-third Revised Sheet No. 3-B

Third Revised Volume No. 2

Second Substitute Thirteenth Revised Sheet No. 1-D

Original Volume No. 2A

Second Substitute Fifteenth Revised Sheet No. 1-C
First Substitute Eleventh Revised Sheet No. 1-D

El Paso states that said letter order dated March 30, 1979, *inter alia,* conditionally, accepted effective April 1, 1979, certain revised tariff sheets to El Paso's FERC Gas Tariff which were tendered as a part of El Paso's March 1, 1979, notice of change in rates for jurisdictional gas service.[1] El Paso states that said March 1, 1979, PGAC filing reflected changes in rates based upon (i) the currently effective PGAC and PGAC-CHPG provisions contained in El Paso's FERC Gas Tariff, (ii) an estimate of the impact of the Natural Gas Policy Act of 1978 ("NGPA") on certain of El Paso's purchased and produced gas costs [2] and (iii) the variations in cost attributable to the Advance Payment Adjustment, Transportation Cost and Revenue Adjustment and Gas Well Royalty Cost Variations provisions contained in El Paso's Stipulation and Agreement dated June 23, 1978, approved and accepted by the Commission's order issued September 5, 1978, at Docket No. RP78-18.

El Paso states that the Commission's acceptance of such revised tariff sheets was conditioned upon El Paso refiling rates reflecting (i) elimination of costs not authorized to be charged by producer-suppliers as of April 1, 1979, pursuant to the NGPA, the Natural Gas Act and the Regulations thereunder; and (ii) the proper producer-supplier rates from reversionary interest owners. In accordance with the Commission's March 30, 1979, letter order, El Paso is tendering the instant filing in order to submit substitute tariff sheets containing proposed revised PGAC and PGAC-CHPG rates to become effective as of April 1, 1979.

El Paso states that the revised rates reflected on the above described tariff sheets have been determined in accordance with the directives set forth by the Commission in its letter order dated March 30, 1979, by adjusting the rates filed March 1, 1979, so as to eliminate gas costs which El Paso's producer-suppliers are not authorized on April 1, 1979, to charge El Paso and reflecting the proper producer-supplier rates from reversionary interest owners.[3] El Paso states the resulting overall revised net PGAC adjustment is an increase of 36.24¢ per Mcf applicable to El Paso's east-of-California ("EOC") customers and 31.70¢ per Mcf applicable to El Paso's California customers, above El Paso's currently effective rates. Said adjustments are 7.33¢ per Mcf and 7.33¢ per Mcf, respectively, below the overall net PGAC adjustment of 43.57¢ per Mcf and 39.03¢ per Mcf applicable to El Paso's EOC and California customers, respectively, initially proposed in El Paso's March 1, 1979, PGAC filing.

El Paso further states that the net PGAC-CHPG adjustment resulting from the elimination of costs not authorized as of April 1, 1979, to be collected and the correction of certain of the producer-supplier rates from reversionary interest owners is a net increase of 7.2425¢ per Mcf above El Paso's currently effective rates. Said adjustment is 8.6648¢ per Mcf below the net increase in PGAC-CHPG rates of 15.9073¢ per Mcf initially proposed in said March 1, 1979, PGAC filing.

Since the revised tariff sheets described above are designed to revise the rates which were tendered as a part of El Paso's March 1, 1979, PGAC filing, El Paso respectfully requested that the tendered tariff sheets be substituted for their respective counterparts tendered by El Paso on March 1, 1979. El Paso also requested that the revised tariff sheets be accepted for filing and permitted to become effective on April 1, 1979, the effective date provided by the Commission in said letter order dated March 30, 1979.

El Paso also states that it submitted under Enclosure No. 4 to the instant filing the information required by Appendix A of the Commission's March 30, 1979, letter order.

El Paso states that copies of the instant tender have been served upon all parties of record in Docket Nos. RP72-155 and RP78-18 (PGA79-1 and AP79-1), and, otherwise, upon all affected customers and interested state regulatory commissions.

Any person desiring to be heard or to make any protest with reference to said tariff filing should, on or before May 11, 1979, file with the Federal Energy Regulatory Commission, Washington, D.C., 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make any protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's rules. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket Nos. RP72-155; RP78-18 (PGA 79-1, AP79-1)]
[FR Doc. 79-14004 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Georgia Power Co.; Filing

April 30, 1979.

Take notice that on April 24, 1979, Georgia Power Company (Georgia) tendered for filing a letter requesting Commission authorization to continue to provide emergency and economy energy service to Savannah Electric & Power

[1] Such service is rendered under rate schedules affected by and subject to ARTICLE 19, Purchased Gas Cost Adjustment Provision ("PGAC"), contained in the General Terms and Conditions applicable to El Paso's FERC Gas Tariff, Original Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A, and under rate schedules affected by and subject to the PGAC—Clean High Pressure Gas Provisions ("PGAC-CHPG") contained in El Paso's FERC Gas Tariff, Original Volume No. 2A.

[2] Order No. 18 issued December 1, 1978, at Docket No. RM79-7 amended § 154.38(d) of the Commission's Regulations to permit a one-time passthrough of certain estimated NGPA costs which may be added to the actual amounts reflected in Account 191, Unrecovered Purchased Gas Costs.

[3] The change in rates applicable to the Account 191 balance as of December 31, 1978, and the variations in costs attributable to the Advance Payment Adjustment, Transportation Costs and Revenue Adjustment and Gas Well Royalty Cost Variations as contained in the March 1, 1979, PGAC filing are not affected by the instant tender.

Company (Savannah) for up to sixty (60) days after the May 31, 1979 termination date or until the new interchange contract is made effective, whichever occurs first.

Georgia states that negotiations are presently being made which will lead to a new contract.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER79-328]
[FR Doc. 79-14005 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Kansas Power & Light Co.; Notice of Compliance Filing

April 30, 1979.

Take notice that Kansas Power & Light Company on April 16, 1979, tendered for filing revised rate schedule for whosesale service to rural electric cooperatives (RCW-78 Revised) as required by the Commission's letter dated March 30, 1979. The revised rate schedule is purportedly in conformance with the approved settlement proposal and such rates will be effective April 2, 1978.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before May 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER78-1]
[FR Doc. 79-14006 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Michigan Wisconsin Pipe Line Co.; Proposed Changes in FERC Gas Tariff

April 30, 1979.

Take notice that on April 12, 1979, Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) tendered for filing, Substitute First Revised Sheet No. 7 and Original Sheet Nos. 48, 49 and 50 to its F.E.R.C. Gas Tariff, Original Volume No. 1, in accordance with Commission "Order Accepting Certain Tariff Sheets, Conditionally Accepting Certain Tariff Sheets, and Rejecting Certain Other Tariff Sheets, Which Reflect the Louisiana First Use Tax in Pipeline Rates Pursuant to Order Nos. 10, 10-A and 10-B". Michigan Wisconsin proposes an effective date of May 1, 1979 for said revised tariff sheets.

Michigan Wisconsin states that these tariff sheets replace those which were filed with Michigan Wisconsin's letter dated March 9, 1979, and reflect revisions in accordance with the Commission's Order. Such revisions entail the refiling of a corporate undertaking which conforms with the Commission's regulations and a change in the tracking methodology to be utilized to recover the effect of the Louisiana First Use Tax (LFUT). The change in tracking methodology does not require a change in the LFUT adjustment originally filed for, 3.5¢.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. RP79-43]
[FR Doc. 79-14007 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Michigan, Department of Natural Resources; Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

April 24, 1979.

On April 5, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

State of Michigan, Department of Natural Resources

FERC Control Number: JD79-2931.
API Well Number: 2110131997.
Section of NGPA: 103.
Operator: Patrich Petroleum Corporation of Michigan.
Well Name: State Springdale 3-27 MI 15425.
Field: Springdale 26.
County: Manistee.
Purchaser: Consumers Power Company.
Volume: 73.949 MMcf.Q02
FERC Control Number: JD79-2930.
API Well Number: 32167.
Section of NGPA: 102.
Operator: Wolverine Gas and Oil Company, Inc.
Well Name: Wolverine-Martella-Pahkanen 1-20.
Field: Maple Grove 20A.
County: Manistee.
Purchaser: Consumers Power Company.
Volume: 100 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, NE, Washington, D.C. 20426.

Persons objecting to any of those final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before May 21, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79-13997 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Minnesota Power & Light Co.; Compliance Filing

April 30, 1979.

Take notice that Minnesota Power & Light Company (Company) on April 6, 1979, tendered for filing a Revised Compliance Filing to FERC Opinion No. 12 in response to a letter from the Office

of Electric Power Regulation dated March 7, 1979. The revised filing reflects a correction of direct assignment of costs to the Municipal-B resale customer and to the nonjurisdictional class from the assignment made in the original compliance filing to FERC Opinion No. 12.

Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Captiol Street, NE., Washington, D.C., 20426, in accordance with the Commission's Rules of practice and procedure (18 CFR 1.8, 1.10). All such protests should be filed on or before May 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. E-8494]
[FR Doc. 79-14008 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

April 30, 1979.

Take notice that on April 16, 1979, Natural Gas Pipeline Company of America, (Natural) tendered for filing proposed changes in its FERC Gas Tariff, Third Revised Volume No. 1. Natural states that the proposed changes will make effective:

Substitute Thirty-eighth Revised Sheet No. 5
Substitute Original Sheet No. 148

Natural states that the substitute sheets to be effective April 1, 1979, were submitted in compliance with Commission order issued March 30, 1979, Docket No. RP79-38 (RP79-53, et al.). The substitute tariff sheets also reflect the lower PGA unit adjustment filed March 12, 1979, in Docket No. RP71-125 (PGA79-1).

Copies of this filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedures (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. RP79-38]
[FR Doc. 79-14009 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Northern Natural Gas Co., Louisiana First Use Tax; Proposed Addition to FERC Gas Tariff

April 30, 1979.

Take notice that Northern Natural Gas Company (Northern), on April 16, 1979, in compliance with Commission Order issued March 30, 1979 in the above proceeding, submitted for filing amended tariff sheets incorporating a provision for the termination of the tracking of the Louisiana First Use Tax, in its F.E.R.C. Gas Tariff, Volume No. 1 and Volume No. 2.

The Tariff Sheets are:

Third Revised Volume No. 1

First Substitute Original Sheet No. 74b

Original Volume No. 2

First Substitute Original Sheet No. 1o

Northern states that copies of its filing were served on all jurisdictional customers and affected State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitons or protests should be filed on or before May 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. RP79-41]
[FR Doc. 79-14010 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Pennsylvania Power & Light Co.; Compliance Filing

April 30, 1979.

Take notice that on April 3, 1979, Pennsylvania Power & Light Company (PP&L) tendered for filing new fuel adjustment clauses and a report on the recomputation of fuel clause billings under the new clauses. PP&L states in its transmittal letter that this filing is made in compliance with the Commission's Opinion No. 34, issued January 15, 1979.

Any person desiring to be heard or to protest said filing should file comments or protests with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such comments or protests should be filed on or before May 29, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. ER76-398]
[FR Doc. 79-14011 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Public Service Co. of Oklahoma; Cancellation

April 30, 1979.

The filing Company submits the following:

Take notice that Public Service Company of Oklahoma on April 23, 1979 tendered for filing a Notice of Cancellation of the Letter Agreement dated September 23, 1975, Supplement to Rate Schedule FERC No. 118 between Public Service Company of Oklahoma and Southwestern Electric Power Company. PSO indicates that this cancellation is to be effective as of May 31, 1979.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1979. Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to

become a party must file petition to intervene. Copies of this application are filed with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. ER79-322]

[FR Doc. 79-14012 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration; Filing

April 30, 1979.

Take notice that the Assistant Secretary for Resource Applications of the Economic Regulatory Administration on behalf of the Southeastern Power Administration (SEPA) on March 5, 1979, tendered for filing, for the Commission's confirmation and approval on a final basis, a request for an extension of short-term rates for Laurel Project power.

(SEPA) indicates that the Economic Regulatory Administration (ERA) has, through a series of orders dated April 21, September 20, and December 29, 1978, pursuant to the Secretary of Energy's Delegation Order No. 0204–33, approved on an interim basis short-term rates through March 31, 1979.

SEPA indicates that it has concluded an arrangement with East Kentucky Power Cooperative, Inc. for, among other things, the long-term sale of the Laurel Project output to cooperative but will be unable to complete the arrangement and obtain the necessary approval for the long-term rates before March 31, 1979. Accordingly, SEPA contends, the extension of short-term rates is appropriate. SEPA further indicates that the short-term rates may be required through June 30, 1979, to provide the limited time needed to develop long-term rates.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. EF79-3051]

[FR Doc. 79-13990 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Southeastern Power Administration; Filing

April 30, 1979.

Take notice that the Assistant Secretary for resource Applications of the Department of Energy on April 17, 1979, tendered for filing, for final approval by the Commission, Rate Order No. SEPA–2, by which the Assistant Secretary for Resource applications confirmed on an interim basis, effective June 1, 1979, Wholesale Power Rate Schedule LP–1 applicable to power from the Laurel Project of the Southeastern Power Administration.

The Administrator indicates that the rate schedule will replace short-term contract rates presently in effect.

The Administrator indicates that the rate schedule is submitted for the Commission's approval on a final basis pursuant to Delegation Order No. 0204–33. Approval is requested for a period ending June 30, 1983.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before may 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Comission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. EF79-3052

[FR Doc. 79-13991 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Southern Natural Gas Co.; Proposed Changes in FPC Gas Tariff

April 30, 1979.

Take notice that Southern Natural Gas Company (Southern), on April 27, 1979, tendered for filing proposed changes to its FPC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2. The effect of the revised tariff sheets is to provide an annual rate increase of $39,394,709. Also, Southern has reflected the substitution of the current level of purchased gas costs as represented in Southern's Purchased Gas Adjustment (PGA) filing of December 15, 1978.

Southern states that, on October 31, 1978, Southern filed a general rate increase in Docket No. RP79–7 to become effective on December 1, 1978. The Commission, by order issued November 30, 1978, accepted the revised tariff sheets for filing and suspended their use until May 1, 1979, subject to certain conditions.

Southern requested that the proposed tariff sheets be allowed to be substituted for the tariff sheets previously suspended by the Commission's order of November 30, 1978. Since the proposed tariff sheets contain the same costs included in Southern's rate filing, modified in accordance with the Commission's November 30, 1978 order, Southern requested that the Commission grant any such waivers as are necessary so as to allow the proposed tariff sheets to become effective as contemplated by the Commission in Ordering Paragraph (C) of that order.

Copies of this filing have been served upon Southern's jurisdictional customers, interested state public service commissions and all parties of record.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. RP 79-7]

[FR Doc. 79-13989 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Southern Natural Gas Co., Louisiana First Use Tax; Notice of Proposed Changes in FERC Gas Tariff

April 30, 1979.

Take notice that Southern Natural Gas Company (Southern) on April 17, 1979, tendered for filing proposed changes to its FERC Gas Tariff, Sixth Revised Volume No. 1, to become effective on April 1, 1979. Southern states that such filing is made in compliance with the Commission's Order issued March 30, 1979 which required revised tariff sheets to be filed to reflect the computation of the Louisiana First Use Tax surcharge by use of actual balances in the deferred account.

Copies of the filing are being served upon the Company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. RP79-48]

[FR Doc. 79-13992 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration; Filing

April 30, 1979.

Take notice that the Assistant Secretary for Resource Applications of the Department of Energy on April 23, 1979, tendered for filing for the Commission's final approval pursuant to Delegation Order No. 0204-33, rates placed into effect by the Assistant Secretary for Resource Applications on an interim basis, effective June 1, 1979, by Rate Order No. SWPA-2, applicable to Sam Rayburn Dam. The contract concerned is between the Southwestern Power Administration and the Sam Rayburn Dam Electric Cooperative and supersedes a rate which has been in effect since March 5, 1971 ($1,030,000 per annum). The new rate is $1,388,300 per annum.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petiton to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,

Secretary.

[Docket No. EF79-4021]

[FR Doc. 79-13993 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Southwestern Power Administration; Filing

April 30, 1979.

Take notice that the Assistant Secretary for Resource Applications of the Department of Energy on March 7, 1979, submitted to the Commission for confirmation and approval on a final basis, pursuant to the authority vested in the Commission by Delegation Order No. 0204-33, the following rate schedules and contract rate of the Southwestern Power Administration (SWPA) which the Assistant Secretary for Resource Applications placed in effect on an interim basis effective April 1, 1979, by Rate Order No. SWPA-1:

Rate Schedule P-3, Hydro Peaking and Seasonal Peaking Power.
Rate Schedule F-2, Firm Power from Integrated System.
Rate Schedule F-3, Firm Power through Oklahoma Utilities Companies.
Rate Schedule EE-2, Excess Energy.
Rate Schedule IC-2, Interruptible Capacity.
Contract Rate under Section 2 of the Tex-La Electric Cooperative, Inc. Contract No. 14-02-001-864.

The Assistant Secretary for Resource Applications also indicates that by the same Order, he also placed into effect on an interim basis, effective January 1, 1979, the application of Rate Schedule P-3 to the power and energy sales under § 1.02 and the application of rate schedule EE-2 to the secondary energy sales under § 1.04 of the contract among SWPA and the Arkansas Power and Light Company and the Reynolds Metals Company, Contract No. ISPA-514 (Aluminum Contract).

The Assistant Secretary of Resource Applications indicates that these rates will immediately increase average annual system gross revenues from $50.3 million to $65.2 million (30 percent) and provide an additional $6.1 million in 1980 (3 percent) after the Harry S. Truman Project becomes operative.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.10). All such petitions or protests should be filed on or before May 16, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection

Kenneth F. Plumb,

Secretary.

[Docket No. EF79-4011]

[FR Doc. 79-13994 Filed 5-3-79; 8:45 am]

BILLING CODE 6450-01-M

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Compliance Filing

April 30, 1979.

Take notice that on April 16, 1979, Tennessee Gas Pipeline Company, a Division of Tenneco Inc. (Tennessee) filed tariff sheets to Ninth Revised Volume No. 1 of its FERC Gas Tariff, consisting of the followig:

Second revised Sheet No. 2130.
First Revised Sheet Nos. 213R and 213S.
Original Sheet No. 213T.

Tennessee states that the sole purpose of these tariff sheets is to revise Article XXVIII in the General Terms and Conditions of its FERC Gas Tariff, which provides for tracking of the State of Louisiana First Use Tax, to conform to the requirements of the Commission's order issued March 30, 1979, in Docket Nos. RP79-53, *et al.*

Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissins.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, in accordance with §§ 1.8

and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. RP 79-52]
[FR Doc. 79-13995 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

April 30, 1979.

Take notice that on April 16, 1979, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing propose changes in its FERC Gas Tariff, Fourth Revised Volume No. 1, the following sheets:

Second Substitute Forty-eighth Revised Sheet No. 14
Second Substitute Forty-eighth Revised Sheet No. 14A
Second Substitute Forty-eighth Revised Sheet No. 14B
Second Substitute Forty-eighth Revised Sheet No. 14C
Second Substitute Forty-eighth Revised Sheet No. 14D

The above tariff sheets ae filed in substitution for the respective tariff sheets, which reflected Texas Eastern's proposed April 1, 1979 Louisiana First Use Tax tracking rate increase which Texas Eastern by its March 15, 1979 motion requested to be placed into effect April 1, 1979. The above-listed tariff sheets reflect a reduction to Texas Eastern's March 15, 1979 filing based on a recalculation of Texas Eastern's estimated cost of the Louisiana First Use Tax under the First Use Regulations promulgated by the Department of revenue and Taxation of the State of Louisiana subsequent to Texas Eastern's March 15, 1979 filing.

In the event the alternative tariff sheets filed by Texas Eastern on April 4, 1979 are placed into effect as of March 1, 1979 by the Commission, Texas Eastern submitted the following alternate tariff sheets in order to recover the estimated cost of the Louisiana First Use Tax as part of its FERC Gas Tariff, Fourth Revised Volume No. 1:

Alternate Second Substitute Forty-eighth Revised Sheet No. 14
Alternate Second Substitute Forty-eighth Revised Sheet No. 14A
Alternate Second Substitute Forty-eighth Revised Sheet No. 14B
Alternate Second Substitute Forty-eighth Revised Sheet No. 14C
Alternate Second Substitute Forty-eighth Revised Sheet No. 14D

In compliance with Ordering Paragraphs (E), (F), and (G) of the Commission's March 30, 1979 order, Texas Eastern also submitted for filing Substitute Original Sheet No. 119 in lieu of Original Sheet No. 119 filed on March 15, 1979.

Texas Eastern requested the Commission to waive all rules and regulations necessary to permit the appropriate tariff sheets to become effective April 1, 1979.

Copies of the filing were served upon the company's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 9, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[Docket No. RP79-40]
[FR Doc. 79-13996 Filed 5-3-79; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of April 23 to 27, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from May 4, 1979 and will end on June 18, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review A-104, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202) 755-0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of April 23 to 27, 1979 the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: May 1, 1979.

Peter L. Cook,

Acting Director, Office of Environmental Review.

Appendix I—EIS's Filed With EPA During the Week of April 23 to 27, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447–3965.

Forest Service

Draft

Mt. Magazine Recreation Development, Logan County, Ark., April 27: Proposed is a recreational development plan for 2,200 acres on top of Mr. Magazine, Ozark National Forest, Logan County, Arkansas. Features include: replacement of a lodge that burnt in 1971 with a structure containing a restaurant, visitor information center and observation deck; replacement of deteriorated cabins; a sewage treatment plant and related facilities; rehabilitating campgrounds and picnic areas along with increased capacity; and increasing trail mileage (USDA–FS–08–10–79–01). (EIS Order No. 90443.)

Rural Electrification Administration

Draft

Seminole Plant, Units 1 and 2, Transmission, Putnam County, Fla., April 24: Proposed is the issuance of loan guarantees for the construction and operation of a 1,200 MW, net, coal-fired steam electric generating station to be located on an approximate 2,000 acre site adjacent to the St. Johns River in Putnam County, Florida. Major station facilities include two approximately 450 foot high natural draft cooling towers, a wet limestone flue gas desulfurization (FGD) system, electrostatic precipitators, boilers, a single 675 foot stack, a chemical waste treatment system, onsite disposal of FGD wastes as stabilized cake, and rail delivery of coal and approximately 69 miles of double-circuit 230 KV transmission line (USDA–REA(ADM)–79–3–D). (EIS Order No. 90425.)

Soil Conservation Service

Final

Hamilton Creek Watershed Plan, Burnet County, Tex., April 23: Proposed is a flood prevention plan for portions of the 52,995 acres of the Hamilton Creek Watershed in the City and County of Burnet, Texas. It is proposed that three floodwater retarding structures be installed to protect 231 acres of urban land in the City and 576 acres of agricultural flood plain land. Each retarding structure will consist of a principal spillway and plunge basin, and emergency spillway, a floodwater retarding pool, a sediment pool, and in total will require 172 acres (USDA–SCS–EIS–WS–(ADM)–78–5–(F)–(TX)). Comments made by: DUI, EPA, USDA, HEW, State agencies. (EIS Order No. 90419.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, S.W., Washington, D.C. 20314, (202) 693–6795.

Draft

Carolina Beach Inlet, Navigation Project, New Hanover County, N.C., April 23: Proposed is the construction of a navigation channel for the Carolina Beach Inlet located in New Hanover County, North Carolina. The channel would have a low water depth of 8 feet and a bottom width, at that level, of 150 feet extending for 1,500 feet, from the seaward side of the ocean bar at Carolina Beach Inlet to the intersection of the inlet with the Atlantic Intracoastal Waterway Channel. Initial channel excavation would require the net removal of 43,100 cubic yards of bar material that would be disposed of in the surf zone along an area approximately 3,000 to 5,000 feet south of the inlet (Wilmington District). (EIS Order No. 90422.)

Deepwater Port and Crude Oil System, Permit, Galveston County, Tex., April 25: Proposed is the issuance of a permit for an onshore deepwater port project which would involve the deepening of the existing ship channel into Galveston, Galveston County, Texas and extending the channel further into the Gulf of Mexico. Also proposed is the construction of a crude oil pipeline distribution system, originating at Pelican Island, and an oil storage tank farm. Several disposal sites will be used, dependent upon the type of dredged material (Galveston District). (EIS Order No. 90429.)

Final

Lake Front Steel Mill, Conneaut, Permit, Ashtabula County, Ohio; Erie County, Pa., April 26: This statement deals with a request by the US Steel Corporation for a permit to perform work in and along the southern shore of Lake Erie and its tributaries extending one mile east of Conneaut, Ashtabula County, Ohio to Springfield Township, Erie County, Pennsylvania. The actions involved include, in part; construction of a water intake and discharge system, an unloading dock, an erosion control structure; installation of a raw materials handling system; dredging and filling; and culverting of Turkey Creek. The proposed action is part of an overall plan to develop a steel manufacturing complex on a 2,800 acre site between Conneaut and West Springfield (Buffalo District). Comments made by: USDA, DOC, DOE, EPA, HEW, HUD, DOT, DOI, NRC, TVA, State and local agencies. Groups, individuals and businesses. (EIS Order No. 90438.)

DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce Washington, D.C. 20230, (202) 377–4335.

National Oceanic and Atmospheric Administration

Draft

Alabama Coastal Area Management Program (CZM), Alabama: April 26: Proposed is the Alabama State Coastal Area Management Program. The program includes general rules and regulations; resource use rules and regulations concerning siting/construction/operation of energy facilities, dredge and filling, shoreline erosion, public access, natural hazards, and solid waste disposal. Natural resources rules and regulations address water quality, wetlands and submerged grassbeds, air quality, beaches and dunes, water resources, protection of cultural resources, fisheries management, and wildlife habitat. (EIS Order No. 90436.)

Apalachicola River and Bay Estuarine Sanctuary, Grant, Franklin and Gulf Counties, Fla., April 26: Proposed is the awarding of an acquisition grant to the State of Florida for the acquisition, development, and operation of a estuarine sanctuary located in the Apalachicola River and Bay region of Franklin and Gulf Counties. The grant would apply to 12,000 acres of land, to be included within the boundaries of a proposed sanctuary consisting of approximately 190,000 acres. The purposes of acquisition include recreation, wildlife management, and conservation and protection of environmentally unique and irreplaceable lands. (EIS Order No. 90437.)

Final

Virgin Islands Coastal Management Program (CZM), Virgin Islands, April 25: Proposed is a coastal zone management program for the Virgin Islands. Approval would permit implementation of the proposed program, allow program administration grants to be awarded to the Territory, and require that Federal actions be consistent with the program. The program addresses general areas of particular concern and site specific recommendations. Comments made by: DOI, DOT, DOC, GSA, FERC, COE, USDA and Local Agency. (EIS Order No. 90428.)

ENVIRONMENTAL PROTECTION AGENCY

Draft

Contact: Mr. Clinton Spotts, Environmental Protection Agency, Region IV, First International Building, 1201 Elm Street, Dallas, Tex. 75270, (214) 767–2716.

WWT Facilities, St. Mary Parish, Grant, St. Mary County, La., April 27: Proposed is the issuance of five grants for the design and construction of sewerage facilities in St. Mary Parish, Louisiana. The project is split into five areas each with a different sewerage plan. They are: 1) Morgan City and Amelia-two distinct systems; 2) Wards 5 and 8—served by a single, centrally located treatment plant; 3) Franklin and vicinity—two distinct systems; 4) Baldwin and vicinity—separate treatment plants in the eastern and western subareas; and 5) Cypremort Point—a single plant. (EIS Order No. 90440.)

Draft

Contact: Ms. Betty Jankus, Environmental Protection Agency, Region IX, 215 Fremont Street, San Francisco, California 94105 (415) 556–6695.

Modesto Wastewater Facilities Improvements, Grant, Stanislaus County, Calif, April 26: Proposed is grant funding for modification improvements of the wastewater treatment and disposal facilities in the City of Modesto, Stanislaus County, California. The project would add a new 15 MGD influent pump station with a cross connection to one of the two existing pump stations; new booster pumps on the primary effluent pipeline to the oxidation ponds; two new sludge thickeners; a new sludge digester; additional sludge drying beds; 1,440 horsepower in additional aerators at the oxidation pond; and new chlorination and dechlorination facilities at the oxidation ponds. (EPA–9CA–Stanislaus-Modesto-WWIP–9).(EIS Order No. 90433.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Brown, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–6306.

Draft

Imperial Oaks Subdivision, Mortgage Insurance, Montgomery County, Tex., April 24: Proposed is the issuance of HUD home mortgage insurance for the Imperial Oaks Subdivision, Montgomery County, Texas. When completed the subdivision will contain approximately 3,000 dwelling units on approximately 958.7 acres. There will also be some commercial reserves and recreational areas within the proposed development. (HUD–R06–EIS–70–79.) (EIS Order No. 90426.)

Final

Carmelitos Housing Complex, Los Angeles County, Calif., April 23: Proposed is the redevelopment of the Carmelitos Housing Complex located in the City of Long Beach, Los Angeles County, California. The project will include the modernization of an existing 64 acre, 713 unit, low-rent housing project, the rehabilitation of 583 family units, the demolition of 130 units of stucco/frame buildings, and replacement construction of 130 new elderly units. (HUD–R09–EIS–77–34.) Comments made by: AHP, local agencies, groups, individuals and businesses. (EIS Order No. 90421.)

Final

Northdale/North Lakes Subdivision, Tampa, Hillsborough County, Fla., April 23: Proposed is the issuance of HUD home mortgage insurance for the Northdale/ North Lakes subdivision located in Tampa, Hillsborough County, Florida. The project site will encompass 2,710 dwelling units on approximately 1,276 acres on the Northdale site and 3,136 dwelling units on approximately 780 acres on the North Lakes site. The subdivision will also include an office center, commercial center, a cultural and ecumenical center, a park/school site, and additional recreational areas. (HUD–R04–EIS–77–07–E.) Comments made by: EPA, DOC, DOI, HEW, FERC, State and local agencies. (EIS Order No. 90432.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343–3891.

Bureau of Land Management

Draft

Drewsey Grazing Management Program, Harney County, Oreg., April 27: Proposed is the continuance of a livestock grazing program for 677,709 acres of public land in the Drewsey study area, Harney County, Oregon. The program consists of implementing 68 AMPs on 81 allotments covering 636,444 acres of public land. Less intensive management is proposed for 43 allotments covering 18,553 acres; 1,680 acres would continue as a driveway; and 21,032 acres would continue with no livestock grazing. The plan will include: allocation of livestock forage to livestock, wild horses, wildlife, and watershed; establishment of grazing systems; and construction of range improvements. (DES–79–22.) (EIS Order No. 90441.)

Draft Supplement

Phosphate Leasing, Osceola National Forest, Several counties, Florida, April 27: This statement supplements a final EIS filed with CEQ on June 28, 1974 (EIS No. 41065, USDA–FES–74–37). The proposed action is the issuance of 41 phosphate preference right leases on 52,000 acres of the Osceola National Forest located in north central Florida. The scope of this supplement is limited to only those impacts, alternatives and new issues that have surfaced since 1974. A new alternative discusses the issuance of leases providing for two beneficiation plants in the Osceola National Forest. (DES–79–17.) (EIS Order No. 90351.)

STATE DEPARTMENT

Contact: Mr. William H. Mansfield, III, Office of Environmental Affairs, Department of State, Washington, D.C. 20520 (202) 632–2418.

Final

Narcotics Control in Mexico, Herbicide Use, Foreign, April 27: Proposed and examined is the continuation of the joint US Government-Government of Mexico program which utilizes herbicides to eradicate opium poppy (2,4-D) and marihuana (paraquat) crops. The statement addresses Mexican narcotics eradication and control projects including the use of herbicides. It presents drug traffic and drug consumer profiles and estimates the extent of contamination of heroin and marihuana in the US along with associated health effects. Comments made by: HEW, DOI, EPA, State agencies, groups and businesses. (EIS Order No. 90431.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590 (202) 426–4357.

Federal Highway Administration

Draft

TH–120, I–494 in Woodbury to I–694 in Oakdale, Washington and Ramsey Counties, Minn., April 23: Proposed is the improvement of TH–120 from I–494 in Woodbury to I–694 in Oakdale, Ramsey and Washington Counties, Minnesota. The existing facility would be upgraded to a four-lane divided roadway with shoulder and with a raised median of sufficient width to accommodate turn lanes. The roadway will be approximately 8 miles in length and will require a minimum right-of-way width of 126 feet. (FHWA–MN–EIS–79–01–D.) (EIS Order No. 90423.)

TH–10, Hanson Boulevard to I–35W, Anoka and Ramsey Counties, Minn, April 23: Proposed is the issuance of funds for the construction/reconstruction of about 6 miles of TH–10 between Hanson Boulevard in Coon Rapids in Anoka County to I–35W in Mounds View in Ramsey County, Minnesota. The project would provide a four lane divided expressway built to highway standards with controlled access between these two termini. The alternatives include no build and two route alternatives. (FHWA–MN–EIs–79–02–D.) (EIS Order No. 90424).

Final

Relocated US 321, Dallas to Hickory, Lincoln, Catawba, Gaston Counties, N.C., April 23: Proposed is the construction of a 4-lane divided highway on new location, connecting the existing improved section of US 321 at Dallas, Gaston County, through Lincoln County, to the existing (new) interchange with I–40 at Brookford, just south of Hickory, Catawba County, North Carolina. New corridor locations under consideration vary from 30 to 32 miles in length. The new roadway will generally parallel and replace existing US 321, which extends about 37 miles between Dallas and Brookford (FHWA–NC–EIS–76–11–F) Comments made by: USDA, DOI, EPA, COE, DOT, HEW, HUD, State and local agencies. (EIS Order No. 90418.)

PR–10, Arecibo to Ponce, Puerto Rico, April 26: Proposed is the improvement of PR–10, from Arecibo to Ponce in Puerto Rico. The proposed action will consist of the construction of 58.0 kilometers of highway with partial access control from PR–22, De Diego Expressway, on the south-east of the town of Arecibo to existing Route PR–10 on the north part of the City of Ponce. The project will be a four-lane divided highway from Route PR–22 to San Pedro Community, were it narrows to a two-lane undivided highway and is maintained for the remaining of the project's length. The selected alternative traverses through agricultural and forest land areas. (FHWA–NC–EIS–75–01–F). Comments made by: HUD, HEW, DOI, EPA, COE, USDA, State agencies, and businesses. (EIS Order No. 90350.)

Final

US 52 to NC–24/NC–27, New Connector, Construction, Stanly County, N.C., April 23: Proposed is the construction of a new

connector from US 52 to NC–24/NC–27 in Albermarle, Stanly County, North Carolina for a distance of 2.6 miles. The project will consist of the construction of a four lane, 48-foot curb and gutter cross section partially on new location and partially along existing Carolina Avenue. The northern terminal of the proposed project will intersect US 52 just south of Snuggs Street while at the southern terminal it will tie into NC–138 (Aquadale Road) at NC–24/NC–27. (FHWA–NC–EIS–77–04–F). Comments made by: DOI, EPA, USDA, HEW, DOT, COE, State and local agencies. (EIS Order No. 90420.)

U.S. Coast Guard

Draft

Pudget Sound Vessel Traffic, Regulations, Regulatory, April 27: Proposed is the promulgation of a set of regulations for the operation of tank vessels carrying oil and hazardous substances in Puget Sound and adjacent waters. The regulations would amend the Puget Sound Vessel Traffic Service Regulation. The regulations would be applicable to all tank vessels of 40,000 DWT or greater carrying oil or hazardous substances in bulk. Features include: an upper limit of 125,000 DWT would be imposed; additional navigation equipment would be required on vessels 100,000 DWT or above, tug escort would be required within certain waters, and others. (EIS Order No. 90442.)

Veterans Administration

Contact: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420, (202) 389–2526.

Draft

Vancouver VA Medical Center, Clark County, Washington, April 27: Proposed is the construction of a 200-bed replacement hospital for the Vancouer VA Medical Center, Clark County, Washington. The facility would provide additional modern nursing home care and other medical services, and includes the demolition of some buildings. A laundry and warehouse will also be constructed. (EIS Order No. 90439.)

EIS's Filed During the Week of April 23 to 27, 1979

[Statement Title Index—By State and County]

State	County	Status	Statement title	Accession No.	Dated filed	Orig. Agency No.
Alabama		Draft	Alabama Coastal Area Management Program (CZM).	90436	4–26–79	DOC.
Arkansas	Logan	Draft	Mt. Magazine Recreation Development	90443	4–27–79	USDA.
California	Los Angeles	Final	Carmelitos Housing Complex	90421	4–23–79	HUD.
	Stanislaus	Draft	Modesto Wastewater Facilities Improvements, Grant.	90433	4–26–79	EPA.
Florida	Franklin	Draft	Apalachicola R. and Bay Estuarine Sanctuary, Grant.	90437	4–26–79	DOC.
	Gulf	Draft	Apalachicola R. and Bay Estuarine Sanctuary, Grant.	90437	4–26–79	DOC.
	Hillsborough	Final	Northdale/North Lakes Subdivision, Tampa	90432	4–23–79	HUD.
	Putnam	Draft	Seminole Plant, Units 1 and 2, Transmission	90425	4–24–79	USDA.
	Several	Supple	Phosphate Leasing, Osceola National Forest	90351	4–27–79	DOI.
Foreign		Final	Narcotics Control in Mexico, Herbicide Use	90431	4–25–79	STAT.
Louisiana	St. Mary	Draft	WWT Facilities, St. Mary Parish, Grant	90440	4–27–79	EPA.
Minnesota	Anoka	Draft	TH–10, Hanson Boulevard to I–35W	90424	4–23–79	DOT.
	Ramsey	Draft	TH–120, I–494 In Woodbury to I–694 in Oakdale	90423	4–23–79	DOT.
		Draft	TH–10, Hanson Boulevard to I–35W	90424	4–23–79	DOT.
	Washington	Draft	TH–120, I–494 in Woodbury to I–694 in Oakdale	90423	4–23–79	DOT.
North Carolina	Catawba	Final	Relocated US 321, Dallas to Hickory	90418	4–23–79	DOT.
	Gaston	Final	Relocated US 321, Dallas to Hickory	90418	4–23–79	DOT.
	Lincoln	Final	Relocated US 321, Dallas to Hickory	90418	4–23–79	DOT.
	New Hanover	Draft	Carolina Beach Inlet, Navigation Project	90422	4–23–79	COE.
	Stanly	Final	U.S. 52 to NC–24/NC–27, New Connector, Construction.	90420	4–23–79	DOT.
Ohio	Ashtabula	Final	Lake Front Steel Mill, Conneaut, Permit	90438	4–26–79	COE.
Oregon	Harney	Draft	Drewsey Grazing Management Program	90441	4–27–79	DOI.
Pennsylvania	Erie	Final	Lake Front Steel Mill, Conneaut, Permit	90438	4–26–79	COE.
Puerto Rico		Final	PR–10, Arecibo to Ponce	90350	4–26–79	DOT.
Regulatory		Draft	Puget Sound Vessel Traffic, Regulations	90442	4–27–79	DOT.
Texas	Burnet	Final	Hamilton Creek Watershed Plan	90419	4–23–79	USDA.
	Galveston	Draft	Deepwater Port and Crude Oil System, Permit	90429	4–25–79	COE.
	Montgomery	Draft	Imperial Oaks Subdivision, Mortgage Insurance	90426	4–24–79	HUD.
Virgin Islands		Final	Virgin Islands Coastal Management Program (CZM)	90428	4–25–79	DOC.
Washington	Clark	Draft	Vancouver VA Medical Center	90439	4–27–79	VA.

Appendix II.—*Extension/waiver of review periods on EIS's filed with EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
DEPARTMENT OF ENERGY					
Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station E-201 GTN, Washington, D.C. 20545, (202) 376-5998.	Waste Isolation Pilot Plant, Construction.	Draft 90407	4-27-79	Extension	7-6-79

Appendix III.—*EIS's filed with EPA which have been officially withdrawn by the originating agency*

Federal agency contact	Title of EIS	Filing status/ accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of official retraction*

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
DEPARTMENT OF INTERIOR				
Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, (202) 343-3891.	Lake Mead National Recreation Area.	Draft 90291	4-2-79	Distribution of the draft EIS has not been made.
	Phosphate Leasing, Osceloa National Forest.	Draft Supplement 90351	4-13-79	Distribution of the DS was not made when the notice of availability was published in FR 4-13-79 and it is refiled as of 4-27-79. See Appendix I.
DEPARTMENT OF AGRICULTURE				
Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447-3965.	San Miguelito Subwatershed, Santa Ynez River.	Final 90339	4-13-79	Distribution of the FEIS has not been made.
DEPARTMENT OF TRANSPORTATION				
Mr. Martin Convisser, Director, Office of Environmental Affairs, Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-4357.	PR-10, Arecibo to Ponce	Final 90350	4-13-79	Distribution of the FEIS was not made when the notice of availability was published in FR 4-13-79 and it is refiled as of 4-26-79. See Appendix I.

Appendix V.—*Avilability of reports/additional information relating to EIS's previously filed with EPA*

Federal agency contact	Title of report	Date made available to EPA	Accession No.
U.S. ARMY CORPS OF ENGINEERS			
Dr. C. Grant Ash, Office of Environmental Policy, Attn: DAEN-CWR-P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 1000 Independence Avenue, SW., Washington, D.C. 20314, (202) 693-6795.	Clarification statement to the April 1974 FEIS Cleveland Harbor Operations & Maintenance, Cuyahoga County, Ohio.	4-25-79	90427
	Supplemental information to the FEIS local flood protection project, Milan, Illinois.	4-26-79	90434
	Supplemental information to the FEIS local flood protection project, Davenport, Iowa.	4-26-79	90435

Appendix VI.—*Official Correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Correction
DEPARTMENT OF TRANSPORTATION				
Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-4357.	FL-45, Halfway Creek to North of Estero (FS).	Final Supplement 90376	4-20-79	The agency number that was published was incorrect and should have stated (FHWA-FL-EIS-72-13-FS).
DEPARTMENT OF INTERIOR				
Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, (202) 343-3891.	Haleakala National Park, Boundary Expansion.	Draft Supplement 90110	2-13-79	A retraction for this was published in FR 2-27-79 and the DS was refiled 3-5-79. The notice of availability should have been published in FR 3-19-79. Comments were due 4-30-79.

[FRL 1216-7]
[FR Doc. 79-14053 Filed 5-3-79; 8:45 am]

BILLING CODE 6560-01-M

FEDERAL MARITIME COMMISSION

Sea-Land Service, Inc. (Sea-Land) Proposed 5-Percent General Rate Increase in Six Puerto Rico and Virgin Islands Trades; Order of Investigation and Hearing

On January 26, 1979, Sea-Land Service, Inc. filed amendments to its tariffs covering its services in the Puerto Rico-Virgin Islands trades, proposing a five (5) percent general rate increase, effective April 1, 1979. The proposed increases were later postponed, except as noted below, to May 1, 1979, to coincide with the effective date of a similar increase proposed by the Puerto Rico Maritime Shipping Authority, a competitor of Sea-Land. The proposed increases apply to all ocean freight rates, extra size charges, per trailer rates or maximum charges per trailer, minimum charges for exclusive use of trailer, and charges for the return of empty pallets, tarpaulins, tote bins, etc. in the subject trades. In addition to the above, the charge for southbound trailerloads of pallets used for the northbound carriage of rum is also subject to the five percent increase. Accomplishment of the proposed changes was made by the filing of supplements to the involved tariffs which are shown below.

Sea-Land intends to discontinue the service provided pursuant to Tariffs FMC-F No. 51 and FMC-F No. 52,[1] two of the tariffs subject to the increase, and filed supplements which would have cancelled the tariffs on April 8, 1979. However, in order to allow itself adequate time to amend its applicable Puerto Rican tariffs to provide for the commodity movements presently provided for under Tariffs FMC-F Nos. 51 and 52, Sea-Land filed appropriate supplements to the tariffs, postponing the April 1 effective date of the proposed increase and the proposed April 8 cancellation date, until May 15, 1979. Since the tariffs are being cancelled May 15, 1979, the proposed increase will not become effective.

Supporting data, as required at the time of the filing of the proposed increase, was submitted with the tariff filings. At the time of Sea-Land's initial filing of the proposed increase, the Commission had not yet amended its Rules of Practice and Procedure to establish the filing procedure for said general rate increase, thus we have not received any of the carrier's exhibits, documents, testimony or supporting workpapers.

Protests were recevied from the Puerto Rico Manufacturers Association (PRMA) on February 27, 1979, and the Government of the Virgin Islands (GVI) on April 12, 1979.

PRMA, who requests that a hearing and investigation be held, contends that the proposed general rate increase may actually exceed five percent when combined with increases made in individual commodity items. PRMA expresses concern that it, and/or its members, may have been subjected to the payments of rates for transportation which were, and are, unjust and unreasonable.

The GVI estimated that in 1977, 4.87 percent of all cargo carried by Sea-Land to Puerto Rico from East Coast ports was destined for the Virgin Islands.[2] Upon receiving notice of Sea-Land's increases and after contacting the carrier, the GVI states that they were supplied with a copy of Sea-Land's General Order 11 and four pages of testimony. No other exhibits, documents, testimony or supporting workpapers related to the proposed increases were received. After review of the data submitted, the GVI believes that Sea-Land has failed to provide sufficient justification that its proposed rates are just, reasonable and lawful under section 18(a) of the Shipping Act, 1916, and under sections 3 and 4 of the Intercoastal Shipping Act of 1933 as amended.

The GVI submits that due in part to the complexity of the issues raised, the questionable nature of Sea-Land's projected data, the need to resolve the issue of whether Sea-Land's LTL trade to and from the Virgin Islands is unfairly subsidizing the less profitable routes of the carrier between the mainland and Puerto Rico, and due to the significant volume of additional information that Sea-Land must provide to establish the reasonableness of its proposed rates, a hearing is required. The GVI requests that an investigation of the proposed rates be initiated and that such investigation include at least the following issues:

1. Whether the proposed rates are unjust and unreasonable in that they will provide Sea-Land with an excessive return as measured by accepted analytical methods;

2. Whether the proposed rates on Virgin Islands LTL service are unjust and unreasonable in that they will provide Sea-Land with an excessive return on such service as measured by accepted analytical methods and as compared to the return being earned on other portions of the trade;

3. Whether Sea-Land's projection of the revenue that is designed to be produced by the proposed rates is reasonable;

4. Whether Sea-Land's projection of expenses related to the trade at issue is reasonable;

[1] Tariff FMC-F No. 51 contains joint commodity rates via rail-water applicable to Puerto Rico from Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, North Carolina, Ohio, Tennessee, Texas, Virginia and Wisconsin.

Tariff FMC-F No. 52 contains joint commodity rates via water-rail applying from Puerto Rico to Georgia, Illinois, Missouri, Nevada, North Carolina, Ohio, Oklahoma, Tennessee and Texas.

[2] Sea-Land's Virgin Islands bound cargo is moved from Puerto Rico via three feeder services, Caribbean Area Transportation, Inc. (Agreement No. DC-74), Interisland Intermodal Lines, Inc. (Agreement No. DC-87), and International Maritime Transport Service, Inc. (Agreement No. DC-130).

5. What is a reasonable method of allocation of rate base and expenses to each of the trades at issue; and

6. Whether the proposed rates are unjust and unreasonable in that their negative effect on the Virgin Islands economy outweighs the carrier's need, if any, for increased revenues.

Sea-Land's reply, to the protest of PRMA was received in the Commission on April 6, 1979, prior to the filing of GVI's protest. Sea-Land's April 23, 1979 reply to the protest of GVI was received late to be considered by the Commission.

Sea Land contends that the financial data which it has submitted demonstrates that the five percent general raise increase is fully justified. The carrier states that its General Order No. 11 Report for the 12 months immediately preceding the general rate increase shows that it incurred a loss in the Puerto Rico trade and that, had its revenue for that 12 month period been increased by five percent, Sea-Land's rate of return would have been less than three percent on rate base. Sea-Land believes that it has clearly demonstrated the need for additional revenue to be generated by the five percent increase. This would still leave the carrier in a position of earning an inferior rate of return on investment.

Sea-Land further states that it has reviewed its tariff activity in its Atlantic and Gulf/Puerto Rico tariffs for the 12 months preceding the filing of the five percent general rate increase[3] and concluded that there was but one increase in one individual commodity.[4] After determining that there were numerous decreases, Sea-Land states that they decided not to attempt the effort to quantify the decreases.

It is Sea-Land's contention that the evidence (namely the official tariffs on file with the FMC) is overwhelming and establishes that, as a general revenue matter, the carrier's tariff activity in the 12 months preceding the general revenue increase has, because of competition and other market factors, been to reduce, and not to increase general revenue.

While a number of areas regarding Sea-Land's data have been clarified, many questions raised in the protests, as set forth below, remain unanswered. We are of the opinion, therefore, that the increases should be investigated.

Now, therefore, it is ordered, That, pursuant to the authority of sections 18(a) and 22 of the Shipping Act, 1916, and sections 3 and 4 of the Intercoastal Shipping Act, 1933 (46 U.S.C. sections 815, 821, 845, 845a), an expedited investigation is hereby instituted into the lawfulness of the tariff matters listed in Attachment No. 1 for the purpose of making such findings as the facts and circumstances warrant;

It is further ordered, That, this proceeding be limited to an investigation of the following areas:

1. What effect did Sea-Land's change in the treatment of overland costs from a reduction of revenue to an increase in "terminal and container expense" have on the calculation of projected revenue and, in light of the change, how can the projected revenue be compared with prior period revenues?

2. Why are direct vessel and port and cargo expenses in the South Atlantic/Puerto Rico trade projected to increase by 60 percent while the volume of traffic is projected to increase by only 40 percent?

3. Why is there a projected 103 percent increase in "other property and equipment" as a rate base item in the South Atlantic/Puerto Rico trade?

4. Why is there a projected increase in "working capital" for all trades despite a decreasing volume of traffic in all but one trade?

5. Why are direct vessel and port and cargo expenses in trades other then South Atlantic/Puerto Rico trade projected to decrease by only 16 percent while the volume of traffic is proejcted to decrease by 29 percent?

6. Why is the rate-of-return in the East Coast/Virgin Islands trade declining?

It is further ordered, That Sea-Land Service, Inc. be named Respondent in this proceeding;

It is further ordered, That the Government of the Virgin Islands and the Puerto Rico Manufacturers Association be named Protestants in this proceeding;

It is further ordered, That in accordance with Rule 42 of the Commission's Ruels of Practice and Procedure (46 CFR 502.42), Hearing Counsel shall be a party to this proceeding;

It is further ordered, That this proceeding be assigned for public hearing before an Administrative Law Judge of the Commission's Office of Administrative Law Judges and that the hearing be held at a date and place to be determined by the Presiding Administrative Law Judge;

It is further ordered, That the parties submit to the Administrative Law Judge, at a prehearing conference, recommendations identifying all unresolved issues and specifying the type of procedure best suited to resolve them. After consideration of these recommendations, the Administrative Law Judge will issue an appropriate order limiting the issues and establishing the procedure for their resolution;

It is further ordered, That the hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matters in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record;

It is further ordered, That any hearing in this proceeding shall be completed within sixty days of service of this order;

It is further ordered, That the initial decision of the Presiding Administrative Law Judge shall be submitted in writing to the Commission within one hundred and twenty days of service of this order;

It is further ordered, That during the pendency of this investigation, Respondent will serve the Administrative Law Judge and all parties of record with notice of any tariff changes affecting the material under investigation at the same time such changes are filed with the Commission;

It is further ordered, That notice of this Order be published in the **Federal Register**, and a copy be served upon all parties of record;

It is further ordered, That any person other than parties of record having an interest and desiring to participate in this proceeding shall file a petition for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure (46 CFR 502.72);

It is further ordered, That all future notices, orders, and/or decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be mailed directly to all parties of record;

It is further ordered, That except as provided in Rules 159 and 201(a) of the Commission's Rules of Practice and Procedure, (46 CFR 502.159, 46 CFR 502.201(a)), all documents submitted by any party of record in this proceeding

[3] Because of changes in the West Coast/Puerto Rico service from all-water to mini-bridge, Sea-Land alleges that the tariff logs are not accurate and no attempt was made to survey individual rate activity in those tariffs.

[4] Sea-Land's Tariff FMC-F No. 36 U.S. South Atlantic/Puerto Rico, Item No. 9590 "Glucose in carriers" tank trailers was increased from 285 cents, minimum 40,000 pounds to 308 cents, minimum 45,000 pounds, effective December 21, 1978. Sea-Land advises that this was a proportional rate and because of added service to Savannah, Georgia, resulted in no increased cost to the shipper.

shall be filed in accordance with Rule 118 of the Commission's Rules of Practice and Procedure (46 CFR 502.118), as well as being mailed directly to all parties of record.

By the Commission.

Francis C. Hurney,
Secretary.

The following Amendments are scheduled to become effective May 1, 1979:

FMC–F No. 27 (Applying Between U.S. Atlantic and Gulf Ports and Virgin Islands Ports)

Supplement No. 6 and:

9th Revised Page 64
14th Revised Page 78
12th Revised Page 92
13th Revised Page 65
10th Revised Page 78–A
10th Revised Page 92–A
9th Revised Page 66
10th Revised Page 79
10th Revised Page 93
14th Revised Page 67
10th Revised Page 80
10th Revised Page 93–A
11th Revised Page 68
13th Revised Page 81
9th Revised Page 94
11th Revised Page 71
11th Revised Page 82
10th Revised Page 94
11th Revised Page 72
12th Revised Page 83
15th Revised Page 95
12th Revised Page 72
15th Revised Page 84
9th Revised Page 96
11th Revised Page 72–A
11th Revised Page 85
9th Revised Page 97
12th Revised Page 73
12th Revised Page 85–A
10th Revised Page 99
12th Revised Page 74
9th Revised Page 86
11th Revised Page 100
11th Revised Page 74–A
11th Revised Page 87
14th Revised Page 104
17th Revised Page 75
9th Revised Page 88
6th Revised Page 105
18th Revised Page 75
9th Revised Page 89
14th Revised Page 106
14th Revised Page 75–A
11th Revised Page 90
14th Revised Page 107

13th Revised Page 76
17th Revised Page 91
10th Revised Page 77
18th Revised Page 91

FMC–F No. 34 (Applying Between U.S. Atlantic Ports and Ports in Puerto Rico)

Supplement No. 8

FMC–F No. 36 (Applying From U.S. South Atlantic Ports to Ports in Puerto Rico)

Supplement No. 6

FMC–F No. 37 (Applying From Ports in Puerto Rico to U.S. South Atlantic Ports)

Supplement No. 6

FMC–F No. 40 (Applying From U.S. Gulf Ports to Ports in Puerto Rico)

Supplement No. 5

FMC–F No. 41 (Applying From Ports in Puerto Rico to U.S. Gulf Ports)

Supplement No. 5

FMC–F No. 45 (Applying From Rail Carrier's Terminals at U.S. Pacific Seaport Cities to Ports in Puerto Rico and the U.S. Virgin Islands)

Supplement No. 6

FMC–F No. 46 (Applying From Ports in Puerto Rico and the U.S. Virgin Islands To Rail Carriers' Terminals at U.S. Pacific Seaport Cities)

FMC–F No. 53 (Applying Between San Juan, Puerto Rico and Canadian Ports With Interchange at New Jersey-Intermodal Tariff)

Supplement No. 2 and:

1st Revised Page 25
1st Revised Page 34
3rd Revised Page 44
1st Revised Page 26
1st Revised Page 35
2nd Revised Page 45
2nd Revised Page 26
1st Revised Page 36
1st Revised Page 46
1st Revised Page 27
1st Revised Page 37
1st Revised Page 47
2nd Revised Page 27
1st Revised Page 38
2nd Revised Page 48
1st Revised Page 28
1st Revised Page 39
2nd Revised Page 49
1st Revised Page 29
1st Revised Page 40
2nd Revised Page 50
1st Revised Page 30
1st Revised Page 41
3rd Revised Page 50
1st Revised Page 31
2nd Revised Page 42
2nd Revised Page 51
1st Revised Page 32
2nd Revised Page 43
2nd Revised Page 52
1st Revised Page 33
2nd Revised Page 44

[Docket No. 79–47]
[FR Doc. 79–13887 Filed 5–3–79; 8:45 am]
BILLING CODE 6730–01–M

GENERAL ACCOUNTING OFFICE

Regulatory Reports Review; Receipt of Report Proposal

The following request for clearance of a report intended for use in collecting information from the public was received by the Regulatory Reports Review Staff, GAO, on April 25, 1979. See 44 U.S.C. 3512(c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipt.

The notice includes the title of the request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed CAB request are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed request, comments (in triplicate) must be received on or before May 22, 1979, and should be addressed to Mr. John M. Lovelady, Assistant Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, D.C. 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

Civil Aeronautics Board

The CAB requests clearance of the recordkeeping and reporting requirements contained in Part 375 of the Board's Special Regulations, "Navigation of Foreign Civil Aircraft Within the United States". Specifically section 375.43(b) which requires cargo operations to keep for one year true copies of all manifests, air waybills, invoices, and other traffic documents covering flights originating or terminating in the United States; section 375.43(c) which requires each holder of a permit for passenger operations to keep for six months a list of all passengers transported on each flight; section 375.44(b) which requires holders of permits issued under section 375.42 to submit letter reports to the Board of passenger flights conducted pursuant thereto or a letter stating that no operations were conducted; section 375.45 which requires that scheduled international air services proposed to be operated pursuant to the International Air Services Transit Agreement in transit across the United States not be undertaken by foreign civil aricraft unless the operator of such aircraft, and (if other than the operator) the carrier offering such service to the public, has, not less than 15 days prior to the date of commencement of such service, filed with the Board a Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement; and section 375.70 which requires that any person desiring to navigate a foreign civil aircraft within the United States otherwise than as

specifically provided in Part 375 may petition the Board for authorization to perform the particular flight or series of flights. The CAB states that adherence to these requirements is mandatory under the Federal Aviation Act of 1958, as amended. The CAB estimates that potential respondents number approximately 109 Foreign Air Carriers and that reporting burden will average 15 minutes per report filed for section 375.44(b), 30 minutes per report filed for section 375.45, and 15 minutes per report filed for section 375.70. The CAB estimates that there is no burden on respondents for the recordkeeping requirements contained in sections 375.43(b) and 375.43(c).

Norman F. Heyl,
Regulatory Reports Review Officer.
[FR Doc. 79-13962 Filed 5-3-79; 8:45 am]
BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

Food and Drug Administration

Abbott Laboratories, Inc.; Panel Recommendation on Petition for Reclassification

Correction

In FR Doc. 79-6099, appearing at page 11832, in the issue of Friday, March 2, 1979, make the following corrections:

(1) On page 11832, in the last column, the fourth paragraph, the fourth line correct "1.25 I AFP" to read "125 I AFP".

(2) On page 11833, in the first column, the fifth line down, correct "performation" to read "perforation".

[Docket No. 78-P-0167]
BILLING CODE 1505-01-M

Carisoprodol in Combination With Phenacetin and Caffeine With or Without Codeine Phosphate; and Carisoprodol 250-Milligram Capsules; Drug Efficacy Study Implementation; Reevaluation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice (1) reclassifies carisoprodol in combination with phenacetin and caffeine, with or without codeine, and carisoprodol 250-milligram capsules to effective for use in acute musculo-skeletal conditions, and (2) announces the conditions for marketing the products.

DATES: Bioavailability supplements to approved new drug applications due on or before October 31, 1979. Other supplements due on or before July 3, 1979.

ADDRESSES: Communications forwarded in response to this notice should be identified with the reference number DESI 11792, directed to the attention of the appropriate office named below, and addressed to the Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

Supplements to full new drug applications (identify with NDA number): Division of Neuropharmacological Drug Products (HFD-120), Rm. 10B-34, Bureau of Drugs.

Original abbreviated new drug applications and supplements thereto (identify as such): Division of Generic Drug Monographs (HFD—530), Bureau of Drugs.

Requests for guidelines on conducting dissolution tests: Division of Biopharmaceutics (HFD-520), Bureau of Drugs.

Requests for the report of the National Academy of Sciences—National Research Council: Public Records and Document Center (HFC-18), Rm. 4-62.

Requests for opinion of the applicability of this notice to a specific product: Division of Drug Labeling Compliance (HFD-310), Bureau of Drugs.

Other communications regarding this notice: Drug Efficacy Study Implementation Project Manager (HFD-501), Bureau of Drugs.

FOR FURTHER INFORMATION CONTACT: Herbert Gerstenzang, Bureau of Drugs (HFD-32), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, (301-443-3650).

SUPPLEMENTARY INFORMATION: In a notice (DESI 11792) published in the **Federal Register** of September 1, 1970 (35 FR 13854), the Food and Drug Administration announced its conclusion that the following drug products are possibly effective for the relief of pain and stiffness in a variety of traumatic, rheumatic, and other conditions affecting muscles and joints, and lack substantial evidence of effectiveness for all other labeled indications.

1. NDA 12-365; Soma Compound Tablets containing carisoprodol 200 milligrams, phenacetin 160 milligrams, and caffeine 32 milligrams;

2. NDA 12-366; Soma Compound with Codeine Tablets containing carisoprodol 200 milligrams, phenacetin 160 milligrams, caffeine 32 milligrams, and codeine phosphate 16 milligrams;

3. NDA 11-792; Soma Capsules containing carisoprodol 250 milligrams; all marketed by Wallace Pharmaceuticals, Division of Carter-Wallace, Inc., Half Acre Rd., Cranbury, NJ 08512.

Other drugs named in the September 1, 1970 notice are not affected by this notice.

The following is a discussion of **Federal Register** notices that were published about the products and information that was submitted in support of their effectiveness after the September 1, 1970 notice.

Carisoprodol 250 milligrams. No data were submitted on the 250-milligram strength of carisoprodol. A notice (DESI 11792; Docket No. FDC-D-685 (now Docket No. 78N-0116)) published in the **Federal Register** of August 15, 1974 (39 FR 29399), announced that this strength was regarded as an inappropriate strength, and the drug product was reclassified to lacking substantial evidence of effectiveness. The notice offered an opportunity for a hearing on the proposal to withdraw approval of that part of the new drug application pertaining to the 250-milligram product. No hearing was requested.

Carisoprodol, phenacetin, and caffeine. In a followup notice published in the **Federal Register** of March 21, 1975, (40 FR 12826), the combination drug product was reclassified to less than effective (probably effective) for use as an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculo-skeletal conditions.

Carisoprodol, phenacetin, caffeine and codeine phosphate. No data were submitted, and in a notice (DESI 11792; Docket No. FDC-D-693 (now Docket No. 78N-0116)) published in the **Federal Register** of June 27, 1974 (39 FR 23292), the product was reclassified to lacking substantial evidence of effectiveness as a fixed combination for its labeled indications. The notice offered an opportunity for a hearing on the proposal to withdraw approval of the new drug application. On July 24, 1974, Wallace Pharmaceuticals requested a hearing.

In response to the notices discussed above, Wallace submitted data from clinical studies on Soma Compound and Soma Compound with Codeine designed to satisfy the requirements of the combination drug policy (21 CFR 300.50) and show that each component makes a contribution to the overall therapeutic

effect claimed for the drugs. The studies were reviewed and determined to provide substantial evidence of effectiveness for the combination products. Although data were not submitted specifically concerning a 250-milligram strength of carisoprodol, the studies of the two combinations, each of which contains 200 milligrams carisoprodol justify reclassifying the 250-milligrams carisoprodol to effective.

Accordingly, the June 27, 1974 and August 15, 1974 notices of opportunity for hearing (the latter as it pertains to carisoprodol 250 milligrams) are rescinded; and the September 1, 1970, August 15, 1974, and March 21, 1975 notices are amended to read as follows:

Such drugs are regarded as new drugs (21 U.S.C. 321(p)). Supplemental new drug applications are required to revise the labeling in and to update previously approved applications providing for such drugs. An approved new drug application in a requirement for marketing such drug products.

In addition to the products specifically named above, this notice applies to any drug product that is not the subject of an approved new drug application and is identical to a product named above. It may also be applicable, under 21 CFR 310.6, to a similar or related drug product that is not the subject of an approved new drug application. It is the responsibility of every drug manufacturer or distributor to review this notice to determine whether it covers any drug product that the person manufactures or distributes. Such person may request an opinion of the applicability of this notice to a specific drug product by writing to the Division of Drug Labeling Compliance (address given above).

A. *Effectiveness classification.* The Food and Drug Administration has reviewed all available evidence and concludes that the drug products are effective for the indications described in the labeling conditions below.

B. *Conditions for approval and marketing.* The Food and Drug Administration is prepared to approve abbreviated new drug applications and abbreviated supplements to previously approved new drug applications under conditions described herein.

1. *Form of drug.* These preparations are in tablet or capsule form suitable for oral administration.

2. *Labeling conditions.* a. The label bears the statement, "Caution: Federal law prohibits dispensing without prescription."

b. The drug is labeled to comply with all requirements of the act and regulations, and the labeling bears adequate information for safe and effective use of the drug. The indications are as follows:

Carisoprodol; and Carisoprodol, Phenacetin and Caffeine

As an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculo-skeletal conditions. The mode of action of carisoprodol has not been clearly identified, but may be related to its sedative properties. Carisoprodol does not directly relax skeletal muscles in man.

Carisoprodol, Phenacetin, Caffeine, and Codeine Phosphate

As an adjunct to rest, physical therapy, and other measures for the relief of discomfort associated with acute, painful musculo-skeletal conditions when the additional action of codeine is desired. The mode of action of carisoprodol has not been clearly identified, but may be related to its sedative properties. Carisoprodol does not directly relax tense skeletal muscles in man.

3. *Marketing status.* a. Marketing of such drug products that are now the subject of an approved or effective new drug application may be continued provided that, on or before July 3, 1979, the holder of the application has submitted (i) a supplement for revised labeling as needed to be in accord with labeling conditions described in this notice, and complete container labeling if current container labeling has not been submitted, and (ii) a supplement to provide updating information with respect to items 6 (components), 7 (composition), and 8 (methods, facilities, and controls) of new drug application form FD-356H (21 CFR 314.1(c)) to the extent required in abbreviated applications (21 CFR 314.1(f)). In addition, on or before October 31, 1979, the holders of such applications are required to supplement their applications to provide dissolution data conducted on three consecutive lots of the products in accordance with the methods provided for in the guidelines on conducting dissolution tests, which are available from the Division of Biopharmaceutics.

b. Approval of an abbreviated new drug application (21 CFR 314.1(f)) must be obtained prior to marketing such products. Bioavailability regulations (21 CFR 320.21) published in the **Federal Register** of January 7, 1977, require any person submitting an abbreviated new drug application after July 7, 1977, to include either evidence demonstrating the in vivo bioavailability of the drug or information to permit waiver of the requirement. For these products this requirement will be regarded as satisfied by adequate dissolution rate data comparing the test drug with the reference drug. Guidelines for conducting the dissolution test are available form the Division of Biopharmaceutics. If any dosage from of the drug fails to acheive adequate dissolution, its in vivo bioavailability must be demonstrated. Marketing prior to approval of a new drug application will subject such products, and those persons who cause the products to be marketed to regulatory action.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 502, 505, 52 Stat. 1050–1053, as amended (21 U.S.C. 352, 355)) and under the authority delegated to the Director of the Bureau of Drugs (21 CFR 5.82).

Dated: April 23, 1979.

J. Richard Crout,

Director, Bureau of Drugs.

[Docket No. 78N-0116; DESI 11792]

[FR Doc. 79-13553 Filed 5-3-79; 8:45 am]

BILLING CODE 4110-03-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces a forthcoming consumer exchange meeting to be chaired by George Gerstenberg, District Director, Brooklyn District Office, Brooklyn, NY.

DATE: The meeting will be held from 10:30 a.m. to 12:30 p.m., Wednesday, May 16, 1979.

ADDRESS: The meeting will be held at 26 Federal Plaza, Rm. 1-102, New York, NY.

FOR FURTHER INFORMATION CONTACT: Alicia Martinez, Consumer Affairs Officer, Food and Drug Administration, 830 Third Ave., Brooklyn, NY 11232, 212-965-5754.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and Food and Drug Administration (FDA) officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and the FDA Brooklyn District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: April 30, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-14072 Filed 5-3-79; 8:45 am]

BILLING CODE 4110-03-M

Consumer Participation; Open Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces a forthcoming consumer exchange meeting to be chaired by Maurice J. Strait, District Director, Baltimore District Office, Baltimore, MD.

DATE: The meeting will be held at 10 a.m., Thursday, June 7, 1979.

ADDRESS: The meeting will be held at Department of Health, Education, and Welfare, Food and Drug Administration, Conference Rm., 900 Madison Ave., Baltimore, MD 21201.

FOR FURTHER INFORMATION CONTACT: Anne B. Lane, Supervisor, Consumer Affairs, Food and Drug Administration, Department of Health, Education, and Welfare, 900 Madison Ave., Baltimore, MD 21201, 301–962–3731.

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to encourage dialogue between consumers and Food and Drug Administration (FDA) officials to identify and set priorities for current and future health concerns, to enhance relationships between local consumers and the FDA Baltimore District Office, and to contribute to the agency's policymaking decisions on vital issues.

Dated: April 30, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–14074 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–03–M

Immunology Devices Section of the Immunology and Microbiology Devices Panel; Meeting Cancellation

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The meeting of the Immunology Device Section of the Immunology and Microbiology Devices Panel announced by notice in the **Federal Register** of April 17, 1979 (44 FR 22812), for May 17 and 18, 1979, has been cancelled.

FOR FURTHER INFORMATION CONTACT: William C. Dierksheide, Bureau of Medical Devices (HFK–440), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301–427–7234.

Dated: April 30, 1979.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR FR Doc. 79–14073 5–3–79; 8:45 am]

BILLING CODE 4110–03–M

Propoxyphene; Public Hearing

Correction

In FR Doc. 79–6246, appearing at page 11837, in the issue of Friday, March 2, 1979, make the following corrections:

(1) On page 11838, in the last column, the last pararaph, the sixth line, correct "trail" to read "trial".

(2) On page 11840, in the second column, the first line, correct "reviewed" to read "received".

(3) On page 11848, in the middle column under the undesignated center heading "References", in paragraph 7., the last line, correct "113:251" to read "13:251".

[Docket No. 77 N–0266; DESI 10996]

BILLING CODE 1505–01–M

Sandoz, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: Sandoz, Inc., has filed a petition proposing that the food additive regulations be amended to express the use limitation on the optical brightener 7-(2*H*-naptho[1, 2-*d*] triazol-2-yl)-3-phenyl-coumarin in olefin polymers intended for food contact as the product of the concentration of the optical brightener in the polymer times the thickness of the polymer.

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: 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 petition (FAP 9B3431) has been filed by Sandoz Color and Chemicals, a Division of Sandoz, Inc., E. Hanover, NJ 07936, proposing to amend § 177.1520 *Olefin polymers* (21 CFR 177.1520 in paragraph (b) to express the use limitation on the optical brightener 7-(2*H*-naptho[1,2-*d*] triazol-2-yl)-3-phenyl-coumarin in olefin polymers intended for food contact as the product of the concentration of the optical brightener in the polymer times the thickness of the polymer.

The agency has determined that the proposed action falls under 21 CFR 25.1(f)(1)(v) and is exempt from the requirement of an environmental impact analysis report, and that no environmental impact statement is necessary.

Dated: April 24, 1979.

Sanford A. Miller,

Director, Bureau of Foods.

[Docket No. 79F–0119]

[FR Doc. 79–13875 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–03–M

Health Resources Administration

National Advisory Council on Nurse Training; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of May 1979:

Name: National Advisory Council on Nurse Training

Date and Time: May 22–24, 1979, 10:30 a.m.

Place: Room 339A Hubert H. Humphrey Building, 200 Independence Avenue S.W., Washington, D.C. 20201.

Open May 22, 1979, 10:30 a.m.–12:15 p.m.

Closed remainder of meeting.

Purpose: The Council advises the Secretary and Administrator, Health Resources Administration, concerning general regulations and policy matters arising in the administration of the Nurse Training Act of 1975. The Council also performs final review of grant applications for Federal assistance, and makes recommendations to the Administrator, HRA.

Agenda: Agenda items for the open portion of the meeting include announcements; consideration of minutes of previous meeting; discussion of future meeting dates; and administrative and staff reports. The remainer of the meeting will be devoted to the review of grant applications for Federal assistance, and will therefore be closed to the public in accordance with prvosions set forth in section 552b(c)(6), Title 5 U.S. Code, and the Determination by the Administrator, Health Resources Administration, pursuant to Pub. L. 92–463.

Anyone wishing to obtain a roster of members, minutes of meeting, or other relevant information should contact Dr. Mary S. Hill, Bureau of Health Manpower, Room 3–50, Center Building, 3700 East-West Highway, Hyattsville, Maryland 20782, Telephone (301) 436–6681.

Agenda items are subject to change as priorities dictate.

Dated: April 30, 1979.

James A. Walsh,

Associate Administrator for Operations and Management.

[FR Doc. 79–13890 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–83–M

National Institutes of Health

Report on Bioassay of Azobenzene for Possible Carcinogenicity; Availability

Azobenzene (CAS 103–33–3) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of azobenzene for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. The chemical is a byproduct in the manufacture of benzidine, a human carcinogen.

It is concluded that under the conditions of this bioassay, azobenzene was carcinogenic (sarcomagenic) for F344 rats, inducing various types of sarcomas in the spleen and other abdominal organs of both males and females. The test chemical was not carcinogenic for B6C3F1 mice of either sex.

Single copies of the report, Bioassay of Azobenzene for Possible Carcinogenicity (T.R. 154), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: April 27, 1979.

Donald S. Fredrickson,

Director, National Institutes of Health.

[FR Doc. 79–13695 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–08–M

Report on Bioassay of 2,4-Diaminotoluene for Possible Carcinogenicity; Availability

2,4-Diaminotoluene (CAS 95–80–7) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of 2,4-diaminotoluene for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use in hair dyes and as an intermediate in the manufacture of polyurethanes, dyes, varnishes, wood stains and pigments.

Under the conditions of this bioassay, 2,4-diaminotoluene was carcinogenic for F344 rats, inducing hepatocellular carcinomas or neoplastic nodules in both males and females and carcinomas or adenomas of the mammary gland in females. The test chemical was also carcinogenic for female B6C3F1 mice, inducing hepatocellular carcinomas. The incidence of lymphomas in the female mice suggested that these tumors also may have been related to administration of the test chemical.

Single copies of the report, Bioassay of 2,4-Diaminotoluene for Possible Carcinogenicity (T.R. 162), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: April 27, 1979.

Donald S. Fredrickson,

Director, National Institutes of Health.

[FR Doc. 79–13693 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–08–M

Report on Bioassay of 6-Nitrobenzimidazole for Possible Carcinogenicity; Availability

6-Nitrobenzimidazole (CAS 94–52–0) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay for possible carcinogenicity of 6-nitrobenzimidazole was conducted using Fischer 344 rats and B6C3F1 mice. Applications of the chemical include use in photographic developers. 6-Nitrobenzimidazole was administered in the feed, at either of two concentrations, to groups of 50 male and 50 female animals of each species.

Under the conditions of this bioassay, dietary administration of 6-nitrobenzimidazole was not carcinogenic to Fischer 344 rats; however, the compound was carcinogenic to B6C3F1 mice, causing hepatocellular carcinomas in both sexes.

Single copies of the report, Bioassay of 6-Nitrobenzimidazole for Possible Carcinogenicity (T.R. 117), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: April 27, 1979.

Donald S. Fredrickson,

Director, National Institutes of Health.

[FR Doc. 79–13694 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–08–M

Report on Bioassay of 2,4,5-Trimethylaniline for Possible Carcinogenicity; Availability

2,4,5-Trimethylaniline (CAS 137–17–7) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Testing Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

Summary: A bioassay of 2,4,5-trimethylaniline for possible carcinogenicity was conducted by administering the test chemical in feed to F344 rats and B6C3F1 mice. Applications of the chemical include use in the manufacture of the red dye Ponceau 3R.

It is concluded that under the conditions of this bioassay, 2,4,5-trimethylaniline was carcinogenic for male and female F344 rats and female B6C3F1 mice, including hepatocellular carcinomas or neoplastic nodules in the rats of each sex, alveolar/bronchiolar carcinomas in the female rats, and hepatocellular carcinomas in the female mice.

Single copies of the report, Bioassay of 2,4,5-Trimethylaniline for Possible Carcinogenicity (T.R. 160), are available from the Office of Cancer Communications, National Cancer Institute, Building 31, Room 10A21, National Institutes of Health, Bethesda, Maryland 20205.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: April 27, 1979.

Donald S. Fredrickson,

Director, National Institutes of Health.

[FR Doc. 79–13696 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–08–M

Office of the Secretary

Board of Advisors to the Fund for the Improvement of Postsecondary Education; Meeting

Notice is hereby given, pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), that the next meeting of the Board of Advisors to the Fund for the Improvement of Postsecondry Education will be held on May 17, 1979 at 5:00 p.m. through May 19, 1979 at 2:30 p.m. at the Belmont Conference Center, 6555 Belmont Woods, Elkridge, Maryland.

The Board of Advisors to the Fund was established to recommend to the Director of the Fund and the Assistant Secretary for Education priorities for funding and the approval or disapproval of grants and contracts of a given kind or over a designated amount under Section 404 of the General Education Provisions Act.

The meeting will not be open to the public. It will be for the sole purpose of reviewing and evaluating grant applications submitted to the Fund under the Comprehensive Program. The meeting will involve discussion of project designs, personnel, and other information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. It has therefore been determined that closing this meeting is in accordance with 5 U.S.C. 552b(c)(4) and (6) and the policies of the Federal Advisory Committee Act.

A summary of the proceedings of the meeting and a roster of members may be obtained from the Fund for the Improvement of Postsecondary Education, 400 Maryland Avenue, S.W., Room 3123, Washington, D.C. 20202, telephone (202) 245–8091.

Signed at Washington, D.C. on April 11, 1979.

Ernest Bartell,

Director, Fund for the Improvement of Postsecondary Education.

[FR Doc. 79–13939 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–12–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Burns-Paiute Indian Reservation; Acceptance of Retrocession of Jurisdiction

April 25, 1979.

Pursuant to the authority vested in the Secretary of the Interior by Executive Order No. 11435 (33 FR 17339) and redelegated to the Assistant Secretary, Indian Affairs by 209 DM 8, I hereby accept, as of 12:01 a.m. (est) of the day following publication of this notice in the **Federal Register**, retrocession to the United States of all jurisdiction, Civil and Criminal, exercised by the State of Oregon over the Burns-Paiute Indian Reseration, in the State of Oregon as offered by the Governor of Oregon in Executive Order No. EO–79–04 on the 22nd day of February, 1979, Salem, Oregon.

Forrest J. Gerard,

Assistant Secretary, Indian Affairs.

[FR Doc. 79–13946 Filed 5–3–79; 8:45 am]

BILLING CODE 4310–02–M

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon

The membership roll of the Confederated Tribes of Siletz Indians of Oregon has been prepared under the Act of November 18, 1977 (95 Stat. 1415), and the regulations issued by the Assistant Secretary—Indian Affairs to assist in its preparation, specifically Subchapter F, Chapter I, Part 43p of Title 25 of the Code of Federal Regulations.

This membership roll, compiled for use in the restoration of federal recognition of these tribes is published as required by Section 6(3)(3) of the November 18, 1977, Act.

Dated: April 24, 1979.

Rick Lavis,

Deputy Assistant Secretary—Indian Affairs.

Department of the Interior, Bureau of Indian Affairs; Membership Roll of the Confederated Tribes of Siletz Indians of Oregon prepared under the Act of November 18, 1977 (95 Stat. 1415)

Certification

The undersigned certify that to the best of our belief and knowledge the attached roll consisting of 44 pages (in the original document) and containing a total of 1083 names constitutes the Membership Roll of the Confederated Tribes of Siletz Indians of Oregon prepared in accordance with Sections 4a, b, and c, of the Act of November 18, 1977 (95 Stat. 1415), and the regulations issued in Subchapter F, Chapter I, Part 43p, of Title 25 of the Code of Federal Regulations.

Dated: April 14, 1979.

Arthur S. Bensell,

Tribal Council Chairman.

Lois C. Chilcott,

Tribal Enrollment Officer.

Approval

In accordance with Section 4(b)(2)(2), of the Act of November 18, 1977 (95 Stat. 1415), dispostion has been made of all current appeals to the Secretary of the Interior from the rejection of the applications for the inclusion of persons on the roll prepared under the act. Consequently, subject to the adjudication of any additional appeals and under the regulations issued in Subchapter F, Chapter I, Part 43p, of Title 25 of the Code of Federal Regulations, the Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, a copy of which is attached, is approved.

Vincent Little,

Area Director.

[FR Doc. 79–13689 Filed 5–3–79; 8:45 am]

BILLING CODE 4310–02–M

2–A04053 0034(02)(03–MAY–79–18:31:18)

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship Page 1
1	ADAMS, Naomi Virginia(Lane)	5948 Stayton Rd., Turner, OR 97392	F	7-23-45	3/8	3/8	490	Self
2	ADAMS, Russell	395 N.W. 21st Dr., Pendleton, OR 97801	M	5-30-96	3/4	3/4	2	Self
3	ALICANTE, Augusta (Evans)	7412 Westlawn Ave., Los Angeles, CA 90045	F	11-28-98	3/4	3/4	4	Self
4	ALTREE, Florence (Martin)	Box 53, Tenakee Springs, AK 99841	F	9-12-17	3/8	3/8	365	Self
5	ANDEREGG, Verdene Myrtle (McQuire)	Route 3, Box 355, Troutdale, OR 97060	F	9-18-50	1/4	1/4	609	Self
6	ANDERSON, Montie Gene	560 W. 15th St., Lebanon, OR 97355	M	9-13-64	7/16	7/16	---	Joan Washington - Son
7	ANDERSON, Patricia Marie (Flagg)	4806 Talisman, Ave., S., Salem, OR 97302	F	3-18-55	7/16	7/16	---	Mercelene Flagg - Dau
8	ANDERSON, Vance Ernest	560 W. 15th St., Lebanon, OR 97355	M	9-14-60	7/16	7/16	---	Joan Washington - Son
9	ANDERSON, Vanessa L.	560 W. 15th St., Lebanon, OR 97355	F	9-24-62	7/16	7/16	---	Joan Washington - Dau
10	ANTIOQUIA, Serena (Logan)	Rt. 3, Box 1668, Port Angeles, WA 98362	F	3-20-39	1/2	1/2	539	Self
11	ARDEN, Amos B.	55 N.W. 23rd, Gresham, OR 97030	M	4-14-30	1/2	1/2	7	Self
12	ARDEN, Clayborne William	55 N.W. 23rd, Gresham, OR 97030	M	8-09-60	1/4	1/4	---	Amos Arden - Son
13	ARDEN, Clinton Anthony	832 S.E. 148th, Portland, OR 97233	M	5-02-57	1/4	1/4	---	Amos Arden - Son
14	ARDEN, Lisa Denice	55 N.W. 23rd, Gresham, OR 97030	F	10-26-58	1/4	1/4	---	Amos Arden - Dau
15	ARDEN, Steven Douglas	55 N.W. 23rd, Gresham, OR 97030	M	7-08-54	1/4	1/4	8	Self
16	ARRINGTON, Dorothy(Delgado)	1342 S. E. Tacoma, Portland, OR 97202	F	9-24-24	3/8	3/8	273	Self
17	ARTIAGO, Maurice William	8616 S. E. 16th, Portland, OR 97202	M	8-26-51	3/16	3/16	11	Self
18	ASHLEY, Darrel David	c/o Mary Ashley, Rt. 1, Box 66, Brookings, OR 97415	M	4-08-69	1/4	1/4	---	Martina Gilbert - Son
19	ASHLEY, Mary (Curl)	Route 1, Box 66, Brookings, OR 97415	F	12-19-38	1/2	1/2	198	Self
20	AUSTIN, June	4733 N. E. 30th, Portland, OR 97211	F	6-09-24	5/8	5/8	925	Self
21	AUSTIN, Randall C.	4733 N. E. 30th, Portland, OR 97211	M	3-21-61	5/16	5/16	---	June Austin - Son
22	AVERY, Letha Louise	2001 N.W. Van Buren Ave., Corvallis, OR 97330	F	9-02-07	1/8	1/8	12	Self
23	BAILEY, Julie	c/o Priscilla Hoffenbredl, 30100 Salmon River Hwy, Grand Ronde, OR 97347	F	2-18-62	1/4	1/4	---	Kenneth Logan - Dau
24	BAKER, George, Jr.	P. O. Box 34, Siletz, OR 97380	M	11-26-14	1/2	1/2	13	Self
25	BAKER, Gilbert Francis	Box 141, Copalis Beach, WA 98535	M	7-24-28	1/2	1/2	18	Self
26	BAKER, Judy Ann	P. O. Box 34, Siletz, OR 97380	F	3-22-44	1/4	1/4	14	Self
27	BAKER, Lloyd	Box 102, Garibaldi, OR 97118	M	12-09-16	1/2	1/2	15	Self
28	BAKER, Margaret Cecelia (Girard)	633 Ferry St., S. E., Monterey Apts, No. 110 Salem, OR 97301	F	4-31-52	1/8	1/8	330	Self
29	BALLIE, Sandra May	921 S. K Street, Lakeworth, FL 33460	F	4-06-46	1/4	1/4	506	Self
30	BALZA, Alice C. (Menard)	7506 N. Kerby, Portland, OR 97217	F	5-22-18	3/4	3/4	19	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
31	BARNHURST, Cathleen Rose (Ricketts)	93320 Dorsey Lane, Junction City, OR 97448	F	12-22-48	1/4	1/4	689	Self
32	BARTOW, Bert Alured	Box 145, Reedsport, OR 97467	M	8-16-22	1/4	1/4	22	Self
33	BARTOW, Grace (Walker)	Box 145, Reedsport, OR 97467	F	5-21-92	1/2	1/2	21	Self
34	BARTOW, Nancy Lee	6665 N. C, Springfield, OR 97477	F	7-02-49	1/8	1/8	23	Self
35	BASYE, Sondra Claire (Shields)	4600 Auburn, #26, Sacramento, CA 95841	F	12-05-47	1/8	1/8	741	Self
36	BATTISE, Eva	c/o St. Timothy Nursing Home, 820 Cottage, N. E. , Salem, OR 97302	F	10-26-21	4/4	4/4	312	Self
37	BATTISE, James William	6195 Lake Labish Rd., Salem, OR 97303	M	2-02-45	1/2	1/2	313	Self
38	BATTISE, Kay Annette	6195 Lake Labish Rd., Salem, OR 97303	F	11-04-66	1/4	1/4	---	James Battise - Dau
39	BAYYA, Evaristo L.	c/o Lillian Bayya, Box 124, Siletz, OR 97380	M	10-23-57	1/4	1/4	---	Lillian Bayya - Son
40	BAYYA, Lillian (Lawson)	Box 124, Siletz, OR 97380	F	9-11-22	1/2	1/2	28	Self
41	BAYYA, Robert Lee	Box 124, Siletz, OR 97380	M	6-15-52	1/4	1/4	29	Self
42	BAYYA, Sammy, Jr.	c/o Lillian Bayya, Box 124, Siletz, OR 97380	M	2-09-55	1/4	1/4	---	Lillian Bayya - Son
43	BEALS, Peter J.	c/o C.E. Beals, 5198 Skyline Rd., S., Salem, OR 97302	M	9-13-57	1/2	1/2	---	Maxine Preston - Son
44	BEAVER, Crystal Fayne(Curl)	P. O. Box 155, Glide, OR 97347	F	7-30-52	1/2	1/2	205	Self
45	BELGARD. Brenda Dawn	Siletz, OR 97380	F	4-02-54	1/4	1/4	33	Self
46	BELGARD, Ronald Craig	3636 S. E. Mall, #16, Portland, OR 97206	M	6-10-51	1/4	1/4	31	Self
47	BELGARDE, Gary L., Sr.	852 Shangri-La Ave., N.E., Salem, OR 97303	M	8-14-51	7/16	7/16	36	Self
48	BELGARDE, Geraldine Gloria (Strong)	1185 N.E. Market, Salem, OR 97303	F	2-18-29	7/8	7/8	34	Self
49	BELGARDE, Jacqueline Mae	852 Shangri-La Ave., N.E., Salem, OR 97303	F	11-27-52	7/16	7/16	37	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
50	BELGARDE, Verne Gerald	3225 Knox Butte, Albany, OR 97321	M	10-25-46	7/16	7/16	35	Self
51	BELGARDE, Wanda Rae	262 4th St., Reedsport, OR 97467	F	11-25-53	7/16	7/16	38	Self
52	BELL, Angelena Agnes	Fort Belknap Agency, Harlem, MT 59526	F	12-22-47	3/8	3/8	45	Self
53	BELL, Delbert Wayne	636 G Street, Springfield, OR 97477	M	8-25-40	7/8	7/8	42	Self
54	BELL, James Douglas	Fort Belknap Agency, Harlem, MT 59526	M	12-17-48	3/8	3/8	46	Self
55	BELL, Signa Arlene	Box 852, Harlem, MT 59526	F	5-21-51	3/8	3/8	48	Self
56	BELL, Sina (Thompson)	Fort Belknap Agency, Harlem, MT 59526	F	4-19-20	3/4	3/4	44	Self
57	BELL, Theodore Elliott	Fort Belknap Agency, Harlem, MT 59526	M	8-07-52	3/8	3/8	49	Self
58	BELLINGER, Cynthia K.	Siletz, OR 97380	F	6-14-48	5/16	5/16	51	Self
59	BELLINGER, Donald	820 Cherry St., Apt. F, Seattle, WA 98501	M	1-29-24	5/8	5/8	50	Self
60	BELLINGER, Donald Walter	820 Cherry St., Apt. F, Seattle, WA 98501	M	3-23-47	5/16	5/16	52	Self
61	BELLINGER, Gregory Phillip	Siletz, OR 97380	M	7-23-51	5/16	5/16	53	Self
62	BEN, Archie	Box 213, Siletz, OR 97380	M	5-25-1900	4/4	4/4	54	Self
63	BEN, Chester Allen	Box 213, Siletz, OR 97380	M	11-19-53	3/8	3/8	60	Self
64	BEN, Edmond Archie, Jr.	4886 Portland Rd., N. E. #3, Salem, OR 97303	M	12-28-57	3/8	3/8	---	Edmund Archie Ben - Son
65	BEN, Edmund Archie	1075 Sharon Loop, S.E., Salem, OR 97302	M	12-25-27	3/4	3/4	63	Self
66	BEN, Gerald Duane	5110 Hill Villa, S., Salem, OR 97302	M	3-04-49	3/8	3/8	64	Self
67	BEN, Raymond Dale	Box 372, Siletz, OR 97380	M	5-10-47	3/4	3/4	59	Self
68	BEN, Rodney Wayne	9595 Hughey Lane, Tillamook, OR 97141	M	1-02-52	3/8	3/8	65	Self
69	BEN, Victoria Abbie(Butler)	Box 213, Siletz, OR 97380	F	12-25-12	1/2	1/2	55	Self
70	BENNET, Barbara Joan	210 S.E. 6th, Redmond, OR 97756	F	5-05-48	5/16	5/16	303	Self
71	BENNETT, Elsie Lorraine (Zosel)	P. O. Box 388, Fort Dick, CA 95538	F	3-26-45	3/16	3/16	929	Self
72	BENNETT, Linda Louise (Flanary)	4355 W. Hwy 126, Redmond, OR 97756	F	10-08-51	5/16	5/16	306	Self
73	BENSELL, Arthur, Jr.	Siletz, OR 97380	M	4-23-09	5/8	5/8	67	Self
74	BENSELL, William Edward	Star Route, Dayville, OR 97825	M	12-02-11	5/8	5/8	66	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
75	BENSELL, Ida (Samuels)	Box 273, Siletz, OR 97380	F	12-23-1878	4/4	4/4	68	Self
76	BERRY, Agnes (Dowd)	Siletz, OR 97380	F	3-19-15	3/4	3/4	70	Self
77	BERRY, Arlene	P. O. Box 647, Warm Springs, OR 97761	F	02-04-34	3/8	3/8	72	Self
78	BERRY, George, Jr.	P. O. Box 415, Warm Springs, OR 97761	M	12-18-32	3/8	3/8	71	Self
79	BETTS, Arthur Alvin	Box 213, Siletz, OR 97380	M	6-12-58	3/8	3/8	---	Victoria Nelson - Son
80	BETTS, Richard	Box 213, Siletz, OR 97380	M	3-07-57	3/8	3/8	---	Victoria Nelson - Son
81	BEVENS, Susan K.(Hoover)	1660 Eugene Ct., N.E., Salem, OR 97303	F	6-04-49	1/8	1/8	391	Self
82	BIGELOW, Cheryl Christine (Staggs)	1517 S. E. Pine, Roseburg, OR 97470	F	4-14-51	7/16	7/16	793	Self
83	BILLIE, Kenneth	P. O. Box 1134, Taholah, WA 98587	M	7-12-36	3/16	3/16	279	Self
84	BLACKETER, Fearn Henry	510 Clark, North Bend, OR 97459	M	11-22-40	1/4	1/4	78	Self
85	BLACKETER, James	6844 S. E. Fleet, Lincoln City, OR 97367	M	2-24-09	3/4	3/4	79	Self
86	BLACKETER, John Harrison	P. O. Box 823, Seaside, OR 97138	M	8-08-14	1/4	1/4	---	S505 - G-G-G-son
87	BLACKETER, Kenneth, Jr.	2209 1/2 Simpson Ave., Hoquiam, WA 98550	M	1-11-49	3/8	3/8	82	Self
88	BLACKETER, Kenneth R.	6526 S. E. Jordan, Portland, OR 97222	M	5-17-22	3/8	3/8	80	Self
89	BLACKETER, Mike Richard	656 N. Larch, Cannon Beach, OR 97138	M	6-26-56	3/8	3/8	---	Kenneth Blacketer - son
90	BLACKETER, Raymond James	4999 S.E. 30th, Apt. 51, Portland, OR 97202	M	8-16-50	3/8	3/8	83	Self
91	BLACKETER, Rebecca Jean	4999 S.E. 30th, Apt. 51, Portland, OR 97202	F	4-12-52	3/8	3/8	84	Self
92	BLAIR, Kenneth P.	6824 N. Haight, Portland, OR 97217	M	11-11-39	1/4	1/4	89	Self
93	BLAIR, Virgene	Route 2, Bx 2165A, Deer Island, OR 97054	F	5-24-38	1/4	1/4	88	Self
94	BLAIR, Virgene (Carson)	Route 2, Bx 2166, Deer Island, OR 97054	F	1-11-06	1/2	1/2	86	Self DOD: 10-23-78
95	BLOMSTROM, Carol Jean (Chapman)	Box 518, Siletz, OR 97380	F	7-27-46	7/16	7/16	161	Self
96	BOEHM, Cindy Lou	4830 Sunnyside Rd., S.E., Apt. 10, Salem, OR 97302	F	4-29-56	1/4	1/4	---	Rose Mary Ricketts - Dau
97	BOLTON, Gladys (Hudson)	Anderson Dam Ranch, Mountain Home, ID 83647	F	12-19-23	3/8	3/8	397	Self
98	BOND, Sandra Doreen	6865 McTimmonds Rd, Dallas, OR 97338	F	4-02-51	7/16	7/16	335	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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99	BORIGO, Charlotte(Delgado)	2745 N.E. 26th, Portland, OR 97212	F	10-23-41	3/8	3/8	212	Self
100	BOSTROM, Debra Leah (Voutrin)	Box 29, Dallas, OR 97338	F	9-08-52	3/8	3/8	857	Self
101	BOSTROM, Juanita (Miles)	P. O. Box 424, Belmont NH 03220	F	8-04-14	1/2	1/2	616	Self
102	BOSTWICK, Dennis Paul (aka Hines)	Box 1093, Gold Beach, OR 97444	M	10-08-41	5/16	5/16	373	Self
103	BOSTWICK, Larry Andrew	5210 Auburn Rd., N.E., Salem, OR 97301	M	3-14-50	5/16	5/16	92	Self
104	BOSTWICK, Mae (Lawson)	5210 Auburn Rd., N.E., Salem, OR 97301	F	8-12-16	5/8	5/8	91	Self
105	BOURRIE, Michele Renee (Martin)	4637 Southland Ave., Alexandria, VA 22312	F	4-13-53	15/32	15/32	573	Self
106	BOURRIE, Travis Wayne	c/o Michele Bourrie, 4637 Southland Ave., Alexandria, VA 22312	M	2-10-72	17/64	17/64	---	Michele Bourrie - Son
107	BOYD, Janice Elaine (Logsden)	c/o Allison Klokman, 532 Del Monte, Pasadena, CA 91103	F	10-20-38	3/8	3/8	553	Self
108	BREMER, Kathy Adele (Mortenson)	1507 N.E. 126th Ct., Vancouver, WA 98664	F	4-13-53	1/4	1/4	638	Self
109	BREMNER, Rosalie (Lane)	352 Cummings Lane, N., Salem, OR 97303	F	8-27-38	3/8	3/8	466	Self
110	BREON, Bensell Lewis	Star Route, Dayville, OR 97825	M	5-22-41	1/4	1/4	94	Self
111	BRETT, Caroline Jean (Belgard)	2923 S.E. Division, Portland, OR 97202	F	2-26-52	1/4	1/4	32	Self
112	BREWER, Lloyd Allen	Star Rt. No. Box 80, Newport, OR 97365	M	12-12-53	1/8	1/8	99	Self
113	BROWN, Andrew Ralph	Box 326, Siletz, OR 97380	M	6-10-49	5/8	5/8	109	Self
114	BROWN, Bennie	Box 326, Siletz, OR 97380	M	4-02-10	3/4	3/4	100	Self
115	BROWN, Bennie Joshley	Box 165, Siletz, OR 97380	M	5-13-36	5/8	5/8	102	Self
116	BROWN, Daniel	Box 326, Siletz, OR 97380	M	1-13-51	5/8	5/8	110	Self
117	BROWN, Darlene (Picard)	Warm Springs, OR 97761	F	5-19-36	1/2	1/2	114	Self
118	BROWN, Debra L.	c/o Vernon Brown, P. O. Box 32, San Ysidro, NM 87053	F	7-18-71	5/16	5/16	---	Vernon Brown - Dau
119	BROWN, Douglas Paul	Box 254, Fairview, OR 97024	M	7-31-42	5/8	5/8	105	Self
120	BROWN, Ivan Alvin	711 A Street, Toledo, OR 97391	M	10-25-47	5/8	5/8	108	Self
121	BROWN, James	1126 S. W. 12th, Portland, OR 97205	M	10-06-02	1/4	1/4	118	Self
122	BROWN, Mary Alice	Box 326, Siletz, OR 97380	F	5-21-44	5/8	5/8	106	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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123	BROWN, Mitzi Faye	514 S.W. 6th, Apt. #2, Newport, OR 97365	F	3-14-58	7/16	7/16	---	Bennie J. Brown - Dau
124	BROWN, Sandra Fay	Box 326, Siletz, OR 97380	F	11-08-46	5/8	5/8	107	Self
125	BROWN, Stephen	Box 326, Siletz, OR 97380	M	2-01-40	5/8	5/8	103	Self
126	BROWN, Tonya Denette	Box 165, Siletz, OR 97380	F	4-17-61	7/16	7/16	---	Bennie J. Brown - Dau
127	BROWN, Vernon	P. O. Box 32, San Ysidro, NM 87053	M	8-09-41	5/8	5/8	104	Self
128	BROWN, Virgil V.	c/o Vernon Brown, P.O. Box 32, San Ysidro, NM 87053	M	6-05-74	5/16	5/16	---	Vernon Brown - Son
129	BROWN, Wilda Jane	Siletz, OR 97380	F	10-27-52	1/4	1/4	115	Self
130	BROWN, William	1834 S.W. 5th, Portland, OR 97201	M	5-31-97	3/4	3/4	119	Self
131	BUCHANAN, Charlene (Martin)	c/o Lorna B. Martin, 4305 25th Ave., N.E., Salem, OR 97303	F	8-11-56	5/16	5/16	---	Lorna Martin - Dau
132	BURSELL, Darryn Martin	c/o Clark Martin, 6428 Edsall Rd., #1, Alexandria, VA 22312	F	9-15-54	15/32	15/32	---	Wilbur Martin - Dau
133	BURSELL, Tony Lee	c/o Clark Martin, 6428 Edsall Rd., #1, Alexandria, VA 22312	M	8-05-75	17/64	17/64	---	Wilbur Martin - G/son
134	BUTLER, Alfred Ivan	Route 1, Box 6, Logsden, OR 97357	M	12-8-51	1/2	1/2	123	Self
135	BUTLER, Alfred Ivan, Jr.	c/o Alfred Butler, Route 1, Box 6, Logsden, OR 97357	M	3-11-78	1/4	1/4	---	Alfred I. Butler - Son
136	BUTLER, Allen Josh	9357 Grand Ronde Rd., Grand Ronde, OR 97347	M	7-21-60	5/16	5/16	---	Alton N. Butler - Son
137	BUTLER, Alton Gussie	Route 1, Box 126, Sheridan, OR 97378	M	6-13-50	11/16	11/16	130	Self
138	BUTLER, Alton Ivan	P. O. Box 2442, Lincoln City, OR 97367	M	5-22-11	1/2	1/2	120	Self
139	BUTLER, Alton Nathaniel	9375 Grand Ronde Rd., Grand Ronde, OR 97347	M	7-05-30	5/8	5/8	142	Self
140	BUTLER, Arthur Louis	315 High Street, Oregon City, OR 97045	M	10-02-53	1/2	1/2	138	Self
141	BUTLER, Barry Curtis	c/o Delmer Butler, Sr., 315 S. 19th St., Reedsport, OR 97467	M	4-30-63	5/16	5/16	---	Delmer L. Butler - Son
142	BUTLER, Brent Ronald	c/o Delmer Butler, Sr., 315 S. 19th St. Reedsport, OR 97467	M	6-05-58	5/16	5/16	---	Delmer L. Butler - Son
143	BUTLER, Bruce III	c/o Laverne Butler, 711 A St., Apt. 4, Toledo, OR 97391	M	11-19-45	1/2	1/2	134	Self
144	BUTLER, Charles Allen	c/o Patricia Smith, P. O. Box 2426, Lincoln City, OR 97367	M	5-12-55	1/2	1/2	---	Edythe L Butler - Son

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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145	BUTLER, Chester	6634 S. Fleet Street, Lincoln City, OR 97367	M	1-03-20	1/2	1/2	139	Self
146	BUTLER, Christopher Allen	c/o Alfred Butler, Route 1, Box 6, Logsden, OR 97357	M	9-21-71	1/4	1/4	---	Alfred I. Butler -Son
147	BUTLER, Darrel Dean	c/o Rosella Butler, 6634 S. Fleet St., Lincoln City, OR 97367	M	4-08-42	1/4	1/4	577	Self
148	BUTLER, Delmer L.	315 S. 19th St., Reedsport, OR 97467	M	1-12-32	5/8	5/8	125	Self
149	BUTLER, Delmer L., Jr.	Box 54, Gardiner, OR 97441	M	1-06-57	5/16	5/16	---	Delmer L. Butler - Son
150	BUTLER, Dent Ward	c/o Delmer Butler, 315 S. 19th St., Reedsport, OR 97467	M	3-30-60	5/16	5/16	---	Delmer L. Butler - Son
151	BUTLER, Eleanor Lilly(Logan)	2084½ Birch, Reedsport, OR 97467	F	9-23-45	1/2	1/2	541	Self
152	BUTLER, Ella Margaret	c/o Delmer Butler, Sr., 315 S. 19th St., Reedsport, OR 97467	F	8-10-65	5/16	5/16	---	Delmer L. Butler - Dau
153	BUTLER, Elvin Michael	9375 Grand Ronde Rd., Grand Ronde, OR 97347	M	10-15-58	5/16	5/16	---	Alton A. Butler - Son
154	BUTLER, Ethel R. (Case)	6634 Fleet St., Lincoln City, OR 97367	F	11-04-21	1/2	1/2	140	Self
155	BUTLER, Gary Leroy	711 A Street, Apt. 4, Toledo, OR 97391	M	7-15-57	5/16	5/16	---	Reginald Butler - Son
156	BUTLER, Gary Nathaniel	Route 1, Box 177, Grand Ronde, OR 97347	M	7-04-52	11/16	11/16	132	Self
157	BUTLER, Kent Lynn	c/o Delmer Butler, Sr., 315 S. 19th St., Reedsport, OR 97467	M	10-24-61	5/16	5/16	---	Delmer L. Butler - Son
158	BUTLER, Laverne Joan	711 A Street, Apt. 4, Toledo, OR 97391	F	4-26-50	1/2	1/2	136	Self
159	BUTLER, Loraine Eyvonne	c/o Laverne Butler, 711 A Street, Apt. 4, Toledo, OR 97391	F	10-25-76	1/4	1/4	---	Laverne J. Butler - Dau
160	BUTLER, Marcellus	1852 Scott Rd., Springfield, OR 97477	M	9-02-54	1/4	1/4	---	Everett Butler - Son
161	BUTLER, Priscilla Louise	c/o Patricia Smith, P. O. Box 2426, Lincoln City, OR 97367	F	5-24-77	1/4	1/4	---	Patricia Smith - Dau
162	BUTLER, Randall Lee, Jr.	c/o Alton Butler, 9375 Grand Ronde Rd., Grand Ronde, OR 97347	M	2-12-74	11/32	11/32	---	Randall L. Butler - Son
163	BUTLER, Randall	Route 1, Grand Ronde, OR 97347	M	5-23-51	11/16	11/16	131	Self
164	BUTLER, Reginald	2084½ Birch, Reedsport, OR 97467	M	2-14-33	5/8	5/8	126	Self
165	BUTLER, Robert Lee	c/o Alfred I. Butler, Route 1, Box 6, Logsden, OR 97357	M	10-13-69	1/4	1/4	---	Alfred I. Butler - Son
166	BUTLER, Ronald	Box 67, Siletz, OR 97380	M	8-21-38	5/8	5/8	127	Self
167	BUTLER, Sharon Lea (Metcalf)	Box 67, Siletz, OR 97380	F	9-25-49	3/4	3/4	613	Self
168	BUTLER, Sylvia Lorree	Box 2442, Lincoln City, OR 97367	F	6-27-59	1/2	1/2	---	Edythe L. Butler - Dau
169	BUTLER, Tracy Leanne	c/o Alton Butler, 9375 Grand Ronde Rd., Grand Ronde, OR 97347	F	10-08-72	11/32	11/32	---	Randall L. Butler - Dau
170	BUTLER, Winona Gustava	c/o Ceon Person, 2050 W. 12th, Eugene, OR 97402	F	1-11-75	1/4	1/4	---	Bruce Butler III - Dau

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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171	BUTORAC, Wanda Lou Ann (Shriner)	5515 Verna St., S.E., Olympia, WA 98503	F	3-24-52	1/8	1/8	750	Self
172	CABA, Arthur Griffin	36851 S. E. Bluff Rd., Boring, OR 97009	M	12-14-53	5/16	5/16	145	Self
173	CABA, Carl Franklin	36851 S. E. Bluff Rd., Boring, OR 97009	M	9-26-49	5/16	5/16	144	Self
174	CABA, Hallie, Jr.	121 S. E. 220th, Troutdale, OR 97060	M	11-20-48	5/16	5/16	143	Self
175	CABA, James E., Jr.	3753 S.E. Main, Portland, OR 97214	M	2-12-57	5/16	5/16	---	Florine Caba - Son
176	CABA, Tamera Lyn	c/o James E. Caba, Sr., 1117 N.E. 118th, Portland, OR 97220	F	5-21-62	5/16	5/16	---	Florine Caba - Dau
177	CADENA, Christy Lynn(Lane)	2957 Morningside St., San Diego, CA 92139	F	1-24-49	3/16	3/16	472	Self
178	CALLAHAN, Henry Andrew	Siletz, OR 97380	M	10-24-42	1/2	1/2	148	Self
179	CARKHUFF, Darlene Marie (Simmons)	P. O. Box 126, Siletz, OR 97380	F	7-05-52	9/16	9/16	773	Self
180	CARSON, Glynn	711 N. 4th, Corvallis, OR 97330	M	2-22-28	1/4	1/4	151	Self
181	CARSON, Willard	5805 La Mirada, Hollywood, CA 90038	M	1-13-22	1/4	1/4	150	Self
182	CARTER, Regina Ann (Campbell)	121 S.E. 3rd, Miltonfreewater, OR 97862	F	9-24-95	1/4	1/4	152	Self
183	CASE, Clifford Willis	2455 F Street, S.E., Auburn, WA 98002	M	8-29-34	1/4	1/4	155	Self
184	CASE, Edward, Jr.	Box 78, Chiloquin, OR 97624	M	3-31-17	1/2	1/2	154	Self
185	CASE, Elouise (Butler)	Box 304, Siletz, OR 97380	F	3-23-37	5/8	5/8	128	Self
186	CASE, Fonda Colene	P. O. Box 304, Siletz, OR 97380	F	7-23-63	5/16	5/16	---	Elouise Case - Dau
187	CASE, Reginald Gregg	P. O. Box 304, Siletz, OR 97380	M	12-21-60	7/16	7/16	---	Elouise Case - Son
188	CASE, Shannon Lynn	P. O. Box 304, Siletz, OR 97380	F	7-05-58	7/16	7/16	---	Elouise Case - Dau
189	CASE, Wayne Leroy	2202 N. E. Ten Pl., Renton, WA 98055	M	9-30-35	1/4	1/4	156	Self
190	CEARLEY, Debra Ann (Lane)	2865 Wiggles Court, Salem, OR 97303	F	11-10-52	3/16	3/16	469	Self
191	CHAPMAN, Frederick Abe	Box 385, Siletz, OR 97380	M	8-29-47	7/16	7/16	162	Self
192	CHAPMAN, Fritz	P. O. Box 385, Siletz, OR 97380	M	12-31-22	3/8	3/8	158	Self
193	CHAPMAN, Marie (Logan)	P. O. Box 385, Siletz, OR 97380	F	7-06-29	1/2	1/2	159	Self
194	CHAPMAN, Walter Louis	Route 2, Box 2254, Yelm, WA 98597	M	5-28-41	3/16	3/16	164	Self
195	CHARLEY, Franklin Leroy	P. O. Box 355, Siletz, OR 97380	M	2-13-47	1/2	1/2	171	Self
196	CHARLEY, George	2122 N. W. Irving, Portland, OR 97210	M	7-18-35	4/4	4/4	169	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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197	CHENOIS, Alice Margaret	Siletz, OR 97380	F	9-16-41	1/2	1/2	177	Self
198	CHENOIS, Edythe Edwin	Siletz, OR 97380	M	2-10-51	1/2	1/2	180	Self
199	CHRISTENSEN, Gary Wayne	1195 Crowley S.E., Salem, OR 97302	M	11-16-64	1/4	1/4	---	Willie Johnson - G-Son
200	CHRISTENSEN, Jay Robert	1195 Crowley S.E., Salem, OR 97302	M	1-08-57	1/4	1/4	---	Willie Johnson - G-Son
201	CHRISTENSEN, Jeanette Louise	1195 Crowley, S.E., Salem, OR 97302	F	12-18-60	1/4	1/4	---	Willie Johnson - G-Dau
202	CHRISTENSEN, John William	1195 Crowley, S.E., Salem, OR 97302	M	11-10-31	1/2	1/2	---	Willie Johnson - G-Son
203	CHRISTENSEN, Laurie Ann	1195 Crowley, S.E., Salem, OR 97302	F	7-15-68	1/4	1/4	---	Willie Johnson - G-Dau
204	CHRISTENSEN, Randy A.	1662 5th, N.E., Salem, OR 97303	M	5-25-58	1/4	1/4	---	Willie Johnson - G-Son
205	CHRISTENSEN, Rex Larry	1195 Crowley, S.E., Salem, OR 97302	M	8-09-59	1/4	1/4	---	Willie Johnson - G-Son
206	CLAWSON, Jolynne M	c/o Geraldine Belgarde, 1185 N.E. Market, Salem, OR 97301	F	4-15-66	7/16	7/16	---	Geraldine Belgarde - Dau
207	CLAWSON, Norma Jean	c/o Geraldine Belgarde, 1185 N.E. Market, Salem, OR 97301	F	2-11-72	7/16	7/16	---	Geraldine Belgarde - Dau
208	CLAWSON, Vilayne L.	c/o Geraldine Belgarde, 1185 N.E. Market, Salem, OR 97301	F	11-05-67	7/16	7/16	---	Geraldine Belgarde - Dau
209	COLGAN, Gail Agnes (Marks)	7224 S. W. 27th, Portland, OR 97219	F	7-31-38	1/4	1/4	561	Self
210	COLLINS, Arless	1230 Center St., Albany, OR 97321	F	7-13-49	1/4	1/4	184	Self
211	COLLINS, Divona Marie	c/o Arless Collins, 1230 Center St., Albany, OR 97321	F	3-27-58	1/4	1/4	---	Edward G. Collins - Dau
212	COLLINS, Edward G.	c/o Arless Collins, 1230 Center St., Albany, OR 97321	M	6-27-23	1/2	1/2	183	Self
213	COLLINS, Georgene M.	c/o Arless Collins, 1230 Center St., Albany, OR 97321	F	6-25-60	1/4	1/4	---	Edward G. Collins - Dau
214	COLLINS, Maxwell	Oakville, WA 98586	M	4-16-53	1/4	1/4	187	Self
215	COMBS, Joy Lynn (Wilcox)	7623 Henderson Blvd, S.E., Olympia, WA 98501	F	11-1-37	1/4	1/4	899	Self
216	CONN, Henry Ellson	Siletz, OR 97380	M	7-09-49	3/8	3/8	188	Self
217	COOK, James R.	Gen. Del., Anchorage, AK 99510	M	6-22-41	1/4	1/4	190	Self
218	COOK, Misty Lee	c/o Loraine Metcalf, P.O. Box 1001, Priest River, ID 83856	F	11-29-77	1/4	1/4	---	Loraine Metcalf - Dau
219	CORDTS, Elena Marie (Delgado)	2239 S.E. 145th, Portland, OR 97233	F	7-02-47	3/16	3/16	277	Self
220	COUNTRYMAN, Adella (Menard)	2660 Shasta Way, #67, Klamath Falls, OR 97601	F	6-01-93	4/4	4/4	191	Self

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221	COURVILLE, Alta (Tom)	204 Mandrin Dr., N., Salem, OR 97303	F	1-29-19	7/8	7/8	192	Self
222	COURVILLE, David George	204 Mandrin Dr., N., Salem, OR 97303	M	6-04-54	7/16	7/16	194	Self
223	CRAWFORD, Naomi R.	Box 44401, Lake Havasu, AZ 86403	F	2-02-35	1/8	1/8	---	Cora Prettyman - Dau
224	CREPEAU, Ginger (Irby)	P. O. Box 1212, Anchorage, AK 99510	F	3-17-48	15/16	15/16	404	Self
225	CRESON, Donald R.	Route 1, Box 1061, La Grande, OR 97850	M	4-01-16	1/8	1/8	195	Self
226	CUMMINGS, Kateri Marie (Brewer)	1757 Persimmon, Coos Bay, OR 97420	F	5-12-52	1/8	1/8	98	Self
227	DARCY, Brad Michael	c/o Michael Darcy, 275 W. H St., Apt. M, Madras, OR 97741	M	8-02-66	1/4	1/4	---	Michael Darcy - Son
228	DARCY, John Everett	c/o Michael Darcy, 275 W. H St., Apt. M, Madras, OR 97741	M	11-29-68	1/4	1/4	---	Michael Darcy - Son
229	DARCY, Michael	275 W. H St., Apt. M, Madras, OR 97741	M	6-24-43	1/2	1/2	207	Self
230	DAUGHERTY, Julie Ann	c/o Buford Daugherty, Star Rt, Box 654, Newport, OR 97365	F	5-08-59	3/8	3/8	---	Willa Daugherty - Dau
231	DAUGHERTY, Lawana Kay	c/o Buford Daugherty, Star Rt, Box 654, Newport, OR 97365	F	9-11-60	3/8	3/8	---	Willa Daugherty - Dau
232	DAUGHERTY, Lesia Gaye	c/o Buford Daugherty, Star Rt. Box 654, Newport, OR 97365	F	10-07-57	3/8	3/8	---	Willa Daugherty - Dau
233	DAUGHERTY, Willa Roberta (Orton)	Star Rt, Box 654, Newport, OR 97365	F	11-26-37	3/4	3/4	654	Self
234	DAUGHERTY, Willo B.	c/o Buford Daugherty, Star Rt, Box 654, Newport, OR 97365	F	2-22-63	3/8	3/8	---	Willa Daugherty - Dau
235	DAVIS, Jessie (Arden)	P. O. Box 476, Dallas, OR 97338	F	11-04-41	3/8	3/8	6	Self
236	DAVIS, Minnie (Menard)	1949 Melrose, Klamath Falls, OR 97601	F	8-08-20	3/4	3/4	208	Self
237	DAVIS, Paul Francis	1949 Melrose, Klamath Falls, OR 97601	M	7-17-59	3/8	3/8	---	Minnie Davis - Son
238	DAVIS, Peter E.	c/o Elnathan Davis, 1949 Melrose, Klamath Falls, OR 97601	M	7-09-55	3/8	3/8	---	Minnie Davis - Son
239	DAVIS, Ruby Elizabeth	1949 Melrose, Klamath Falls, OR 97601	F	12-16-64	3/8	3/8	---	Minnie Davis - Dau
240	DAVIS, Ruth Elizabeth	1949 Melrose, Klamath Falls, OR 97601	F	12-16-64	3/8	3/8	---	Minnie Davis - Dau
241	DEPOE, Duane Allen	P. O. Box 166, Elmer City, WA 99124	M	1-30-42	1/4	1/4	218	Self
242	DEBUSK, Coleen Cileste	P. O. Box 241, Waldport, OR 97394	F	2-07-55	1/4	1/4	---	Margaret Lundy - Dau
243	DEFRIES, Judith Lynn	2415 Meridian St., Bellingham, WA 98225	F	6-13-55	3/8	3/8	---	Arneva Pyle - Dau

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
244	DELGADO, Andrew	2252 S.E. 32nd Pl., Portland, OR 97214	M	6-30-38	3/8	3/8	211	Self
245	DELGADO, Antonio	2745 N.E. 26th, Portland, OR 97212	M	7-29-29	3/8	3/8	210	Self
246	DELGADO, Dora (Brown)	2745 N.E. 26th, Portland, OR 97212	F	10-10-05	3/4	3/4	209	Self
247	DELGADO, Vincent A.	2745 N.E. 26th, Portland, OR 97212	M	9-03-34	3/8	3/8	214	Self
248	DEMOE, Ida Mae (Case)	Siletz, OR 97380	F	2-24-33	1/4	1/4	215	Self
249	DEPOE, Charles Robert	107 Casey, Richland, WA 99253	M	8-14-37	1/4	1/4	217	Self
250	DEPOE, William	5284 44th, S.W., Seattle, WA 98136	M	12-24-13	1/2	1/2	219	Self
251	DIAZ, Ismael Mark	c/o Rowenda Diaz, 972 Cottage Dr., #2, Albany, OR 97321	M	6-29-75	3/8	3/8	---	Rowenda Diaz - Son
252	DIAZ, Rowenda Rosa (Strong)	972 Cottage Dr., #2, Albany, OR 97321	F	8-24-52	3/4	3/4	805	Self
253	DICK, Frederick	Siletz, OR 97380	M	1-22-92	3/4	3/4	220	Self
254	DICKSON, Judy Kay (Bartow)	1757 Greenwood, Reedsport, OR 97467	F	12-19-51	1/8	1/8	24	Self
255	DODDS, Richard Vernon	Box 1091, Knoxville, TN 37901	M	1-18-45	3/16	3/16	223	Self
256	DOHERTY, Agnes (Winkler)	1824 W. Margaret, Pasco, WA 99301	F	3-08-05	1/2	1/2	224	Self
257	DOHERTY, Edgar	1056 South Sullivan, Seattle, WA 98108	M	4-15-30	1/4	1/4	227	Self
258	DOHERTY, Patricia Lynn	3434 S. 144th, Apt. 119, Seattle, WA 98168	F	9-12-53	1/8	1/8	228	Self
259	DOWNER, Lori S. (Beals)	5198 Skyline Rd., S., Salem, OR 97302	F	10-15-58	1/2	1/2	---	Maxine Preston - Dau
260	DOTSON, Elizabeth (Wilcox)	106 E. 5th St., Cle Elum, WA 98922	F	11-04-34	1/4	1/4	897	Self
261	DOWNEY, Everett Leroy	9186 S.E. Lester, Portland, OR 97266	M	2-20-40	1/8	1/8	232	Self
262	DOWNEY, Everett William	2617 S.E. 33rd Pl., Portland, OR 97202	M	7-11-23	1/4	1/4	231	Self
263	DOWNEY, Kay Lavone	222½ Meadow, New Iberia, LA 70569	F	6-26-52	1/8	1/8	239	Self
264	DOWNEY, Margaret (Harney)	1696 I Street, Arcata, CA 95521	F	2-05-01	1/2	1/2	235	Self
265	DOWNEY, Marvin George	2617 S.E. 33rd Pl., Portland, OR 97202	M	10-18-26	1/4	1/4	236	Self
266	DOWNEY, May (Adams)	P. O. Box 294, Siletz, OR 97380	F	11-22-99	3/4	3/4	240	Self
267	DOWNEY, Melvin Richard	4352 N.E. Dover Ave., Salem, OR 97303	M	12-06-22	3/8	3/8	241	Self
268	DOWNEY, Michael Gene	Box 97, Mc Alester, OK 74501	M	8-11-51	1/8	1/8	238	Self
269	DOWNEY, Peter Jerome	Route 1, Box 278, Toledo, OR 97391	M	7-02-34	3/8	3/8	243	Self
270	DOWNEY, Roy, Jr.	1306 Church, N.E., Salem, OR 97303	M	5-04-30	3/8	3/8	242	Self
271	DOWNEY, Thomas Charles	2332 S.E. 122nd, Portland, OR 97233	M	5-22-43	3/8	3/8	247	Self
272	DOWNEY, Tim Patrick	6395 S.W. Broadoak, Beaverton, OR 97005	M	2-09-42	1/8	1/8	233	Self
273	DRAKE, Patricia Carol (Pond)	10551 Caminito West Chester, San Diego, CA 92126	F	12-25-51	3/16	3/16	666	Self
274	DUGAN, Bertha (Hatch)	P. O. Box 791, Agana, GU 96910	F	4-13-25	5/8	5/8	249	Self
275	DUGAN, Martin	c/o Bertha Dugan, P. O. Box 791, Agana, GU 96910	M	4-04-49	5/16	5/16	250	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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276	EASTER, Angeline Delores	c/o Caroline Easter, 1118 L St., Springfield, OR 97477	F	8-20-76	11/32	11/32	---	Caroline Easter - Dau
277	EASTER, Carlene Delores	1118 L St., Springfield, OR 97477	F	4-19-54	11/16	11/16	257	Self
278	EASTER, Caroline Louise	1118 L St., Springfield, OR 97477	F	7-01-51	11/16	11/16	255	Self
279	EASTER, Corliss Delight	1118 L St., Springfield, OR 97477	F	11-03-55	11/16	11/16	---	Esther Easter - Dau
280	EASTER, Esther Delores (Bell)	1118 L St., Springfield, OR 97477	F	12-30-31	7/8	7/8	254	Self
281	EASTER, Issac Leroy	c/o Ralph Easter, 85961-64 Edenvale Rd., Pleasant Hill, OR 97401	M	7-21-74	11/32	11/32	---	Ralph Easter - Son
282	EASTER, Lisa Marie	c/o Ralph Easter, 85961-64 Edenvale Rd., Pleasant Hill, OR 97401	F	4-21-78	11/32	11/32	---	Ralph Easter - Dau
283	EASTER, Ralph Leroy	85961-64 Edenvale Rd., Pleasant Hill, OR 97401	M	8-13-53	11/16	11/16	256	Self
284	EASTER, Walter Jake	1118 L St., Springfield, OR 97477	M	6-07-32	1/2	1/2	253	Self
285	EDDINGS, Sherry Leola (Towner)	2335 N. Willamette Blvd., Portland, OR 97217	F	11-15-38	1/8	1/8	452	Self
286	EDENFIELD, Jean Irby(Lane)	1905 S.E. Kauri, Toledo, OR 97391	F	9-21-49	3/8	3/8	480	Self
287	EDENFIELD, Sharon Ann(Brown)	6615 150th St., S.W., 425, Tacoma, WA 98439	F	5-22-57	7/16	7/16	---	Bennie Brown - Dau
288	EDMONDS, Earl Davis	Siletz, OR 97380	M	9-04-31	3/16	3/16	259	Self
289	EDMONDS, Iola (Anderson)	Siletz, OR 97380	F	5-04-11	3/8	3/8	258	Self
290	EDWARDS, Darold	c/o Marie Edwards, Star Route, Logsden, OR 97357	M	5-02-73	3/8	3/8	---	Marie Fuller - G-Son
291	EDWARDS, Marie Rose Lawson	Star Route, Logsden, OR 97357	F	10-04-55	3/4	3/4	---	Marie Fuller - Dau
292	EDWARDS, Tina	c/o Marie Edwards, Star Route, Logsden, OR 97357	F	6-29-77	3/8	3/8	---	Marie Fuller - G-Dau
293	EGGERSGLUSS, Alice B (McClintock)	16421 S.E. Gordon, Milwaukie, OR 97222	F	9-26-25	1/4	1/4	260	Self
294	EGGERSGLUSS, Raymond	7012 S.E. Furnberg St., Milwaukie, OR 97222	M	10-07-46	1/8	1/8	261	Self
295	ELLIOTT, Ida Mae (Curl)	P. O. Box 83, Otis, OR 97368	F	9-08-43	1/2	1/2	202	Self
296	ELLIOTT, Lincoln Paul	c/o Ida Elliott, P. O. Box 83, Otis, OR 97368	M	8-22-71	1/4	1/4	---	Ida M. Elliott - Son
297	EVANS, Gale	Route 1, Box 68, Logsden, OR 97357	M	2-07-04	3/4	3/4	264	Self
298	FERAN, Frances M.	Siletz, OR 97380	F	4-09-06	3/8	3/8	269	Self
299	FERNANDEZ, Consuelo Dora (Delgado)	5300 N.E. Cully Blvd., Apt. 11, Portland, OR 97218	F	8-01-45	3/16	3/16	3/16	Self
300	FERNANDEZ, Delores Sebrina (Delgado)	8002 S.E. 13th, Portland, OR 97202	F	2-25-44	3/16	3/16	274	Self

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301	FERNANDEZ, Richard Antonio (aka Delgado)	5414 S.E. Ogden, Portland, OR 97206	M	8-30-46	3/16	3/16	276	Self
302	FIELDER, James	Box 638, Amanda Park, WA 98526	M	10-06-39	3/16	3/16	280	Self
303	FIFE, Danny Keith	Siletz, OR 97380	M	10-23-53	3/32	3/32	286	Self
304	FIFE, Larry Allen	Siletz, OR 97380	M	6-17-49	3/32	3/32	284	Self
305	FIFE, Urla Ann (Edmonds)	Siletz, OR 97380	F	10-08-29	3/16	3/16	283	Self
306	FIFE, Wendy Sue	Siletz, OR 97380	F	6-20-51	3/32	3/32	285	Self
307	FINLEY, Marjorie Evangeline (McClay)	470 Elm St., Reedsport, OR 97467	F	7-22-12	1/4	1/4	287	Self
308	FINLEY, Robert Joseph	1144 N.E. 118th, Portland, OR 97220	M	11-01-47	1/8	1/8	288	Self
309	FISH, Allan Craig	20070 S.W. Blanton, Aloha, OR 97005	M	1-14-50	3/8	3/8	290	Self
310	FISH, Yvonne Carleen	13616 S.E. Rhine, Portland, OR 97236	F	10-15-52	3/8	3/8	291	Self
311	FISHER, Barbara Ann (Chapman)	Box 147, Siletz, OR 97380	F	7-27-46	7/16	7/16	160	Self
312	FISHER, Cheryl Ann	c/o Franklin Simmons, P. O. Box 144, Siletz, OR 97380	F	9-28-57	5/16	5/16	---	Nancy Simmons - Dau
313	FISHER, Chuck Allen	Box 64, Siletz, OR 97380	M	8-10-50	5/16	5/16	296	Self
314	FISHER, Frank Bensell	c/o Rm. 440, Vanderbilt Hall, 107 Ave. Louis Pasteur, Boston MA 02115	M	6-30-53	1/8	1/8	297	Self
315	FISHER, Joan Felicia (Bensell)	1705 Julian Court, El Cerrito, CA 94530	F	7-20-25	1/4	1/4	298	Self
316	FISHER, Mary Agnes (Simmons)	Box 64, Siletz, OR 97380	F	4-08-29	5/8	5/8	293	Self
317	FISHER, Michael S.	Box 64, Siletz, OR 97380	M	4-04-58	5/16	5/16	---	Mary Fisher - Son
318	FISHER, Ramona Kay	Box 142, Siletz, OR 97380	F	1-09-57	5/16	5/16	---	Mary Fisher - Dau
319	FISHER, Randall Allen	Box 142, Siletz, OR 97380	M	6-24-73	17/64	17/64	---	Mary Fisher - G-Son
320	FISHER, Terry Daniel	Gen. Del., Siletz, OR 97380	M	2-03-48	5/16	5/16	294	Self
321	FLAGG, Marvin J.	3835 Liberty Rd., S., Salem, OR 97302	M	2-02-58	7/16	7/16	---	Mercelene Flagg - Son
322	FLAGG, Mercelene (Tom)	3835 Liberty Rd., S., Salem, OR 97302	F	7-01-26	7/8	7/8	300	Self
323	FLANARY, Agnes (Logan)	Route 1, Box 347, Terrebonne, OR 97760	F	10-19-26	5/8	5/8	301	Self
324	FLANARY, Leonard Keith	744 Finch Ct., N.E., Salem, OR 97301	M	5-27-49	5/16	5/16	304	Self
325	FLEMING, Carol Janice	c/o Jimmy Fleming, P. O. Box 175, Siletz, OR 97380	F	6-25-48	1/4	1/4	311	Self
326	FLEMING, Donald Duane	148 S.W. 1st. Toledo, OR 97391	M	9-17-45	1/4	1/4	309	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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327	FLEMING, Howard Rae	3631 E. 18th, Eugene, OR 97403	M	3-27-47	1/4	1/4	310	Self
328	FLEMING, James B.	Box 175, Siletz, OR 97380	M	5-24-23	1/2	1/2	307	Self
329	FLEMING, Raymond Roscoe	Box 175, Siletz, OR 97380	M	3-05-44	1/4	1/4	308	Self
330	FLORES, Alejandro	c/o Randall P. Flores, 6195 Lake Labish, N.E., Salem, OR 97303	M	2-13-77	1/4	1/4	---	Eva Battise - G-Son
331	FLORES, Heather Ann	c/o Orville Flores, 1315 19th St., N.E., Salem, OR 97301	F	3-31-77	1/4	1/4	---	Orville Flores - Dau
332	FLORES, Jennifer Nicole	c/o Orville Flores, 1315 19th St., N.E., Salem, OR 97301	F	3-31-77	1/4	1/4	---	Orville Flores - Dau
333	FLORES, Orville Dwayne	1315 19th St., N.E., Salem, OR 97301	M	6-05-49	1/2	1/2	315	Self
334	FLORES, Randall P.	6195 Lake Labish, N.E., Salem, OR 97303	M	11-13-54	1/2	1/2	---	Eva Battise - Son
335	FLORES, Randall P. II	c/o Randall Flores, 6195 Lake Labish, N.E., Salem, OR 97303	M	2-13-77	1/4	1/4	---	Eva Battise - G-Son
336	FLORES, Stephanie Jean	c/o Stephen L. Flores, 4936 13th Ave., N., Salem, OR 97303	F	10-08-67	1/4	1/4	---	Stephen Flores - Dau
337	FLORES, Stephen Lee	4936 13th Ave., N., Salem, OR 97303	M	8-17-47	1/2	1/2	314	Self
338	FLORES, Stephen Lee, Jr.	c/o Stephen L. Flores, 4936 13th Ave., N., Salem, OR 97303	M	5-27-74	1/4	1/4	---	Stephen Flores - Son
339	FREEMAN, Gary Allen	8456 41st, S.W., Seattle, WA 98136	M	3-18-42	3/16	3/16	321	Self
340	FREEMAN, Prudence	31 Broadway, Tacoma, WA 98402	F	2-18-02	3/8	3/8	318	Self
341	FREEMAN, Roger Lee	9345 Fauntleroy Way, S.W., Seattle, WA 98136	M	5-26-27	3/16	3/16	320	Self
342	FULLER, Marie (Charley)	2122 N.W. Irving, Portland, OR 97210	F	3-10-24	4/4	4/4	170	Self
343	FURLONG, Michelle Regina (McKenny)	603 White, Walla Walla, WA 99362	F	4-07-41	1/4	1/4	605	Self
344	GAGE, Charles	Siletz, OR 97380	M	6-27-40	3/16	3/16	325	Self
345	GALLAMORE, Ruth (Umatata)	Box 109, Toledo, OR 97391	F	12-26-02	4/4	4/4	326	Self
346	GAMBLE, Rebecca Lynn (Christensen)	E. 611 Bismark, Spokane, WA 99207	F	7-25-54	1/4	1/4	---	Willie Johnson - G-Dau
347	GARDNER, Glenna Gail (Rolfson)	2115 Simpson Ave., Hoquiam, WA 98550	F	2-19-41	1/2	1/2	716	Self
348	GARRETT, Jean (Downey)	1549 N.W. Grove St., Newport, OR 97365	F	6-27-35	3/8	3/8	328	Self
349	GAVIN, Genevieve Victoria (Gray)	1410 Rockfeller, Everett, WA 98201	F	10-18-19	3/8	3/8	221	Self
350	GEISZLER, Jeanette (Delgado)	2804 N.E. 27th, Portland, OR 97212	F	8-02-31	3/8	3/8	9	Self

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351	GILBERT, Chiquita Martina	c/o Martina Gilbert, 1302 Montana, Coos Bay, OR 97420	F	12-29-72	1/4	1/4	---	Martina Gilbert - Dau
352	GILBERT, Martina Agatha (Curl)	1302 Montana, Coos Bay, OR 97420	F	8-15-42	1/2	1/2	201	Self
353	GILBERT, Willie Jay	c/o Martina Gilbert, 1302 Montana, Coos Bay, OR 97420	M	7-03-65	1/4	1/4	---	Martina Gilbert - Son
354	GIRARD, Bruce	894 Commercial, N.E., Salem, OR 97301	M	7-23-30	1/4	1/4	333	Self
355	GIRARD, Mary Joyce	Siletz, OR 97380	F	6-11-37	1/8	1/8	331	Self
356	GIRARD, Raymond	911 Palm, Sanluis Obispo, CA 93401	M	11-01-26	1/4	1/4	332	Self
357	GODFREY, Harriet E. (Hatch)	Route 2, Florence, OR 97439	F	1-03-31	5/8	5/8	338	Self
358	GOLSH, Mildred (Griggs)	Siletz, OR 97380	F	4-13-22	1/2	1/2	339	Self
359	GONZALES, Josephine(John)	367 18th St., S.E., Salem, OR 97303	F	6-10-40	3/8	3/8	417	Self
360	GOODELL, David, Jr.	Box 303, Siletz, OR 97380	M	3-24-37	1/4	1/4	337	Self
361	GOODMAN, Jessie (Hancorne)	626½ Monroe St., Hoquiam, WA 98550	F	9-08-39	1/4	1/4	353	Self
362	GRABERT, Mary Alena (Johnson)	Siletz, OR 97380	F	8-28-20	1/4	1/4	340	Self
363	GREEN, Abbie (George)	834 Del Norte St., Crescent City, CA 95531	F	9-21-23	3/8	3/8	342	Self
364	GREEN, Anita Dawn	2347 Howland Hill Rd., Crescent City, CA 95531	F	6-22-52	3/16	3/16	345	Self
365	GREEN, Lowell Kenny	2347 Howland Hill Rd., Crescent City, CA 95531	M	9-05-48	3/16	3/16	343	Self
366	GREEN, Marietta	2347 Howland Hill Rd., Crescent City, CA 95531	F	7-12-53	3/16	3/16	346	Self
367	GREEN, Tessabelle D (Goodell)	6865 McTimmonds Rd., Dallas, OR 97338	F	5-05-30	7/16	7/16	341	Self
368	GREEN, William Darell	2347 Howland Hill Rd., Crescent City, CA 95531	M	9-04-49	3/16	3/16	344	Self
369	GREENWELL, Jacquelyn Winifred	Siletz, OR 97380	F	2-07-53	1/2	1/2	348	Self
370	GRIGGS, Florence	Siletz, OR 97380	F	2-05-20	1/2	1/2	349	Self
371	HAINLINE, Gloria Joan (Flanary)	890 F Street, W., Vale, OR 97918	F	5-28-47	5/16	5/16	302	Self
372	HALL, Aldona (Fielder)	c/o Lillian Jackson, Route 3, Box 833, Brookings OR 97415	F	7-14-42	3/16	3/16	282	Self
373	HALL, Carlotta Ann (Lundy)	Box 540 River Rd., Yachats, OR 97498	F	12-18-53	1/4	1/4	558	Self
374	HALL, Dorothy Jean (Adams)	395 N.W. 21st Dr., Pendleton, OR 97801	F	5-10-29	3/8	3/8	350	Self
375	HAMILTON, Eva Jean (Rabinsky)	Box 81, Route 1, Scappoose, OR 97056	F	7-06-25	1/4	1/4	351	Self

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376	HAMILTON, Fred Randolph	Box 81, Route 1, Scappoose, OR 97056	M	3-15-54	1/8	1/8	352	Self
377	HARPER, Juanita Gertrude (Curl)	2680 Bennett Cr. Dr., Cottage Grove, OR 97424	F	9-25-52	1/2	1/2	204	Self
378	HARPER, Sharon Lou(Hostler)	1911 S Street, Eureka, CA 95501	F	11-10-46	3/16	3/16	396	Self
379	HARRINGTON, Kathryn June (Werth)	1160 N. 55th Pl., Springfield, OR 97477	F	6-28-50	7/16	7/16	891	Self
380	HARRISON, Robert Nelson	c/o Victorine Harrison, 14838 S.E. Taylor Ct., Portland, OR 97233	M	9-05-69	1/4	1/4	---	Victorine Harrison - Son
381	HARRISON, Victorine (Simmons)	14838 S.E. Taylor Ct., Portland, OR 97233	F	6-19-30	1/2	1/2	579	Self
382	HARTT, Barbara Louise	Route 1, Box 265, Colton, OR 97017	F	2-06-57	1/4	1/4	---	Clementine Hartt - Dau
383	HARTT, Clementine (Arden)	Route 1, Box 265, Colton, OR 97017	F	4-14-33	1/2	1/2	357	Self
384	HARTT, Elliot Donald	Route 1, Box 265, Colton, OR 97017	M	3-29-61	1/4	1/4	---	Clementine Hartt - Son
385	HARTT, Minnie (Arden)	Route 3, Box 319, Estacada, OR 97023	F	3-12-25	1/2	1/2	355	Self
386	HATCH, Beverly Joyce (Youngman)	6218 Neylon Dr., S.W., Olympia, WA 98502	F	11-13-43	5/16	5/16	926	Self
387	HATCH, David Russell	55 W. 31st St., Eugene, OR 97405	M	12-12-53	5/16	5/16	361	Self
388	HATCH, Herbert Hallam	55 W. 31st St., Eugene, OR 97405	M	10-30-52	5/16	5/16	360	Self
389	HATCH, Judith	1117 Neola St., Los Angeles, CA 90042	F	12-04-40	5/8	5/8	364	Self
390	HATCH, Kenneth Martin	55 W. 31st St., Eugene, OR 97405	M	10-16-22	5/8	5/8	359	Self
391	HATFIELD, Oscar	c/o Buena Vista Area, Route 1, Independence, OR 97351	M	9-17-38	3/16	3/16	366	Self
392	HAVRANEK, Barbara K. (Towner)	7354 S.E. Division, Portland, OR 97206	F	6-13-53	7/16	7/16	834	Self
393	HEDRICK, Jean Shirley (Koehler)	1631 N.W. Everett, Portland, OR 97209	F	2-26-41	1/4	1/4	459	Self
394	HEDRICK, Virginia Marie	6353 65th, N.E., Seattle, WA 98115	F	9-09-53	1/8	1/8	371	Self
395	HEDRICK, William P.	2005 Road 33, Pasco, WA 99301	M	1-24-49	1/8	1/8	368	Self
396	HEGGE, Minnie Rose (Lane)	872 Highland Ave., Salem, OR 97303	F	11-09-39	3/8	3/8	488	Self
397	HELMIG, Henrietta Betty (Koehler)	4094 Noon Ave., N.E., Salem, OR 97303	F	6-25-43	1/4	1/4	460	Self
398	HENDRICKSON, Maureen Suzanne	P. O. Box 285, Waldport, OR 97394	F	11-11-56	1/4	1/4	---	Margaret Lundy - Dau

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
399	HENRY, Frances D. (Wilcox)	Route 7, Box 430, Olympia, WA 98506	F	6-31-31	1/4	1/4	748	Self
400	HESKITH, Lorraine Ann (Courville)	1777 Meadowlark, Dr., N.E., Salem, OR 97303	F	10-26-49	7/16	7/16	193	Self
401	COMENOUT, Phyllis Rae (Collins)	3102 Freeman Rd., E., Puyallup, WA 98371	F	10-10-36	3/4	3/4	377	Self
402	HOHENSTEIN, Marion (Baker)	2602 4th & Vine, Apt. C, Seattle, WA 98121	F	3-28-13	3/8	3/8	378	Self DOD: 3-08-79
403	HOINESS, Corrine Mae	c/o Ila Hoiness, 2645 32nd Ave., Longview, WA 98632	F	1-21-51	3/16	3/16	380	Self
404	HOINESS, Harold Leroy	274 Beach St., Longview, WA 98632	M	1-21-48	3/16	3/16	252	Self
405	HOINESS, Ila (Downey)	2645 32nd Ave., Longview, WA 98632	F	5-18-27	3/8	3/8	379	Self
406	HOINESS, Raymond Sevrine	c/o Ila Hoiness, 2645 32nd Ave., Longview, WA 98632	M	6-29-53	3/16	3/16	381	Self
407	HOINESS, Ronald Lee	302 K St., Hoquiam, WA 98550	M	10-24-46	3/16	3/16	251	Self
408	HOLLAND, Bernard Stevens	1430 S.E. 14th, Portland, OR 97214	M	5-27-57	1/4	1/4	---	Minetta Holland - Son
409	HOLLAND, Daniel Brian	4919 S.E. Kelly, Portland, OR 97214	M	1-09-56	1/4	1/4	---	Minetta Holland - Son
410	HOLLAND, Irene Ann	3529 S.E. Clinton, Portland, OR 97202	F	7-02-50	1/4	1/4	383	Self
411	HOLLAND, Jeffrey Joseph	c/o Minetta Holland, 5308 S.E. Sherman, Portland, OR 97215	M	12-22-52	1/4	1/4	385	Self
412	HOLLAND, Kathleen Margaret	1430 S.E. 14th, Portland, OR 97214	F	10-08-51	1/4	1/4	384	Self
413	HOLLAND, Minetta T. (Simmons)	5308 S.E. Sherman, Portland, OR 97215	F	10-15-28	1/2	1/2	382	Self
414	HOLMES, Donna L. (Logan)	1610 High St., S. E. , Salem, OR 97301	F	4-09-39	1/2	1/2	531	Self
415	HOOVER, Alonzo	359 N.E. 1st., Toledo, OR 97391	M	2-20-12	1/4	1/4	386	Self
416	HOOVER, Edward	1520 Pacific Ave,, St. George Hotel, Santa Cruz, CA 95060	M	4-27-21	1/4	1/4	388	Self
417	HOOVER, Herbert Leith	Box 554, Toledo, OR 97391	M	5-01-36	1/8	1/8	387	Self
418	HOOVER, Richard	549 Churchdale Ave., N., Salem, OR 97303	M	8-03-14	1/4	1/4	390	Self
419	HOSTLER, Fred Franklin	2242 E. Irwin Way, Eugene, OR 97402	M	11-27-27	3/8	3/8	392	Self
420	HOSTLER, Frederick Roger	c/o Catherine Richards, Smith River,CA 95567	M	11-03-49	3/16	3/16	393	Self
421	HOWELL, Deanna Lee (Downey)	P. O. Box 45, Siletz, OR 97380	F	12-13-39	3/8	3/8	245	Self
422	HOWERTON, Rebecca Janice (Raya)	1539 N.W. 11th, Corvallis, OR 97330	F	6-30-49	1/8	1/8	---	Sally Bobb S-19 - G-G-G-Da

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423	HUBBARD, Germaine (Wilcox)	17801 Sargent Rd., S.W., Rochester, WA 98579	F	6-04-36	1/4	1/4	898	Self
424	HUDSON, Donald Gene	2221 Lee Street, S.E., Salem, OR 97301	M	11-18-46	9/16	9/16	400	Self
425	HUDSON, Dwayne Andres	c/o Donald Hudson, 2221 Lee Street, S.E., Salem, OR 97301	M	8-14-67	9/32	9/32	---	Donald Hudson - Son
426	HUDSON, John Freeman	377 N.W. 32nd, Springfield, OR 97477	M	1-18-59	7/16	7/16	---	Rose Hudson - Son
427	HUDSON, Ronald Lee	4085 Market, N.E., #64, Salem, OR 97301	M	11-18-46	9/16	9/16	399	Self
428	HUDSON, Rose Catherine(Bell)	377 N. 32nd, Springfield, OR 97477	F	5-16-17	7/8	7/8	575	Self
429	HUDSON, Tamora Michelle	c/o Donald Hudson, 2221 Lee Street, S.E., Salem, OR 97301	F	8-15-72	9/32	9/32	---	Donald Hudson - Dau
430	HUDSON, William Paul	1799 Wessner, N.E., Salem, OR 97303	M	6-30-44	3/16	3/16	398	Self
431	HUNT, Pamela Jean (Lane)	1705 Prescott St., Springfield, OR 97477	F	9-05-48	3/8	3/8	496	Self
432	HUSTON, Anna	c/o Patricia Hofenbredl, 30100 Salmon River Hwy, Grand Ronde, OR 97347	F	9-25-60	1/4	1/4	---	Kenneth Logan - Dau
433	INGLE, Gloria Ann (Rilatos)	Box 756, Wrangell, AK 99929	F	3-17-44	1/8	1/8	694	Self
434	JACKSON, Joseph	Siletz, OR 97380	M	11-30-1900	4/4	4/4	406	Self
435	JACKSON, Lillian (Fielder)	Route 3, Box 833, Brookings, OR 97415	F	10-30-40	3/16	3/16	281	Self
436	JACKSON, Sharmaine (Scott)	P. O. Box 99, Smith River, CA 95567	F	11-28-49	7/16	7/16	731	Self
437	JACKSON, Tracey Christine	c/o Darlene Carkhuff	F	3-29-72	9/32	9/32	---	Darlene Carkhuff - Dau
438	JAMES, Constance Elaine (Williams)	4122 S.E. 74th, Portland, OR 97206	F	1-22-47	3/4	3/4	917	Self
439	JAMES, Delores	Taholah, WA 98587	F	11-22-32	1/2	1/2	407	Self
440	JAMES, Elizabeth	Siletz, OR 97380	F	5-02-49	1/4	1/4	408	Self
441	JAMES, Kenya Karleen	c/o Constance E. James, 4122 SE 74, Port. OR	F	6-27-64	3/8	3/8	---	Constance James - Dau
442	JAMES, Marlene	Siletz, OR 97380	F	1-01-53	1/4	1/4	409	Self
443	JAMES, Robert	605 Yesler St., Seattle, WA 98104	M	9-04-34	1/2	1/2	410	Self
444	JAMES, Troy Murdock	c/o Constance James, 4122 S.E. 74th, Portland, OR 97206	M	4-04-63	3/8	3/8	---	Constance James - Son
445	JANIK, Marva Elizabeth (Downey)	P. O. Box 14, Cascade Locks, OR 97014	F	3-06-50	1/8	1/8	237	Self
446	JENNINGS, Joanne (Eggersgluss)	5230 N.E. Prescott St., Portland, OR 97218	F	7-26-54	1/8	1/8	263	Self
447	JETT, Ernestine (Reed)	5834 N.E. Rodney, Portland, OR 97211	F	12-22-22	1/4	1/4	413	Self

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448	JOBIN, Ardith June (Hart)	P. O. Box 392, Estacada, OR 97023	F	12-17-48	1/4	1/4	356	Self
449	JOGTICH, Patricia Ann (Blair)	17628 S.E. 292nd Pl, Kent, WA 98031	F	8-25-36	1/4	1/4	87	Self
450	JOHANSON, Andrea May (Martin)	1715 S.W. 192nd, Aloha, OR 97005	F	11-02-53	1/4	1/4	580	Self
451	JOHN, Clark	c/o Gylene M. Jones, 412 Market, Coos Bay, OR 97420	M	1-28-08	3/4	3/4	414	Self
452	JOHN, David Andrew	412 Market, Coos Bay, OR 97420	M	3-10-43	3/8	3/8	418	Self
453	JOHN, Diana Lynn	2867 Sterne Pl., Fremont, CA 94536	F	8-06-59	5/16	5/16	---	William C. John - Dau
454	JOHN, Elizabeth Jane	613 N.E. Eads, Newport, OR 97365	F	10-23-46	3/8	3/8	420	Self
455	JOHN, Glendora	2867 Sterne Pl., Fremont, CA 94536	F	7-24-56	5/16	5/16	---	William C. John - Dau
456	JOHN, Jane (Service)	2867 Sterne Pl., Fremont, CA 94536	F	5-11-33	1/4	1/4	734	Self
457	JOHN, Leroy	Star Route N., Box 179 E, Newport, OR 97365	M	6-24-45	3/8	3/8	419	Self
458	JOHN, Lindsey	1154 Chemawa Loop, N.E., Salem, OR 97303	M	7-10-10	3/4	3/4	424	Self
459	JOHN, Lindsey Frank	c/o Gylene M. Jones, 412 Market, Coos Bay, OR 97420	M	12-23-48	3/8	3/8	421	Self
460	JOHN, Robert	101 N. 10th Ave., Stayton, OR 97383	M	9-29-38	3/8	3/8	416	Self
461	JOHN, William Clark	2867 Sterne Pl., Fremont, CA 94536	M	7-01-33	3/8	3/8	415	Self
462	JOHN, William Clark, Jr.	2867 Sterne Pl., Fremont, CA 94536	M	1-01-62	5/16	5/16	---	William C. John - Son
463	JOHNS, Sharon Carol (Duncan)	Siletz, OR 97380	F	1-06-43	1/4	1/4	425	Self
464	JOHNSON, Alice L.	Siletz, OR 97380	F	2-14-37	1/2	1/2	432	Self
465	JOHNSON, Brian T.	c/o Lori Johnson, 6106 S.E. 44th, Portland, OR 97206	M	4-12-65	3/8	3/8	---	Geneva Johnson - Son
466	JOHNSON, Caroline (Metcalf)	P. O. Box 197, Siletz, OR 97380	F	2-28-11	3/4	3/4	788	Self
467	JOHNSON, Denise L.	c/o Lori Johnson, 6106 S.E. 44th, Portland, OR 97206	F	4-17-56	3/8	3/8	---	Geneva Johnson - Dau
468	JOHNSON, Donald Lee	2018 Myrtle, St., North Bend, OR 97459	M	5-12-37	3/4	3/4	434	Self
469	JOHNSON, Doris Ann	c/o Johnnie Johnson, 1907 North Callear, Newburg, OR 97132	F	11-10-56	5/16	5/16	---	Agnes Flanary - Dau
470	JOHNSON, Frank Logan	2018 Myrtle St., North Bend, OR 97459	M	12-10-10	4/4	4/4	435	Self
471	JOHNSON, Geneva Alice (Williams)	6104 S.E. 44th, Portland, OR 97206	F	11-17-28	3/4	3/4	289	Self
472	JOHNSON, John Matthew	15525 S. E. Johnson, Clackamas, OR 97015	M	1-19-58	3/8	3/8	---	Geneva Johnson - Son

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
473	JOHNSON, Kevin B.	c/o Lori Johnson, 6106 S.E. 44th, Portland, OR 97206	M	5-20-59	3/8	3/8	---	Geneva Johnson - Son
474	JOHNSON, Lorna Gail	4553 Arabian Ct., S.E., Salem, OR 97301	F	7-05-55	1/4	1/4	---	Willie Johnson - G-Dau
475	JOHNSON, Louis W.	18710 S.W. Wright, Aloha, OR 97005	M	7-17-33	1/2	1/2	431	Self
476	JOHNSON, Raymond H.	6200 S.W. Hall Blvd., #105, Beaverton, OR 97005	M	5-29-32	1/2	1/2	430	Self
477	JOHNSON, Violet (Smith)	c/o Raymond Johnson, 6200 S.W. Hall Blvd., #105 Beaverton, OR 97005	F	4-21-12	4/4	4/4	429	Self
478	JOHNSON, Wayne Kenneth	c/o Lori Johnson, 6106 S. E. 44th, Portland, OR 97206	M	4-09-64	3/8	3/8	---	Geneva Johnson - Son
479	JOHNSTON, Rosalie(Rolfson)	P. O. Box 9, Kalama, WA 98625	F	5-25-48	1/2	1/2	717	Self
480	JONES, Gylene M. (John)	412 Market, Coos Bay, OR 97420	F	11-23-36	3/8	3/8	830	Self
481	JONES, Nora Leola(Towner)	P. O. Box 1093, Wickenburg, AZ 85358	F	9-05-20	1/4	1/4	826	Self
482	JORDAN, Geraldine (Girard)	4868 Chinook Ct., S.E., Salem, OR 97301	F	7-11-33	1/4	1/4	644	Self
483	JUCATAN, Anthony	6245 Lake Labish Rd., N.E., Salem, OR 97303	M	12-17-45	1/2	1/2	438	Self
484	JUCUTAN, Adrienne Ann	c/o Anthony Jucutan, 6245 Lake Labish Rd., N.E. Salem, OR 97303	F	6-27-74	1/4	1/4	---	Anthony Jucutan - Dau
485	JUCUTAN, Amber Nadine	c/o Anthony Jucutan, 6245 Lake Labish Rd., N.E. Salem, OR 97303	F	5-10-72	1/4	1/4	---	Anthony Jucutan - Dau
486	JUCUTAN, Anthony Adam	c/o Anthony Jucutan, 6245 Lake Labish Rd., N.E. Salem, OR 97303	M	8-29-69	1/4	1/4	---	Anthony Jucutan - Son
487	KAISER, Andrea Jane (Huffine)	3011 S. 90th, Yakima, WA 98908	F	3-18-44	1/4	1/4	401	Self
488	KARNOWSKI, Adelaide(Adams)	Box 182, Route 2, Logsden, OR 97357	F	2-04-01	3/4	3/4	439	Self
489	KEISER, Byron M.	4211 State St., Salem, OR 97301	M	3-06-58	3/4	3/4	---	Martha Moody - Son
490	KEKUA, Alfred Joseph, Sr.	Mapleton, OR 97453	M	4-10-25	1/2	1/2	440	Self
491	KEKUA, Alfred Joseph, Jr.	P. O. Box 849, Florence, OR 97439	M	10-27-47	1/4	1/4	441	Self
492	KELLER, Pamela Rae(Fisher)	Box 3076, Juneau, AK 99801	F	1-29-49	5/16	5/16	295	Self
493	KELSO, Shelly Mae(Ricketts)	345 South 42nd, Pl., Springfield, OR 97477	F	9-25-50	1/4	1/4	690	Self
494	KENTTA, Arlen Ray	633 Ferry St., S., Apt. 309, Salem, OR 97301	M	3-18-43	3/16	3/16	445	Self
495	KENTTA, Arlene Frances (Logan)	Route 1 Weitchpec, Hoopa., CA 95546	F	5-17-48	1/2	1/2	543	Self
496	KENTTA, Donald William	Siletz, OR 97380	M	12-11-45	3/16	3/16	446	Self DOD: 1-27-79
497	KENTTA, Henry Lee	Route 1, Box 647, Toledo, OR 97391	M	6-14-51	3/16	3/16	451	Self
498	KENTTA, John Victor	21 Putnam, S., Claremont, NH 03743	M	7-26-41	3/16	3/16	444	Self

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499	KENTTA, Monte Wayne	2936 S.W. Anchor, Newport, OR 97365	M	5-19-53	3/16	3/16	448	Self
500	KENTTA, Norma (Belinger)	4416 Scott Ave., N.E., Salem, OR 97303	F	1-23-21	3/8	3/8	442	Self
501	KENTTA, Norma Jean	Siletz, OR 97380	F	7-21-54	3/16	3/16	449	Self
502	KENTTA, Rosalie Grace	20 Eugene St., Mellville, NY 11746	F	10-02-39	3/16	3/16	443	Self
503	KESSINGER, Donna Lee (Strong)	852 Shangri-La Ave., N.E., Salem, OR 97303	F	6-26-38	1/4	1/4	801	Self
504	KIRKWOOD, Sheila	4357 41st Ave., N.E., Salem, OR 97303	F	6-21-48	1/4	1/4	724	Self
505	KLAMATH, Clifton Dale	c/o Walter L. Klamath, Box 14185, Portland, OR 97214	M	4-15-54	1/4	1/4	455	Self
506	KLAMATH, Lynette Rae	c/o Sharon M. Klamath, 6505 S.E. Clatsop, Portland, OR 97206	F	12-21-65	1/4	1/4	---	Walter Klamath - Dau
507	KLAMATH, Pamela Kay	5811 S.E. 86th, Portland, OR 97266	F	11-26-58	1/4	1/4	---	Walter Klamath - Dau
508	KLAMATH, Walter Lawrence	Box 14185, Portland, OR 97214	M	5-18-30	1/2	1/2	454	Self
509	KLINE, Corey Wayne	c/o Joella Kline, P. O. Box 345, Siletz, OR 97380	M	7-15-77	3/8	3/8	---	Stanley Strong- G-Son
510	KLINE, Joella E.	P. O. Box 345, Siletz, OR 97380	F	2-13-58	3/4	3/4	---	Stanley Strong - Dau
511	KLOKMAN, Allison Faye	532 Del Monte, Pasadena, CA 91103	F	5-14-55	7/16	7/16	---	Theodore Logsden - Dau
512	KNOX, Mary Margaret (Hedrick)	1-B S. McKinley, Kennewick, WA 99336	F	5-03-52	1/8	1/8	370	Self
513	KOEHLER, Edmund E.	3761 Carnes Rd., Roseburg, OR 97470	M	12-10-38	1/4	1/4	458	Self
514	KOEHLER, Henry Richard	3808 Peck Ave., S.E., Salem, OR 97302	M	7-03-36	1/4	1/4	457	Self
515	KUNKEL, Rosenette V.	c/o Lyle O. Pearson, 920 Airport Rd., Albany, OR 97321	F	10-15-49	1/4	1/4	---	Willie Johnson - G-Dau
516	LA CHANCE, Melvin Richard	769 S.E. Hankel, Dallas, OR 97338	M	2-02-35	1/4	1/4	464	Self
517	LA CHANCE, Matthew Eugene	379 S. 47th St., Springfield, OR 97477	M	6-06-30	1/4	1/4	463	Self
518	LA CHANCE, Thomas Theodore	General Delivery, Grand Ronde, OR 97347	M	9-13-29	1/4	1/4	462	Self
519	LAFFERTY, Vera (Wallace)	Route 2, Box 1316, Smith River, CA 95567	F	1-07-36	3/8	3/8	862	Self
520	LAGREW, June Faith (Towner)	c/o W.B. Eddings, II, 2335 N. Willamette Blvd., Portland, OR 97217	F	6-25-23	1/4	1/4	740	Self
521	LANDIS, Rosemary (Breon)	P. O. Box 44, Brightwood, OR 97011	F	2-13-43	1/4	1/4	95	Self
522	LANE, Alfred, Jr.	2735 3rd St., National City, CA 92050	M	3-03-26	3/8	3/8	471	Self
523	LANE, Arnold Dean	c/o Ernestine Wooten, 4610 12th Ave., N.E., Salem, OR 97303	M	9-17-68	3/8	3/8	---	Dennis Lane - Son
524	LANE, Arthur Harry, Jr.	142 N. Oak, Independence, OR 97351	M	10-28-53	3/16	3/16	470	Self

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525	LANE, Burma Jodene (Williams)	Route 1, Box 34A, Philomath, OR 97370	F	6-12-44	3/8	3/8	907	Self
526	LANE, Charles Raymond	440 N. 36th, Springfield, OR 97477	M	10-02-42	3/16	3/16	482	Self
527	LANE, Clayton Frank	160 14th, N.E., Salem, OR 97303	M	2-09-42	3/8	3/8	489	Self
528	LANE, David Leroy	1695 D St., N.E., Salem, OR 97301	M	7-24-36	3/8	3/8	487	Self
529	LANE, Dennis	2296 Northgate Ave., N.E., Salem, OR 97303	M	12-14-40	3/4	3/4	479	Self
530	LANE, Gerald Andrew	c/o Naomi Adams, 5948 Stayton Rd., Turner, OR 97392	M	4-14-48	3/8	3/8	491	Self
531	LANE, James	310 N.W. 6th, Portland, OR 97209	M	9-04-06	3/4	3/4	476	Self
532	METCALF, Janice DeVonn (Lane)	Rt. 2, Box 182, Toledo, OR 97391	F	5-24-47	3/8	3/8	495	Self
533	LANE, Joseph Harry	3335 S.E. 43rd., Portland, OR 97206	M	3-28-21	3/8	3/8	481	Self
534	LANE, Joseph Harry, Jr.	1920 Sunshine Dr., Concord, CA 94520	M	8-24-44	3/16	3/16	483	Self
535	LANE, Marjorie (Martin)	4610 12th Ave., N.E., Salem, OR 97303	F	2-12-16	3/4	3/4	477	Self
536	LANE, Virgil Alan	c/o Ernestine Wooten, 4610 12th Ave., N.E., Salem, OR 97303	M	3-16-70	3/8	3/8	---	Dennis Lane - Son
537	LANE, William Alfred	P. O. Box 251, Siletz, OR 97380	M	1-02-51	3/8	3/8	497	Self
538	LANEGAN, Elaine Adele	Siletz, OR 97380	F	10-20-50	1/8	1/8	500	Self
539	LANEGAN, Joseph K.	Siletz, OR 97380	M	3-11-23	1/4	1/4	499	Self
540	LANIER, Lois Louise	235 N. Valley Ave., Apt. 22, Burbank, CA 91505	F	8-13-25	1/8	1/8	---	Cora Prettyman - Dau
541	LARSEN, Charles Raymond	5260 S. Santa Fe Dr., No. 24, Littleton, CO 80120	M	11-13-52	1/4	1/4	508	Self
542	LARSEN, Franklin	Siletz, OR 97380	M	9-09-43	1/4	1/4	505	Self
543	LARSEN, George Allen	1451 W. Nevada Pl., Denver, CO 80203	M	4-14-54	1/4	1/4	509	Self
544	LARSEN, Kenneth Lee	St George Hotel, Rm. 351, Santa Cruz, CA 95060	M	4-11-42	1/4	1/4	504	Self
545	LARSEN, Raymond L.	16 W. 10th Ave., Harding Apt. 207, Denver, CO 80204	M	3-26-19	1/2	1/2	503	Self
546	LARSEN, Victor	Fairview Hospital, 2250 Strong Rd., S.E., Salem, OR 97302	M	6-18-10	1/2	1/2	502	Self
547	LARUE, Lila M.	49 North 200, East, Santaquin, UT 84655	F	5-16-48	1/4	1/4	---	Willie Johnson - G-Dau
548	LARVIE, Lillian (Case)	390 S.E. Lancaster Court, Apt. 5, Salem, OR 97303	F	11-13-23	1/2	1/2	848	Self
549	LASH, Ellen Arlene (Curl)	Box 712, Lincoln City, OR 97397	F	2-27-41	1/2	1/2	200	Self
550	LAWSON, Lavina Lou	1226 N.W. Lake, Newport, OR 97365	F	3-27-54	1/4	1/4	514	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
551	LEE, Charles Leroy	Siletz, OR 97380	M	3-01-52	3/16	3/16	523	Self
552	LEE, Dixie Sue (Williams)	2749 S.W. Morris Ave., Corvallis, OR 97330	F	11-14-46	3/8	3/8	908	Self
553	LEE, Larry Leonard	Siletz, OR 97380	M	12-14-48	3/16	3/16	521	Self
554	LEE, Marsida Marie	Siletz, OR 97380	F	5-03-53	3/16	3/16	524	Self
555	LEE, Patricia Ann	Siletz, OR 97380	F	8-01-54	3/16	3/16	525	Self
556	LEE, Rosena Marvina	Siletz, OR 97380	F	3-29-51	3/16	3/16	522	Self
557	LENO, Claudia Louisa	P. O. Box 2, Grand Ronde, OR 97347	F	11-12-43	1/2	1/2	533	Self
558	LENO, Gregg E.	c/o Claudia Leno, P. O. Box 2, Grand Ronde, OR 97347	M	3-29-68	1/4	1/4	---	Claudia Leno - Son
559	LENO, Michelle L.	c/o Claudia Leno, P. O. Box 2, Grand Ronde, OR 97347	F	4-25-67	1/4	1/4	---	Claudia Leno - Dau
560	LITTLETON, Earl Clark	4055 Langton, Eugene, OR 97405	M	4-09-53	3/16	3/16	527	Self
561	LOGAN, Cherine	Siletz, OR 97380	F	7-23-40	1/2	1/2	549	Self
562	LOGAN, Elmer Louis	Gen. Del., Willimina, OR 97396	M	1-03-49	1/2	1/2	535	Self
563	LOGAN, Frankie Carl	4139 Polar Way, Longview, WA 98632	M	11-18-48	1/4	1/4	547	Self
564	LOGAN, John, Jr.	Siletz, OR 97380	M	12-17-46	1/2	1/2	542	Self
565	LOGAN, Kendall John	10813 Geo-Ann Rd., Oregon City, OR 97045	M	4-19-53	1/4	1/4	548	Self
566	LOGAN, Kenneth R.	Siletz, OR 97380	M	12-18-39	1/2	1/2	530	Self
567	LOGAN, Larkie Charles	355 S. Manzanita Ct., Canby, OR 97013	M	11-18-48	1/4	1/4	546	Self
568	LOGAN, Larry	Siletz, OR 97380	M	7-23-40	1/2	1/2	550	Self
569	LOGAN, Leonard Leroy	P. O. Box 187, Willamina, OR 97396	M	6-12-45	1/2	1/2	534	Self
570	LOGAN, Nelda Lee	644 Lancaster Dr., N.E., Salem, OR 97301	F	4-01-53	1/2	1/2	536	Self
571	LOGSDEN, Bambi Lynn	c/o Allison Klokman, 532 Del Monte, Pasadena, CA 91103	F	1-25-61	7/16	7/16	---	Theodore Logsden - Dau
572	LOGSDEN, Carl	Siletz, OR 97380	M	6-08-92	4/4	4/4	551	Self
573	LOGSDEN, John Arnold	Siletz, OR 97380	M	4-04-21	1/2	1/2	552	Self
574	LOGSDEN, Richard Mark	c/o Janice Boyd, 532 Del Monte, Pasadena, CA 91103	M	5-12-57	7/16	7/16	---	Janice Boyd - Son
575	LOGSDEN, Tammra Marie	c/o Janice Boyd, 532 Del Monte, Pasadena, CA 91103	F	12-21-58	7/16	7/16	---	Janice Boyd - Dau
576	LOGSDEN, Theodore	Siletz, OR 97380	M	2-07-36	1/2	1/2	554	Self
577	LONG, Alfred Abeson	c/o Louise Long, 17505 Mt. Hebo Rd., Hebo, OR 97122	M	7-22-57	1/4	1/4	---	Louise Long - Son
578	LONG, Brock Monroe	c/o Louise Long, 17505 Mt. Hebo Rd., Hebo, OR 97122	M	1-01-60	1/4	1/4	---	Louise Long - Son

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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579	LONG, Coleman Clayton	c/o Louise Long, 17505 Mt. Hebo Rd., Hebo, OR 97122	M	2-09-64	1/4	1/4	---	Louise Long - Son
580	LONG, Louise Agnes (Curl)	17505 Mt. Hebo Rd., Hebo, OR 97122	F	1-23-40	1/2	1/2	199	Self
581	LOPEZ, Henrietta Lee (Curl)	Route 4, Box 442-C, Coos Bay, OR 97420	F	7-14-35	1/2	1/2	869	Self DOD: 1-04-79
582	LOVELAND, Elinor (Caba)	4617 N.E. 75th, Portland, OR 97218	F	4-28-28	5/8	5/8	142	Self
583	LUND, Sherry Lee (McQuire)	1407 7th St., Astoria, OR 97103	F	1-02-46	1/4	1/4	607	Self
584	LUNDY, Dale Rodney	RR Box 494, Yachats, OR 97498	M	11-16-51	1/4	1/4	557	Self
585	LUNDY, Daniel Everett	P. O. Box 1254, Bonners Ferry, ID 83805	M	7-25-50	1/4	1/4	556	Self
586	MARKS, Violet Johnson	8604 S.W. 41st., Portland, OR 97219	F	12-30-15	1/2	1/2	560	Self
587	MARSH, Shelley Marie (Robertson)	N.E. 1134 Markley Dr., #1, Pullman, WA 99163	F	5-18-54	7/16	7/16	714	Self
588	MARTIN, Angela E.	c/o Joella Kline, P. O. Box 345, Siletz, OR 97380	F	9-29-74	3/8	3/8	---	Stanley Strong -G-Dau
589	MARTIN, Antoine	395 McNamara St., Crescent City, CA 95531	M	4-30-19	1/2	1/2	562	Self
590	MARTIN, Antone Frederick	395 McNamara St., Crescent City, CA 95531	M	10-28-51	3/8	3/8	565	Self
591	MARTIN, Bradley Shawn	c/o Virgil Martin, 445 S.W. 6th, Newport, OR 97365	M	12-30-62	1/4	1/4	---	Virgil Martin - Son
592	MARTIN, Brenda Lee (Lucas)	2194 Vaughn Ave., N.E., Salem, OR 97303 Salem, OR	F	2-03-58	5/16	5/16	---	Lorna Martin - Dau
593	MARTIN, Cheryl Lynn	P. O. Box 328, Haines, AK 99827	F	12-29-59	1/4	1/4	---	Ernest Martin - Dau
594	MARTIN, Christopher Shane	c/o Virgil Martin, 445 S. W. 6th, Newport, OR 97365	M	6-16-61	1/4	1/4	---	Virgil Martin - Son
595	MARTIN, David	2122 N.W. Irving, Portland, OR 97210	M	5-10-11	4/4	4/4	574	Self
596	MARTIN, Ernest	P. O. Box 328, Haines, AK 99827	M	7-07-37	1/2	1/2	569	Self
597	MARTIN, Jaimi Jill	c/o Clark W. Martin, 6428 Edsall Rd., No. 1, Alexandria, VA 22312	F	8-13-55	15/32	15/32	---	Wilbur Martin - Dau
598	MARTIN, Joseph Clayton	325 46th Ave., S.E., Salem, OR 97301	M	6-12-53	5/16	5/16	567	Self
599	MARTIN, Katherine Janelle	c/o Arliss Strickler, P. O. Box 313, Siletz, OR 97380	F	12-08-62	1/4	1/4	---	Marie Spratt - Dau
600	MARTIN, Kristi Lynn	P. O. Box 1442, Newport, OR 97365	F	3-26-50	1/4	1/4	578	Self
601	MARTIN, Kyle Kevin	4637 Southland Ave., Alexandria, VA 22312	M	2-08-57	15/32	15/32	---	Wilbur Martin - Son
602	WHITEHEAD, Linda Joy	Box 16, Siletz, OR 97380	F	4-19-52	1/4	1/4	894	Self
603	MARTIN, Lori Ann	P. O. Box 328, Haines, AK 99827	F	2-10-61	1/4	1/4	---	Ernest Martin - Dau
604	MARTIN, Lorna Beth (Washington)	325 46th Ave., S.E., Salem, OR 97301	F	7-18-34	5/8	5/8	566	Self

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605	MARTIN, Rickey Gene	P. O. Box 328, Haines, AK 99827	M	9-21-57	1/4	1/4	---	Ernest Martin - Son
606	MARTIN, Roberta (Goodell)	6428 Edsall Rd., #1, Alexandria, VA 22312	F	7-04-32	7/16	7/16	572	Self
607	MARTIN, Steven Dean	P. O. Box 328, Haines, AK 99827	M	11-15-58	1/4	1/4	---	Ernest Martin - Son
608	MARTIN, Vernie Creta (Collins)	514 7th St., #3, Marysville, CA 95901	F	12-24-04	4/4	4/4	93	Self
609	MARTIN, Violet Gylene	c/o Arliss Strickler, P. O. Box 313, Siletz OR 97380	F	1-24-64	1/4	1/4	---	Marie Spratt - Dau
610	MARTIN, Virgil Dean, Jr.	c/o Virgil Martin, 445 S.W. 6th, Newport, OR 97365	M	2-13-60	1/4	1/4	---	Virgil Martin - Son
611	MARTIN, Virgil Eugene	c/o Arliss Strickler, P. O. Box 313, Siletz, OR 97380	M	1-23-67	1/4	1/4	---	Marie Spratt - Son
612	MARTIN, Virginia Jeanine	c/o Arliss Strickler, P. O. Box 313, Siletz, OR 97380	F	1-23-67	1/4	1/4	---	Marie Spratt - Dau
613	MARTIN, Wilbur, Jr.	6428 Edsall Rd., #1, Alexandria, VA 22312	M	1-26-31	1/2	1/2	571	Self
614	MARZAN, Benito Mariano	P. O. Box 356, Siletz, OR 97380	M	11-25-47	1/8	1/8	582	Self
615	MARZAN, Juan Francisco	P. O. Box 24, Orange Cove, CA 93646	M	4-13-50	1/8	1/8	583	Self
616	MARZAN, Mary M. (Rilatos)	334 6th St., Orange, Cove, CA 93646	F	2-09-27	1/4	1/4	581	Self
617	MARZAN, Robert Anthony	P. O. Box 356, Siletz, OR 97380	M	4-21-52	1/8	1/8	584	Self
618	MASON, Cynthia Mary	c/o Madge Mason, Box 13, Waldport, OR 97394	F	12-15-60	1/4	1/4	---	Madge Mason - Dau
619	MASON, Howard Paul	Box 19, Yachats, OR 97498	M	10-09-47	1/4	1/4	587	Self
620	MASON, Judith Annette	c/o Madge Mason, Box 13, Waldport, OR 97394	F	6-23-62	1/4	1/4	---	Madge Mason - Dau
621	MASON, Madge (Darcy)	Box 13, Waldport, OR 97394	F	2-11-23	1/2	1/2	585	Self
622	MASON, Monica Lynne	c/o Madge Mason, Box 13, Waldport, OR 97394	F	8-02-63	1/4	1/4	---	Madge Mason - Dau
623	MASON, Pamela Jo	P. O. Box 431, Yachats, OR 97498	F	8-12-53	1/4	1/4	592	Self
624	MASON, Tad	711 S.W. Minnie, Newport, OR 97365	M	6-18-52	1/4	1/4	591	Self
625	MASON, Terrence M.	Gen. Del. Kodiak, AK 99615	M	6-30-45	1/4	1/4	586	Self
626	MASON, Tim Duane	c/o Doug Maulton, 69 Jadwin Ave., Quarry Apt. No. 66, Richland, WA 99352	M	1-13-51	1/4	1/4	590	Self
627	MASON, Todd Walter	P. O. Box 13, Waldport, OR 97394	M	1-03-50	1/4	1/4	589	Self
628	MAUCH, Elma Louise (Chapman)	Route 1, Box 353, Toledo, OR 97391	F	7-12-19	1/2	1/2	814	Self
629	MAYS, Angelina Anna (Artiago)	2804 N.E. 27th, Portland, OR 97212	F	8-08-50	3/16	3/16	10	Self

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630	MCCLAY, Meri Jane	Box 273, Bonham, TX 75418	F	5-04-44	1/8	1/8	594	Self
631	MCCLAY, Charles David	2049 Dogwood, Reedsport, OR 97467	M	7-13-17	1/4	1/4	593	Self
632	MCCLAY, David Charles	957 Fir, Reedsport, OR 97467	M	5-21-48	1/8	1/8	595	Self
633	MCCLINTOCK, Allen Eugene	4022 S.E. Risley, Milwaukie, OR 97222	M	6-02-35	1/4	1/4	597	Self
634	MCCLINTOCK, Earl L.	652 Holly St., Junction City, OR 97448	M	5-06-27	1/4	1/4	596	Self
635	MCCLINTOCK, Freddie Lamont	675 E. Beacon Dr., Eugene, OR 97404	M	9-23-51	1/8	1/8	598	Self
636	MCCLINTOCK, Orpha Mae	652 Holly St., Junction City, OR 97448	F	6-25-53	1/8	1/8	599	Self
637	MCCORMICK, James Henry	425 13th, Independence, OR 97351	M	5-08-47	5/16	5/16	602	Self
638	MCCOY, Joseph Lincoln	Columbia Apt., Aberdeen, WA 98520	M	9-29-20	4/4	4/4	601	Self
639	MCKENNY, Alice (Briggs)	601 S.W. 2nd, College Place, WA 99324	F	8-04-08	1/2	1/2	604	Self
640	MCKNIGHT, Arthur Thomas	145 U Street, Springfield, OR 97471	M	1-19-58	7/16	7/16	---	Clarice McKnight - Son
641	MCKNIGHT, Clarice Nadine (Bell)	636 G Street, Springfield, OR 97471	F	4-25-37	7/8	7/8	41	Self
642	MCKNIGHT, Francis Melvin	700 N. 1st. Street, Apt. 15, Springfield, OR 97471	M	1-12-57	7/16	7/16	---	Clarice McKnight - Son
643	MCLEOD, Diane Louise (Chatterson)	P. O. Box 81, Fall Creek, OR 97438	F	11-18-51	1/4	1/4	174	Self
644	MCMAHON, Martha (Downey)	P. O. Box 336, Siletz, OR 97380	F	8-12-28	3/8	3/8	494	Self
645	MCQUIRE, Esther Annabelle (Simmons)	1034 James St., Astoria, OR 97103	F	4-08-25	1/2	1/2	606	Self
646	MCQUIRE, Marvin Lewis	P. O. Box 1612, Forks, WA 98331	M	9-28-47	1/4	1/4	608	Self
647	MEDLEY, Evalina (Fernandez)	509 Robinson Rd., Woodland, WA 98674	F	4-17-45	3/16	3/16	271	Self
648	MEEKS, Phyllis (Doherty)	707 N. Hawaii St., Kennewick, WA 99336	F	10-18-27	1/4	1/4	367	Self
649	MERRILL, Linda Lou (Lane)	9643 S.W. Alsea Dr., Tualatin, OR 97062	F	2-03-48	3/16	3/16	484	Self
650	METCALF, Ellen Louise	Box 67, Siletz, OR 97380	F	2-16-51	3/4	3/4	614	Self
651	METCALF, Leon Earl	Route 2, Box 182, Toledo, OR 97391	M	8-12-53	3/4	3/4	615	Self
652	METCALF, Loraine Yvonne (Butler)	Box 1001, Priest River, ID 83856	F	11-22-48	1/2	1/2	135	Self
653	METCALF, Martha Michelle	c/o Loraine Metcalf, Box 1001, Priest River, ID 83856	F	10-05-66	5/8	5/8	---	Willard Metcalf - Dau
654	METCALF, Michael Damon	c/o Ellen Metcalf, Box 67, Siletz, OR 97380	M	8-05-71	3/8	3/8	---	Ellen Metcalf - Son
655	METCALF, Nathan Thomas	c/o Loraine Metcalf, Box 1001, Priest River, ID 83856	M	3-12-70	5/8	5/8	---	Willard Metcalf - Son

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656	METCALF, Renee Lanette	c/o Loraine Metcalf, Box 1001, Priest River, ID 83856	F	11-24-65	5/8	5/8	---	Willard Metcalf - Dau
657	METCALF, Willard Lee	c/o Janice Metcalf, Route 2, Box 182, Toledo, OR 97391	M	10-07-75	9/16	9/16	---	Leon Metcalf - Son
658	MILES, Charles	Siletz, OR 97380	M	4-23-32	1/4	1/4	617	Self
659	MILLER, Eileen (Fitzpatrick)	Siletz, OR 97380	F	2-14-10	1/2	1/2	621	Self
660	MILLER, Gaylene Marie (Reynolds)	2463 Meadow Lane, Eureka, CA 95501	F	3-25-47	1/8	1/8	685	Self
661	MILLER, Jo Ann (Downey)	Route 2, Box 156, Logsden, OR 97357	F	3-10-32	3/8	3/8	450	Self
662	MILLER, Mary (Lawson)	Siletz, OR 97380	F	8-28-12	1/2	1/2	623	Self
663	MILLER, Robert Leland	Siletz, OR 97380	M	11-25-29	1/4	1/4	622	Self
664	MILLS, Wilma Lou(Chapman)	709 N. Daisy, Escondidos, CA 92027	F	7-10-44	3/16	3/16	165	Self
665	MINTHORN, Vivian(McIntyre)	Route 1, Box 43, Adams, OR 97810	F	7-28-15	1/2	1/2	376	Self
666	MONTANA, Pauline Ruby (Washington)	732 N.E. Couch, Portland, OR 97232	F	12-25-42	7/8	7/8	878	Self
667	MONTGOMERY, Fred	Siletz, OR 97380	M	3-20-87	1/4	1/4	626	Self
668	MONTGOMERY, Herman	Siletz, OR 97380	M	7-08-94	1/4	1/4	627	Self
669	MONTGOMERY, Orleana (Johnson)	Siletz, OR 97380	F	11-18-97	1/4	1/4	428	Self
670	MONTGOMERY, Robert	Siletz, OR 97380	M	11-24-29	1/8	1/8	625	Self
671	MOODY, Charles Edward	c/o Genevieve Moody, 21130 S.E. Salmon, Gresham, OR 97030	M	10-13-51	1/8	1/8	629	Self
672	MOODY, Genevieve (McClintock)	21130 S.E. Salmon, Gresham, OR 97030	F	12-13-21	1/4	1/4	628	Self
673	MOODY, Lawrence William	212 Cedar, Brookings, OR 97415	M	2-27-53	1/8	1/8	630	Self
674	MOODY, Martha (Case)	1920 N.W. 26th, Portland, OR 97221	F	10-27-26	1/2	1/2	402	Self
675	MORRELL, Priscilla Ann (Fernandez)	8315 S.W. 133rd, Beaverton, OR 97005	F	3-14-46	3/16	3/16	272	Self
676	MORRISON, Virgene Louise (Weder)	4910 S.W. 192nd, Aloha, OR 97005	F	7-16-49	1/8	1/8	885	Self
677	MORTENSON, Arnold	c/o Marjorie Mortenson, 6530 S.E. Clatsop, Portland, OR 97206	M	7-19-51	1/4	1/4	636	Self
678	MORTENSON, Arthur	c/o Marjorie Mortenson, 6530 S.E. Clatsop, Portland, OR 97206	M	7-19-51	1/4	1/4	637	Self

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679	MORTENSON, Ellery Peter	c/o Marjorie Mortenson, 6530 S.E. Clatsop, Portland, OR 97206	M	6-22-48	1/4	1/4	635	Self
680	MORTENSON, Marjorie (Menard)	6530 S.E. Clatsop, Portland, OR 97206	F	3-28-23	1/2	1/2	632	Self
681	MORTENSON, Paul	c/o Marjorie Mortenson, 6530 S.E. Clatsop, Portland, OR 97206	M	2-03-55	1/4	1/4	---	Marjorie Mortenson - Son
682	MORTENSON, Ronald Verden	c/o Marjorie Mortenson, 6530 S.E. Clatsop, Portland, OR 97206	M	10-20-44	1/4	1/4	633	Self
683	MOSES, Joy Gertrude(Hill)	745 Cedar Flat Rd., Williams, OR 97544	F	11-28-31	1/4	1/4	---	Vivian Minthorn - Dau
684	MUNCY, Mary Alice (Bensell)	P. O. Box 23, Siletz, OR 97380	F	7-22-07	5/8	5/8	642	Self
685	MUSCHAMP, Clint Charles	c/o Jack Muschamp, P. O. Box 364, Siletz, OR 97380	M	5-11-70	1/4	1/4	---	Jack Muschamp - Son
686	MUSCHAMP, George	Box 273, Siletz, OR 97380	M	6-08-48	1/2	1/2	640	Self
687	MUSCHAMP, Gladys (Bensell)	Box 273, Siletz, OR 97380	F	9-03-14	4/4	4/4	639	Self
688	MUSCHAMP, Jack Charles	Box 364, Siletz, OR 97380	M	2-23-50	1/2	1/2	641	Self
689	MUSCHAMP, Marci Lynn	c/o Jack Muschamp, Box 364, Siletz, OR 97380	F	7-08-71	1/4	1/4	---	Jack Muschamp - Dau
690	NAVARRO, Donna Marie (Voutrin)	2120 Vaughn, N.E., Salem, OR 97303	F	6-27-41	3/8	3/8	855	Self
691	NEIMI, Judy Kay (Lawson)	RR No. 2 Creston Dr., Terrace, B. C.	F	7-07-42	1/4	1/4	511	Self
692	NELSON, Archie Hugh	Box 36, Siletz, OR 97380	M	6-15-65	3/8	3/8	---	Victoria Nelson - Son
693	NELSON, Park H. IV	Box 36, Siletz, OR 97380	M	6-08-64	3/8	3/8	---	Victoria Nelson - Son
694	NELSON, Victoria Marie (Ben)	Box 36, Siletz, OR 97380	F	6-08-30	3/4	3/4	56	Self
695	NEVAREZ, Nadine Antonette	700 N. 1st. Apt. 4, Springfield, OR 97477	F	5-30-50	3/8	3/8	564	Self
696	NEWPORT, Mary Alice (Leach)	RR Deans Cr., Reedsport, OR 97467	F	4-15-50	1/8	1/8	519	Self
697	NORTON, Marge Elaine (Pullam)	4155 Bonillo Dr., #309, San Diego, CA 92115	F	8-08-51	1/4	1/4	670	Self
698	O LEARY, Andrew Washington	c/o Pauline Montana, 732 N. E. Couch, Portland OR 97232	M	8-06-65	7/16	7/16	---	Pauline Montana - Son
699	O LEARY, Marcus Lee	c/o Pauline Montana, 732 N. E. Couch, Portland, OR 97232	M	3-06-61	7/16	7/16	---	Pauline Montana - Son

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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700	OLEMAN, Stacie Anne (Strickler)	Route 3, Box 485, Siletz, OR 97380	F	6-12-54	7/32	7/32	796	Self
701	OLSON, Ada Nancy (Service)	P. O. Box 1574, Newport, OR 97365	F	10-30-23	1/4	1/4	648	Self
702	OLSON, Ole Willard	c/o Ada Olson, P. O. Box 1574, Newport, OR 97365	M	11-26-52	1/8	1/8	649	Self
703	OLSON, Patricia Bernice (Logan)	10813 Geo-Ann Rd., Oregon City, OR 97045	F	4-25-47	1/4	1/4	545	Self
704	ORTON, Charles James	P. O. Box 155, Toledo, OR 97391	M	12-06-09	3/4	3/4	652	Self
705	ORTON, Charles William	4000 Flynn, Bellingham, WA 98225	M	9-14-41	3/4	3/4	655	Self
706	ORTON, Daniel	2710 S.E. Olsen St., Milwaukee, OR 97222	M	6-16-02	3/4	3/4	657	Self
707	ORTON, Nellie (Metcalf)	P. O. Box 155, Toledo, OR 97391	F	3-06-13	3/4	3/4	653	Self
708	OWEN, Beverly A. (Flagg)	1539 Madras St., S.E., Salem, OR 97302	F	9-13-56	7/16	7/16	---	Mercelene Flagg - Dau
709	PACLEB, Diana Battise	Siletz, OR 97380	F	3-29-51	1/2	1/2	661	Self
710	PACLEB, Domingo, Jr.	Siletz, OR 97380	M	6-01-49	1/2	1/2	660	Self
711	PAEZ, Jose A., III	7838 Ben Ave., N. Hollywood, CA 91605	M	11-20-48	3/16	3/16	---	Augusta Alicante - G-Son
712	PAEZ, Theresa Alicante	7838 Ben Ave., N. Hollywood, CA 91605	F	9-07-26	3/8	3/8	---	Augusta Alicante - Dau
713	PALOMINO, Clara (Towner)	7106 S.E. Mitchell Court, Portland, OR 97206	F	6-23-28	3/4	3/4	611	Self
714	PALOMINO, Priscilla Shay	c/o Clara Palomino, 7106 S.E. Mitchell Court, Portland, OR 97206	F	8-31-65	3/8	3/8	---	Clara Palomino - Dau
715	PARR, Ardella Marie (Case)	P. O. Box 182, Siletz, OR 97380	F	10-25-56	7/16	7/16	---	Elouise Case - Dau
716	PATRICK, Susan Darlene (Staggs)	1501 S.E. Stephens, Roseburg, OR 97470	F	3-27-50	7/16	7/16	792	Self
717	PEARSON, David Francis	P. O. Box 63, Springville, UT 84663	M	9-02-51	1/4	1/4	---	Willie Johnson - G-Son
718	PEARSON, Dennis Paul	c/o Frances Pearson, 920 Airport Rd., Albany, OR 97321	M	2-15-53	1/4	1/4	---	Willie Johnson - G-Son
719	PEARSON, Frances	920 Airport Rd., Albany, OR 97321	F	3-18-30	1/2	1/2	---	Willie Johnson - Dau
720	PEARSON, John C.	3779 Fisher Rd., N.E., Salem, OR 97303	M	1-23-54	1/4	1/4	---	Willie Johnson - G-Son
721	PEARSON, Mark C.	c/o Frances Pearson, 920 Airport Rd., Albany, OR 97321	M	5-20-57	1/4	1/4	---	Willie Johnson - G-Son
722	PEARSON, Richard Lavell	555 17th St., S.E., Salem, OR 97301	M	7-17-55	1/4	1/4	---	Willie Johnson - G-Son
723	PEARSON, Robb Lee	115 S. Pinon, Vernal UT 84078	M	3-28-47	1/4	1/4	---	Willie Johnson - G-Son
724	PETERSON, Bonnie May (Brown)	5143 Alpine Loop, Eugene, OR 97405	F	2-04-54	1/4	1/4	116	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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725	PETERSON, Pauline Jean (Lane)	202 French Ave., Toledo, OR 97391	F	5-27-34	3/8	3/8	663	Self
726	PHILBROOK, Rena Rose (Blacketer)	3614 23rd St., Forest Grove, OR 97116	F	9-05-53	3/8	3/8	85	Self
727	PIERSON, Honie Ann	c/o Juanita Harper, 2680 Bennett Cr. Dr., Cottage Grove, OR 97424	F	8-21-72	1/4	1/4	---	Juanita Harper - Dau
728	PIGSLEY, Delores Ann (Lane)	1322 Larchwood, N., Salem, OR 97303	F	3-29-43	3/8	3/8	467	Self
729	PILGRIM, Agnes E. (Baker)	1245 Inyo St., Crescent City, CA 95531	F	9-11-24	1/4	1/4	563	Self
730	POERSCH, Veronica Jean (Siniscal)	Route 2, Box 175H, Hillsboro, OR 97123	F	10-21-44	1/8	1/8	774	Self
731	POND, Clayton	7012 Marmick Pl., Laurel MD 20810	M	8-29-20	3/8	3/8	665	Self
732	POND, Gerald Alfred	980 Church St., Woodburn, OR 97071	M	3-28-55	1/4	1/4	---	Alfred Pond - Son
733	POND, Terry Lee	9205 S.W. Terwilliger Blvd., Portland, OR 97219	M	10-23-44	1/4	1/4	---	Alfred Pond - Son
734	PORTER, Catherine Jean (Workman)	Route 3, Box 138, Dayton, OR 97114	F	2-04-48	1/4	1/4	924	Self
735	POTTER, Jana Sue (Ricketts)	1016 Cunningham Ln., S., #32, Salem, OR 97302	F	4-01-52	1/4	1/4	691	Self
736	POTTER, Melissa (Viles)	821 S. Main St., Prineville, OR 97754	F	3-08-48	1/8	1/8	852	Self
737	PRESTON, Maxine(Washington)	Siletz, OR 97380	F	12-06-34	4/4	4/4	870	Self
738	PULLAM, Florine (Darcy)	Box 343, Waldport, OR 97394	F	5-27-27	1/2	1/2	669	Self
739	PULLAM, Mark Anthony	Box 343, Waldport, OR 97394	M	1-15-63	1/4	1/4	---	Florine Pullam - Son
740	PULLAM, Patrick Lynn	P. O. Box 1293, Oakridge, OR 97463	M	6-03-53	1/4	1/4	671	Self
741	PULLAM, Tina Marie	c/o Florine Pullam, Box 343, Waldport, OR 97394	F	11-27-55	1/4	1/4	---	Florine Pullam - Dau
742	PYLE, Arneva (Orton)	2415 Meridian, Bellingham, WA 98225	F	9-09-35	3/4	3/4	672	Self
743	PYLE, James Darwin	3126 Cederwood, Bellingham, WA 98225	M	5-16-51	3/8	3/8	673	Self
744	PYLE, Wendy Doreen	295 Barrel Springs Rd., Bow, WA 98232	F	4-29-58	3/8	3/8	---	Arneva Pyle - Dau
745	RABINSKY, Genevieve	Box 80, Route 1, Scappoose, OR 97056	F	8-15-23	1/8	1/8	675	Self
746	RALSTON, Donna Lou (Lane)	6532 Parkside Ave., San Diego, CA 92139	F	6-24-54	3/16	3/16	474	Self
747	RANDOL, Joann Rebecca (Balza)	1575 S. E. 7th, Gresham, OR 97030	F	5-08-41	3/8	3/8	20	Self
748	RAY, Ada Nancy Lee (Olsen)	1004 S.W. Alder St., Newport, OR 97365	F	2-05-54	1/8	1/8	650	Self
749	RAYA, Phillip Theodore	P. O. Box 186, Warden, WA 98857	M	1-13-51	1/8	1/8	---	Sally Bobb - G-G-G-Son
750	RAYA, Sequoia Bobb	2022 W. Broadway, Moses Lake, WA 98837	M	7-03-54	1/8	1/8	---	Sally Bobb - G-G-G-Son

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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751	REED, Albert A.	2980 E. Main, Hillsboro, OR 97123	M	2-16-25	1/4	1/4	677	Self
752	REED, Albert Elmer	16431 N.E. Wasco, Portland, OR 97230	M	2-16-49	1/8	1/8	678	Self
753	REED, Donald	3315 3rd St., Tillamook, OR 97141	M	2-04-33	1/8	1/8	683	Self
754	REED, Esther Marie	539 E. 38th, Albany, OR 97321	F	10-25-50	1/8	1/8	679	Self
755	REED, Kenneth	3315 3rd St., Tillamook, OR 97141	M	9-25-28	1/8	1/8	681	Self
756	REED, Robert	Box 102, Garibaldi, OR 97118	M	6-13-31	1/8	1/8	682	Self
757	REED, Tony	Siletz, OR 97380	M	8-12-95	1/4	1/4	680	Self
758	REYNOLDS, Harry Duayne	261 Rockpit Rd., Arcata, CA 95521	M	8-24-50	1/8	1/8	686	Self
759	REYNOLDS, Ida Marie (Downey)	Route 1, Box 355-A, Arcata, CA 95521	F	5-26-24	1/4	1/4	684	Self
760	RICHARDS, Theresa Rose (Collins)	c/o Arless Collins, 1230 Center St., Albany, OR 97321	F	8-11-52	1/4	1/4	185	Self
761	RICHARDSON, Joan(Service)	220 W. 9th, Prineville, OR 97754	F	5-11-33	1/4	1/4	735	Self
762	RICKETTS, Rose Mary (Lawson)	1051 S.W. Levens, Dallas, OR 97338	F	7-28-27	1/2	1/2	688	Self
763	RICKETTS, Sharon Lee (Mason)	10192 W 64th Ave., Arvada, CO 80004	F	8-14-48	1/4	1/4	588	Self
764	RICKS, Pauline (Bell)	2660 N. 20th, Springfield, OR 97477	F	11-19-29	7/8	7/8	647	Self
765	RIDING IN, Debra S.	c/o Doris Riding In, 6026 S. E. 84th, Portland, OR 97266	F	7-08-63	1/4	1/4	---	Doris Riding In - Dau
766	RIDING IN, Delores Marlene	c/o Doris Riding In, 6026 S. E. 84th, Portland, OR 97266	F	6-14-57	1/4	1/4	---	Doris Riding In - Dau
767	RIDING IN, Denise Lyn	c/o Doris Riding In, 6026 S. E. 84th, Portland, OR 97266	F	2-07-62	1/4	1/4	---	Doris Riding In - Dau
768	RIDING IN, Doris (Tom)	6026 S. E. 84th Portland, OR 97266	F	4-21-33	1/2	1/2	692	Self
769	RIDING IN, Dorna Mae	c/o Doris Riding In, 6026 S. E. 84th, Portland, OR 97266	F	9-25-55	1/4	1/4	---	Doris Riding In - Dau
770	RILATOS, Daniel Ezra	P. O. Box 437, Siletz, OR 97380	M	3-23-44	1/8	1/8	704	Self
771	RILATOS, David Carl	Box 282, Tygh Valley, OR 97063	M	8-20-50	1/8	1/8	700	Self
772	RILATOS, David Louis	Siletz, OR 97380	M	3-09-20	1/4	1/4	706	Self
773	RILATOS, Donald Leslie	P. O. Box 605, Wrangell, AK 99929	M	9-04-52	1/8	1/8	697	Self
774	RILATOS, Edward	P. O. Box 605, Wrangell, AK 99929	M	3-01-25	1/4	1/4	693	Self
775	RILATOS, Edward Rizal	P. O. Box 781, Wrangell, AK 99929	M	10-07-48	1/8	1/8	696	Self
776	RILATOS, Emanual	Box 484, Wrangell, AK 99929	M	9-13-23	1/4	1/4	698	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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777	RILATOS, Kari Kerlynn	c/o Roger Rilatos, P. O. Box 525, Siletz, OR 97380	M	3-05-77	1/4	1/4	---	Robert Rilatos - G-Dau
778	RILATOS, Katherine Jane	Box 104, Siletz, OR 97380	F	5-07-54	7/16	7/16	711	Self
779	RILATOS, Manuel Francisco	N. 3315 Woodruff, Spokane, WA 99206	M	4-20-42	1/8	1/8	702	Self
780	RILATOS, Marita Selene	c/o Robert Rilatos, Box 104, Siletz, OR 97380	F	9-11-61	7/16	7/16	---	Robert Rilatos - Dau
781	RILATOS, Maxine (Ben)	Box 104, Siletz, OR 97380	F	7-08-32	3/4	3/4	709	Self
782	RILATOS, Pearl (Simmons)	P. O. Box 356, Siletz, OR 97380	F	10-09-05	1/2	1/2	705	Self
783	RILATOS, Phillip Monroe	Box 665, Wrangell, AK 99929	M	8-24-51	1/8	1/8	701	Self
784	RILATOS, Phillip Walter	3591 Highway 34, Waldport, OR 97394	M	4-13-35	1/4	1/4	707	Self
785	RILATOS, Randy William	P. O. Box 421, Siletz, OR 97380	M	1-11-77	1/4	1/4	---	Robert Rilatos - G-Son
786	RILATOS, Richard Wayne	345 S. 9th, St Helens, OR 97053	M	8-27-47	1/8	1/8	699	Self
787	RILATOS, Robert Paul	P. O. Box 104, Siletz, OR 97380	M	11-24-32	1/8	1/8	708	Self
788	RILATOS, Robert Paul, III	c/o Robert Paul Rilatos, Box 421, Siletz, OR 97380	M	9-27-74	1/4	1/4	---	Robert Rilatos - G-Son
789	RILATOS, Robert Paul, Jr.	Box 421, Siletz, OR 97380	M	6-11-55	7/16	7/16	---	Robert Rilatos - Son
790	RILATOS, Roger Manuel	Box 525, Siletz, OR 97380	M	5-28-57	7/16	7/16	---	Robert Rilatos - Son
791	RILATOS, Rollie	c/o Robert Rilatos, Box 104, Siletz, OR 97380	M	9-10-62	7/16	7/16	---	Robert Rilatos - Son
792	RILATOS, Valerie	c/o Robert Rilatos, Box 104, Siletz, OR 97380	F	9-04-55	7/16	7/16	---	Robert Rilatos - Dau
793	ROBERTSON, Angella Maurice (Pullam)	c/o Florine Pullam, Box 343, Waldport, OR 97394	F	4-28-57	1/4	1/4	---	Florine Pullam - Dau
794	ROBERTSON, Diane M. (Delgado)	2745 N.E. 26th, Portland, OR 97212	F	1-04-44	3/8	3/8	213	Self
795	ROBERTSON, Ellen Marie	3109 Brown Rd., N.E., Salem, OR 97303	F	11-27-28	7/8	7/8	713	Self
796	ROBERTSON, Jesse Francis	c/o Ida M. Elliott, Route 3, Box 1180 Estacada, OR 97023	M	10-02-61	1/4	1/4	---	Ida Elliott - Son
797	ROBERTSON, Kenneth Alford	c/o Ida M. Elliott, Route 3, Box 1180, Estacada, OR 97023	M	2-23-64	1/4	1/4	---	Ida Elliott - Son
798	ROBERTSON, Lynn Allan	c/o Ida M. Elliott, Route 3, Box 1180, Estacada, OR 97023	M	3-10-65	1/4	1/4	---	Ida Elliott - Son
799	ROBERTSON, Michael Anthony	c/o Ida M. Elliott, Route 3, Box 1180, Estacada, OR 97023	M	2-22-63	1/4	1/4	---	Ida Elliott - Son
800	ROGERS, Marjorie Kay (Reynolds)	3211 Daws Prairie Rd., Mckinleyville, CA 95521	F	10-14-51	1/8	1/8	687	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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801	ROLFSON, Robert Clifton	Route 3, Box 580, Hoquiam, WA 98550	M	7-16-49	1/2	1/2	718	Self
802	RUSSELL, Diane Laverne	1225 Clearview Dr., N.E., Salem, OR 97303	F	11-27-59	7/16	7/16	---	Emma Russell - Dau
803	RUSSELL, Emma Verdyne (Tom)	1225 Clearview Dr., N.E., Salem, OR 97303	F	2-17-31	7/8	7/8	832	Self
804	RUSSELL, Janet Verdyne	1225 Clearview Dr., N.E., Salem, OR 97303	F	5-03-55	13/16	13/16	---	William Towner - Dau
805	RUSSELL, Roberta Pauline	1225 Clearview Dr., N.E., Salem, OR 97303	F	5-08-54	7/16	7/16	835	Self
806	RUSSELL, Terry Bruce	1225 Clearview Dr., N.E., Salem, OR 97303	M	9-29-61	7/16	7/16	---	Emma Russell - Son
807	RUSSELL, William Larry	3141 N. Shore, #12, Albany, OR 97321	M	7-10-51	7/16	7/16	833	Self
808	SAMPSON, Margaret Lynn (Hutchens)	228 S.W. 28th Dr., #70, Pendleton, OR 97801	F	5-18-51	3/16	3/16	---	Arthur Lane II - Dau
809	SANDERS, Gary Charles	1317 N.E. Barnes Ct., Gresham, OR 97030	M	10-21-45	1/4	1/4	726	Self
810	SANDERS, Robert	754 Kotzy, S., Salem, OR 97302	M	7-01-24	1/2	1/2	725	Self
811	SCHNEIDER, Sharon	8723 S.E. 70th, Portland, OR 97206	F	1-10-46	1/4	1/4	634	Self
812	SCOGGINS, Gertrude Esther	5948 Stayton Rd., Turner, OR 97392	F	4-25-50	3/8	3/8	492	Self
813	SCOTT, Frederick William	P. O. Box 35, Fort Dick, CA 95538	M	6-14-51	7/16	7/16	732	Self
814	SCOTT, John R.	Siletz, OR 97380	M	1-01-03	1/4	1/4	727	Self
815	SEAGRAVES, Anna Joyce (Brown)	920 N. Main St., Toledo, OR 97391	F	11-25-52	5/8	5/8	111	Self
816	SEPULVEDA, Rosalie Marie (Colby)	401 Cedar St., Seattle, WA 98121	F	1-01-40	1/4	1/4	181	Self
817	SERVICE, Diane Lee	Siletz, OR 97380	F	3-09-43	1/8	1/8	739	Self
818	SERVICE, Michael	333 15th, Washougal, WA 98671	M	2-14-40	1/4	1/4	737	Self
819	SERVICE, William	c/o Jane John, 2867 Sterne Pl., Fremont, CA 94536	M	1-18-35	1/4	1/4	736	Self
820	SEVERSON, Frances Jean (Simmons)	1974 S.E. Howard St., Astoria, OR 97103	F	1-13-35	1/2	1/2	769	Self
821	SEVERSON, Lori Michelle	1974 S.E. Howard St., Astoria, OR 97103	F	6-04-61	1/4	1/4	---	Frances Severson - Dau
822	SEVERSON, Marti Diane	1974 S.E. Howard St., Astoria, OR 97103	F	5-12-58	1/4	1/4	---	Frances Severson - Dau
823	SEVERSON, Robert Alan	1974 S.E. Howard St., Astoria, OR 97103	M	10-06-59	1/4	1/4	---	Frances Severson - Son
824	SEVERSON, Steven Michael	1974 S.E. Howard St., Astoria, OR 97103	M	3-03-67	1/4	1/4	---	Frances Severson - Son
825	SHEPPARD, Rebecca Ann (Bartow)	Box 145, Reedsport, OR 97467	F	4-11-54	1/8	1/8	25	Self
826	SHIELDS, Stephany Kim	1522 Keeaumoku St., #1, Honolulu, HI 96822	F	5-14-49	1/8	1/8	742	Self
827	SHIELDS, Sydney Diane	1522 Keeaumoku St., #1, Honolulu, HI 96822	F	10-12-50	1/8	1/8	743	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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828	SHOEMAKER, Julia Ellen (Adams)	23740 N.E. Shamrock Dr., Troutdale, OR 97060	F	6-11-42	3/4	3/4	3	Self
829	SHORT, George Melvin	894 Travis Ave., Eugene, OR 97402	M	11-01-49	1/2	1/2	746	Self
830	SHORT, Gerald Dean	830 Bertelson, Eugene, OR 97402	M	1-01-51	1/2	1/2	747	Self
831	SHORT, Gregory Matthew	c/o George Short, 894 Travis Ave., Eugene, OR 97402	M	10-25-75	1/4	1/4	---	George Short - Son
832	SHORT, Jason Lee	c/o Robert Short, Box 434, Siletz, OR 97380	M	10-11-74	1/4	1/4	---	Robert Short - Son
833	SHORT, Robert E.	Siletz, OR 97380	M	9-26-47	1/2	1/2	---	Self
834	SHORT, Sabrena Lee	c/o George Short, 894 Travis Ave., Eugene, OR 97402	F	5-28-70	1/4	1/4	---	George Short - Dau
835	SHRINER, David James	2404 N. Quince, Olympia, WA 98506	M	12-23-53	1/8	1/8	751	Self
836	SHRINER, Robert Dean	1109 Rhoton Court, N.W., Yelm, WA 98597	M	4-24-51	1/8	1/8	749	Self
837	SIMMONS, Aleatha Viola	c/o Arliss Strickler, P. O. Box 313, Siletz, OR 97380	F	9-10-72	1/4	1/4	---	Robert Simmons
838	SIMMONS, Allison Rena	c/o Franklin Simmons, Box 144, Siletz, OR 97380	F	8-30-64	5/8	5/8	---	Franklin D. Simmons - Da
839	SIMMONS, Calvin, Jr.	Route 2, Box 324, Clatskanie, OR 97016	M	4-25-49	11/16	11/16	755	Self
840	SIMMONS, Calvin Fred	Box 164, Siletz, OR 97380	M	1-27-26	5/8	5/8	752	Self
841	SIMMONS, Daphne Renee	c/o Clarice Norton, Box 94, Toledo, OR 97391	F	9-09-72	11/32	11/32	---	Donald Simmons - Dau
842	SIMMONS, Darwin Lee	Box 164, Siletz, OR 97380	M	12-01-47	11/16	11/16	754	Self
843	SIMMONS, Derek Jay	c/o Sheryl K. Simmons, Box 203, Siletz, OR 97380	M	8-10-74	11/32	11/32	---	Lenford Simmons - Son
844	SIMMONS, Donald Leroy	Route 2, Box 324, Clatskanie, OR 97016	M	4-23-50	11/16	11/16	756	Self
845	SIMMONS, Donald Leroy, Jr.	c/o Clarice Norton, Box 94, Toledo, OR 97391	M	7-26-74	11/32	11/32	---	Donald Simmons - Son
846	SIMMONS, Edwin Edward	Box 156, Siletz, OR 97380	M	9-28-10	1/2	1/2	759	Self
847	SIMMONS, Franklin D.	Siletz, OR 97380	M	2-12-35	5/8	5/8	765	Self
848	SIMMONS, Harding	Box 126, Siletz, OR 97380	M	1-11-21	5/8	5/8	771	Self
849	SIMMONS, Jason Ezka Dean	c/o Arliss Strickler, Box 313, Siletz, OR 97380	M	11-27-73	1/4	1/4	---	Robert Simmons - Son
850	SIMMONS, Kelly Gwyn	c/o Franklin D. Simmons, Box 144, Siletz, OR 97380	F	3-25-63	5/8	5/8	---	Franklin D. Simmons - Dau
851	SIMMONS, Kevin Frederick	c/o Calvin Simmons, Jr., Route 2, Box 320, Clatskanie, OR 97016	M	8-30-67	11/32	11/32	---	Calvin Simmons Jr. - Son
852	SIMMONS, Lavera Marie	Box 174, Siletz, OR 97380	F	9-09-31	5/8	5/8	764	Self
853	SIMMONS, Lenford	Box 203, Siletz, OR 97380	M	2-26-53	11/16	11/16	758	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

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854	SIMMONS, Leonda May	412 S. Denver Ave., Albany, OR 97321	F	12-23-51	11/16	11/16	757	Self
855	SIMMONS, Lester	2949 S.E. Yamhill, Portland, OR 97214	M	5-01-03	1/2	1/2	767	Self
856	SIMMONS, Lester Charles	4616 S.E. Roethe Rd., #62, Milwaukie, OR 97222	M	6-20-47	1/2	1/2	770	Self
857	SIMMONS, Luella	c/o Leonda Simmons, Box 361, Siletz, OR 97380	F	6-19-72	11/32	11/32	---	Leonda Simmons - Dau
858	SIMMONS, Marci Belva	c/o Harding Simmons, Siletz, OR 97380	F	7-22-71	9/16	9/16	---	Harding Simmons - Dau
859	SIMMONS, Nancy Loretta (Butler)	Box 144, Siletz, OR 97380	F	10-02-34	5/8	5/8	292	Self
860	SIMMONS, Paul Anthony	c/o Calvin Simmons, Jr., Route 2, Box 320, Clatskanie, OR 97016	M	10-25-69	11/32	11/32	---	Calvin Simmons - Son
861	SIMMONS, Robert Edwin	Box 81, Siletz, OR 97380	M	2-17-42	1/4	1/4	761	Self
862	SIMMONS, Shyla Ann	c/o Sheryl K. Simmons, Bx 203, Siletz, OR 97380	F	3-27-78	11/32	11/32	---	Lenford Simmons - Dau
863	SIMMONS, Tami Michelle	c/o Calvin Simmons, Jr., Route 2, Box 320, Clatskanie, OR 97016	F	10-25-72	11/32	11/32	---	Calvin Simmons - Dau
864	SIMMONS, Ulysses	c/o Leonda Simmons, Box 361, Siletz, OR 97380	M	6-05-71	11/32	11/32	---	Leonda Simmons - Son
865	SIMMONS, Yolanda L.	c/o Leonda Simmons, Box 361, Siletz, OR 97380	F	12-02-74	11/32	11/32	---	Leonda Simmons - Dau
866	SINISCAL, Douglas Reed	6252 N.E. Roselawn, Portland, OR 97211	M	9-14-51	1/8	1/8	777	Self
867	SINISCAL, George Frank	5317 S.E. Hacienda, Hillsboro, OR 97123	M	12-06-47	1/8	1/8	775	Self
868	SINISCAL, Thomas Edward	c/o Ernestine Jett, 5834 N.E. Rodney Ave., Portland, OR 97211	M	12-17-46	1/8	1/8	776	Self
869	SKRADE, Edith (Montgomery)	Siletz, OR 97380	F	6-28-82	1/4	1/4	778	Self
870	SMITH, Benjamin Dewey, Jr.	Siletz, OR 97380	M	5-24-54	1/2	1/2	782	Self
871	SMITH, Darlene Joyce (Charley)	132 N.W. 10th, Toledo, OR 97391	F	12-04-52	1/2	1/2	172	Self
872	SMITH, Elaine Pearl (Rilatos)	Corner Bay, Wrangell, AK 99841	F	3-12-47	1/8	1/8	695	Self
873	SMITH, Juanita	Route 1, Box 41, Florence, MT 59833	F	9-27-34	1/4	1/4	618	Self
874	SMITH, Margaret (Washington)	Siletz, OR 97380	F	6-01-33	4/4	4/4	781	Self
875	SMITH, Patricia Ann (Butler)	P. O. Box 2442, Lincoln City, OR 97367	F	4-02-53	1/2	1/2	124	Self
876	SMITH, Rachel C. (Blair)	454 North 10th, St. Helens, OR 97051	F	7-15-41	1/4	1/4	90	Self
877	SMITH, Ronald Lee	Box 545, Scottsburg, OR 97473	M	2-08-45	5/16	5/16	783	Self
878	SMITH, Yvonne Joyce (Scott)	P. O. Box 35, Fort Dick, CA 95538	F	10-17-48	7/16	7/16	730	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1411).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
879	SONDAG, Mary Jeanne	27314 Farm Creek, Husman, TX 77336	F	1-14-53	3/16	3/16	667	Self
880	SONDENAA, Edwin Leroy	Siletz, OR 97380	M	5-22-43	1/4	1/4	785	Self
881	SONDENAA, Lawrence Lynn	Siletz, OR 97380	M	4-10-47	1/4	1/4	787	Self
882	SONDENAA, Raymond W., Jr.	8091 Holanda Ct., Dublin, CA 94566	M	7-26-44	1/4	1/4	786	Self
883	SONDENAA, Viola Louisa (Logan)	Siletz, OR 97380	F	3-08-25	1/2	1/2	784	Self
884	SPEAKTHUNDER, Robert	P. O. Box 647, Warm Springs, OR 97761	M	12-28-48	3/8	3/8	75	Self
885	SPRATT, Marie Louise (Chatterson)	Box 134, Nashville, Rd., Blodgett, OR 97326	F	8-04-32	1/2	1/2	173	Self
886	STAGGS, Charles Thomas	1112 Adeline, Coeur d'Alene, ID 83814	M	10-17-47	7/16	7/16	790	Self
887	STAGGS, Gladys (Tom)	1673 G Street, Springfield, OR 97477	F	2-24-22	7/8	7/8	789	Self
888	STAGGS, Julie Annette	1673 G Street, Springfield, OR 97477	F	5-02-68	7/16	7/16	---	Gladys Staggs - Dau
889	STAGGS, Kenneth Leroy	709 E. Harrison St., Coeur d'Alene, ID 83814	M	2-11-49	7/16	7/16	791	Self
890	STAHL, Patricia Ann (Hedrick)	P. O. Box 66, Roy, WA 98580	F	3-28-51	1/8	1/8	369	Self
891	STAINBROOK, Lucille (Flores)	1147 Saginaw, Salem, OR 97302	F	6-17-52	1/2	1/2	317	Self
892	STEELE, Kathleen D. (Orton)	2926 S. E. 136th, Portland, OR 97236	F	10-08-41	3/8	3/8	658	Self
893	STEGGELL, Arlene (Baker)	217 S. W. Walnut, #4, Dallas, OR 97338	F	2-07-42	1/4	1/4	16	Self
894	STEIN, Alana Lee (Lane)	5762 Calle Casas Bonitas, San Diego, CA 92139	F	5-11-50	3/16	3/16	473	Self
895	STOKES, Patricia Nadine	P. O. Box 213, Toledo, OR 97391	F	1-28-55	3/8	3/8	---	Scott Lane - Dau
896	STRATTON, Laurella May (Rolfson)	P. O. Box 87, Neotsu, OR 97364	F	8-02-51	1/2	1/2	719	Self
897	STREET, Louise C. (Girard)	P. O. Box 204, Fort Jones, CA 96032	F	9-20-28	1/4	1/4	329	Self
898	STRICKLER, Arliss Marie (Chatterson)	P. O. Box 313, Siletz, OR 97380	F	3-09-52	1/4	1/4	175	Self
899	STRICKLER, Charlotte Ruth (Downey)	Siletz, OR 97380	F	8-09-40	3/8	3/8	246	Self
900	STRICKLER, Shirley Ann (Goodell)	Route 2, Box 225, Logsden, OR 97357	F	9-16-37	7/16	7/16	795	Self
901	STRONG, Byron Samuel	c/o Beverly E. Winn, Route 1, Box 446, Pendleton, OR 97801	M	4-26-47	1/2	1/2	799	Self
902	STRONG, Joel M.	c/o Stanley Strong, Siletz, OR 97380	M	7-13-59	3/4	3/4	---	Stanley Strong - Son

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
903	STRONG, Norman Paul	Box 345, Siletz, OR 97380	M	9-20-53	3/4	3/4	806	Self
904	STRONG, Royce R.	c/o Stanley Strong, Siletz, OR 97380	M	11-02-54	3/4	3/4	---	Stanley Strong - Son
905	STRONG, Stanley	Box 345, Siletz, OR 97380	M	11-09-08	4/4	4/4	802	Self
906	STRONG, William S.	c/o Stanley Strong, Siletz, OR 97380	M	1-22-56	3/4	3/4	966	Self
907	STRONG, Wilma(Washington)	Box 345, Siletz, OR 97380	F	1-17-31	1/2	1/2	803	Self
908	STUART, Marlene Roberta (Rilatos)	4258 Delaware Dr., Fremont, CA 94538	F	4-02-53	7/16	7/16	710	Self
909	STUART, Thomas Anthony, Jr.	4258 Delaware Dr., Fremont, CA 94538	M	12-08-77	1/4	1/4	---	Marlene Stuart - Son
910	SUAZO, Shawn Daniel	c/o Joan M. Washington, 1830 N.W. 24th, Apt. 11 Portland, OR 97210	M	3-03-67	7/16	7/16	---	Joan Washington - Son
911	SUMMER, Alice Rachel (Eggersgluss)	1625 S.E. Washington, Portland, OR 97214	F	5-24-48	1/8	1/8	262	262
912	SUTALO, Janine Denise	c/o Rose Sutalo, 598 15th St., S.E., Salem, OR 97301	F	11-24-71	3/8	3/8	---	Rose M. Sutalo - Dau
913	SUTALO, Lawrence	c/o Rose Sutalo, 598 15th St., S.E., Salem, OR 97301	M	10-06-69	3/8	3/8	---	Rose M. Sutalo - Son
914	SUTALO, Maurice Frank	c/o Rose Sutalo, 598 15th St., S.E., Salem, OR 97301	M	12-17-68	3/8	3/8	---	Rose M. Sutalo - Son
915	SUTALO, Philip	c/o Rose Sutalo, 598 15th St., S.E., Salem, OR 97301	M	10-06-69	3/8	3/8	---	Rose M. Sutalo - Son
916	SUTALO, Rose Marie (Tronson)	598 15th St., S.E., Salem, OR 97301	F	3-12-31	3/4	3/4	867	Self
917	SWADER, Donna Fay (Lawson)	1521 Quaker St., Eugene, OR 97402	F	6-17-49	1/4	1/4	513	Self
918	TAYLOR, Darlene S. (Rilatos)	Box 631, Wrangell, AK 99929	F	1-21-44	1/8	1/8	703	Self
919	TAYLOR, Jacoulyn Doreen (Martin)	c/o Lorna Martin, 1234 Scepter Way, N.E., Salem, OR 97301	F	2-03-55	5/16	5/16	---	Lorna B. Martin - Dau
920	TAYLOR, LaVonne Ilene (Butler)	Route 2, Box 282A, Albany, OR 97321	F	8-02-51	1/2	1/2	137	Self
921	TAYLOR, Livingston Nelson IV	c/o Lavonne Taylor, Route 2, Box 282A, Albany, OR 97321	M	7-04-70	1/4	1/4	---	Lavonne Taylor - Son
922	TAYLOR, Louis Keith	8151 Franklin Ave., Buena Park, CA 90621	M	10-12-45	1/4	1/4	808	Self
923	TAYLOR, Robert Lloyd	c/o Agnes Pilgrim, 1245 Inyo St., Crescent City, CA 95531	M	7-05-44	1/4	1/4	807	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
924	TAYLOR, Sonia Rose	c/o Dr. William T. Parker, 412 Market St., Long Beach, CA 90805	F	6-21-47	1/4	1/4	809	Self
925	THOMAS, Elaine Louise (Butler)	20690 Hwy. 22, Sheridan, OR 97378	F	4-26-50	1/2	1/2	122	Self
926	THOMAS, Mary	Siletz, OR 97380	F	6-01-40	4/4	4/4	811	Self
927	THOMAS, Theresa	Siletz, OR 97380	F	3-05-30	4/4	4/4	810	Self
928	THOMPSON, George Louis	P. O. Box 551, Siletz, OR 97380	M	1-19-38	7/16	7/16	815	Self
929	TIEDT, Garabella (Doherty)	1023 2nd St., Cheney, WA 99804	F	10-25-28	1/4	1/4	225	Self
930	TOLLEFSON, Elizabeth (Walker)	470 Elm St., Reedsport, OR 97467	F	6-16-90	1/2	1/2	817	Self
931	TOLLEFSON, Wrethea Winifred (Johnson)	Siletz, OR 97380	F	4-08-18	1/4	1/4	818	Self
932	TOM, Robert Paul	1610 Riverview St., Eugene, OR 97403	M	8-15-37	7/8	7/8	820	Self
933	TOWNER, George Everett	P. O. Box 195, Siletz, OR 97380	M	12-15-28	3/4	3/4	829	Self
934	TOWNER, Gilbert, Jr.	2424 N. E. 40th, Portland, OR 97212	M	12-25-29	3/4	3/4	822	Self
935	TOWNER, Gregory Dewain	c/o Gylene Jones, 412 Market, Coos Bay, OR 97420	M	4-24-56	9/16	9/16	---	Gylene Jones - Son
936	TOWNER, Leah L.	Siletz, OR 97380	F	6-21-20	1/2	1/2	825	Self
937	TOWNER, Lena Mary (Logan)	Box 187, Willamina, OR 97396	F	1-30-41	1/2	1/2	532	Self
938	TOWNER, Louise Roberta	c/o Gilbert Towner, 2424 N. E. 40th, Portland, OR 97212	F	2-14-62	5/8	5/8	---	Gilbert Towner - Dau
939	TOWNER, Michelle Lanae	c/o William Towner, 15619 N.E. Caples Rd., #63, Brush Prairie, WA 98606	F	2-26-72	3/8	3/8	---	William Towner - Dau
940	TOWNER, Stacey Ranae	c/o William Towner, 15619 N.E. Caples Rd., #63, Brush Prairie, WA 98606	F	9-19-73	3/8	3/8	---	William Towner - Dau
941	TOWNER, Wilbur Wayne	c/o Gilbert Towner, 2424 N. E. 40th, Portland, OR 97212	M	9-24-60	5/8	5/8	---	Gilbert Towner - Son
942	TOWNER, William, Jr.	15619 N.E. Caples Rd., #63, Brush Prairie, WA 98606	M	3-21-25	3/4	3/4	831	Self
943	TREFREN, Lydia Mae (Kentta)	P. O. Box 506, Beatty, NV 89003	F	10-30-48	3/16	3/16	447	Self
944	TRONSON, Adolph, Jr.	9 N.E. 31st Ave., #109, Portland, OR 97232	M	1-19-28	1/4	1/4	837	Self
945	TRONSON, Adolph	Siletz, OR 97380	M	6-15-08	1/2	1/2	836	Self DOD: 7-07-78

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
946	TRONSON, Audrey Alair	c/o Rosemary Sutalo, 598 15th St., S.E., Salem, OR 97301	F	12-25-43	1/4	1/4	839	Self
947	TRONSON, Donald George	c/o Rosemary Sutalo, 598 15th St., S.E., Salem, OR 97301	M	8-30-33	1/4	1/4	838	Self
948	TRONSON, Vernie F.	c/o Evergreen Care Center, 3011 N.E. Park, Dr., Lincoln City, OR 97367	M	4-01-10	1/4	1/4	843	Self
949	TUCKER, Terrie Lynn	P. O. Box 112, Curtin, OR 97428	F	10-27-56	1/4	1/4	---	Henrietta Lopez - Dau
950	TUFT, Dennis	Siletz, OR 97380	M	3-19-38	3/16	3/16	844	Self
951	TURCOTTE, Ramona Beth	P. O. Box 723, Aumsville, OR 97325	F	10-10-52	3/8	3/8	---	Antone Martin - Dau
952	TYLER, Blanche Darlene (Downey)	S. Bay Rd., Toledo, OR 97391	F	2-24-37	3/8	3/8	244	Self
953	TYLER, Carol Ann (Weder)	P. O. Box 542, Toledo, OR 97391	F	12-14-50	1/8	1/8	887	Self
954	UNGER, Betty Jane (Brown)	445 Lincoln St., Fairview, OR 97024	F	5-04-32	5/8	5/8	847	Self
955	UNGER, Dewayne Homer	c/o Louida I. Unger, Box 47, PeEll, WA 98572	M	10-22-56	1/4	1/4	---	Homer Unger - Son
956	UNGER, Edward	c/o Louida I. Unger, Box 47, PeEll, WA 98572	M	1-14-61	1/4	1/4	---	Homer Unger - Son
957	UNGER, Homer Ire, Jr.	c/o Betty J. Unger, 445 Lincoln St., Fairview, OR 97024	M	9-10-58	9/16	9/16	---	Homer Unger - Son
958	UNGER, Rebecca	c/o Louida I. Unger, P. O. Box 47, PeEll, WA 98572	F	5-13-62	1/4	1/4	---	Homer Unger - Dau
959	UNGER, Verna Esther	c/o Louida I. Unger, P. O. Box 47, PeEll, WA 98572	F	6-10-64	1/4	1/4	---	Homer Unger - Dau
960	VAILE, Angela Delores (Raya)	1539 N. W. 11th, Corvallis, OR 97330	F	12-19-52	1/8	1/8	---	Sally Bobb - G-G-G-Dau
961	VAN DYKE, Dennis Wayne, Jr.	c/o Elaine Thomas, 20690 Hwy 22, Sheridan, OR 97378	M	2-18-70	1/4	1/4	---	Elaine Thomas - Son
962	VILES, Daniel Franklin	835 W. 6th, Prineville, OR 97754	M	8-08-50	1/8	1/8	853	Self
963	VILES, David	9603 S.W. 52nd Ave., Portland, OR 97219	M	3-04-46	1/8	1/8	851	Self
964	VILES, Mary (Service)	P. O. Box 477, Prineville, OR 97754	F	8-11-27	1/4	1/4	850	Self
965	VOUTRIN, Mary (Menard)	P. O. Box 29, Dallas, OR 97338	F	2-12-16	3/4	3/4	854	Self
966	VOUTRIN, Marylin Dorene	1720 McCoy Ave., N.E., Salem, OR 97303	F	11-17-48	3/8	3/8	856	Self
967	WAGNER, Debra Jean (Pyle)	6148 Portal Way, Ferndale, WA 98248	F	3-21-53	3/8	3/8	674	Self
968	WAGNER, Lana Rae (Lawson)	1205 Clearwater Lane, Springfield, OR 97477	F	10-16-45	1/4	1/4	512	Self
969	WAHWASSUCK, Judy P. (McKnight)	700 N. 1st. #15, Springfield, OR 97477	F	12-19-59	7/16	7/16	---	Clarice McKnight - Dau

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
970	WALDREP, Retha (Carson)	Box 563, Toledo, OR 97391	F	5-26-03	1/2	1/2	858	Self
971	WALKER, Angela Dawn	c/o Shirley Walker, 28525 S.W. Canyon Cr. Dr., Wilsonville, OR 97070	F	11-17-72	3/8	3/8	---	Shirley Walker - Dau
972	WALKER, Heather Rae	c/o Shirley Walker, 28525 S.W. Canyon Cr. Dr., Wilsonville, OR 97070	F	3-03-78	3/8	3/8	---	Shirley Walker - Dau
973	WALKER, Shirley Ann (Ben)	28525 S.W. Canyon Cr. Dr., Wilsonville, OR 97070	F	8-01-42	3/4	3/4	58	Self
974	WALLACE, Albert	1355 W. 2nd St., #75, McMinnville, OR 97128	M	3-18-40	3/8	3/8	863	Self
975	WALLACE, Richard (aka Hostler)	Route N. Box 159 A, Newport, OR 97365	M	3-10-33	3/8	3/8	861	Self
976	WALSH, Lorene M.	c/o Eds Motel, 203 N. Alexander, Port Allen, LA 70767	F	8-20-49	1/4	1/4	507	Self
977	WARD, Joline Mildred (Downey)	P. O. Box 441, Mill City, OR 97360	F	5-28-50	1/8	1/8	234	Self
978	WARREN, Alfred Glenn	c/o Henrietta Lopez, Route 4, Box 442C, Coos Bay, OR 97420	M	5-16-67	1/4	1/4	---	Mary Ashley - Son
979	WARREN, Alicea Mae (Pond)	12603 25th Ave., S.E., Everett, WA 98204	F	4-03-32	3/8	3/8	864	Self
980	WARREN, Daniel James	2600 Center St., N.E. Salem, OR 97301	M	9-21-53	3/8	3/8	868	Self
981	WARREN, Donald George	c/o Rose Sutalo, 598 15th St., S.E., Salem, OR 97301	M	4-14-58	3/8	3/8	---	Rose M. Sutalo - Son
982	WARREN, Harold Arthur	c/o Henrietta Lopez, Route 4, Box 442C, Coos Bay, OR 97420	M	3-08-66	1/4	1/4	---	Mary Ashley - Son
983	WARREN, Michael Duane	12603 25th Ave., S.E., Everett, WA 98204	M	11-10-52	3/16	3/16	866	Self
984	WARREN, Rosella Iola	c/o Henrietta Lopez, Route 4, Box 442C, Coos Bay, OR 97420	F	2-21-65	1/4	1/4	---	Mary Ashley - Dau
985	WARREN, Sheila	12603 25th Ave.,S.E., Everett, WA 98204	F	1-21-51	3/16	3/16	865	Self
986	WARREN, Sheryl Ann	c/o Rose Sutalo, 598 15th St., S.E., Salem, OR 97301	F	4-14-58	3/8	3/8	---	Rose M. Sutalo - Dau
987	WASHINGTON, Celeste Kim	c/o Pauline Montana, 732 N.E. Couch, Portland, OR 97232	F	11-23-58	9/16	9/16	---	Pauline Montana - Dau
988	WASHINGTON, Cynthia	1830 N.W. 24th Pl., Portland, OR 97210	F	12-21-45	7/8	7/8	879	Self
989	WASHINGTON, Joan Mary	1830 N.W. 24th Pl., Portland, OR 97210	F	8-07-32	7/8	7/8	875	Self
990	WASHINGTON, Margaret J.	1830 N.W. 24th Pl., Portland, OR 97210	F	6-06-48	7/8	7/8	880	Self
991	WASHINGTON, Mary (Brown)	c/o Yaquina Care Center, 835 S.W. 11th, Newport, OR 97365	F	7-15-07	3/4	3/4	874	Self DOD: 2-06-79

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

oll umber	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationsai
992	WASHINGTON, Timothy Damon	c/o Margaret J. Washington, 1830 N.W. 24th Pl., Portland, OR 97210	M	4-21-65	7/16	7/16	---	Bernadine Washington - Son
993	WATERS, Esther May	Siletz, OR 97380	F	12-01-42	1/8	1/8	882	Self
994	WEDER, Mary Joan (Carson)	Route 1, Box 281, Toledo, OR 97391	F	8-04-30	1/4	1/4	884	Self DOD: 1-12-79
995	WEDER, Ronald Wayne	Route 1, Box 281, Toledo, OR 97391	M	4-10-53	1/8	1/8	886	Self
996	WENTWORTH, Joseph Paul	700 N. 1st., #15, Springfield, OR 97477	M	8-25-70	7/16	7/16	---	Margaret Washington - Son
997	WENTWORTH, Nunna Jolene	c/o Margaret Washington, 1830 N.W. 24th Pl., Portland, OR 97210	F	3-16-67	7/16	7/16	---	Margaret Washington - Dau
998	WENTWORTH, William John, Jr.	c/o Margaret Washington, 1830 N.W. 24th Pl., Portland, OR 97210	M	2-11-68	7/16	7/16	---	Margaret Washington - Son
999	WERTH, Alice (Tom)	858 N. 19th, Springfield, OR 97477	F	4-28-29	7/8	7/8	888	Self
1000	WERTH, Gloria Jean	1535 Carter Lane, #32, Springfield, OR 97477	F	8-16-48	7/16	7/16	889	Self
1001	WERTH, James Michael	858 N. 19th, Springfield, OR 97447	M	12-26-64	7/16	7/16	---	Alice Werth - Son
1002	WERTH, Stanley Eugene	2393 Northtree Court, N.E., Salem, OR 97303	M	2-30-49	7/16	7/26	890	Self
1003	WERTIN, Peter Michael	685 Court, N.E., Salem, OR 97301	M	9-28-41	1/4	1/4	892	Self
1004	WHITEHEAD, Betty Jean (Logan)	Siletz, OR 97380	F	3-19-34	1/2	1/2	893	Self
1005	WHITEHEAD, Craig Steven	c/o Linda Whitehead, Box 114, Siletz, OR 97380	M	3-06-59	1/4	1/4	---	Betty Whitehead - Son
1006	WHITEHEAD, Peggy Jean	Box 114, Siletz, OR 97380	F	4-06-55	1/4	1/4	---	Betty Whitehead - Dau
1007	WHITEHEAD, Stuart Lee	c/o Linda Whitehead, Box 114, Siletz, OR 97380	M	3-19-58	1/4	1/4	---	Betty Whitehead - Son
1008	WERTH, Theodore Alan	858 N. 19th, Springfield, OR 97477	M	7-17-59	7/16	7/16	---	Alice Werth - Son
1009	WHITEHEAD, Tamara Sue	c/o Linda Whitehead, Box 114, Siletz, OR 97380	F	3-17-61	1/4	1/4	---	Betty Whitehead - Dau
1010	WHITEHEAD, Tony Paul	c/o Linda Whitehead, Box 114, Siletz, OR 97380	M	6-27-65	1/4	1/4	---	Betty Whitehead - Son
1011	WILCOX, Charles A.	Route 2, Box 2497, Yelm, WA 98597	M	5-16-39	1/4	1/4	900	Self
1012	WILCOX, Daniel F.	Route 2, Box 2497, Yelm, WA 98597	M	4-13-46	1/4	1/4	903	Self
1013	WILCOX, Ina (Larson)	345 Nadenas St., Pittsburg, CA 94565	F	3-06-05	1/2	1/2	896	Self
1014	WILCOX, Ina Isleen	Siletz, OR 97380	F	1-22-41	1/4	1/4	904	Self
1015	WILCOX, Margaret J.	P. O. Box 444, Tenino, WA 98589	F	6-10-42	1/4	1/4	901	Self
1016	WILKERSON, Josephine	36 E. Laurel St., Porterville, CA 93257	F	6-04-27	3/8	3/8	520	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
1017	WILLETTE, Catherine Ann	c/o Jose Paez, 7838 Ben Ave., North Hollywood, CA 91605	F	4-22-50	3/16	3/16	---	Augusta Alicante - G-Dau
1018	WILLIAMS, Duane Scott	P. O. Box 325, Siletz, OR 97380	M	7-22-64	3/8	3/8	---	Eugene Williams - Son
1019	WILLIAMS, Eugene, Jr.	P. O. Box 325, Siletz, OR 97380	M	3-07-56	3/8	3/8	---	Eugene Williams - Son
1020	WILLIAMS, Gordon Lynn	P. O. Box 325, Siletz, OR 97380	M	11-29-57	3/8	3/8	---	Eugene Williams - Son
1021	WILLIAMS, Henrietta (Fleming)	1629 Kelly St., N.E.,Salem, OR 97303	F	2-24-17	1/2	1/2	918	Self
1022	WILLIAMS, Jeanice Charmaine	P. O. Box 325, Siletz, OR 97380	F	11-14-62	3/8	3/8	---	Eugene Williams - Dau
1023	WILLIAMS, Jeffrey Hale	P. O. Box 542, Philomath, OR 97370	M	11-29-48	3/8	3/8	909	Self
1024	WILLIAMS, Joseph Wendell	6960 N.W. Concord, Corvallis, OR 97330	M	7-18-41	3/8	3/8	906	Self
1025	WILLIAMS, Mary Ellen (Ewan)	Box 272, Willow Creek, CA 95573	F	7-24-28	3/8	3/8	526	Self
1026	WILLIAMS, Matthew, Jr.	3550 Pattison, Eugene, OR 97402	M	11-18-31	3/4	3/4	915	Self
1027	WILLIAMS, Matthew Robert	3550 Pattison, Eugene, OR 97402	M	8-02-58	3/8	3/8	---	Matthew Williams - Son
1028	WILLIAMS, Melody Muriel	P. O. Box 325, Siletz, OR 97380	F	12-25-60	3/8	3/8	---	Eugene Williams - Dau
1029	WILLIAMS, Nora Nadine	P. O. Box 325, Siletz, OR 97380	F	3-21-59	3/8	3/8	---	Eugene Williams - Dau
1030	WILLIAMS, Robina Lee	c/o Matthew Williams, Jr, 3550 Pattison, Eugene, OR 97402	F	9-29-62	3/8	3/8	---	Matthew Williams - Dau
1031	WILLIAMS, Rory Dean	c/o Matthew Williams, Jr., 3550 Pattison, Eugene, OR 97402	M	8-16-64	3/8	3/8	---	Matthew Williams - Son
1032	WILLIAMS, Roxann Marie	3550 Pattison, Eugene, OR 97402	F	5-10-60	3/8	3/8	---	Matthew Williams - Dau
1033	WILLIAMS, Stacey Wade	P. O. Box 325, Siletz, OR 97380	M	12-02-65	3/8	3/8	---	Eugene Williams - Son
1034	WILLIAMS, Wendy Lutrica	c/o Matthew Williams, Jr., 3550 Pattison, Eugene, OR 97402	F	8-30-71	3/8	3/8	---	Matthew Williams - Dau
1035	WILLIAMS, Willie Norwood	2750 S.W. Morris, Ave., Apt. 5, Corvallis, OR 97370	M	10-26-50	3/8	3/8	910	Self
1036	WILLIAMS, Zachery Omar	Route 1, Box 33, Philomath, OR 97370	M	1-16-54	3/8	3/8	911	Self
1037	WILSON, Kenneth Harry	Siletz, OR 97380	M	3-03-06	1/4	1/4	919	Self
1038	WINN, Beverly Elaine (Strong)	Route 1, Box 446, Pendleton, OR 97801	F	3-21-46	1/2	1/2	798	Self
1039	WOOD, Teresa Francine	c/o Darlene Wood, P. O. Box B, Glendale, OR 97442	F	11-01-67	7/16	7/16	---	Bennie J. Brown - Dau
1040	WOODRUM, Dorothy Maxine (Flanary)	1776 Hayes St., North Bend, OR 97459	F	10-07-50	5/16	5/16	305	Self
1041	WOODS, Donna Mae (Lane)	6075 Roanoke St., San Diego, CA 92139	F	2-01-35	3/8	3/8	920	Self

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

1 ber	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor s Name and Relationsni
1042	WOODS, Raymond Daniel	Gen. Del., Taholah, WA 98587	M	6-06-48	1/2	1/2	923	Self
1043	WOODS, Richard Carl	P. O. Box 473, Madras, OR 97741	M	3-21-44	1/2	1/2	922	Self
1044	WOOTEN, Ernestine (Lane)	4610 12th Ave., N.E., Salem, OR 97303	F	1-07-35	3/4	3/4	478	Self
1045	WOOTEN, James Melvin	c/o Ernestine Wooten, 4610 12th Ave., N.E., Salem, OR 97303	M	3-22-58	3/8	3/8	---	Ernestine Wooten - Son
1046	WOOTEN, Karen Darlene	c/o Ernestine Wooten, 4610 12th Ave., N.F., Salem, OR 97303	F	10-21-58	3/8	3/8	---	Ernestine Wooten - Dau
1047	WOOTEN, Robin Monique	c/o Ernestine Wooten, 4610 12th Ave., N.E., Salem, OR 97303	F	4-04-61	3/8	3/8	---	Ernestine Wooten - Dau
1048	WORLEY, Nancy Lee (Mitchell)	321 S. 40th St., Springfield, OR 97477	F	3-11-53	3/8	3/8	498	Self
1049	YARBOUR, Bruce V.	c/o Ernestine Yarbour, 1816 S.E. 11th, Portland OR 97214	M	1-17-68	1/4	1/4	---	Ernestine Yarbour - Son
1050	YARBOUR, Ernestine	1816 S.E. 11th, Portland, OR 97214	F	5-19-33	1/2	1/2	30	Self
1051	YARBOUR, Gwendolyn L.	c/o Ernestine Yarbour, 1816 S.E. 11th, Portland OR 97214	F	10-16-61	1/4	1/4	---	Ernestine Yarbour - Dau
1052	YARBOUR, Rhonda Fay	1816 S.E. 11th, Portland, OR 97214	F	7-08-60	1/4	1/4	---	Ernestine Yarbour - Dau
1053	YARBOUR, Robert V.	c/o Ernestine Yarbour, 1816 S.E. 11th, Portland OR 97214	M	2-21-64	1/4	1/4	---	Ernestine Yarbour - Son
1054	YONKER, Donna Jean	c/o Minnie Hartt, Route 3, Box 319, Estacada, OR 97023	F	3-27-58	1/4	1/4	---	Minnie Hartt - Dau
1055	ZIGLER, Bonnie Lee	2287 Wisconsin St., Eugene, OR 97402	F	5-18-54	1/4	1/4	---	Henrietta Lopez - Dau
1056	ZIMMERMAN, Gloria Jean (Dodds)	5201 91st Pl., N.E., Marysville, WA 98270	F	6-16-41	3/16	3/16	222	Self
1057	ZOSEL, Norman Earl	P. O. Box 7, Smith River, CA 95567	M	3-25-44	3/16	3/16	928	Self
1058	BAKER, Larry Gilbert	812 5th St., Anacortes, WA 98221	M	2-16-77	1/4	1/4	---	Gilbert F. Baker - Son
1059	BAKER, Tina Marie	c/o Gilbert Baker, P. O. Box 141, Conalis Beach, WA 98535	F	10-05-71	1/4	1/4	---	Gilbert F. Baker - Dau
1060	BLACKETER, Patricia Kay	4999 S. E. 30th, #61, Portland, OR 97202	F	9-15-58	3/8	3/8	---	Kenneth Blacketer - Dau
1061	BUTLER, Jamie Mae	c/o Laverne Butler, 711 A St., #4, Toledo, OR 97391	F	10-10-70	1/4	1/4	---	Laverne Butler - Dau
1062	DOWNEY, Henry George	6395 S. W. Broadoak, Beaverton, OR 97005	M	6-04-55	1/4	1/4	---	Everett Downey - Son
1063	FLANARY, Jessica Lynn	c/o Leonard Flanary, 744 Finch Ct., N.E., Salem, OR 97301	F	1-25-74	1/4	1/4	---	Leonard Flanary - Dau
1064	FLANARY, Leonard Keith, Jr.	c/o Leonard Flanary, 744 Finch Ct., N.E., Salem, OR 97301	M	11-02-71	1/4	1/4	---	Leonard Flanary - Son
1065	YARBOUR, Donald Burl, Jr.	1816 S. E. 11th, Portland, OR 97214	M	2-16-59	1/4	1/4	---	Ernestine Yarbour - Son

Membership Roll of the Confederated Tribes of Siletz Indians of Oregon, prepared under the Act of November 18, 1977 (95 Stat. 1415).

Roll Number	Name	Address	Sex	Date of Birth	Degree Siletz Blood	Total Indian Blood	Basic Roll Number	Ancestor's Name and Relationship
1066	HALL, Allan Darryl	c/o Lillian Jackson, Rt. 3, Box 833, Brookings, OR 97415	M	7-12-57	11/32	11/32	---	Aldona L. Hall - Son
1067	HALL, Kenneth James Hall	c/o Lillian Jackson, Rt., 3, Box 833, Brookings, OR 97415	M	6-29-58	11/32	11/32	---	Aldona L. Hall - Son
1068	Hall, Steven Lee	c/o Lillian Jackson, Rt., 3, Box 833, Brookings, OR 97415	M	12-11-59	11/32	11/32	---	Aldona L. Hall - Son
1069	JACKSON, Andrew Gary	c/o Lillian Jackson, Rt., 3, Box 833, Brookings, OR 97415	M	3-05-68	11/32	11/32	---	Lillian Jackson - Son
1070	JACKSON, Olissa Gay	c/o Lillian Jackson, Tr., 3, Box 833, Brookings, OR 97415	F	12-10-60	11/32	11/32	---	Lillian Jackson - Dau
1071	JOHNSON, Elizabeth Anne	c/o Louis Johnson, 18710 S.W. Wright, Aloha, OR 97005	F	6-15-58	1/4	1/4	---	Louis Johnson- Dau
1072	JOHNSON, Eugene Douglas	c/o Louis Johnson, 18710 S.W. Wright, Aloha, OR 97005	M	1-17-64	1/4	1/4	---	Louis Johnson- Son
1073	JOHNSON, Ferrol Cerise	c/o Louis Johnson, 18710 S.W. Wright, Aloha, OR 97005	F	8-18-56	1/4	1/4	---	Louis Johnson- Dau
1074	JOHNSON, Roxanna Faith	c/o Louis Johnson, 18710 S.W. Wright, Aloha, OR 97005	F	6-29-60	1/4	1/4	---	Louis Johnson- Dau
1075	JOHNSON, Lori Annette	6106 S.E. 44th, Portland, OR 97206	F	3-19-55	3/8	3/8	---	Geneva Johnson - Dau
1076	KRAXBERGER, Denise Minnie (Downey)	9785 Kraxberger Rd., Canby, OR 97013	F	11-07-56	1/4	1/4	---	Everett Downey - Dau
1077	LARVIE, Albert Brian	c/o Lillian Larvie, 390 Lancaster Dr., S.E., Apt. 5, Salem, OR 97301	M	10-12-64	1/4	1/4	---	Lillian Larvie - Son
1078	LARVIE, Cheri Rae	c/o Lillian Larvie, 390 Lancaster Dr., S.E., Apt. 5, Salem, OR 97301	F	1-13-68	1/4	1/4	---	Lillian Larvie - Dau
1079	NORWEST, Everetta Jane (Butler)	921 S.W. Hwy. 101, Lincoln City, OR 97367	F	7-25-55	1/4	1/4	---	Everett Butler - Dau
1080	SNIDER, Dixie Rae (Fielder)	c/o Lillian M. Jackson Rt. 3, Box 833, Brookings, OR 97415	F	10-04-56	11/32	11/32	---	Lillian Jackson - Dau
1081	TRIBBLE, Sharon LaVonne	c/o Ellen Metcalf, Box 67, Siletz, OR 97380	F	8-25-74	3/8	3/8	---	Ellen Metcalf - Dau
1082	WOODS, Michael Scott	c/o Daniel Woods, Gen. Del., Taholah, WA 98587	M	5-16-70	1/4	1/4	---	Daniel Woods - Son
1083	WOODS, Wendy Lee	c/o Daniel Woods, Gen. Del., Taholah, WA 98587	F	2-19-68	1/4	1/4	---	Daniel Woods, - Dau

BILLING CODE 4310-02-C

Bureau of Land Management

Alaska Native Claims Selection

On April 29, 1960 and June 16, 1972, the State of Alaska filed State selection applications A–051864 and AA–3089, respectively, and subsequently amended the applications to include lands in Lots 1, 3, 6 to 11, inclusive, of U.S. Survey 1726. On August 17, 1967, State selection application AA–2036 was filed and later amended, for lands in T. 18 N., R. 1 W., Seward Meridian and Ts. 17–18 N., R. 2 W., Seward Meridian. On November 29, 1963 and August 17, 1967, State selection applications A–060527 and AA–2036, respectively, were filed and then amended for lands in T. 18 N., R. 3 W., Seward Meridian. All of the above lands are in the general area of the Native village of Knik.

None of the above State selections are valid applications as to the lands described below because the lands were segregated from selection at the time of the State's filings and amendments thereto by either entries under the public land laws or withdrawals pursuant to Sec. 11(a)(1) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 696; 43 U.S.C. 1601, 1610(a)(1) (1976), (hereinafter referred to as ANCSA)).

Therefore, the following State selection applications for the lands listed below are hereby rejected:

State selection A–051864 filed on April 29, 1960, as amended, and AA–3089, as amended, on June 16, 1972:

U.S. Survey 1726
Lots 1, 3, 6 to 11, inclusive.
Containing 17.75 acres.

State selection AA–2036 filed on August 17, 1967, as amended:

T. 18 N., R. 1 W.,

Seward Meridian
Sec. 20, N½NW¼NW¼, N½S½ NW¼NW¼, SW¼SW¼NW¼NW¼, SE¼SE¼NW¼NW¼.
Containing 35.00 acres.

T. 17 N., R. 2 W.,
Sec. 4, SE¼NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼SW¼, SW¼SW¼SW¼, excluding the bed of the Alaska Railroad one-hundred (100) feet each side of the centerline;
Sec. 13, S½NE¼NE¼SE¼, N½SE¼ NE¼SE¼, SE¼SE¼.
Containing 209.00 acres.

T. 18 N., R. 2 W.,
Sec. 21, E½SW¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 28, NE¼NW¼NW¼, E½SE¼ NW¼NW¼.
Containing 115.00 acres.

State selection A–060527 filed on November 29, 1963, as amended, and AA–2036 filed on August 17, 1967, as amended:

T. 18 N., R. 3 W.,
Sec. 21, SW¼NE¼, SE¼NW¼.
Containing 80.00 acres.

The State selection applications rejected above aggregate approximately 456.75 acres. Further action on these State selection applications as to the lands not rejected herein will be taken at a later date.

On December 17, 1974, July 14, 1975 and September 22, 1978, Knikatnu, Inc., for the Native village of Knik, filed selection applications and amendments, AA–8485–A, under the provisions of Sec. 12 of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 701; 43 U.S.C. 1601, 1611 (1976)), for the surface estate of certain lands in the vicinity of Knik.

The village corporation selected certain lands described below which were withdrawn by Sec. 11(a)(1) of ANCSA. Section 12(a)(1) of ANCSA provides that village selections shall be made from lands withdrawn by Sec. 11(a). Since none of the above listed State selections were valid applications, as to the lands listed above, this acreage will not be charged against the 12(a) entitlement of Knikatnu, Inc., as State selected lands. The total amount of valid State selected lands previously rejected to permit conveyance to Knikatnu, Inc. is 440.91 acres, which is less than the 69,120 acres permitted by Sec. 12(a)(1) of ANCSA.

As to the lands described below, the village applications, as amended, are properly filed and meet the requirements of the Alaska Native Claims Settlement Act and of the regulations issued pursuant thereto. These lands do not include any lawful entry perfected under or being maintained in compliance with laws leading to acquisition of title.

In view of the foregoing, the surface estate of the following described lands, selected pursuant to Sec. 12(a) of ANCSA, aggregating approximately 549.76 acres, is considered proper for acquisition of Knikatnu, Inc. and is hereby approved for conveyance pursuant to Sec. 14(a) of ANCSA:

Seward Meridian, Alaska (Surveyed)

Lots 1, 3, 6 to 11, inclusive, U.S. Survey 1726, situated at Knik, Alaska.
Containing 17.75 acres.

T. 18 N., R. 1 W.,
Sec. 20, N½NW¼NW¼, N½S½ NW¼NW¼, SW¼SW¼NW¼NW¼, SE¼SE¼NW¼NW¼.
Containing 35.00 acres.

T. 17 N., R. 2 W.,
Sec. 4, SE¼NW¼, N½SW¼, N½SW¼SW¼, SE¼SW¼SW¼;
Sec. 13, S½NE¼NE¼SE¼, N½SE¼ NE¼SE¼, SE¼SE¼.
Containing 200.00 acres.

T., 18 N., R. 2 W.
Sec. 21, E½SW¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 28, NE¼NW¼NW¼, E½SE¼ NW¼NW¼.
Containing 115.00 acres.

T. 18 N., R. 3 W.,
Sec. 21, SW¼NE¼SE¼.
Containing 80.00 acres.

T. 14 N., R. 4 W.,
Sec. 12, lot 1;
Sec. 32, N½SW¼.
Containing 93.01 acres.

Seward Meridian, Alaska (Unsurveyed)

T. 17 N., R. 2 W.,
Sec. 4, SW¼SW¼SW¼, excluding the bed of the Alaska Railroad one-hundred (100) feet each side of the centerline.
Containing approximately 9.00 acres.

The conveyance issued for the surface estate of the lands described above shall contain the following reservation to the United States:

1. The subsurface estate therein, and all rights, privileges, immunities, and appurtenances, of whatsoever nature, accruing unto said estate pursuant to the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 704; 43 U.S.C. 1601, 1613(f) (1976)).

There are no easements to be reserved to the United States pursuant to Sec. 17(b) of ANCSA.

The grant of the above-described lands shall be subject to:

1. Issuance of a patent confirming the boundary description of the unsurveyed lands hereinabove granted after approval and filing by the Bureau of Land Management of the official plat of survey covering such lands;

2. Valid existing rights therein, if any, including but not limited to those created by any lease (including a lease issued under Sec. 6(g) of the Alaska Statehood Act of July 7, 1958 (72 Stat. 339, 341; 48 U.S.C. Ch. 2, Sec. 6(g) (1970))), contract, permit, right-of-way, or easement, and the right of the lessee, contractee, permittee, or grantee to the complete enjoyment of all rights, privileges and benefits thereby granted to him. Further, pursuant to Sec. 17(b)(2) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 708; 43 U.S.C. 1601, 1616(b)(2) (1976), (ANCSA)), any valid existing right recognized by ANCSA shall continue to have whatever right of access as is now provided for under existing law;

3. Requirements of Sec. 14(c) of the Alaska Native Claims Settlement Act of December 18, 1971 (85 Stat. 688, 703; 43

U.S.C. 1601, 1613(c) (1976)), that the grantee hereunder convey those portions, if any, of the lands hereinabove granted, as are prescribed in said section; and

4. A right-of-way, A–062107 for a Federal Aid Highway in Lots 6, 8, 9, 10 and 11 of U.S. Survey 1726, issued under the Act of August 27, 1958 (72 Stat. 885; 23 U.S.C. 317).

Knikatnu, Inc. is entitled to conveyance of 69,120 acres of land selected pursuant to Sec. 12(a) of ANCSA. Together with the lands herein approved, the total acreage conveyed or approved for conveyance is 2,507.91 acres. The remaining entitlement of approximately 66,612.09 acres will be conveyed at a later date.

Pursuant to Sec. 14(f) of ANCSA, conveyance of the subsurface estate of the lands described above shall be issued Cook Inlet Region, Inc. when the surface estate is cnveyed to Knikatnu, Inc., and shall be subject to the same conditions as the surface conveyance.

There are no inland water bodies considered to be navigable within the above described lands.

In accordance with Departmental regulation 43 CFR 2650.7(d), notice of this decision is being published once in the **Federal Register** and once a week, for four (4) consecutive weeks, in the *Anchorage Times*. Any party claiming a property interest in lands affected by this decision may appeal the decision to the Alaska Native Claims Appeal Board, P.O. Box 2433, Anchorage, Alaska 99510 with a copy served upon both the Bureau of Land Management, Alaska State Office, 701 C Street, Box 13, Anchorage, Alaska 99513 and the Regional Solicitor, Office of the Solicitor, 510 L Street, Suite 408, Anchorage, Alaska 99501, also:

1. Any party receiving service of this decision shall have 30 days from the receipt of this decision to file an appeal.

2. Any unknown parties, any parties unable to be located after reasonable efforts have been expended to locate, and any parties who failed or refused to sign the return receipt shall have until June 4, 1979, to file an appeal.

3. Any party known or unknown who may claim a property interest which is adversely affected by this decision shall be deemed to have waived those rights which were adversely affected unless an appeal is timely filed with the Alaska Native Claims Appeal Board.

To avoid summary dismissal of the appeal, there must be strict compliance with the regulations governing such appeals. Further information on the manner of and requirements for filing an appeal may be obtained from the Bureau of Land Management, 701 C Street, Box 13, Anchorage, Alaska 99513.

If an appeal is taken, the parties to be served with a copy of the notice of appeal are:

State of Alaska, Division of Lands, 323 East Fourth Avenue, Anchorage, Alaska 99501.

Knikatnu, Inc., P.O. Box 2130, Wasilla, Alaska 99687.

Cook Inlet Region, Inc., P.O. Drawer 4–N, Anchorage, Alaska 99509.

Sue Wolf,

Chief, Branch of Adjudication.

[AA–8485–A]

[FR Doc. 79–13958 Filed 5–3–79; 8:45 am]

BILLING CODE 4310–84–M

Central and Northern California Outer Continental Shelf Oil and Gas; Intent To Prepare an Environmental Impact Statement for Proposed OCS Sale No. 53

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior's Bureau of Land Management (BLM) intends to prepare an environmental impact statement for the purpose of considering the effects of the proposed Outer Continental Shelf (OCS) oil and gas lease Sale No. 53 offshore central and northern California, scheduled for February 1981. A list of 243 tracts on the OCS, comprising 532,588 hectares (1.3 million acres), has been selected for further environmental study in this environmental impact statement.

Possible alternatives to this proposed sale include but are not limited to: (1) Cancellation; (2) proceeding; (3) delaying; and (4) modifying the proposed sale.

The Pacific Outer Continental Shelf Office of BLM has invited affected Federal and State agencies, local communities, and other special interest groups to participate in the process of scoping the signficant actions, alternatives, and impacts which should be considered in the environmental impact statement.

In the last half of January 1979, the Environmental Assessment Staff of the Pacific Outer Continental Shelf Office conducted a series of scoping meetings in central and northern California on the preparation of a Draft Environmental Impact Statement (DEIS) for the proposed oil and gas Lease Sale No. 53.

The DEIS information Briefings were held on the following dates and at these locations.

January 17, 1979: Redwood City, Calif.
January 18, 1979: Santa Cruz, Calif.
January 19, 1979: San Luis, Obispo, Calif.
January 24, 1979: Eureka, Calif.
January 25, 1979: Ft. Bragg, Calif.
January 26, 1979: Santa Rosa, Calif.

The scoping meetings consisted of an overview of the DEIS structure and format, presentations by staff members as to their proposed approach, and a request for continued involvement in DEIS preparation or at least an active role in the review of respective draft sections as they are accomplished.

Other groups will be contacted by letter inviting their written comments on significant actions, alternatives, and impacts. These written responses should be received on or before May 29, 1979, and addressed to the Manager, Pacific OCS Office, Room 7127, 300 N. Los Angeles Street, Los Angeles, California 90012.

Any questions concerning the proposed action and environmental impact statement may be directed to the Manager, Pacific OCS Office, at (213) 688–7234.

Approved: May 1, 1979.

Arnold E. Petty,

Acting Associate Director, Bureau of Land Management.

Guy R. Martin,

Assistant Secretary of the Interior.

[FR Doc. 79–13897 Filed 5–3–79; 8:45 am]

BILLING CODE 4310–84–M

Colorado; Wilderness Study Report; Public Comment Period

Summary: Notice is hereby given that pursuant to the Federal Land Policy and Management Act of 1976 (Pub. L. 94–579), a 45-day public comment period will begin May 1, 1979, on the results of the wilderness characteristics evaluation of the North Sand Hills (Dunes) Instant Wilderness Study Area administered by the Bureau of Land Management (BLM) near Walden, in Jackson County, Colorado.

Comments will be accepted through June 14, 1979, regarding the BLM recommendation that the Study Area does not meet the wilderness criteria as defined by Sec. 2(c) of the Wilderness Act of 1964 (Pub. L. 88–577).

A copy of the report can be obtained from the Craig District Office, Bureau of Land Management, P.O. Box 248, Craig, Colorado 81625. Phone (303) 824–3417.

Dated: April 26, 1979.

Marvin Pearson,

District Manager.

[FR Doc. 79–13881 Filed 5–3–79; 8:45 am]

BILLING CODE 4310–84–M

New Mexico; Application

April 27, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by

the Act of November 16, 1973 (87 Stat. 576), El Paso Natural Gas Company has applied for two 4½-inch natural gas pipelines right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 21 S., R. 26 E.,
Sec. 28, N½NW¼;
Sec. 29, N½NE¼ and NE¼NW¼.

These pipelines will convey natural gas across 0.887 of a mile of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved, and if so, under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Raul E. Martinez,
Acting Chief, Branch of Lands and Minerals Operations.

[NM 36650]
[FR Doc. 79-13884 Filed 5-3-79; 8:45 am]
BILLING CODE 4310-84-M

New Mexico; Application

April 27, 1979.

Notice is hereby given that, pursuant to Section 28 of the Mineral Leasing Act of 1920 (30 U.S.C. 185), as amended by the Act of November 16, 1973 (87 Stat. 576), Phillips Petroleum Company has applied for two 6⅝-inch natural gas pipelines right-of-way across the following land:

New Mexico Principal Meridian, New Mexico

T. 17 S., R. 29 E.,
Sec. 13, E½SE¼;
Sec. 19, lot 2;
Sec. 24, E½NE¼ and NE¼SE¼.

These pipelines will convey natural gas across 1.178 miles of public land in Eddy County, New Mexico.

The purpose of this notice is to inform the public that the Bureau will be proceeding with consideration of whether the application should be approved and if so under what terms and conditions.

Interested persons desiring to express their views should promptly send their name and address to the District Manager, Bureau of Land Management, P.O. Box 1397, Roswell, New Mexico 88201.

Raul E. Martinez,
Acting Chief, Branch of Lands and Minerals Operations.

[NM 36662]
[FR Doc. 79-13882 Filed 5-3-79; 8:45 am]
BILLING CODE 4310-84-M

New Mexico; Transfer of Jurisdiction to Pueblo of Santa Ana: Correction

April 27, 1979.

Federal Register Document Volume 44, No. 61 as published in the **Federal Register** of Wednseday, March 28, 1979, is corrected as follows:

Page 18565, 2nd column under T. 13 N., R. 3 E., sec. 23 the last land description in section should read N½NE¼SE¼NE¼SE¼ not N½NE¼, SE¼NE¼SE¼.

Page 18565, 2d column under T. 13 N., R. 4 E., sec. 3 is corrected to read lots 4 to 6 inclusive, W½NE¼ and NW¼ not lots 4 to inclusive, W½NE¼ and NW¼.

Page 18565, 3d column under T. 14 N., R. 4 E., sec. 31 is corrected to read E½NE¼, SW¼NE¼, NW¼NW¼, S½NW¼, S½ and bed of the Jemez River.

Raul E. Martinez,
Acting Chief, Branch of Lands and Minerals Operations.

[NM 35468]
[FR Doc. 79-13883 Filed 5-3-79; 8:45 am]
BILLING CODE 4310-84-M

Bureau of Reclamation

Closed Basin Division—San Luis Valley Project, Colo.; Public Hearing on Draft Environmental Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Department of the Interior has prepared a draft environmental statement for the Closed Basin Division—San Luis Valley Project, Colorado. This statement (INT DES 79-20, dated April 19, 1979) was made available to the public on April 20, 1979.

The draft statement deals with a multiple-purpose water resource project designed to deliver to the Rio Grande water now being removed by evaporative processes from the Closed Basin. The project is scheduled for stage development. About 66,000 to 104,000 acre-feet of ground water will be pumped annually, with 100,800 acre-feet per year being a reasonable project yield objective. Of this 100,800 acre-feet of water, 5,300 acre-feet will be delivered to the existing Alamosa National Wildlife Refuge (NWR); and 95,500 acre-feet will be delivered annually to the Rio Grande. This delivery to the Rio Grande will help Colorado to meet its commitments for water deliveries to Texas and New Mexico under the Rio Grande Compact and will assist the United States in meeting its commitments to Mexico under the Rio Grande Convention of 1906. The project will also provide for the establishment of Mishak National Wildlife Refuge; for stabilization of the water level of San Luis Lake at about 890 surface acres; for development of recreational facilities at San Luis Lake; and for fish and wildlife enhancement.

Public hearings will be held at the Student Union Building, Carson Auditorium, Adams State College, Alamosa, Colorado, on June 5, 1979, to receive views and comments from interested organizations or individuals relating to environmental impacts of this project. The hearings will commence at 1:00 p.m., and 7:00 p.m. Oral statements at the hearings will be limited to 10 minutes. Speakers will not trade their time to obtain a longer oral presentation; however, the hearings officer may allow any speaker to provide additional oral comment after all persons wishing to comment have been heard. Speakers will be scheduled according to the time preference mentioned in their letter or telephone request whenever possible, and any scheduled speaker not present when called will lose his privilege in the scheduled order and his name will be recalled at the end of the scheduled speakers. Requests for scheduled presentation will be accepted up to June 1, 1979, and any subsequent requests will be handled on a first-come-first-served basis following the scheduled presentation.

Organizations or individuals desiring to present statements at the hearing should contact the Office of the Regional Director, Bureau of Reclamation, Herring Plaza, Box H-4377, Amarillo, TX 79101, telephone (806) 376-3401, and announce their intention to participate. Written comments from those unable to attend and from those wishing to supplement their oral presentation at the hearing should be received by June 20, 1979, for inclusion in the hearing record.

Dated: May 1, 1979.

R. Keith Higginson,
Commissioner.

[FR Doc. 79-13976 Filed 5-3-79; 8:45 am]
BILLING CODE 4310-09-M

Office of the Secretary

Availability of the Department of the Interior's Proposed Stipulations for the Alaska Natural Gas Transportation System

AGENCY: Department of the Interior.

ACTION: Notice—Availability of Stipulations for the Alaska Natural Gas Transportation System.

SUMMARY: The Stipulations for the Alaska Natural Gas Transportation System will be attached to the Department of the Interior's Grant of Right-of-Way which will permit the construction of this pipeline system on Federal lands as authorized by the Mineral Leasing Act of 1920 as amended, 30 U.S.C. 185. These Stipulations are being made available for public review and comment on any of the requirements contained therein.

SUPPLEMENTARY INFORMATION: These Stipulations will be attached to the Grants of Right-of-Way which, when issued by the Department of the Interior, will authorize the construction of the Alaska Natural Gas Transportation System on Federal lands. These Stipulations establish the administrative procedures and the general environmental and technical standards which the Department of the Interior has determined to be necessary for the protection of the environment, public health and safety, and the integrity of the pipeline itself. A separate set of Stipulations has been prepared for each of the three legs of the Alaska Natural Gas Transportation System to accommodate the different environmental and technical problems which will be encountered. The Alaska Stipulations will apply to those Federal lands crossed by the pipeline within the State of Alaska; the Western Leg Stipulations will apply to those Federal lands crossed in the States of Idaho, Washington, Oregon, and California; and the Northern Leg Stipulations will apply to those Federal lands crossed in the States of Montana, North Dakota, South Dakota, Minnesota, Iowa, and Illinois.

Request for Comments

Persons interested in these Stipulations may furnish written comments on or before June 22, 1979. Comments must be filed with the Office of the Project Manager, Alaska Natural Gas Transportation System, (105) Department of the Interior, Washington, D.C. 20240. Copies of these Stipulations may be obtained by contacting the Office of the Project Manager at (202) 343-6932, or by writing to that office at the above address.

Guy R. Martin,

Assistant Secretary of the Interior.

May 1, 1979.

[FR Doc. 79-13943 Filed 5-3-79; 8:45 am]

BILLING CODE 431084

INTERNATIONAL TRADE COMMISSION

Perchloroethylene from Belgium, France, and Italy; Determinations of Injury

On the basis of information obtained in investigations Nos. AA1921-194, AA1921-195, and AA1921-196, the Commission determines (Vice Chairman Alberger and Commissioner Stern dissenting) that an industry in the United States is being injured by reason of the importation of perchloroethylene from Belgium, France, and Italy that is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended.

On January 30, 1979, the United States International Trade Commission received advice from the Department of the Treasury that perchloroethylene from Belgium, France, and Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on February 8, 1979, the Commission instituted investigations Nos. AA1921-194 (perchloroethylene from Belgium) AA1921-195 (perchloroethylene from France), and AA1921-196 (perchloroethylene from Italy) under section 201(a) of said act, to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established, by reason of the importation of such merchandise into the United States.

In connection with the investigations, a public hearing was held in Washington, D.C., on March 13, 1979. Notice of the institution of the investigations and the public hearing was given by posting copies of the notice at the Office of the Secretary, U.S. International Trade Commission, Washington, D.C., and at the Commission's office in New York City, and by publishing the notice in the **Federal Register** of February 20, 1979 (44 FR 10442).

The Treasury Department instituted its investigations after receiving a complaint filed on June 16, 1978, from counsel acting on behalf of PPG Industries, Inc., Pittsburgh, Pa.; Stauffer Chemical Co., Westport, Conn.; Diamond Shamrock Corp., Cleveland, Ohio; Vulcan Materials Co., Birmingham, Ala.; and Dow Chemical U.S.A., Midland, Mich. Treasury's notices of withholding of appraisement and its determinations of sales at LTFV were published in the **Federal Register** of February 2, 1979 (44 FR 6821-6824).

In arriving at its determinations, the Commission gave due consideration to all written submissions from interested parties and information adduced at the hearing as well as information obtained by the Commission's staff from questionnaires, personal interviews, and other sources.

Statement of Reasons of Chairman Joseph O. Parker and Commissioners George M. Moore and Catherine Bedell

On January 30, 1979, the United States International Trade Commission received advice from the Treasury Department that it had determined, on the basis of investigations it had made, that perchloroethylene from Belgium, France, and Italy is being, or is likely to be, sold in the United States at less than fair value (LTFV) within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)). Accordingly, on February 8, 1979, the Commission instituted investigations Nos. AA1921-194 (perchloroethylene from Belgium), AA1921-195 (perchloroethylene from France), and AA1921-196 (perchloroethylene from Italy) under section 201(a) of said act to determine whether an industry in the United States is being or is likely to be injured, or is prevented from being established,[1] by reason of the importation of such merchandise into the United States.

The Commission previously conducted inquiries into perchloroethylene imports from the countries in question under section 201(c) of the Antidumping Act (AA1921-Inq.-14, 15, and 16) after receiving advice from Treasury that there was substantial doubt that an industry was being or was likely to be injured by reason of the importation of this merchandise into the United States. As a result of those investigations, the Commission determined that the criteria for continuing the investigations had been met. Treasury's investigations were instituted on the basis of a petition filed with Treasury by five U.S. producers of perchloroethylene.

Determination

On the basis of the information obtained in this investigation, we determine that an industry in the United States is being injured by reason of the importation of perchloroethylene from Belgium, France, and Italy which the Treasury Department has determined is being, or is likely to be, sold at LTFV within the meaning of the Antidumping Act, 1921, as amended.

[1] Prevention of establishment of an industry is not an issue in these investigations and will not be discussed further in these views.

Injury by Reason of LTFV Sales

In order to make an affirmative determination in an antidumping investigation, it is necessary to determine that a U.S. industry is being or is likely to be injured by reason of the LTFV sales determined by the Secretary of the Treasury. The legislative history of the Antidumping Act and Commission decisions have both established that the injury criterion of this unfair trade practice statute is satisfied if there is injury which is "more than frivolous, inconsequential, insignificant, or immaterial." [2] It is also well established that the term "by reason of" expresses a causation linkage between the LTFV sales and injury to the U.S. industry but does not mean that the LTFV imports must be a principal, major, or a substantial cause of such injury.[3] In our judgment, the information obtained in these investigations shows these criteria to have been satisfied.

The Treasury Department investigated imports of perchloroethylene from Belgium and France during the 6-month period beginning February 1, 1978. It was determined that 100 percent of the perchloroethylene imported from Belgium during this period was at LTFV. Treasury made comparisons on 90 percent of perchloroethylene imported from France into the United States during this period and all of the sales compared were found to have been at LTFV. The weighted average LTFV margins for sales from Belgium were 60 percent and those for sales from France were 32 percent. The Treasury Department also determined that 100 percent of the sales of perchloroethylene imported from Italy during the 17-month period beginning January 1, 1977, were at LTFV and that the weighted average margin of such sales was 24 percent.

Total imports from these three countries increased from 15 million pounds in 1974 to 41 million pounds in 1977 and increased as a share of apparent consumption from 2 percent to 6.3 percent. This increase occurred at the same time that there was a 66 million pound drop in apparent consumption. In 1978, total imports from the three counties declined to 23 million pounds, with the sharpest decline occurring in the 6-month period after the filing of the complaint with the Treasury Department in June 1978 which was the basis on which these investigations were initiated.

Virtually all the perchloroethylene imported from Belgium, France, and Italy enters the United States through ports located in the Northeastern United States, and nearly all of it is consumed in this market. These imports, which are all drycleaning-grade perchloroethylene, have had a disproportionate impact on the Northeastern market. In 1977, such imports accounted for nearly 40 percent of apparent consumption of the drycleaning-grade perchloroethylene in the Northeast, and even after the decline in 1978, such imports still accounted for about 25 percent of this market.

The information obtained in the investigation clearly established that this import penetration was achieved as a result of prices being the same as or below domestic prices and that, had the imports been sold at fair value, they would have been priced considerably higher than domestically made perchloroethylene. Except for one 2-month period, the lowest average weighted price per pound of perchloroethylene during 1976–78 sold in the domestic market was accounted for by imports from either France or Italy.

The Commission's investigation shows that the domestic industry lost sales as a result of this underselling by LTFV imports. Of 14 purchasers identified by U.S. producers as accounts to which sales were lost, all but 3 confirmed that they had purchased perchloroethylene imported from Belgium, France, and/or Italy in lieu of perchloroethylene offered by U.S. producers, and that price was the primary reason for purchasing the imports.

In our judgment, the domestic industry is being injured, within the meaning of the Antidumping Act, by reason of imports of perchloroethylene from the countries under consideration. These imports occurred at a time when the domestic industry was in a substantially weakened position and particularly susceptible to the injury caused by their penetration of the market. From 1976 to 1978, the price of perchloroethylene declined by more than 30 percent. As a result of this decline and rising costs of production, the profitability of the domestic industry declined precipitously. During both 1977 and 1978, the domestic industry suffered substantial operating losses in perchloroethylene operations and was plagued by substantial unused capacity. Thus, it is clear that the presence of LTFV imports being sold at prices below those of domestic producers, with a resulting loss of sales, caused injury to the U.S. producers.

Statement of Reasons of Commissioner Bill Alberger

In order for the Commission to find in the affirmative in an investigation under the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)) it is necessary to find that an industry in the United States is being or is likely to be injured, or is prevented from being established,[4] and the injury or the likelihood thereof must be by reason of imports at less than fair value (LTFV). I find in the case of perchloroethylene from Belgium, France, and Italy, the domestic industry is not being injured by reason of such imports which the Secretary of the Treasury (Treasury) has determined are being, or are likely to be, sold at LTFV.

The Imported Article and the Domestic Industry

Perchloroethylene is a clear, heavy (1.6 times heavier than water), non-flammable liquid used primarily as a drycleaning and industrial solvent and as an intermediate in the synthesis of other chemicals.

The domestic industry in this case consists of the facilities in the United States devoted to the production of perchloroethylene. Presently, there are seven firms producing the perchloroethylene at 10 plant sites. The seven firms are: Dow Chemical, U.S.A.; PPG Industries, Inc.; Vulcan Materials Co.; Diamond Shamrock Corp. (Diamond); E. I. du Pont deNemours & Co. (Du Pont); Stauffer Chemical Co.; and Ethyl Corp.

LTFV Sales

The Treasury investigations of LTFV imports of perchloroethylene from Belgium and France covered sales made during the 6-month period February 1, 1978 through July 31, 1978; its investigation of sales from Italy covered the 17-month period January 1, 1977 through July 31, 1978. Price comparisons were made on 100 percent of the sales from Belgium and Italy and on 90 percent of the sales from France made during the periods of investigation. LTFV margins were found on 100 percent of the sales from the 3 countries that were examined. The LTFV margins for sales from Belgium ranged from 59.5 to 60.6 percent of the home market price, with a weighted average margin of 60.0 percent. The margins for sales from France ranged from 23.2 to 36.2 percent of the home market price, with a weighted average margin of 32.4 percent, and the margin for sales from Italy ranged from 13.0 to 35.0 percent of the

[2] U.S. Senate, *Trade Reform Act of 1974: Report of the Committee on Finance* * * *, S. Rept. No. 93-1298 (93d Cong., 2d sess.), p. 180.

[3] Ibid.

[4] Prevention of establishment of an industry is not an issue in this case and will not be discussed further.

home market prices with a weighted average price of 23.5 percent.

National or Regional Industry

It was urged by petitioner that the Commission look at injury to a regional market, namely the Northeast. The statute requires us to make our determination based upon "an industry in the United States". The industry may be considered "regional" in character, particularly where: (1) Domestic producers of an article are located in and serve a particular regional market predominantly or exclusively, *and* (2) the LTFV imports are concentrated primarily in this regional market.[5] In this case, the second criterion is met, since all LTFV imports entered the Northeast market, mostly New York City. However, the domestic industry is located in Texas and Louisiana, and distribution is nationwide, so the first criterion is not even close to being satisfied. Thus, I have looked at the national market.

No Injury by Reason of LTFV Sales

Imports and market share. Imports from the three countries in question show sharp increases in 1976 from the relatively low to nonexistent levels of 1974 and 1975. Italy was a new entrant in the U.S. market in 1976 and increased its level of imports further in 1977. In 1978, imports from Italy dropped precipitously and represented only 0.7 percent of domestic consumption. Belgium's 1976 imports were nearly ten times those of 1974, but by 1978 the level of Belgian imports was less than half of 1976 and represented 0.8 percent of U.S. consumption. Perchloroethylene imports from France peaked in 1976 and then dropped by more than 35 percent in 1977. In 1978, imports from France dropped still further and held a 1.7 percent share of the domestic market. For the three countries combined, the 6.7 percent import to consumption ratio attained in 1976 represents their largest market share in the 1974–78 period. Following that peak, the combined ratio dropped slightly in 1977 and in 1978, at 3.2 percent, was less than half the 1976 level.

Production and shipments. 1974 and 1978 represent the peak years for production and shipments by U.S. producers of perchloroethylene. Production dropped by more than 9 percent from 1974 to 1975 and, after maintaining a steady level in 1976 and 1977, climbed back near 1974 levels in 1978. Shipments by U.S. producers dipped by nearly 15 percent from 1974 to 1975, then leveled off for the next two years. However, in 1978, shipments showed a strong increase over the previous three years and even exceeded the 1974 level of shipments.

Exports. Exports by U.S. producers more than doubled from 1974 through 1978, going from 29 million pounds in 1974 to more than 59 million pounds in 1978. These levels represent an increase from 4 to 8 percent as a percentage of producers' shipments and would seem to indicate that U.S. producers are quite competitive in the world market. In fact, exports exceeded total imports in three of the five years.

Capacity utilization. The raw data shows capacity utilization falling from 60 percent in 1974 to a low point of 54 percent in 1977 and rising to 58 percent in 1978. One might assume that an industry operating at such a low level of capacity utilization for 5 years must be injured. However, aggregate capacity for the domestic industry has remained well above total consumption plus exports for the five-year period 1974–78. Thus, there is gross overcapacity and a comparison of production with consumption plus exports yields perhaps a more realistic measure of capacity utilization. 1974 is 99 percent, 1976 and 1977 are 96 percent, and 1978, a period of declining imports and disposal of large stocks of inventory, was 91 percent. Those are strong figures, and any shortfall in actual capacity utilization is the result of capacity far in excess of demand.

Inventories. U.S. producers' inventories of perchloroethylene increased sharply from 76 million pounds in 1974 to over 157 million pounds in 1977 before falling to about 113 million pounds by the end of 1978. Most of this increase involves one producer, Diamond, which previously supplied Du Pont and built up its inventory on the assumption startup problems would occur in the latter's new plant. There apparently were no such problems, and Diamond was left with large inventories. Factoring Diamond's inventories out of the total, inventories throughout 1975 to 1978 are more level. The total volume of Diamond's inventories in 1975 through 1977 was larger than total imports in each year, and significantly larger than imports from countries involved in these investigations.

Employment. Employment was basically steady from 1974 through 1978. In this case, however, employment does not play a particularly important role since a drop in production for most of the chemical industry does not necessarily result in a drop in employment. Employees are generally kept on the payroll to maintain the production equipment to have it ready when production of a chemical resumes. Consequently, employment is not as accurate a reflection of the industry's condition as other factors I have considered.

Profits. In general, those U.S. producers supplying financial data (only 5 firms did) show sharply declining profits on perchloroethylene operations. Aggregate 1978 data shows a ratio of net operating *loss* to net sales of 30.7 percent, down from a profit of 37 percent in 1974. this is obviously a disastrous change, and suggests serious problems, particularly for 4 of these 5 firms (the fifth shows healthy profits). Almost all of the firms producing perchloroethylene are large, diversified, multinational corporations in which perchloroethylene plays a relatively small role. It is entirely possible that there are serious allocation problems, since the ratio of net operating profit to net sales for chlorinated solvents operations for 4 of the 5 firms (the 5th did not submit such data) was 22.4 percent, a very healthy showing. The one producer showing profits on perchloroethylene throughout 1974–78 generally priced all other competitors, importers and domestic, with apparent success.

Lost sales. Three producers identified 14 purchasers of imports from the three countries involved as sales lost during 1976–78. Eleven were verified by the staff. The other three had switched to other U.S. producers. Price was given as the primary reason for the switch. Several also mentioned that U.S. producers' prices had been artificially high in a time of excess supply. However, many also indicated the decline of the dollar relative to European currencies in the last 6 to 8 months absorbed the price difference and they consequently had switched back to the U.S. product. With the domestic consumption up and the market share and volume of LTFV imports going down in 1978, importers must have lost sales to the domestic industry as well. This decline in LTFV imports began well before this case was filed with Treasury. Even the aggregate of the lost sales do not equal Diamond's lost sale to a fellow domestic producer, Du Pont, which now totally supplies itself through internal production.

Prices. There is some indication, as I stated in AA1921-Inq. 14, 15, and 16 (U.S.I.T.C. Publication No. 904), that U.S. producers were involved to a signficiant degree in price reduction efforts. In fact during 1978, while the volume of imports

[5] U.S. Senate, Report of the Committee on Finance to accompany H.R. 10710, Trade Act of 1974, S. Rept. No. 93–1298 (93rd Congress, 2nd Sess.) 1974, at pp. 180–181.

was declining, average prices by U.S. producers dropped considerably. Significant inventories, mostly the result of Diamond's miscalculation, overhung the market, depressing the prices. Since 1974 total producers' inventories have been between three and six times total imports from the three countries involved in these investigations. This oversupply would pressure an industry to lower prices regardless of imports.

Conclusion

Among the indicators I have considered, capacity utilization, profits, prices, and lost sales appear to suggest injury, However, the capacity utilization problem is explained by excess capacity. The poor profit picture and the low prices are the result of the inventory surplus of one producer which lost its largest account to another domestic producer. Finally, the lost sales that were found were offset by the declining market share of LTFV imports throughout 1978. Consequently, whatever, injury may exist is not by reason of LTFV imports from Belgium, France, or Italy. This is true whether these imports are considered separately or cumulatively.

By order of the Commission.

Issued: April 30, 1979.

Kenneth R. Mason,

Secretary.

[AA1921-194, AA1921-195, and AA1921-196]

[FR Doc. 79-13940 Filed 5-3-79; 8:45 am]

BILLING CODE 7020-02-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Beth-Elkhorn Corp.; Petition for Modification of Application of Mandatory Safety Standard

Beth-Elkhorn Corporation, Jenkins, Kentucky 41537, has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations), to its No. 22 Mine, located in Letcher County, Kentucky. 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. In some airways of the petitioner's mine (designated on a map supplied with the petition), roof conditions have deteriorated, making it hazardous to walk the airways for weekly inspections. Up to three feet of shale rock have fallen in some areas.

2. As an alternative, the petitioner proposes to examine the airways weekly by going through man-doors off the track entry and observing conditions in both directions of the airways.

3. The petitioner states that this alternative method will guarantee the miners affected no less then the same measure of protection given them by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 26, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-35-C]

[FR Doc. 79-14024 Filed 5-3-79; 8:45 am]

BILLING CODE 4510-28-M

Cabin Knoll Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Cabin Knoll Coal Company, Star Route, Box 22, Elkhorn City, Kentucky 41522, has filed a petition to modify the application of 30 CFR 75.1710 (canopies) to its No. 74-6 Mine, located in Pike County, Kentucky. 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 the installation of canopies on the petitioner's scoops, cutting machine, and roof bolting machine.

2. The petitioner is mining coal seams ranging from 44 to 56 inches in height.

3. Undulations in the coal seam would necessitate the use of a low canopy configuration to prevent the canopy from dislodging and possibly destroying roof support.

4. Such a configuration would allow vertical space of only 25 inches in the operating compartment, thereby limiting the equipment operator's view of surrounding mining conditions and of other miners.

5. For these reasons the petitioner feels that the application of the standard to its mine would result in a reduction of the safety to it miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 25, 1979.

Eckehard Muessig,

Acting Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-46-C]

[FR Doc. 79-14025 Filed 5-3-79; 8:45 am]

BILLING CODE 4510-28-M

Excel Mineral Co.; Petition for Modification of Application of Mandatory Safety Standard

Excel Mineral Company, P.O. Box 1277, Taft, California, 93268, has filed a petition to modify the application of 30 CFR 55.15-3 (protective footwear), to its Excel Pit and Mill Mine and to its Sheep Springs Pit and Mill Mine, both located in Kern County, California. 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 petitioner requests permission for its employees to wear a serviceable leather shoe rather than a steel-toed safety shoe or boot in its packing room and warehouse.

2. The floor in these areas is smooth-surface concrete. Employees handle wooden pallets and bags of a crushed clay product as well as work around forklifts. However, no one is in constant contact with the wooden pallets or forklifts. The crushed clay product is packaged in 5 and 25 pound units and shipped in 50 pound bales.

3. For these reasons, the petitioner believes that serviceable leather shoes would be suitable protective footwear for employees in its packing room and warehouse.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 27, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-13-M]

[FR Doc. 79-14026 Filed 5-3-79; 8:45 am]

BILLING CODE 4510-28-M

Jewell Ridge Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

Jewell Ridge Coal Corporation, Jewell Ridge, Virginia, has filed a petition to modify the application of 30 CFR 75.1719

(illumination) to its No. 12A Mine, located in Buchanan County, Virginia. 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 the installation of additional lighting for the petitioner's longwall mining equipment.

2. Vertical clearance at the longwall face in the petitioner's mine allows an average of 23 inches of travel space between the face support chocks of the mining equipment.

3. The petitioner cannot install stationary lighing fixtures because there is no place for the ballast boxes necessary for their operation.

4. Illumination of the longwall would require mounting a light over the panline on which the chocks rest. The plow or plowed coal could tear off such a fixture, creating a dangerous electrical hazard.

5. The placement of lighting cables, fixtures and other electrical wiring would result in extreme difficulty in traversing the face.

6. Any lights mounted in the area above the crawl space area of the mining equipment would reduce the crawl area to such an extent that the area could not be travelled.

7. For these reasons the petitioner states that the application of the standard would result in a reduction of the safety to its miners.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 25, 1979.

Eckehard Muessig,

Acting Assistant Secretary for Mine Safety and Health.

[Docket No. M–79–47–C]

[FR Doc. 79–14027 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–28–M

Jumacris Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Jumacris Mining Inc., Post Office Drawer D, Gilbert, West Virginia 25621, has filed a petition to modify the application of 30 CFR 75.1719 (illumination) to its Jumacris No. 10 Mine located in Mingo County, West Virginia. 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 the illumination of working places in the petitioner's mine while self-propelled mining equipment is operated in the working place.

2. The petitioner states that illumination systems would result in a diminution of safety to the miners affected because equipment operators would have difficulty in adjusting to constant changes in illumination as they move about the mine; their vision would be impaired, posing a safety hazard to themselves and other miners.

3. The petitioner also states that the possibility of an electrical hazard is increased by the use of illumination systems.

4. As an alternative, the petitioner proposes to install two 150-watt lamps at each end of each piece of face equipment in service at its mine.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 27, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M–79–38–C]

[FR Doc. 79–14028 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–28–M

Leeco, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Leeco, Inc., Rt. 9, Box 15, London, Kentucky 40741, has filed a petition to modify the application of 30 CFR 75.805 (electrical couplers) to its No. 22 and No. 29 Mines in Leslie County, Kentucky and its No. 42 Mine in Laurel County, Kentucky. 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 petitioner requests permission to use junction boxes (Pemco Corporation part number J-133527) which are equipped with a micro-switch wired in series with the ground check circuit. The micro-switch causes the power circuit to deenergize if the cover of the box is removed. The boxes are constructed of ⅛-inch steel with insulated strain straps.

2. The junction boxes will be located in dry, well rockdusted areas or supported above wet locations.

3. When different size cables are used, fittings for the cable entrance will be properly sized and secured to prevent strain on the electrical connections.

4. High-voltage cables shall be terminated according to the termination kit manufacturer's recommendations.

5. The junction box and cables will be protected according to the provisions of 30 CFR 75.807 and 30 CFR 75.1107–1(a)(3).

6. The petitioner states that this alternative will achieve no less protection for its miners than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Va. 22203. Copies of the petition are available for inspection at that address.

Dated: April 26, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M–79–45–C]

[FR Doc. 79–14029 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–28–M

The North American Coal Corp.; Petition for Modification of Application of Mandatory Safety Standard

The North American Coal Corporation, Powhatan Point, Ohio 43942, has filed a petition to modify the application of 30 CFR 75.1700 (oil and gas wells) to its No. 1 Mine located in Belmont and Monroe Counties, Ohio. 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. Numerous boreholes of abandoned oil/gas wells penetrate the coal seam the petitioner intends to mine.

2. A barrier of coal around these boreholes as required by the standard would interfere with the petitioner's longwall mining plan and ventilation plan. Such barriers are also less efficient and secure than other available methods to prevent well gas leaks.

3. As an alternative, the petitioner proposes to plug and mine through the boreholes following the proven techniques in MESA Informational Report 1052, "Cleaning Out, Sealing and Mining Through Wells Penetrating Areas of Active Coal Mines in Northern West Virginia."

4. The petition details the steps of these techniques which include the use of mechanical bridge plugs, expanding

cement and sulfur hexafluoride or Krypton-85 tracer units.

5. The petitioner states that this alternative will guarantee the miners affected no less than the same measure of protection given them by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 27, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-58-C]
[FR Doc. 79-14030 Filed 5-3-79; 8:45 am]
BILLING CODE 4510-28-M

Peerless Alma Coals, Inc.; Petitions for Modification of Application of Mandatory Safety Standard

Peerless Alma Coals, Inc., Post Office Drawer D, Gilbert, West Virginia 25621, has filed separate petitions to modify the application of 30 CFR 75.1719 (illumination) to its Peerless Alma No. 1 (M-79-40-C) and Peerless Alma No. 3 (M-79-39-C) Mines, located in Mingo County, West Virginia. The petitions are filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164.

The substance of the petitions follows:

1. The petitions concern the illumination of working places in the petitioner's mines while self-propelled mining equipment is operated in the working place.

2. The petitioner states that illumination systems would result in a diminution of safety to the miners affected because equipment operators would have difficulty in adjusting to constant changes in illumination as they move about the mines; their vision would be impaired, posing a safety hazard to themselves and other miners.

3. The petitioner also states that the possibility of electrical hazards would be increased by the use of illumination systems.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 27, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-39-C and M-79-40-C]
[FR Doc. 79-14031 Filed 5-3-79; 8:45 am]
BILLING CODE 4510-28-M

Solar Fuel Co.; Petition for Modification of Application of Mandatory Safety Standard

Solar Fuel Company, P.O. Box 488, Somerset, Pa. 15501, has filed a petition to modify the application of 30 CFR 75.1710 (canopies), to its Solar No. 5 and No. 9 mines, located in Somerset County, Pa. 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 petitioner is mining coal seams varying from 40 to 48 inches in height.

2. The petitioner's mining system uses a Jeffrey 101 mining machine with radio or cable-remote control which allows the operator to remain well outby the last permanent roof support.

3. The petitioner's continuous-type haulage system begins at the mining machine and uses a bridge carrier. The bridge carrier operator is always outby the mining machine operator.

4. The continuous haulage system requires constant visual communication between the mining machine operator and the bridge carrier operator.

5. The petitioner states that the use of cabs or canopies on the bridge carriers will result in a diminution of safety to the bridge carrier operators for the following reasons:

a. Canopies would restrict the bridge carrier operator's line-of-sight communication with the mining machine operator.

b. The confined space would severely restrict the movements of the operator and possibly hamper the operator's ability to properly control the equipment.

c. At times, canopies will not allow sufficient clearance between the canopy top and the roof line and/or roof supports.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 27, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-54-C]
[FR Doc. 79-14032 Filed 5-3-79; 8:45 am]
BILLING CODE 4510-28-M

Youghiogheny & Ohio Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Youghiogheny & Ohio Coal Company, 4614 Prospect Avenue, Cleveland, Ohio 44103, has filed a petition to modify the application of 30 CFR 75.519 (disconnecting switches) to its Nelms No. 2 Mine in Harrison County, Ohio. 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 petitioner proposes to install an air brake disconnect switch for its main power circuit in a breakthrough along a main haulage entry.

2. The distance from the switch to the borehole through which the main power circuit enters the underground area of the mine would be 600 feet—100 feet more than allowed by the standard.

3. By placing the switch in the proposed location, nearly all miners would be aware of the switch's location. If the switch were located 500 feet from the borehole as required, it would be located in an isolated intake air entry.

4. The petitioner believes that this alternative will achieve no less protection for its miners than that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before June 4, 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: April 26, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[Docket No. M-79-56-C]
[FR Doc. 79-14033 Filed 5-3-79; 8:45 am]
BILLING CODE 4510-28-M

Office of the Secretary

Bomar Crystal Co., Middlesex, N.J.; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 4, 1979 in response to a worker petition received on April 3, 1979 which was filed on behalf of

workers and former workers of the Middlesex, New Jersey facility of the Bomar Crystal Company.

The Notice of Investigation was published in the **Federal Register** on April 13, 1979 (44 FR 22207–8). No public hearing was requested and none was held.

In a letter dated April 17, 1979 the petitioner requested that the petition be withdrawn. 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 April 25, 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[TA–W–5103]

[FR Doc. 79–14036 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–28–M

Cameron Dress Co., Harrisburg, Pa.; Negative Determination Regarding Application for Reconsideration

By letter of March 21, 1979, counsel for the workers and former workers requested admistrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of workers and former workers of Cameron Dress Company, Harrisburg, Pennsylvania. The determination was published in the **Federal Register** on February 23, 1979, (44 FR 10795).

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 the 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.

Counsel for the workers and former workers claims the Department of Labor's determination did not consider imports of garments from Hong Kong and Taiwan stored at the Harrisburg, Pennsylvania, plant. Further, counsel charges that goods similar to those produced by Cameron Dress but manufactured overseas were seen by employees of Cameron Dress on sale in retail stores.

The Department's investigation revealed that all of the sewing department workers were laid off April 28, 1978, when the company was a part of Genesco, Inc. According to company officials, Genesco did not import ladies' dresses, the major project, by far, of the Harrisburg, Pennsylvania, plant. However, some sweaters designed to match the dresses were imported prior to 1977 but this was a one-time event. Sweaters were never produced by the subject firm.

Late in 1978, the Cameron Dress Company was sold and renamed Rondalco. According to company officials, the new owner imports designer jeans and denim jackets and tops and stores some of them at the Harrisburg, Pennsylvania, plant. The Department does not see any connection between the closing of the sewing department in April 1978 and the subsequent imports of other products stored at Harrisburg when under new ownership in October 1978. According to company officials, there have been no other layoffs since the closing of the sewing department.

The ratio of imports to domestic production for women's and misses' dresses has remained less than 5 percent since 1973. The Department conducted a survey of the manufacturers for whom the subject firm did contract work. Two manufacturers accounted for the majority of the subject firm's production. One of these manufacturers increased his contract work with Cameron Dress in 1977 compared to 1976 and decreased contract work in the first ten months of 1978 compared to the same period in 1977. This manufacturer's sales increased during this period, and it imported no foreign-made garments and did no business with foreign contractors.

The other of these manufacturers was formerly the subject firm's parent company. It imported no foreign garments and did no work with foreign contractors. Adjusted sales decreased slightly in the first nine months of 1978 compared to the same period in 1977. A secondary survey of this firm's major customers revealed that only two customers accounting for only an insignificant percentage of the parent firm's total sales decreased purchases from this manufacturer while increasing purchases of imports.

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 Deprarment of Labor's prior decision. The application is, therefore, denied.

Signed at Washington, D.C., this 27th day of April 1979.

C. Michael Aho,

Director, office of Foreign Economic Research.

[TA–W–4439]

[FR Doc. 79–14037 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–28–M

Crazy Horse, Paterson, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA–W–4785: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in Section 222 of the Act.

The investigation was initiated on February 9, 1979 in response to a worker petition received on January 30, 1979 which was filed by the International Ladies' Garment Workers' Union on behalf of workers and former workers producing women's sportswear at Crazy Horse, Paterson, New Jersey. The investigation revealed that Crazy Horse is primarily involved in sales of imported women's sweaters.

The Notice of Investigation was published in the **Federal Register** on February 23, 1979 (44 FR 10800). No public hearing was requested and none was held.

The determination was based upon information obtained principally from officials of Crazy Horse, its customers, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met. Without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed in the course of the investigation revealed that the employment declines at Crazy Horse occurred in departments which handle primarily company imports of sweaters.

The preponderance of sales by Crazy Horse consists of sweaters which are imported by the company. Crazy Horse has never manufactured sweaters.

Crazy Horse also sells ladies' sportswear which is produced for the subject firm by contractors. However,

the employment declines which occurred from 1977 to 1978 at Crazy Horse were in departments whose primary activity involves processing company imports. In these departments, employment levels fluctuate in direct proportion to sales of imported sweaters. Employment in the pattern making, production, and design departments whose employment is a function of sales of domestically produced sportswear remained constant from 1977 to 1978.

Conclusion

After careful review, I determine that all workers of Crazy Horse, Paterson, New Jersey be denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 27th day of April 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[TA-W-4785]

[FR Doc. 79-14038 Filed 5-3-79; 8:45 am]

BILLING CODE 4510-28-M

Johnson Outboard Co., Waukegan, Ill.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-4214: 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 26, 1978 in response to a worker petition received on September 21, 1978 which was filed by the Independent Marine and Machinists Association on behalf of workers and former workers producing outboard motors at the Waukegan, Illinois plant of the Johnson Outboard Company, a division of the Outboard Marine 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 the Outboard Marine 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.

Company-wide sales in adjusted value and company-wide production in quantity of outboard motors increased during the January–October period of 1978 compared to the same period of 1977. Both sales and production in the fourth quarter of 1977 were affected by a three-week strike which occurred in that quarter.

The Waukegan, Illinois plant of the Johnson Outboard Company produces only outboard motors with 70 or more horsepower. All smaller motors are built at another domestic facility. While production of the larger motors at the Waukegan plant declined marginally in the January–October period of 1978 compared to the same period of 1977, production of the smaller motors increased at the other facility. The marginal production and employment declines at the Waukegan plant resulted, respectively, from a shift in the production mix at the Waukegan plant to higher powered, but fewer, outboard motors and from a cost-reduction program instituted in 1978.

Conclusion

After careful review, I determine that all workers at the Waukegan, Illinois plant of the Johnson Outboard 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 5th day of March 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[TA-W-4214]

[FR Doc. 79-14039 Filed 5-3-79; 8:45 am]

BILLING CODE 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 May 14, 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 May 14, 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 26th day of April 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
Amstar Corp., Spreckels Sugar Div., Factory No. 1, (Sugar Refinery Workers Union).	Spreckels, Calif.	4/16/79	4/11/79	TA-W-5,302	Beet sugar, beet pulp for cattle feed, molasses, packaging and warehousing.
Arco Auto Carriers (Teamsters)	Ridgefield, N.J.	4/12/79	4/9/79	TA-W-5,303	Deliver cars to the metropolitan areas.
Conair Corporation (workers)	Edison, N.J.	4/9/79	3/30/79	TA-W-5,304	Assemble, finish and package hair dryers and sun lamps.
Lilly Augering Co., Inc., Willis Branch Mine (U.M.W.A.).	Raleigh County, W. Va.	4/23/79	3/28/79	TA-W-5,305	Mining of coal.
Maben Energy Corp., Maben Energy Mine No. 1 (U.M.W.A.).	Wyoming County, W. Va.	4/23/79	3/28/79	TA-W-5,306	Contract mining of coal.
Maben Energy Corp., Maben Energy Mine No. 3 (U.M.W.A.).	Wyoming County, W. Va.	4/23/79	3/28/79	TA-W-5,307	Contract mining of coal.
Maben Energy Corp., Maben Energy Mine No. 4 (U.M.W.A.).	Wyoming County, W. Va.	4/23/79	3/28/79	TA-W-5,308	Contract mining of coal.
Maben Energy Corp., Maben Energy Mine No. 5 (U.M.W.A.).	Wyoming County, W. Va.	4/23/79	3/28/79	TA-W-5,309	Contract mining of coal.
Sewell Mountain Trucking, Inc. (U.M.W.A.)	Danese, W. Va.	4/23/79	3/28/79	TA-W-5,310	Trucking hauling of coal.
Victory Clothes Co., Inc. (ACTWU)	Philadelphia, Pa.	4/24/79	4/20/79	TA-W-5,311	Contractors of men's suits and sportcoats and some ladies' suits.

[FR Doc. 79-14034 Filed 5-3-79; 8:45 am]

BILLING CODE 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 May 14, 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 May 14, 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.

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
Atomic Textiles (company)	Fort Lee, N.J.	4/20/79	4/20/79	TA-W-5,281	Sweaters and baby shawls.
Bethlehem Steel Corp., Baltimore Yards, Fort McHenry (IUMSWA).	Baltimore, Md.	4/17/79	4/16/79	TA-W-5,282	Repairs ships.
Bethlehem Steel Corp., Baltimore Yards, Key Highway (IUMSWA).	Baltimore, Md.	4/17/79	4/16/79	TA-W-5,283	Repairs ships.
Carla Leather, Inc. (workers)	New York, N.Y.	4/9/79	4/4/79	TA-W-5,284	Shearling leather goods, coats, jackets, skirts.
Cresco Pollik Sportswear, Inc. (United Garment Workers Union).	Ashland, Ohio	4/20/79	4/19/79	TA-W-5,285	Men's leather and cloth outercoats.
Fenton Shoe Corp. (workers)	Cambridge, Mass.	4/17/79	4/9/79	TA-W-5,286	Women's shoes.
M. Goldenberg & Son, Inc. (ACTWU)	Philadelphia, Pa.	4/23/79	4/17/79	TA-W-5,287	Men's slacks.
Haas Tailoring Co. (ACTWU)	Baltimore, Md.	4/23/79	4/17/79	TA-W-5,288	Men's and women's suits and uniforms.
Maryland-Hampstead Clothing Co. (ACTWU)	Hampstead, Md.	4/23/79	4/17/79	TA-W-5,289	Men's shirts.
Mirando Manufacturing Co., Inc. (ACTWU)	Elizabeth, N.J.	4/23/79	4/16/79	TA-W-5,290	Men's leather jackets.
Modern Slack Creations, Inc. (ACTWU)	Northampton, Pa.	4/23/79	4/17/79	TA-W-5,291	Ladies' and men's pants.
J. Molofsky & Sons (ACTWU)	Baltimore, Md.	4/23/79	4/17/79	TA-W-5,292	Men's pants contractors.
Northampton Pants Co., Inc. (ACTWU)	Easton, Pa.	4/23/79	4/17/79	TA-W-5,293	Men's pants.
Paramount Clothing Co. (ACTWU)	Baltimore, Md.	4/23/79	4/17/79	TA-W-5,294	Cut, ship, examine and assemble clothing also, do all billing.
Joseph J. Piertrafessa Co., Inc. (ACTWU)	Syracuse, N.Y.	4/23/79	4/17/79	TA-W-5,295	Men's tailored clothing.
Plastilite Corp. (workers)	Eight Mile, Ala.	4/23/79	4/19/79	TA-W-5,296	Balsa fishing floats.
Rock Creek Mining Company (workers)	Davin, W. Va.	4/23/79	4/16/79	TA-W-5,297	Mining of coal.

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Rossanna Knitted Sportswear (workers)	West Deptford, N.J.	4/23/79	4/17/79	TA-W-5,298	Ladies' knitted sportswear.
Seal Tanning Co. (Amalgamated Meat Cutters and Butcher Workmen of North America).	Manchester, N.H	4/23/79	4/20/79	TA-W-5,299	Finish leather for shoe manufacturers.
Strongwear Slack, Inc. (ACTWU)	Easton, Pa.	4/23/79	4/17/79	TA-W-5,300	Ladies' slacks.
Strongwear Pants Co., Inc. (ACTWU)	Easton, Pa.	4/23/79	4/17/79	TA-W-5,301	Men's and ladies' slacks.

[FR Doc. 79-14035 Filed 5-3-79; 8:45 am]

BILLING CODE 4510-28-M

Office of Pension and Welfare Benefit Programs

Proposed Exemption for Certain Transactions Involving Kern County Electrical Pension Fund

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act). The proposed exemption would exempt, retroactively and prospectively, the continuing acts of the common trustees under the terms of a 20 year construction and mortgage loan made by Kern County Electrical Pension Fund (the Plan) to Kern County Electrical Apprenticeship and Training Fund (the Fund). The proposed exemption, if granted, would affect participants and beneficiaries of the Plan, the Plan, the Fund, and the trustees of the Plan and the Fund.

DATES: Written comments and requests for a public hearing must be received by the Department on or before June 18, 1979.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to: Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. L-359. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Department, (202) 523-8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of section 406(b)(2) of the Act. The proposed exemption was requested in an application filed by the trustees of the Plan, pursuant to section 408(a) of the Act, and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

(1) The Fund and the Plan are Taft-Hartley multiemployer employee benefit plans with common trustees, who are the same persons acting at all times for both the Fund and the Plan, under the terms of the loan agreement hereinafter described.* The participants in the Plan and the Fund are substantially the same persons.

(2) Effective July 26, 1974, the Trustees of the Plan loaned $100,000 to the Fund for the purpose of financing construction and improvements at the facilities of the Fund. The loan was evidenced by a promissory note from the Fund, payable to the Plan, and the note is secured by the real property and improvements. The note provides for interest of 10% per annum on the outstanding balance and the repayment of principal and interest in equal monthly installments of $965 over a period of 20 years. All monthly payments have been timely. In addition, the Fund has made two prepayments in the amount of $10,000 each. As of August 2, 1977, the outstanding principal balance of the loan was $63,137, which represents about 1.5% of Plan assets. The note contains no prepayment penalty clause. An appraisal, which was performed by a qualified independent real estate appraiser, was submitted by the applicant and states that the value of the property was $205,000 as of June 1, 1974, and $273,000 as of November 8, 1977. The appraisal states that present use of the property is appropriate and that the property is adaptable for secondary use as commercial offices.

(3) California usury laws restrict private parties (but not banks and certain other commercial lenders) to interest rates not exceeding 10% per annum, so the Plan is lending at the maximum rate allowable. The Fund did not seek a loan from an unrelated party, such as a commercial lender or a bank. A statement signed by K. E. Fortner, Vice President and Assistant Manager of American National Bank, Bakersfield, California, indicates that from May 20, 1974, to June 25, 1974, the bank's prime rate was 11.5% and increased on June 26, 1974, to 12%. The bank's construction loan rate for the same period was approximately 10% plus loan fees of two to four points. For the same period of time, the bank's commercial property rate was estimated to be 11% to 13% plus three to four points. A point is equal to 1% of the principal amount of the loan. Other Plan assets are earning interest of 5½% to 8½% per annum.

(4) The common trustees, who were electrical workers and contractors, were knowledgeable with respect to loans involving real estate. Under all of the circumstances of the loan from the Plan to the Fund, the common trustees believed that the loan would be a sound investment for the Plan providing a desirable rate of return. They determined that the terms of the loan were as fair as an arm's-length transaction would be. In addition, the common trustees felt that both the Plan and the Fund achieved important benefits from the transaction.

(5) If the exemption is granted, the common trustees of the Plan and of the Fund will be permitted to act on behalf of the Plan and the Fund, retroactively and prospectively, under the terms of a 20 year construction and mortgage loan agreement which allows the Plan to realize the highest yield permissible

* In this regard, the Department has indicated that two multiple-employer employee benefit plans are not parties in interest or disqualified persons with respect to each other merely because they are maintained by the same plan sponsors. The presence of trustees or fiduciaries who are common to more than one multiemployer plan does not make such plans parties in interest or disqualified persons to one another. (*See* 41 FR 12740, 12744, March 26, 1976.)

between private parties under the controlling law, and which is represented to be more than adequately secured by real property.

Notice to Interested Persons

Notice of the pending exemption as published in the **Federal Register** will be given to all trustees of the Plan and the Fund and to all participants of the Plan and the Fund. In the case of the trustees, notice will be provided by first class mail, addressed to the business addresses of the Plan and the Fund respectively. In the case of the participants, notice will be provided by first class mail, addressed to the residence address of each such participant which is on file with the Plan and the Fund at the time notice is filed. This notice will be postmarked no later than 10 days following the publication of such notice in the **Federal Register.**

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act does not relieve a fiduciary or other party in interest from certain other provisions of the Act, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act.

(2) The proposed exemption, if granted, will not extend to transactions prohibited under sections 406(a), 406(b)(1) and 406(b)(3) of the Act.

(3) Before an exemption may be granted under section 408(a) of the Act, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative of statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, from January 1, 1975, the restrictions of section 406(b)(2) of the Act shall not apply, retroactively or prospectively, to the continuing acts of the common trustees under the terms of the 20 year construction and mortgage loan in the amount of $100,000 made on July 26, 1974, by the Plan to the Fund. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to the exemption.

Signed at Washington, D.C., this 27th day of April, 1979.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[Application No. L–359]

[FR Doc. 79–14021 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–29–M

Employee Benefit Programs; Exemption From the Prohibitions Respecting a Transaction Involving E. H. Sheldon & Co. Pension Trust for Union Employees and Sheldon Salaried Employees Pension Trust

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the E. H. Sheldon and Company Pension Trust for Union Employees (the Union Plan) and the Sheldon Salaried Employees Pension Trust (the Salaried Plan) (collectively the Plans) to accept the formal tender offer made on April 29, 1977, by the American Seating Company (the Employer), and enables the Plans to sell to the Employer, on or about May 20, 1977, in accordance with the tender offer, 5,700 shares of common stock of the Employer for $15.00 per Share.

FOR FURTHER INFORMATION CONTACT: C. E. Beaver of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216, (202) 523–8881. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 2, 1979 notice was published in the **Federal Register** (44 FR 11858) of the pendency before the Department of Labor (the Department) of a proposal for an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A) through (E) of the Code, for transactions described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no request for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service, but the notice of pendency was issued solely by the Department because, effective December 31, 1978, 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 exemption is granted solely by the Department.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a

fiduciary or party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act, nor does the fact that the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

Therefore, the exemption proposed in the notice of March 2, 1979 (44 FR 11858), is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transactions to be consummated pursuant to this exemption.

Signed at Washington, D.C. this 27th day of April, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, Department of Labor.

[Prohibited Transaction Exemption 79–14]

[FR Doc. 79–14022 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–29–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

NASA Advisory Council (NAC) Space Systems and Technology Advisory Committee Meeting

A meeting of the Informal Executive Subcommittee of the Space Systems and Technology Advisory Committee will be held May 24, 1979, from 9:30 a.m. to 4:00 p.m. in Room 647, NASA Headquarters, 600 Independence Avenue, SW., Washington, D.C. 20546. The meeting will be open to the public up to the seating capacity of the room (about 15 persons including Subcommittee members and participants).

The Space Systems and Technology Advisory Committee was established to advise NASA senior management through the NASA Advisory Council in the area of space research and technology. The purpose of the Executive Subcommittee meeting is to review and discuss recent and planned activities of the informal ad hoc subcommittees and to formulate plans for the June meeting of the Space Systems and Technology Advisory Committee. The Chairperson is Mr. Robert L. Johnson. There are seven members on the Informal Executive Subcommittee.

Agenda

May 24, 1979

9:30 a.m., Reports from the Informal Ad Hoc Subcommittees' Chairpersons.
1:00 p.m., Future Activities of the Informal Ad Hoc Subcommittees.
3:00 p.m., Planning for the June 1979 Meeting of the Space Systems and Technology Advisory Committee.

For further information, please contact C. Robert Nysmith, Executive Secretary, (202) 755–3252, NASA Headquarters, Code RP–4, Washington, D.C. 20546.

Arnold W. Frutkin,

Associate Administrator for External Relations.

April 30, 1979.

[FR Doc. 79–13926 Filed 5–3–79; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL COMMISSION ON UNEMPLOYMENT COMPENSATION

Meeting

The Fifteenth meeting of the National Commission on Unemployment Compensation is scheduled to be held at the Shoreham Americana Hotel, Washington, D.C. on June 28, 29, and 30. The meeting will begin at 10:00 a.m. and conclude at 5:00 p.m. each day.

Requests for presenting testimony must be submitted 30 days prior to the meeting date and must indicate the topics to be discussed. Individuals and organizations requesting time must limit oral testimony to not more than ten minutes. Forty copies of written testimony must be submitted, but oral testimony should summarize any written testimony. Depending upon the number of persons and organizations requesting the opportunity to testify at a meeting, and the topics to be discussed, individuals and organizations will be notified of time and place allocated for testimony. Whenever feasible, individuals and organizations presenting similar views will be grouped together and will be handled as a panel in order to enable discussion, questioning, and responses to be developed with a view to assisting the Commission to deal with the mandate established by Congress.

Telephone inquiries and communications concerning this meeting should be directed to: James M. Rosbrow, Executive Director, National Commission on Unemployment Compensation, 1815 Lynn Street, Room 440, Rosslyn, Virginia 22209 (702) 235–2782.

Signed at Washington, D.C. this 26th day of April, 1979.

James M. Rosbrow,

Executive Director, National Commission on Unemployment Compensation

[FR Doc. 79–14023 Filed 5–3–79; 8:45 am]

BILLING CODE 4510–30–M

NUCLEAR REGULATORY COMMISSION

Applications for Licenses To Export Nuclear Facilites or Materials

Pursuant to 10 CFR 110.40, "Public Notice of Receipt of an Application," please take notice that the Nuclear Regulatory Commission has received the following applications for export licenses. A copy of each application is on file in the nuclear Regulatory Commission's Public Document Room located at 1717 H Street, NW., Washington, D.C.

Dated April 27, 1979, at Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Gerald G. Oplinger,

Assistant Director, Export/Import and International Safeguards, Office of International Programs.

Attachment

Name of applicant, date of application, date received, application number	Material type	Material in kilograms		End-use	Country of destination
		Total element	Total isotope		
1. General Electric Co. April 13, 1979, April 18, 1979, XSNM01498.	3.65 percent enriched uranium.	18,452	510	Reload fuel for Fukushima 1, unit 6	Japan
2. Transnuclear, Inc. April 20, 1979, April 23, 1979, XSNM01500.	93.3 percent enriched uranium.	15.038	14.030	Fuel for DR-3 reactor	Denmark

[FR Doc. 79-13956 Filed 5-3-79; 8:45 am]

BILLING CODE 7590-01-M

Commonwealth Edison Co., et al.; Carroll County Site; Hearing on Application for Construction Permits and a Request for Early Site Review

In the matter of Commonwealth Edison Co. Interstate Power Company Iowa-Illinois Gas and Electric Company.

Pursuant to the Atomic Energy Act of 1954, as amended (the Act), and the regulations in Title 10, Code of Federal Regulations, Part 50, "Licensing of Production and Utilization Facilities," Part 51, "Licensing and Regulatory Policy and Procedures for Environmental Protection," and Part 2, "Rules of Practice," notice is hereby given that a hearing will be held before an Atomic Safety and Licensing Board (Board), to consider the application filed under the Act by the Commonwealth Edison Company, *et al.* (the applicant) for construction permits and a request for an early site review, hearing and partial initial decision on issues of site suitability within the purview of the applicable provisions of 10 CFR Parts 50, 51 and 100 for a proposed site designated as the Carroll County site. The Carroll County site is located in northwestern Illinois, about 5 miles southeast of the city of Savanna and 3 miles east of the Mississippi River in Carroll County, Illinois.

The hearing, which will be scheduled to begin in the vicinity of the proposed site, will be conducted by an Atomic Safety and Licensing Board which has been designated by the Chairman of the Atomic Safety and Licensing Board Panel. The Board consists of Glenn O. Bright, R. L. Holton, and John F. Wolf, Chairman.

Pursuant to 10 CFR 2.785, an Atomic Safety and Licensing Appeal Board will exercise the authority and the review function which would otherwise be exercised and peformed by the Commission. Notice as to the membership of the Appeal Board will be published in the **Federal Register** at a later date.

Pursuant to 10 CFR 2.606 and 2.761a, respectively, the Board will make findings on issues of site suitability for which early consideration is sought and render a partial decision.

The application for construction permits with a request for an early site review identified as the issues of site suitability for which early consideration is sought the following: whether, from both an environmental and safety standpoint, the Carroll County site is suitable with respect to: geology, hydrology, meteorology, terrestrial and aquatic ecology, water use, regional demography, community characteristics, economy, historical and national landmarks, land use, noise considerations, and aesthetics. In the event the Board makes favorable findings on these issues, the partial decision shall remain in effect either for a period of five years or until the applicant for the construction permit has made timely submittal of the remaining information required to support the application and the proceeding for a permit to construct a facility on the site identified in the partial decision has been concluded, unless the Commission, Atomic Safety and Licensing Appeal Board, or Atomic Safety and Licensing Board, upon its own initiative or upon motion by a party to the proceeding, finds that there exists significant new information that substantially affects the earlier conclusions and reopens the hearing record on site suitability issues.

In the event that this proceeding is not a contested proceeding, as defined by 10 CFR 2.4(n), the Board will determine without conducting a *de novo* evaluation of the application whether the application and the record of the proceeding contain sufficient information and whether the review conducted by the Commission's staff pursuant to the National Environmental Policy Act of 1969 (NEPA) has been adequate.

With respect to the Commission's responsibilities under NEPA, and regardless of whether the proceeding is contested or uncontested, the Board will, in accordance with 10 CFR 51.52(c): (1) determine whether the requirements of Section 102(2)(A), (C), and (E) of NEPA and 10 CFR Part 51 have been complied with in this proceeding; (2) independently consider the final balance among conflicting factors contained in the record of the proceeding; and (3) determine, after weighing the environmental, economic, technical and other benefits against environmental and other costs, the suitability of the site with respect to the factors reviewed. The Board will convene a prehearing conference of the parties, or their counsel to be held subsequent to any required special prehearing conference, and within sixty (60) days after discovery has been completed or at such other time as the Board may specify, for the purpose of dealing with the matters specified in 10 CFR 2.752.

The Board will set the time and place for any special prehearing conference, prehearing conference and evidentiary hearing, and the respective notices will be published in the **Federal Register.**

Any person who does not wish, or is not qualified, to become a party to this

proceeding may request permission to make a limited appearance pursuant to the provisions of 10 CFR 2.715. A person making a limited appearance may make an oral or written statement of position on the issues. He does not become a party, but may state his position and raise questions which he would like to have answered to the extent that the questions are within the scope of site suitability. A limited appearance may be made at any session of the hearing or at any prehearing conference subject to such limits and conditions as may be imposed by the Board. Persons desiring to make a limited appearance are requested to inform the Secretary of the Commission by July 3, 1979.

Any person whose interest may be affected by the proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene in accordance with the provisions of 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 proceedings. 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 the petitioner wishes to intervene.

Any person who as filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without prior approval of the presiding officer at any time up to 15 days prior to the holding of the first prehearing conference, but such an amended petition must satisfy the specificity requirements described above. A petition that sets forth contentions relating only to matters outside the jurisdiction of the Commission will be denied.

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 a 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 present evidence and cross-examine witnesses.

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 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)(1)(i)–(v) and 23.714(d).

An answer to this notice, pursuant to the provisions of 10 CFR 2.705, must be filed by the applicant by May 24, 1979.

A request for a hearing or a petition to intervene shall be filed by June 4, 1979 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. A copy of any petition for intervention should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and to Isham, Lincoln & Beale, Attention: Richard E. Powell, Esquire, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorney for the applicant. Pending further order of the Board, parties are required to file, pursuant to the provisions of 10 CFR 2.708, an original and twenty (20) conformed copies of each such paper with the Commission. Any questions or requests for additional information regarding the content of this notice should be addressed to the Chief Hearing Counsel, Office of the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

For further details, see the application for Construction permits and request for an early site review consisting of the Site Suitability Environmental Report and the Site Suitability Site Safety Report dated April 5, 1979. Any amendments or supplements thereto are or will be available as noted above for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., between the hours of 8:30 AM and 5:00 PM on weekdays. Copies of those documents will also be available at the Savanna Township Library, 326 Third Street, Savanna, Illinois, for inspection by members of the public between the hours of 1:30 PM and 5:30 PM Monday through Saturday. As they become available, the Draft and Final Site Environmental Statements, the transcripts of the prehearing conferences and of the hearing, and other relevant documents, will also be available at the above locations. Copies of the Final Site Environmental Statement and Site Safety Evaluation Report, when available, may be purchased at current rates, from the National Technical Information Service, Department of Commerce, 5285 Port Royal Road, Springfield, Virginia 22161.

Dated at Washington, D.C. this 1st day of May 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[Docket Nos. S50-599, S50-600]

[FR Doc. 79-13949 Filed 5-3-79; 8:45 am]

BILLING CODE 7590-01-M

Puerto Rico Water Resources Authority; Availability of Site Safety Evaluation Report for the North Coast Nuclear Station

Notice is hereby given that the Office of Nuclear Reactor Regulation has published its Site Safety Evaluation Report reviewing site related safety issues to determine the suitability of the Islote Site for eventual construction of the North Coast Nuclear Station in Arecibo, Puerto Rico. Notice of receipt of Puerto Rico Water Resources Authority's Environmental Report was published in the **Federal Register** on February 14, 1975 (40 FR 6835).

This report summarizes the results of NRC's technical evaluation of the proposed Islote site suitability for a nuclear power plant performed by the NRC staff and delineates the scope of the technical matters considered in evaluating the suitability of the site for a nuclear power plant.

To the extent possible, review has been completed in the areas of seismology, geology, meteorology, hydrology, and in the area of hazards to a nuclear power plant which could result from man's activities.

The report is being referred to the Advisory Committee on Reactor Safeguards and is being made available at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C., the Arecibo City Hall Library, Arecibo, Puerto Rico and the Etien Totti

Public Library, Hato Rey, Puerto Rico for inspection and copying. The report (Document No. NUREG–0541) can also be purchased, at current rates, from the National Technical Information Service, Springfield, Virginia 22161. (Printed copy: $5.25; microfiche: $3.00.)

Dated at Bethesda, Maryland, this 27th day of April 1979.

For the Nuclear Regulatory Commission.

Ronald L. Ballard,

Chief, Environmental Projects Branch No. 1, Division of Site Safety and Environmental Analysis.

[Docket No. 50-376]

[FR Doc. 79-13953 Filed 5-3-79; 8:45 am]

BILLING CODE 7590-01-M

Virginia Electric & Power Co.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment 10 to the Facility Operating License No. NPF–4, issued to Virginia Electric and Power Company, which requires an inservice inspection program to periodically inspect the flow splitter plates installed in the reactor coolant system pipe elbow adjacent to the reactor coolant pump. Changes have been made to the Appendix A Technical Specifications regarding the inservice inspection of flow splitter plates, the displacement monitoring system, and a limiting condition for operation requiring the loose-parts detection system to be operable during startup and power operation. Amendment No. 10 is effective as of its date of issuance.

The Amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement, or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action see a copy of (1) Amendment No. 10 to NPF–4, and (2) the Safety Evaluation dated April, 1979. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555 and at the Board of Supervisor's Office, Louisa County Courthouse, Louisa, Virginia 23093 and at the Alderman Library, Manuscripts Department, University of Virginia, Charlottesville, Virginia 22901. A copy of these items may be obtained upon request to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Project Management.

Dated at Bethesda, Maryland this 27th day of April, 1979.

For the Nuclear Regulatory Commission.

Olan D. Parr,

Chief, Light Water Reactors Branch No. 3 Division of Project Management.

[Docket No. 50-338]

[FR Doc. 79-13954 Filed 5-3-79; 8:45 am]

BILLING CODE 7590-01-M

Wisconsin Public Service Corp., et al.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 29 to Facility Operating License No. DPR–43 issued to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensee) which revised Technical Specifications for operation of the Kewaunee Nuclear Power Plant located in Kewaunee, Wisconsin. The amendment is effective as of the date of issuance.

The amendment revises the Technical Specifications to require safety injection actuation based on low pressurizer pressure, 2 out of 3 channels.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated April 20, 1979, (2) Amendment No. 29 to Facility Operating License No. DPR–43, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW, Washington, D.C. 20555, and at the Kewaunee Public Library, 822 Juneau Street, Kewaunee, Wisconsin 54216. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 27th day of April 1979.

For the nuclear regulatory commission.

A. Schwencer,

Chief, Operating Reactors Branch No. 1 Division of Operating Reactors.

[Docket No. 50-305]

[FR Doc. 79-13955 Filed 5-3-79; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF THE SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS

Trade Policy Staff Committee; Specialty Steel-Extension, Reduction or Termination of Import Relief; Solicitation of Public Views

On June 11, 1976 the President issued a proclamation imposing import restrictions on certain Stainless Steel and Alloy Tool Steel (Specialty Steel), now found in TSUS items 923.20, 923.21, 923.22, 923.23 and 923.26 effective June 14, 1976 for a period three years. (Presidential Proclamation 4445, 41 FR 24101 of June 11, 1976—see also modifications on the relief on Proclamation 4477 of Nov. 16, 1976 (41 FR 5096), Proclamation 4509 of June 15, 1977 (42 FR 30829) and Proclamation 4559 of April 15, 1978 (43 FR 14433)). These restrictions were imposed pursuant to Section 203(a) of the Trade Act of 1974, in response to a finding by the USITC that the US industry producing like or directly competitive products was suffering from serious injury or the threat thereof caused by increased imports of the above named specialty steel products.

The imports relief proclaimed and implemented will expire on June 13, 1979 unless extended by the President, after receiving advice from the USITC and taking into account the considerations in 202(c) of the Trade Act, pursuant to Sec. 203(h)(3) of the Trade Act.

On April 24, 1979 the USITC reported to the President its advice under 203 (1)(2) and (1)(5) of the Trade Act as to the probable economic effects of such expiration (see USITC Report Number

TA–203–5 of April 24, 1979 for further details).

The Office of the Special Representative for Trade Negotiations chairs the interagency Trade Policy Committee structure that makes recommendations to the President as to what action, if any, he should take with respect to any action on an extension, reduction or termination of relief. In order to assist the Trade Policy Staff Committee in developing recommendations to the President, interested persons are invited to submit written briefs to the Trade Policy Staff Committee on the probably effects of any extension, reduction or termination of present import restrictions now in effect with respect to Specialty Steel, specifically with respect to the following factors:

(1) The probable effectiveness of the extension, reduction or termination import relief as a means to promote adjustment, the efforts being made or to be implemented by the industry concerned to adjust to import competition, and other considerations relevant to the position of the industry in the nation's economy;

(2) The effect of the extension, reduction or termination of import relief on consumers and on competition in the domestic markets for such articles;

(3) The effect of the extension, reduction or termination of import relief on the international economic interest of the United States;

(4) The impact on United States industries and firms as a consequence of any (extension of the possible modification of duties or other) import restrictions which may result from international obligations with respect to compensation;

(5) The geographic concentration of imported products marketed in the United States

(6) The extent to which the United States market is a focal point for exports of such article by reason of restraints on exports of such article to, or on imports of such article into, third country markets; and

(7) The economic and social costs which would be incurred by taxpayers, communities and workers if import relief were or were not extended, terminated or reduced.

Briefs should be submitted in twenty (20) copies to Chairman, Trade Policy Staff Committee, Room 729, Office of the Special Representative for Trade Negotiations, 1800 G Street, NW., Washington, D.C. 20506.

To be considered by the Trade Policy Staff Committee, submissions should be received in the Office of the Special Representative for Trade Negotiations no later than the close of business Monday, May 14, 1979.

Richard L. Matthiesen,

Acting Chairman, Trade Policy Staff Committee.

[FR Doc. 79–14107 Filed 5–3–79; 8:45 am]

BILLING CODE 3190–01–M

SMALL BUSINESS ADMINISTRATION

Mississippi; Disaster Loan Area

The above numbered Declaration (See 44 FR 24179) is amended in accordance with the President's declaration of April 16, 1979, to include Clarke, Copiah, Lauderdale and Simpson Counties in the State of Mississippi. The Small Business Adminstration will accept applications for disaster relief loans from disaster victims in the above-named counties, and adjacent counties within the State of Mississippi. All other information remains the same; i.e., the termination dates for filing applications for physical damage is close of business on June 15, 1979, and for economic injury until the close of business on January 15, 1980.

(Catalog of Federal Domestic Assistance program Nos. 59002 and 59008)

Dated: April 26, 1979.

A. Vernon Weaver,

Administrator.

[Disaster Loan Area No. 1616, Amdt. No. 1]

[FR Doc. 79–14050 Filed 5–3–79; 8:45 am]

BILLING CODE 8025–01–M

Missouri: Declaration of Disaster Loan Area

As a result of the President's major disaster declaration, I find that Cape Girardeau, Dunklin, Jefferson, Lincoln, Mississippi, New Madrid, Pemiscot, Pulaski, St. Charles, St. Louis, Ste. Genevieve, Scott, Stoddard and Texas Counties and adjacent counties within the State of Missouri, constitute a disaster area because of damage resulting from tornadoes, torrential rains and flooding beginning on or about March 31, 1979. Applications will be processed under provisions of Pub. L. 94–305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physcial damage until close of business on June 22, 1979, and for economic injury until the close of business on January 22, 1980, at:

Small Business Administration, District Office, 12 Grand Bldg., 5th Floor, 1150 Grand Avenue, Kansas City, Missouri 64106.

Small Business Administration, District Office, Mercantile Tower, Suite 2500, One Mercantile Center, St. Louis, Missouri 63101.

or other locally announced locations.

(Caltalog of Federal Domestic Assistance Program Nos. 59002. and 59008)

Dated: April 27, 1979.

William H. Mauk, Jr.,

Acting Administrator.

[Disaster Loan Area No. 1622]

[FR Doc. 79–14051 Filed 5–3–79; 8:45 am]

BILLING CODE 8025–01–M

South Carolina; Declaration of Disaster Loan Area

Greenville County and adjacent counties within the State of South Carolina constitute a disaster area as a result of damage caused by tornadoes which occurred on March 23, 1979. Applications will be processed under the provisions of Pub. L. 94–305. Interest rate is 7⅜ percent. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on June 25, 1979, and for economic injury until the close of business on January 28, 1980, at:

Small Business Administration, District Office, 1801 Assembley, Room 131, Columbia, South Carolina 29201

or other locally announced locations.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 26, 1979.

A. Vernon Weaver,

Administrator.

[Disaster Loan Area No. 1621]

[FR Doc. 79–14049 Filed 5–3–79; 8:45 am]

BILLING CODE 8025–01–M

Universal Investment Corp.; Issuance of Small Business Investment Company License

On December 27, 1978, a Notice of application for a license as a small business investment company was published in the **Federal Register** (43 FR 60361) stating that an application had been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1978)), for a license to operate as a small business investment company by Universal Investment Company, 300 Curry Street, Carson City, Nevada 89701.

Interested parties were given until the close of business on January 11, 1979, to submit their comments. No comments were received.

Notice is hereby given pursuant to Section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information and

facts with regard thereto, SBA issued License No. 09/09–0235, to Universal Investment Corporation on April 5, 1979.

(Catalog of Federal Assistance Program No. 59.011, Small Business Investment Companies).

Dated: April 30, 1979.

Peter F. McNeish,

Deputy Associate Administrator for Finance and Investment.

[License No. 09/09–0235]

[FR Doc. 79–14048 Filed 5–3–79; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Illinois Central Gulf Railroad; Hearing

The Illinois Central Gulf Railroad (ICG) has petitioned the Federal Railroad Administration (FRA) seeking approval of a proposed modification of a portion of its signal system. The proposed modification involves discontinuance of the automatic block signal system currently installed on a line of railroad extending between Clark and Rock Creek Junction in the State of Missouri. This proceeding is identified as FRA Block Signal Application Number 1508 and involves a single track line approximately 130 miles in length.

The Railroad Safety Board has voted to hold a public hearing before entering its decision in this proceeding. Accordingly, a public hearing is hereby set for 11 a.m. on May 31, 1979, Room 1341, Federal Building, located at 210 North 12th Street, St. Louis, Missouri.

The hearing will be an informal one, and will be conducted in accordance with Rule 31 of the FRA rulemaking procedures (49 CFR 211.31), by a representative designated by the Board.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The representatives of the Board will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons who wish to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary, for the conduct of the hearing will be announced at the hearing.

Issued in Washington, D.C., on May 1, 1979.

J. W. Walsh,

Chairman, Railroad Safety Board.

[FR Doc. 79–13691 Filed 5–3–79; 8:45 am]

BILLING CODE 4910–06–M

DEPARTMENT OF THE TREASURY

Customs Service

Receipt of American Manufacturer's Petition Alleging That the Appraised Value of Certain Printing Presses Manufactured in East Germany is too low

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: Customs has received a petition from an American manufacturer of web-fed offset lithographic printing presses alleging that the appraised value of certain web-fed lithographic printing presses from East Germany is too low.

DATES: Interested persons may comment on this petition. Comments (preferably in triplicate) must be received on or before July 3, 1979.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, Room 2335, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Burton L. Schlissel, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202–566–2938).

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of web-fed lithographic printing presses. The petitioner alleges that the appraised value of the Zephyr 300 printing press, a web-fed lithographic printing press manufactured by The Polygraph Company of Leipzig, German Democratic Republic (East Germany), is too low. Importations of the Zephyr 300 printing press are being classified under the provision for other printing machinery in item 668.20, Tariff Schedules of the United States, with duty at the column 2 rate of 25 percent ad valorem.

The petitioner bases his allegation, in part, upon a comparison of the value of an equivalent printing press manufactured in West Germany with Department of Commerce data regarding the value of web presses imported from East Germany.

The petitioner estimates the present appraised value of the presses to be $60,138, based on Commerce Department (Bureau of Census) data for the year 1977.

The petitioner claims a value for the presses of $290,907. It should be noted that some question exists as to whether the same electrical components are included in the presses on which the present appraised value was calculated, as are included in the presses on which the claimed value was calculated.

Comments

Pursuant to § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with §§ 103.8(b) and 175.21(b), Customs Regulations (19 CFR 103.8(b), 175.21(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, Room 2335, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

This notice is published in accordance with § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

April 27, 1979.

Leonard Lehman,

Assistant Commissioner, Regulations and Rulings.

[521114]

[FR Doc. 79–13944 Filed 5–3–79; 8:45 am]

BILLING CODE 4810–22–M

Receipt of American Manufacturer's Petition Alleging That the Appraised Value of Tapered Roller Bearings and Components Imported From Japan is too low

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of receipt of American manufacturer's petition.

SUMMARY: Customs has received a petition from an American manufacturer of tapered roller bearings and components alleging that the appraised value of tapered roller bearings and components imported from Japan is too low.

DATES: Interested persons may comment on this petition. Comments (preferably in triplicate) must be received on or before July 3, 1979.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, Room 2335,

1301 Constitution Avenue, N.W. Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Jesse V. Vitello, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, N.W., Washington, D.C. 20229 (202–566–8410).

SUPPLEMENTARY INFORMATION:

Background

A petition has been filed under section 516 of the Tariff Act of 1930, as amended (19 U.S.C. 1516), by an American manufacturer of tapered roller bearings and components. The petitioner alleges that the appraised value of certain tapered roller bearings and components manufactured in Japan by Koyo Seiko Co., Ltd., Nippon Seiko, K.K., Fujikoshi, Ltd., and the Toyo Bearing Mfg. Co., Ltd. is too low. This allegation is based upon a claimed disparity between the average unit dutiable value of the subject tapered roller bearings and their average unit foreign value. The average unit dutiable value is derived by petitioner from Department of Commerce data for 1978 concerning tapered roller bearings and components classified under item 680.35, Tariff Schedules of the United States. The average unit foreign value is derived by petitioner from independent market research data indicating the prices at which tapered roller bearings are offered for sale by distributors in the Japanese home market. The petitioner asserts that the average unit dutiable value of tapered roller bearings and components from Japan is approximately one third of the Japanese home market price.

The petitioner alleges that the present appraised value is $1.66 (average unit dutiable value) and claims that the value should be $4.67 (average unit foreign value/Japanese home market price).

Comments

Pursuant to § 175.21(a) of the Customs regulations (19 CFR 175.21(a)), the Customs Service invites written comments on this petition from all interested parties.

The American manufacturer's petition, as well as all comments received in response to this notice, will be available for public inspection in accordance with §§ 103.8(b) and 175.21(b), Customs Regulations (19 CFR 103.8(b), 175.21(b)), during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, Room 2335, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Authority

This notice is published in accordance with § 175.21(a) of the Customs Regulations (19 CFR 175.21(a)).

April 27, 1979.

Donald W. Lewis,

Acting Assistant Commissioner, Regulations and Rulings.

[FR Doc. 79–13945 Filed 5–3–79; 8:45 am]

BILLING CODE 4810–22–M

INTERSTATE COMMERCE COMMISSION

Policy Statement Concerning Disposition of Temporary Authority Decisions

AGENCY: Interstate Commerce Commission.

ACTION: Policy notice.

SUMMARY: The Commission on its own motion is changing its policy in regard to the type of notice that applicant's representatives receive when temporary authority applications under section 49 U.S.C. 11349 (formerly section 210a(b)) of the act are granted or denied. Presently practitioners located outside Washington, D.C. are notified of the Commission's decision by collect commercial telegram. under this policy notice, practitioners located outside of Washington, D.C. shall be notified by FTS telephone, at no charge to the receiving party. FTS telephone is less costly, more efficient and expedient than commercial telegrams. Practitioners who wish to receive notice of the Commission's decision on or about the date of decision must include in their application a telephone number where they can be contacted during normal business hours.

EFFECTIVE DATE: Effective for all applications filed on or after May 4, 1979.

ADDRESS: Send comments to Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg (202) 275–7245.

SUPPLEMENTARY INFORMATION: This proceeding was instituted by the Commission on its own motion to expedite the notice given to practitioners on temporary authority applications under section 11349 of the act.

Presently practitioners are notified of a Commission decision by two separate means. Practitioners located in greater Washington, D.C. (i.e., the local (202) area dialing code) are notified by telephone. Practitioners located outside Washington, D.C. are notified by collect commercial telegram.

By this proceeding, and to expedite notice to practitioners located outside Washington, D.C., the Commission shall notify practitioners of the Commission's decision by FTS telephone (no charge to receiving party) instead of by collect commercial telegram.

In addition to the savings to the practitioner a considerable savings will be had by the Commission. Presently, the Commission's staff prepares, types, and proofreads the commercial telegram notices. These notices require several separately addressed carbon copies for internal distribution and filing. All this would be unnecessary, and would be consistent as with the present practice of notifying practitioners in Washington, D.C., by telephone.

Practitioners desiring to receive notice of the Commission's decision on or about the date of decision must include in their application a telephone number where they can be contacted during normal business hours.

Dated: April 20, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp, and Christian.

H. G. Homme, Jr.,

Secretary.

[Ex Parte No. MC–123]

[FR Doc. 79–13927 Filed 5–3–79; 8:45 am]

BILLING CODE 7035–01–M

Irregular-Route Motor Common Carriers of Property—Elimination of Gateway Letter Notices

April 30, 1979.

The following letter-notices of proposals to eliminate gateways for the purpose of reducing highway congestion, alleviating air and noise pollution, minimizing safety hazards, and conserving fuel have been filed with the Interstate Commerce Commission under the Commission's *Gateway Elimination Rules* (49 CFR Part 1065), and notice thereof to all interested persons is hereby given as provided in such rules.

An original and two copies of protests against the proposed elimination of any gateway herein described may be filed with the Interstate Commerce Commission on or before May 14, 1979. A copy must also be served upon applicant or its representative. Protests against the elimination of a gateway will *not* operate to stay commencement of the proposed operation.

Successively filed letter-notices of the same carrier under these rules will be numbered consecutively for convenience in identification. Protests, if

any, must refer to such letter-notices by number.

The following applicants seek to operate as a *common carrier*, by motor vehicles, over irregular routes.

MC 124174 (Sub-E83), filed November 2, 1976. Applicant: MOMSEN TRUCKING COMPANY, P.O. Box 37490, Omaha, NE 68137. Representative: Karl E. Momsen (same as above). *Hides, skins, and pieces thereof, tannery products, tannery by-products, and supplies* (except commodities in bulk, in tank vehicles) from points in WY to points in IA on and east of a line beginning at Sioux City extending along US Hwy 75 to jct. IA Hwy 60, then along IA Hwy 60 to the IA–MN State line; points in MN on and east of a line beginning at the IA–MN State line extending along MN Hwy 60 to jct. MN Hwy 15, then along MN Hwy 15 to jct. US Hwy 169, then along US Hwy 169 to Minneapolis, then along I Hwy 94 to jct. US Hwy 52, then along US Hwy 52 to jct. I Hwy 94, then along I Hwy 94 to jct. US Hwy 71, then along US Hwy 71 to jct. MN Hwy 34, then along MN Hwy 34 to jct. MN Hwy 371, then along MN Hwy 371 to jct. US Hwy 2, then along US Hwy 2 to jct. MN Hwy 6, then along MN Hwy 6 to jct. US Hwy 71, then along US Hwy 71 to the US-CN International Boundary line; points in NE on and east of a line beginning at Hastings extending along US Hwy 281 to the NE-KS State line; points in KS on and east of US Hwy 281; points in OK on and east of US Hwy 281; points in TX on and east of a line beginning at the OK-TX State line extending along US Hwy 183 to jct. US Hwy 287, then along US Hwy 287 to jct. US Hwy 281, then along US Hwy 281 to jct. TX Hwy 16, then along TX Hwy 16 to the US–MX International Boundary line; and Buford, GA; Hazelwood, NC; New Orleans, LA; and points in WI, IL, MO (within 60 miles of Auburn, NE), AR, TN, KY, IN, MI, OH, VA, WV, MD, PA, NJ, MA, VT, NH, and ME. (Gateways eliminated: Sioux City, IA; St. Paul, MN, and Hastings, NE.)

MC 124174 (Sub-E84), filed November 2, 1976. Applicant: MOMSEN TRUCKING COMPANY, P.O. Box 37490, Omaha, NE 68137. Representative: Karl E. Momsen (same as above). *Hides, skins, and pieces thereof, tannery products, tannery by-products, and supplies* (except commodities in bulk, in tank vehicles) from points in ND to points in NE on, south, and east of a line beginning at Sioux City extending along US Hwy 20 to jct. US Hwy 81, then along US Hwy 81 to jct. US Hwy 6 then along US Hwy 6 to jct. US Hwy 283, then along US Hwy 283 to the NE-KS State line; points in KS on and east of a line beginning at the KS-NE State line extending along US Hwy 281 to jct. US Hwy 24, then along US Hwy 24 to jct. US Hwy 83, then along US Hwy 83 to the KS-OK State line; points in OK on and east of a line beginning at the OK-KS State line extending along US Hwy 83 to jct. US Hwy 64, then along US Hwy 64 to the OK-TX State line; points in TX on and east of US Hwy 54; points in MN on and south of a line beginning at St. Paul extending along US Hwy 12 to the MN-WI State line; points in WI on and southeast of a line beginning at the MN-WI State line extending along US Hwy 12 to jct. WI Hwy 40, then along WI Hwy 40 to jct. WI Hwy 70, then WI Hwy 70 to jct. US Hwy 2/141, then along US Hwy 2/141 to the WI-MI State line; points in MI on and southeast of US Hwy 2; points in IA, IL, IN, OH, WV, MD, PA, NJ, MA, VT, NH, ME, VA, AR, MO (within 60 miles of Auburn, NE), KY, TN, Hazelwood, NC, Buford, GA, and New Orleans, LA. (Gateways eliminated: Hastings, NE; St. Paul, MN; and Sioux City, IA).

MC 124174 (Sub-E85). Applicant: MOMSEN TRUCKING COMPANY, P.O. Box 37490, Omaha, NE 68137. Representative: Karl E. Momsen (same as above). *Hides, skins, and pieces thereof, tannery products, tannery by-products, and supplies* (except commodities in bulk, in tank vehicles) between points in ME, NH, VT, MA, NY, NJ, PA, DE, MD, OH, WV, VA, MI, IN, KY, TN, WI, IL, MN, IA, TX, NE, and SD, on the one hand, and, on the other, Hazelwood, NC; Buford, GA, and New Orleans, LA; and from points in MT, WY, CO, ND, KS, OK, AR, MS, AL and GA to Hazelwood, NC. (Gateway eliminated: points in VA and TN.)

H. G. Homme, Jr.,
Secretary.

[FR Doc. 79-13928 Filed 5-3-79; 8:45 am]

BILLING CODE 7035-01-M

Motor Carrier Temporary Authority Applications

April 30, 1979.

Important Notice

The following are notices of filing of applications for temporary authority under Section 210a(a) of the Interstate Commerce Act provided for under the provisions of 49 CFR 1131.3. These rules provide that an original and six (6) copies of protests to an application may be filed with the field official named in the **Federal Register** publication no later than the 15th calendar day after the date the notice of the filing of the application is published in the **Federal Register**. One copy of the protest must be served on the applicant, or its authorized representative, if any, and the protestant must certify that such service has been made. The protest must identify the operating authority upon which it is predicated, specifying the "MC" docket and "Sub" number and quoting the particular portion of authority upon which it relies. Also, the protestant shall specify the service it can and will provide and the amount and type of equipment it will make available for use in connection with the service contemplated by the TA application. The weight accorded a protest shall be governed by the completeness and pertinence of the protestant's information.

Except as otherwise specifically noted, each applicant states that there will be no significant effect on the quality of the human environment resulting from approval of its application.

A copy of the application is on file, and can be examined at the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., and also in the ICC Field Office to which protests are to be transmitted.

Notes.—All applications seek authority to operate as a common carrier over irregular routes except as otherwise noted.

Motor Carriers of Property

MC 31389 (Sub-274TA), filed February 14, 1979, and published in the **Federal Register** issue of April 12, 1979, and republished as corrected this issue. Applicant: McLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), serving (1) Between Pensacola, FL and Nashville, TN, serving all intermediate points in AL: From Pensacola, FL over U.S. Hwy 29 to the junction of FL Hwy 97 to the junction of AL Hwy 21 to the junction of Interstate Hwy 65, thence over Interstate Hwy 65 to Nashville, TN and return over the same. (2) Between Dothan, AL and Montgomery, AL, serving all intermediate points: From Dothan, Al over U.S. Hwy 231 to Montgomery, AL and return over the same route. (3) Between Atmore, AL and Andalusis, AL, serving all intermediate points: From Atmore, AL over U.S. Hwy

29 to Andalusia, AL and return over the same route. (4) Between Montgomery, AL and Columbus, GA, serving all intermediate points: From Montgomery, AL over Interstate Hwy 85 to the junction of U.S. Hwys 280 and 431 at or near Opelika, AL, thence over U.S. Hwy 280 to Phenix City, AL, thence over U.S. Hwy 280 to Columbus, GA, return over the same route. (5) Between Columbus, GA and Atlanta, GA, serving no intermediate points: From Columbus, GA over U.S. Hwy Alt 27, AL Hwy 85E and AL Hwy 85 to Atlanta, GA and return over the same route. (6) Between Birmingham, AL and Altanta, GA, serving all intermediate points in AL: From Birmingham, AL over Interstate Hwy 20 to Altanta, GA and return over the same route. (7) Between Montgomery, AL and Altanta, GA, serving all intermediate points in AL: From Montgomery, AL over Interstate Hwy 85 to Atlanta, GA and return over the same route. (8) Between Dothan, AL and Phenix City, AL, serving all intermediate points: From Dothan, AL over U.S. Hwy 431 to Phenix City, AL and return over the same route. (9) Between Eufaula, AL and Montgomery, AL, serving all intermediate points: From Eufaula, AL over U.S. Hwy 82 to Montgomery, AL and return over the same route. (10) Between Memphis, TN and Atlanta, GA, serving all intermediate points in MS and AL: From Memphis, TN over U.S. Hwy 72 to the junction of Alt 72 near Tuscumbia, AL, thence over Alt 72 to AL Hwy 67 at or near Decatur, AL, thence over AL Hwy 67 to the junction of U.S. Hwy 231, thence over U.S. Hwy 231 to the junction of U.S. Hwy 278, thence over U.S. Hwy 278 via Gadsden, AL to Atlanta, GA and return over the same route. (11) Between Nashville, TN and Montgomery, AL, serving all intermediate points in AL: From Nashville, TN over Interstate Hwy 24 to the junction of U.S. Hwy 231, thence over U.S. Hwy 231 via Huntsville and Ashville, AL to Montgomery AL (also from junction of U.S. Hwy 231 and AL Hwys 79 and 75, over AL Hwys 79 and 75 to Birmingham, AL, thence over Interstate Hwy 65 to Montgomery, AL), and and return over the same route. (12) Between Memphis, TN and Birmingham, AL, serving all intermediate points in MS and AL: From Memphis, TN over U.S. Hwy 78 to Birmingham, AL and return over the same route. (13) Between Corinth, MS and Mobile, AL, serving all intermediate points: From Corinth, MS over U.S. Hwy 45 via Columbus, MS to Mobile, AL (also over Alt. U.S. Hwy 45), and return over the same route. (14) Between Mobile, AL and the junction of AL Hwy 97, serving all intermediate points: From Mobile, AL over Interstate Hwy 65 to the junction of AL Hwy 97 and return over the same route. (15) Between New Orleans, LA and Memphis, TN, serving all intermediate points in MS: From New Orleans, LA over Interstate Hwy 10 to the junction of Interstate Hwy 55 (U.S. Hwy 51), thence over Interstate Hwy 55 via Jackson, MS to Memphis, TN, and return over the same route. (16) Between Greenwood, MS and Montgomery, AL, serving all intermediate points: From Greenwood, MS over U.S. Hwy 82 to Montgomery, AL and return over the same route. (17) Between Jackson, MS and Birmingham, AL, serving all intermediate points: From Jackson, MS over Interstate Hwy 20 to Birmingham, AL and return over the same route. (18) Between Baton Rouge, LA and Greenville, MS, serving all intermediate points in MS: From Baton Rouge, LA over U.S. Hwy 61 to Greenville, MS and return over the same route. (19) Between Vicksburg, MS and Jackson, MS, serving all intermediate points: From Vicksburg, MS over Interstate Hwy 20 to Jackson, MS and return over the same route. (20) Between New Orleans, LA and Meridian, MS, serving all intermediate points in MS: From New Orleans, LA over Interstate Hwy 10 to the junction of Interstate Hwy 59 thence over Interstate Hwy 59 to the junction of Interstate Hwy 20, thence over Interstate Hwy 20 to Meridian, MS and return over the same route. (21) Between New Orleans, LA and Mobile, AL, serving all intermediate points in MS and AL: From New Orleans, LA over U.S. Hwy 90 to Mobile, AL and return over the same route. (22) Between Natchez, MS and Mobile, AL, serving all intermediate points: From Natchez, MS over U.S. Hwy 98 via Hattiesburg, MS to Mobile, AL and return over the same route. (23) Between Gulfport, MS and Jackson, MS, serving all intermediate points: From Gulfport, MS over U.S. Hwy 49 to Jackson, MS and return over the same route. (24) Between Laurel, MS and Walnut, MS, serving all intermediate points: From Laurel, MS over MS U.S. Hwy 15 to Walnut, MS and return over the same route. (25) Between Mobile, AL and Florence, AL, serving all intermediate points: From Mobile, AL over U.S. Hwy 43 to Florence, AL and return over the same route. (26) Between the junction of Interstate Hwy 20 and U.S. Hwy 80 west of York, AL and Montgomery, AL, serving all intermediate points: From the junction of Interstate Hwy 20 and U.S. Hwy 80 over U.S. Hwy 80 to Montgomery, AL and return over the same route. (27) Between Jackson, MS and Clarksdale, MS, serving all intermediate points: From Jackson, MS over U.S. Hwy 49 to the junction of U.S. Hwy 49E at Yazoo City, MS, thence over U.S. Hwy 49E to the junction of U.S. Hwy 49 at or near Tutwiler, MS, thence over U.S. Hwy 49 to Clarksdale, MS and return over the same route. (28) Between Clarksdale, MS and Tupelo, MS, serving all intermediate points: From Clarksdale, MS over MS Hwy 6 to Tupelo, MS and return over the same route. (29) Between Valdosta, GA and Bude, MS, serving all intermediate points in AL and MS: From Valdosta, GA over U.S. Hwy 84 via Dothan, AL, Laurel, MS and Brookhaven, MS to Bude, MS and return over the same route. (30) Between Natchez, MS and Alexandria, LA, serving all Alexandria, LA for purposes of joinder only: From Natchez, MS over U.S. Hwy 84 to the junction of LA Hwy 28, thence over LA Hwy 28 to Alexandria and return over the same route. (31) Between Vicksburg, MS and Shreveport, LA, serving Shreveport, LA for purposes of joinder only: From Vicksburg, MS over Interstate Hwy 20 to Shreveport, LA and return over the same route. (32) Between Vicksburg, MS and Little Rock, AR, serving all intermediate points in MS: From Vicksburg, MS over Interstate Hwy 20 (also over U.S. Hwy 80) to the junction of U.S. Hwy 65, thence over U.S. Hwy 65 to Little Rock, AR and return over the same route. Serving as intermediate and off-route points, all points in AL and MS in conjunction with the above identified routes, for 180 days. An underlying ETA seeks 90 days authority. Applicant proposes to tack the authority sought here with its lead docket, MC–31389, and proposes to interline with carriers at selected points common to McLean and connecting carriers. Supporting shipper(s): There are approximately 650 shippers. Their statements may be examined at the Office listed below and Headquarters. Send protests to: Terrell Price, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205. The purpose of this republication is to reflect territorial description as previously omitted.

Note.—Common control may be involved.

MC 31389 (Sub-276TA), filed March 20, 1979, and published in the **Federal Register** issue of April 20, 1979, and republished as corrected this issue. Applicant: MCLEAN TRUCKING COMPANY, 1920 West First Street, Winston-Salem, NC 27104. Representative: David F. Eshelman, P.O. Box 213, Winston-Salem, NC 27102. Authority sought to operate as a *common carrier*, by motor vehicle, over regular routes, transporting: *General*

commodities (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment), (1) Between Savannah, GA and Jacksonville, FL: From Savannah over US Highway 17 to Jacksonville (also from junction of US Highway 17 and Interstate Highway 95 near Richmond Hill, GA over Interstate Highway 95 to Jacksonville), and return over the same route. (2) Between Augusta, GA and Jacksonville, and return over the same route. (3) Between Augusta, GA and Savannah, GA: From Augusta over US Highway 25 to the junction of US Highway 80, thence over US Highway 80 to Savannah, and return over the same route. (4) Between the SC/GA State Line and the GA/AL State Line: From the SC/GA State Line over US Highway 278 to the junction of US Highway 78 near Atlanta, GA, thence over US Highway 78 to the GA/AL State Line (also over Interstate Highway 20), and return over the same route. (5) Between Savannah, GA and Atlanta, GA: From Savannah over Interstate Highway 16 to the junction of Interstate Highway 75 at Macon, GA, thence over Interstate Highway 75 to Atlanta (also from Savannah over US Highway 80 to Macon, GA, thence over the above described route to Atlanta), and return over the same route. (6) Between Macon, GA and the GA/FL State Line: From Macon over US Highway 41 (also over Interstate Highway 75) to the GA/FL State Line, and return over the same route. (7) Between Madison, GA and Dublin, GA: From Madison over US Highway 441 to Dublin, and return over the same route. (8) Between the junction of US Highways 80 and 280 at or near Blichton, GA and Columbus, GA: From the junction of US Highways 80 and 280 over US Highway 280 to Columbus, and return over the same route. (9) Between Brunswick, GA and Dothan, AL: From Brunswick over US Highway 84 to Dothan, and return over the same route. (10) Between Atlanta, GA and the GA/FL State Line: From Atlanta over US Highway 19 to the GA/FL State Line, and return over the same route. (11) Between Waycross, GA and Eaufaula, AL: From waycross over US Highway 82 to Eufaula, and return over the same route. (12) Between Macon, GA and Brunswick, GA: From Macon over US Highway 23 to Hazlehurst, GA, thence over US Highway 341 to Brunswick, and return over the same route. (13) Between Midway, GA and Waycross, GA: From Midway over US Highway 82 to Waycross, and return over the same route. (14) Between the SC/GA State Line and Statesboro, GA: From the SC/GA State Line over US Highway 301 to Statesboro, and return over the same route. (15) Between Wrens, GA and Macon, GA: From Wrens over GA Highway 88 to Sandersville, GA, thence over GA Highway 24 to Milledgeville, GA, thence over GA Highway 49 to Macon, and return over the same route. (16) Between Helen, GA and the GA/FL State Line: From Helen over US Highway 441 to the GA/FL State Line, and return over the same route. (17) Between the TN/GA State Line and Bainbridge, GA: From the TN/GA State Line over US Highway 27 to Bainbridge, and return over the same route. (18) Between Macon, GA and Columbus, GA: From Macon over US Highway 80 to Columbus, and return over the same route. (19) Between Atlanta, GA and Lanett, AL: From Atlanta over US Highway 29 (also over Interstate Highway 85) to Lanett, and return over the same route. (20) Between Albany, GA and Donalsonville, GA: From Albany over GA Highway 91 to Donalsonville, and return over the same route. (21) Between Atlanta, GA and Blairsville, GA: From Atlanta over US Highway 19 to Blairsville, and return over the same route. (22) Between Madison, GA and Clayton, GA: From Madison over US Highway 441 to Clayton, and return over the same route. (23) Between Atlanta, GA and the GA/TN State Line: From Atlanta over Interstate Highway 75 (also over US Highway 41) to the GA/TN State Line, and return over the same route. (24) Between Dalton, GA and Clayton, GA: From Dalton over US Highway 76 to Clayton, and return over the same route. (25) Between Atlanta, GA and the GA/SC State Line: From Atlanta over Interstate Highway 85 to the GA/SC State Line, and return over the same route. (26) Between Atlanta, GA and Memphis, TN: From Atlanta over US Highway 278 to the junction of US Highway 78, thence over US Highway 78 to Memphis, and return over the same route. (27) Between Thomson, GA and Athens, GA: From Thomson over US Highway 78 to Athens, and return over the same route. (28) Between Washington, GA and the junction of Interstate Highway 85 and GA Highway 366: From Washington over GA Highway 17 to the junction of GA Highway 77, thence over GA Highway 77 to the junction of GA Highway 366, thence over GA Highway 366 to the junction of Interstate Highway 85, and return over the same route. Serving all points in Georgia as intermediate or off-route points in conjunction with the above described regular routes, for 180 days. An underlying ETA seeks 90 days authority. Applicant intends to tack the authority sought herein with their MC-31389 and also intends to interline with other carriers at selected points common to it and connecting carriers. Supporting shipper(s): There are approximately 150 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: Terrell Price, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205. The purpose of this republication is to reflect territorial description as previously omitted.

Note—Common control may be involved.

MC 40978 (Sub-58TA), filed April 5, 1979. Applicant: CHAIR CITY MOTOR EXPRESS COMPANY, 3321, Business 141 South, Sheboygan, WI 53081. Representative: William C. Dineen, 710 N. Plankinton Ave., Milwaukee, WI 53203. *(1) New office furniture, fixtures and equipment and (2) parts of commodities named in (1) above,* from the facilities of Steelcase, Inc., Grand Rapids and Wyoming, MI to points in the States of WI, IL, MN, IA, IN, MO, and Upper Peninsula of MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Steelcase, Inc., Grand Rapids, MI 49501. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Milwaukee, Wisconsin 53202.

MC 78228 (Sub-114TA), filed March 20, 1979. Applicant: J MILLER EXPRESS, INC., 962 Greentree Road, Pittsburgh, PA 15220. Representative: Henry M. Wick, Jr., Esq., 2310 Grant Bldg., Pittsburgh, PA 15219. *Bauxite ore,* in bulk, in dump vehicles, from Baltimore, MD to Gary, IN, Warren, OH and Sproul, PA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): General Refractories Company, 50 Monument Rd., Bala Cynwyd, PA 19004. Send protests to: J. A. Niggemyer, DS, 416 Old Post Office Bldg., Wheeling, WV 26003.

MC 109689 (Sub-347TA), filed March 14, 1979. Applicant: W. S. HATCH CO., 643 South 800 West, Woods Cross, UT 84087. Representative: Mark K. Boyle, Attorney at Law, 10 West Broadway Bldg., Suite 400, Salt Lake City, UT 84101. *Ferro phosphorous slag,* in bulk, from the facilities of Stauffer Chemical at or near Silver Bow, MT to the facilities of Kerr McGee Corporation at or near Soda Springs, ID, for 180 days. An underlying ETA requests 90 days authority. Supporting shipper(s): Stauffer Chemical Company, P.O. Box 3050, Rincon Annes, San Francisco, CA 94119.

Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 112989 (Sub-85TA), filed February 21, 1979, and published in the **Federal Register** issue of April 12, 1979, and republished as corrected this issue. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same as above). *Containers, container closures, and container accessories,* from the facilities of Glass Container Corp. in CA to points in OR, WA, and ID, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Glass Containers Corp., 535 North Gilbert Avenue, Fullerton, CA 92634. Send protests to: A. E. Odoms, ICC, 114 Pioneer Courthouse, Portland, OR 97204. The purpose of this republication is to show correct territorial description.

MC 1122989 (Sub-87TA), filed March 15, 1979, and published in the **Federal Register** issue of April 20, 1979, and republished as corrected this issue. Applicant: WEST COAST TRUCK LINES, INC., 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr. (same as above). *Lumber, lumber mill products, millwork, and wood products,* from CA, ID, OR, and WA to MN, NE, KS, WI, IA, MO, IL, IN, OH and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Douglas Forest Materials Corp., P.O. Box 02217, Portland, OR 97202. Champion International Corporation, 1600 Valley River Drive, Eugene, OR. Sunrise Forest Products Co., P.C. Box 25060, Portland, OR 97225. Send protests to: A. E. Odoms, ICC, 114 Pioneer Courthouse, Portland, OR 97204. The purpose of this republication is to add Ohio (OH) as a destination state.

MC 112989 (Sub-92TA), filed April 9, 1979. Applicant: WEST COAST TRUCK LINES, 85647 Highway 99 South, Eugene, OR 97405. Representative: John W. White, Jr., 85647 Highway 99 South, Eugene, OR 97405. *Iron and Steel articles, Plastic Articles, and Aluminum Articles* from the facilities of Joseph T. Ryerson & Son at or near Chicago, Illinois, to Renton and Spokane, Washington and Emeryville and Los Angeles, California, for 180 days. An underlying ETA seeks 90 day authority. Supporting shipper(s): Joseph T. Ryerson & Son, Incorporated 2621 West 15th Place, Chicago, IL 60608. Send protests to: A. E. Odoms, District Supervisor, ICC, 114 Pioneer Courthouse, Portland, OR 97204

MC 113678 (Sub-777TA), filed January 2, 1979 and published in the **Federal Register** issue of March 5, 1979, and republished as corrected this issue. Applicant: CURTIS, INC., 4810 Pontiac Street, Commerce City, CO 80022. Representative: Roger M. Shaner (same as applicant). *Non frozen foodstuffs, and commodities the transportation of which is partially exempt pursuant to the provision of Section 203(b)(6) of the Act when moving in the same vehicle and at the same time with non-frozen foodstuffs* (except commodities in bulk) *in vehicles equipped with mechanical refrigeration, from AZ and CA to Champaign, IL; Ft. Wayne, IN; Des Moines, IA; Hopkins, MN; Bismarck and Fargo, ND; Xenia, OH; Michell, SD; and Green Bay, WI, restricted to traffic destined to the facilities of Super Valu Stores, Inc., at the named destination, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Super Valu Stores, Inc., 101 Jefferson Avenue, Hopkins, MN 55343. Send protests to: H. C. Ruoff, ICC, 429 U.S. Customs House, 721 19th Street, Denver, CO 80202. The purpose of this republication is to show correct territorial description as previously indicated.*

MC 115669 (Sub-186TA), filed April 3, 1979. Applicant: DAHLSTEN TRUCK LINE, INC. P.O. Box 95, Clay Center, NE, 68933. Representative: Howard N. Dahlsten (same address as applicant). *Iron and Steel articles,* from Chicago, IL and its commercial zone to points in Harvey County, KS. An underlying ETA seeks 90 days authority. Supporting shipper(s): Hesston Corporation, Hesston, KS, 67062. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building & Court House, 100 Centennial Mall North, Lincoln, NE, 68508

MC 117519 (Sub-3TA), filed April 9, 1979. Applicant: TRANSPORTATION, INC., RR 4, Ottawa, KS 66067. Representative: David L. Bones, 205 E. Wilson, Ottawa, KS 66067. *Contract carrier:* irregular routes: *Expanded Shale Aggregates,* from Ottawa and Marquette, KS to points in LA; points in TX on and west of U.S. Hwy 83 and north of U.S. Hwy 380; points in NM lying on and north of a line beginning at the TX–NM state line, thence west along U.S. Hwy 60 to its junction with Interstate Hwy 25, thence north along Interstate Hwy 25 to its junction with State Hwy 44, thence north and west along State Hwy 44 to the CO–NM state line, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper: Buildex, Inc., P.O. Box 15, Ottawa, KS 66067. Send protests to: Thomas P. O'Hara, DS, ICC, 256 Federal Bldg., 444 SE. Quincy, Topeka, KS. 66683.

MC 118089 (Sub-34TA), filed March 20, 1979. Applicant: ROBERT HEATH TRUCKING, INC., P.O. Box 2501, Lubbock, TX 79408. Representative: Charles M. Williams, 350 Capitol Life Center, 1600 Sherman Street, Denver, CO 80203. *Meats, meat products, meat by-products and articles distributed by meat packinghouses as described in Section A & C of Appendix I to the report in Descriptions in Motor Carrier Certificates, 61 M.C.C. 209 and 766* (except hides and skins and commodities in bulk), from the facilities of John Morrell & Co., at or near Amarillo, TX to points in MT, for 180 days. An underlying ETA seeks up to 90 days authority. Supporting shipper(s): John Morrell & Co., 208 S. LaSalle St., Chicago, IL 60604. Send protests to: Haskell E. Ballard, District Supervisor, Interstate Commerce Commission—Bureau of Operations, Box F–13206 Federal Building, Amarillo, TX 79101.

MC 118959 (Sub-209TA), filed April 10, 1979. Applicant: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Donald B. Levine, 39 S. LaSalle St., Chicago, IL 60603. *Food and food products,* and materials, equipment and supplies (except in bulk) used in the manufacture, sale or distribution of food and food products (1) from KS, MN, and NE to Steelville and Chester, IL and Perryville, MO; (2) from Chicago, IL, to Perryville, MO, and Wilson, AR, and (3) from Kansas City, MO to Steelville and Chester, IL, for 180 days. Supporting shipper(s): Gilster Mary Lee Corporation, 1037 State St., Chester, IL 62233. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 118959 (Sub-210TA), filed April 10, 1979. Applicant: JERRY LIPPS, INC., 130 S. Frederick St., Cape Girardeau, MO 63701. Representative: Marc J. Blumenthal, 39 S. LaSalle St., Chicago, IL 60603. *Silica, silica products,* and materials, equipment and supplies used in the manufacture, distribution or sale of silica and silica products between Alexander County, IL on the one hand, and, on the other, points in and east of ND, SD, NE, KS, OK and TX, for 180 days. Supporting shipper(s): Illinois Mineral Company, 2035 Washington, Cario, IL 62914. Send protests to: P. E. Binder, DS, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 120098 (Sub-33TA), filed March 22, 1979. Applicant: UINTAH FREIGHTWAYS, 1030 South Redwood Road, Salt Lake City, UT 84104. Representative: William S. Richards,

Post Office Box 2465, Salt Lake City, UT 84110. Common carrier, regular route, *general commodities*, except livestock, commodities of unusual value, commodities in bulk, classes A and B explosives, household goods as defined by the Commission, and commodities requiring special equipment. (a) From Montrose, CO to Farmington, NM over U.S. Hwy 550 and return over the same route. (b) From Grand Junction, CO over Interstate 70 to the junction of Interstate 70 and U.S. Hwy 163; thence over U.S. Hwy 163 to the junction of U.S. Hwy 163 and U.S. Hwy 666; thence over U.S. Hwy 666 to the junction of U.S. Hwy 666 and U.S. Hwy 550; thence over U.S. Hwy 550 to Farmington, NM and return of the same route, serving the intermediate points of Shiprock, NM and Crescent Junction, UT. (c) Serving Crescent Junction, UT for purpose of joinder only with carrier's presently authorized regular-route authority between Salt Lake City, UT and Grand Junction, CO in Docket No. MC–120098 Sub-No. 28, for 180 days. Applicant proposes to interline with another carrier at Grand Junction and Montrose, CO and Farmington, NM, and intends to tack with its present MC–120098 (Sub-No. 28). An underlying ETA seeks 90 days authority. Supporting shipper(s): Two motor carriers and approximately 36 shippers supported this application. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Building, Salt Lake City, UT 84138.

MC 124679 (Sub-100TA), filed March 12, 1979. Applicant: C. R. ENGLAND & SONS, INC., 975 West 2100 South, Salt Lake City, UT 84119. Representative: Daniel E. England (same address as applicant). *Canned or preserved foodstuffs* from the facilities of the Gorton Group at Millville, NJ to points in Anaheim and Oakland, CA, Portland, OR, Seattle and Spokane, WA, Salt Lake City, UT and Denver, CO, for 180 days. An underlying ETA requests 90 days authority. Supporting shipper(s): The Gorton Group, Div. of General Mills, Inc., 327 Main St., Gloucester, MA 01930. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 125689 (Sub-3TA), filed April 9, 1979. Applicant: BEATTYVILLE TRANSPORT, INC., P.O. Box 357, Catlettsburg, KY 41129. Representative: Oakie G. Ford (same address as above). Authority sought to operate as a common carrier by motor vehicle, over irregular routes, to transport Petroleum and Petroleum Products, in bulk, in tank vehicles, between points in Boyd County, KY and points in OH and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Emil M. Sturzenegger, Traffic Manager, Ashland Petroleum Company, P.O. Box 391, Ashland, KY 41101. Send protests to: Mrs. Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, KY 40202.

MC 126118 (Sub-146TA), filed April 2, 1979. Applicant: CRETE CARRIER CORPORATION, P.O. Box 81228, Lincoln, NE 68501. Representative: Duane W. Acklie (same address as applicant). Empty beverage containers, and related lids, and packaging materials, from San Antonio, TX and its commericial zone to Omaha, NE, and its commercial zone. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pearl Brewing Company, 312 Pearl Parkway, San Antonio, TX 78296. Send protests to: Max H. Johnston, District Supervisor, 285 Federal Building and Court House, 100 Centennial Mall North, Lincoln, NE 68508.

MC 127019 (Sub-11TA), filed March 8, 1979. Applicant: LaRUE LAMB, d.b.a. LaRUE LAMB TRUCKING, Box 374, Myton, UT 84052. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. *Cement*, in bulk, from the plantsite of Southwest Cement Co., at or near Bushland, TX to Vernal, UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Halliburton Services, Div. of Halliburton Company, Box 1431, Duncan, OK 73533. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 127019(Sub-12TA), filed March 29, 1979. Applicant: LaRUE LAMB, d.b.a. LaRUE LAMB TRUCKING, Box 374, Myton, UT 84052. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. *Gilsonite*, in bulk, from Bonanza, Uintah County, UT to the facilities of Halliburton Services at or near Wooster, OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Halliburton Services, Div. of Halliburton Company, Box 1431, Duncan, OK 73533. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 127019 (Sub-13TA), filed March 29, 1979. Applicant: LaRUE LAMB, d.b.a. LaRUE LAMB TRUCKING, Box 374, Myton, UT 84052. Representative: Irene Warr, 430 Judge Building, Salt Lake City, UT 84111. *Gilsonite*, in bulk, from Bonanza, Uintah County, UT to the facilities of Halliburton Services at or near Tioga, ND, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): American Gilsonite Company, 1150 Kennecott Building, Salt Lake City, UT 84133. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 133689 (Sub-262TA), filed March 29, 1979. Applicant: OVERLAND EXPRESS, INC., 719 First Street, Southwest, New Brighton, MN 55112. Representative: Robert P. Sack, P.O. Box 6010, West St. Paul, MN 55118. *Foodstuffs (except commodities in bulk)* from Owatonna, MN to Foxboro, MA and Teterboro, NJ, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Geo. A. Hormel & Company, Supervisor—Motor Carrier Services, P.O. Box 800, Austin, MN 55912. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 134498 (Sub-4TA), filed March 27, 1979. Applicant: FREEWAY TRANSPORT, INC., 835 S.E. 11th Avenue, Portland, OR 97214. Representative: Jack H. Blanshan, Suite 200, 205 W. Touhy Avenue, Park Ridge, IL 60068. *Bananas and agricultural commodities exempt from regulation under Section 10526(a)(6) of the Interstate Commerce Act when transported in mixed loads with bananas*, from the facilities of Del Monte Banana Co. at Port Hueneme, CA to points in OR and WA, for 180 days. Corresponding ETA filed 3/27/79 for 30+2, Permanent to be timely filed. An underlying ETA seeks 90 days authority. Supporting shipper(s): Del Monte Banana Company, 1201 Brickell Avenue, Miami, FL. Send protests to: R. V. Dubay, ICC, 114 Pioneer Courthouse, Portland, OR 97204.

MC 134599 (Sub-170TA), filed March 26, 1979. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, 2156 West 2200 South, P.O. Box 30303, Salt Lake City, UT 84125. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Contract carrier, irregular route authority to transport *Such commodities as are used, manufactured and dealt in by producers of rubber and rubber products* (except commodities in bulk or those which because of their size or weight require special handling or equipment), (1) from the facilities of The Armstrong Rubber Company at Des Moines, IA, to points in AZ, CA, CO, ID, MI, MT, NV, NM, OR, UT, WA, and WY; (2) between the facilities of The Armstrong Rubber Company at West Haven, CT, Des Moines, IA, Natchez, MS, Madison, TN, Knoxville, TN, West Allis, WI and Hanford, CA; (3) from Laurel Hill, NC, Baton Rouge, LA, and Borger, TX, to the facilities of The

Armstrong Rubber Company at Des Moines, IA; (4) from Tacoma, WA to the facilities of The Armstrong Rubber Company at Des Moines, IA, Natchez, MS, Nashville, TN and Clinton, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Armstrong Rubber Company, 500 Sargent Drive, New Haven, CT 06507. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 134888 (Sub-8TA), filed April 6, 1979. Applicant: MOROSA BROS. TRANSPORTATION COMPANY, 4800 Stine Road, Bakersfield, CA 93309. Representative: R. Y. Schureman, 1545 Wilshire Blvd., Los Angeles, CA 90017. *Ink, in bulk, in shipper-furnished trailers,* from Bakersfield, CA to points in AZ, OR, WA, MT, ID, UT, NV, CO, and NM, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): Sun Chemical Corporation, 22 S. Marginal Road, Fort Lee, NJ 07024. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 136318 (Sub-62TA), filed April 9, 1979. Applicant: COYOTE TRUCK LINE, INC., P.O. Box 756, Thomasville, NC 27360. Representative: John T. Wirth, 717 17th St., Suite 2600, Denver, CO 80202. *Contract* Carrier-Irregular routes, *New furniture, furnishings and accessories* from points in AL to the facilities of Montgomery Ward in NY, MD, PA, OK, MI, IL, IN, MN, IA, MO, OH, CO, TX, AZ, CA, NV, OR and VA. RESTRICTIONS: (1) Restricted to traffic destined to the facilities of Montgomery Ward; and (2) Restricted to traffic moving under a continuing contract, or contracts with Montgomery Ward, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Montgomery Ward, 535 Chicago Ave., West, Chicago, IL 60671. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd.—Rm. CC516, Mart Office Building, Charlotte, NC 28205.

MC 140829 (Sub-207TA), filed March 30, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Ave., Morristown, NJ 07960. *General commodities (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment,* from points in MA and VT to points in CO, IL, IN, IA, MI, MN, MO, NE, OH, OK, TX, and WI, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): John Seidensticker, New England Shipping Association Co-operative, 1029 Pearl St., Brockton, MA 02403. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 140829 (Sub-208TA), filed April 2, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Highway 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Ave., Morristown, NJ 07960. *Packaged lime,* from the facilities of Atlantes Industries, Inc., at or near Dallas, TX to all points in CO, IA, KS, KY, NY, OH, PA, and WI, for 180 days. Supporting shipper(s) Thomas Lundberg, Atlantes Industries, Inc., 8320 Chancellor Row, Dallas, TX 75247. Send protests to Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 140829 (Sub-209TA), filed April 2, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Hwy 20, Sioux City, IA 51102. Representative: William J. Hanlon, Esq., 55 Madison Ave., Morristown, NJ 07960. *Canned foodstuffs,* from the facilities of Stokely-Van Camp, Inc., at or near Gibson City, Hoopeston and Rochelle, IL; Fairmont and Lakeland, MN; and Appleton, Columbus, Cumberland, Frederic, Plymouth and Sheboygan, WI, to all points in the United States in and east of ND, SD, NE, KS, OK,and TX, for 180 days. Supporting shipper(s): David A. Madinger, Stokely-Van Camp, Inc., P.O. Box 1113, Indianapolis, IN. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 140829 (Sub-210TA), filed April 2, 1979. Applicant: CARGO, INC., P.O. Box 206, U.S. Hwy 20, Sioux city, IA 51102. Representative: Willima J. Hanlon, Esq., 55 Madison Ave., Morristown, NJ 07960. *Fully baked bread in loaves,* from the facilities of Oroweat Foods Company, at or near Dallas, TX to points in the states of KS, MO, and NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Coy Robinson, Oroweat Foods Company, 10689 Harry Hines Boulevard, Dallas, TX 75220. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE 68102.

MC 142559 (Sub-90TA), filed March 28, 1979. Applicant: BROOKS TRANSPORTATION, INC., 3830 Kelley Avenue, Cleveland, OH 44114. Representative: John P. McMahon, Esq., 100 East Broad Street, Columbus, OH 43215. *Sanitary paper products,* from the facilities of Scott Paper Company at Fond du Lac, Green Bay, Oconto Falls, and Marinette, WI, to AL and GA, for 180 days. Supporting shipper(s): Scott Paper Company, Scott Plaza I, Philadelphia, PA 19113. Send protests to: Mary A. Wehner, District Supervisor, Interstate Commerce Commission, 1240 E. Ninth Street, Cleveland, OH 44199.

MC 142669 (Sub-10TA), filed February 28, 1979. Applicant: GENE WALTERS AND CLARK WURTELE, d.b.a. M & M TRUCKING, 115 East Brewster Street, Harvey, ND 58341. Representative: Charles E. Johnson, 418 East Rosser Avenue, P.O. box 1982, Bismarck, ND 58501. *Dry fertilizer and dry fertilizer materials* from Duluth, Willmar and Minneapolis, MN and their commercial zones to points in ND and SD, for 180 days. Supporting shipper(s): Martrex Company, Chanhassen, MN 55317; Peavey Company, 730 2nd Avenue South, Minneapolis, MN 55402. Send protests to: District Supervisor, Interstate Commerce Commission, Room 268, Fed. Bldg. and U.S. Post Office, 657 2nd Avenue North, Fargo, ND 58102.

MC 143059 (Sub-67TA), filed March 9, 1979. Applicant: MERCER TRANSPORTATION CO., 12th & Main Sts. (P.O. Box 35610), Louisville, Ky. 40232. Representative: Lousis J. Amato, Attorney, P.O. Box E, Bowling Green, Ky. 42101. Iron and steel articles, from Chicago, IL and points in its commercial zone and Burns Harbor, IN, to Louisville, Ky. for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): W. Jerome Der, Corporate Traffic Manager, American Air Filter Company, Inc., 215 Central Avenue, Louisville, Ky. 40277. Send protests to: Mrs. Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, Ky. 40202.

MC 143059 (Sub-68TA), filed April 3, 1979. Applicant: MERCER TRANSPORTATION COMPANY, P.O. Box 35610, Louisville, Ky. 40232. Representative: John M. Nader, Attorney, 1600 Citizens Plaza, Louisville, Ky. 40202. Iron and steel articles from Canfield, Martins Ferry, Mingo, Steubenville, and Yorkville, OH, Monessen and Allenport, PA, Beech Bottom, Benwood, Follansbee, and Wheeling, WV, to points in IL, IN, and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): D. J. Stuthers, Manager—Traffic Services, Wheeling-Pittsburgh Steel Corp., P.O. Box 118, Pittsburgh, PA 15230. Send protests to: Mrs. Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, Ky. 40202.

MC 143059 (Sub-69TA), filed April 3, 1979. Applicant: MERCER TRANSPORTATION COMPANY, 12th and Main Sts., P.O. Box 35610,

Louisville, Ky. 40232. Representative: Edw. G. Villalon, 1032 Pennsylvania Bldg., Penn Ave. and 13th Sts., NW., Washington, D.C. 20004. Iron and steel articles, from Marengo and Chicago, IL, Detroit and Grand Rapids, MI, and Cleveland, OH, to Shreveport, LA, Como, MS, Decatur, AL, and points in TN, IN, KY, and AR. Supporting Shipper(s): Charles L. Tuttle, Traffic Manager, American United Steel Co., 2970 Maria Ave., Northbrook, IL 60062. Send protests to: Mrs. Linda H. Sypher, District Supervisor, Interstate Commerce Commission, 426 Post Office Building, Louisville, Ky. 40202.

MC 143179 (Sub-14TA), filed March 5, 1979. Applicant: CNM CONTRACT CARRIERS, INC., P.O. Box 1017, Omaha, NE 68101. Representative: Foster L. Kent (same address as applicant). *Contract carrier:* irregular route: *(1) Urethane foam products,* from the plantsites of Future Foam, Inc., at Newton, KS and Council Bluffs, IA to points in AL, ID, KY, LA, MS, MT, NE, NM, ND, SD, TN, and WY; and *(2) Materials, equipment, and supplies used in the manufacture and distribution of items in (1) above,* from points in TX to the plantsite of Future Foam, Inc., at Newton, KS; and between the plantsites of Future Foam, Inc., at Council Bluffs, IA; Kansas City, MO; Middleton, WI; Newton, KS; of Future Foam, Inc. at Council Bluffs, IA; Kansas City, MO; Middleton, WI; Newton, KS; and Oklahoma City, OK, under continuing contract with Future Foam, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Robert Ginsburg, Future Foam, Inc., 400 No. 10th St., Council Bluffs, IA 51501. Send protests to: Carroll Russell, ICC, Suite 620, 110 No. 14th St., Omaha, NE. 68102

MC 143209 (Sub-8TA), filed March 15, 1979. Applicant: HOUSTON FREIGHTWAYS, INC., P.O. Box 473, Galena Park, TX 77547. Representative: J. G. Dail, Jr., P.O. Box LL, McLean, VA 22101. Common carrier over irregular routes. *Rust preventive pipeline coating, in bulk, in tank vehicles* from Granite City, IL to Fort Collins, CO, Birmingham, AL, EL Reno and Tulsa, OK and Baton Rouge, LA for 180 days authority. An underlying ETA seeks 90 days authority. Supporting shipper(s): Reilly Tar & Chemical Corp., 320 Brookes Dr., Rm. 201, Hazelwood, MO 63042. Send protests to: John F. Mensing, Interstate Commerce Commission, 8610 Federal Bldg., 515 Rusk Ave., Houston, TX 77002.

MC 143328 (Sub-16TA), filed March 19, 1979. Applicant: EUGENE TRIPP TRUCKING, P.O. Box 2730, Missoula, MT 59806. Representative: David A. Sutherland, Fulbright & Jaworski, Suite 400, 1150 Connecticut Avenue NW., Washington, DC 20036. *Pulpboard* from the facilities of Champion International Corp. at or near Frenchtown, MT to points in CA, WA, OR, WI and MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Champion International Corporation, Knightsbridge Dr., Hamilton, OH 45020. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 143398 (Sub-3TA), filed March 20, 1979. Applicant: C. C. ROBERTS CONCRETE CONSTRUCTION CO., INC., 3725 Gibbon Road, Charlotte, NC 28213. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. *Animal and poultry feed and animal and poultry feed ingredients* (except liquid in bulk, in tank trailers) between points in AL, FL, GA, NC, SC, TN and VA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): There are 7 shippers. Their statements may be examined at the office listed below and Headquarters. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 143659 (Sub-7TA), filed March 8, 1979. Applicant: VALLEY TRUCKING, INC., Rural Route 2, Box 55, Fargo, ND 58102. Representative: Edward A. O'Donnell, 1004 29th Street, Sioux City, IA 51104. *Foodstuffs, other than frozen, except in bulk,* from the facilities of RJR Foods, Inc., at or near Ortonville, MN, to point in IA, NE, ND and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): RJR Foods, Inc., P.O. Box 3037, Winston-Salem, NC 27102. Send protests to: DS, ICC, Room 268 Federal Building and U.S. Post Office, 657 Second Avenue North, Fargo, ND 58102.

MC 143739 (Sub-11TA), filed March 12, 1979. Applicant: SHURSON TRUCKING CO., INC., P.O. Box 147, New Richland, MN 56072. Representative: Thomas E. Leahy, Jr., 1980 Financial Center, Des Moines, IA 50309. *Meat, meat products, meat by-products, and articles distributed by meat packinghouses, except hides and commodities in bulk,* from the facilities utilized by Jason Foods, Inc. at Minneapolis-St. Paul, MN and destined to points in IL, WI, IN and MI, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Jason Foods, Inc., 3655 Woodhead Drive, Northbrook, IL 60062. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 143739 (Sub-12TA), filed March 16, 1979. Applicant: SHURSON TRUCKING CO., INC., P.O. Box 147, New Richland, MN 56072. Representative: William L. Fairbank, 1980 Financial Center, Des Moines, IA 50309. *Foodstuffs* from the facilities of Green Giant Company at Belvidere, IL to points in IN, MI, MO and OH, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Green Giant Company, Director of Transportation, Le Sueur, MN 56058. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building and U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401

MC 144069 (Sub-6TA), filed March 1, 1979. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: Thomas A. McNeely, 2460 First Union Plaza, Charlotte, NC 28282. *Iron and steel articles* from, to, or between points in NC, SC, GA, FL, AL, TN, KY, WV, OH, VA, MD and DC for the account of DuBose Steel, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): DuBose Steel, Inc., P.O. Box 1098, Roseboro, NC 28382. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 144069 (Sub-7TA), filed March 1, 1979. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: Thomas A. McNeely, 2460 First Union Plaza, Charlotte, NC 28282. *Iron and steel articles* between the facilities of Intercontinental Metals Corporation at or near Monks Corner, SC and Charleston, SC, and North Charleston, SC, on the one hand and on the other, NC, SC, GA, FL, AL, TN, KY, WV, VA, MD, and DC, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Intercontinental Metals Corp., P.O. Box 10166, Charleston, SC. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 144069 (Sub-8TA), filed March 1, 1979. Applicant: FREIGHTWAYS, INC., P.O. Box 5204, Charlotte, NC 28225. Representative: Thomas A. McNeely, 2460 First Union Plaza, Charlotte, NC 28282. *Iron and steel articles* between the facilities of Georgetown Steel Corporation at or near Georgetown, SC on the one hand and on the other, points and places in NC, GA, AL, TN, KY, WV, VA, MD, and DC, for 180 days. Supporting shipper(s): Georgetown Steel Corp., P.O. Box 619, Georgetown, SC

29440. Send protests to: Terrell Price, District Supervisor, 800 Briar Creek Road, Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 144209 (Sub-5TA), filed April 3, 1979. Applicant: ERWIN TRUCKING, INC., 9100 F Street, Omaha, NE 68127. Representative: Paul D. Kratz, Suite 610, 7171 Mercy Road, Omaha, NE 68106. *Telephone equipment; switchboard parts; materials and supplies used in the installation and maintenance of telephone equipment and telephone lines; plant and office supplies,* from Kearny and South Kearny, NJ to Goddard, KS, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Clifford M. Amrhein, Western Electric Co., Inc., P.O. Box 25000, Greensboro, NC 27420. Send protests to: Carroll Russell, ICC, Suite 620, 110 N. 14th St., Omaha, NE 68102

MC 144298 (Sub-9TA), filed March 19, 1979. Applicant: MASTER TRANSPORT SERVICES, INC., 5000 Wyoming Avenue, Suite 203, Dearborn, MI 48126. Representative: William B. Elmer, 21635 East Nine Mile Road, St. Clair Shores, MI 47080. *Contract Carrier:* irregular routes: *Such merchandise as is dealt in by wholesale, retail and chain grocery and food business houses and, in connection therewith, equipment, materials and supplies* used in the conduct of such business (except commodities in bulk); and commodities which are otherwise exempt from economic regulation under 49 USC Section 10526 (a), when moving in mixed loads with the commodities above FROM Los Angeles and San Francisco, CA; Tampa, Orlando, and Dade City, FL; Newark, NJ; Albany, NY; Seattle and Tacoma, WA; Charleston, SC; New Orleans, LA; Chicago, IL; and Baltimore, MD to Warren, MI, under a continuing Contract or contracts with Chatham. For 180 days. An underlying ETA seeks no days authority. Supporting shipper(s): Chatham Super Markets, Inc., 2300 E. Ten Mile Road, Warren, MI 48091. Send protests to: C. R. Flemming, D/S, I.C.C., 225 Federal Building, Lansing, MI 48933.

MC 144599 (Sub-3TA), filed February 27, 1979. Applicant: TRANSFER, INC., 90 S. Ko-We-Ba Lane, Indianapolis, IN 46241. Representative: Robert W. Loser, 1009 Chamber of Commerce Building, Indianapolis, IN 46204. *Corn starch,* dry, in bulk, from Indianapolis, IN, to points in the U.S., except AK and HI. Restricted to traffic originating at the facilities of National Starch & Chemical Corp. at Indianapolis, IN, for 180 days. Supporting shipper(s): National Starch & Chemical Corp., 10 Finderne Avenue, Bridgewater, NJ 08807. Send protests to: Beverly J. Williams, Transportation Assistant, I.C.C., 46 E. Ohio St., Rm 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 144609 (Sub-3TA), filed March 20, 1979. Applicant: ADAN J. DOMINGUEZ, d.b.a., DOMINGUEZ BROS. PRODUCE CO., 1500 South Zarzamora Street, San Antonio, TX 78207. Representative: Kenneth R. Hoffman, Lanham, Hatchell, Sedberry & Hoffman, 801 Vaughn Building, Austin, TX 78701. Authority sought as a common carrier, by motor vehicle, over irregular routes, transporting: *Malt beverages* (except in bulk) from San Antonio, TX to points in CA on and south of Interstate Highway 80, and all points in the San Francisco and Oakland Commercial Zones, and points in AZ, NM and CO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Pearl Brewing Co., P.O. Box 1661, San Antonio, TX 78296. Send protests to: Richard H. Dawkins, District Supervisor, Interstate Commerce Commission, Room B400, Federal Building, 727 E. Durango Street, San Antonio, TX 78206.

MC 144688 (Sub-14TA), filed March 2, 1979. Applicant: READY TRUCKING, INC., 4722 Lake Mirror Place, Forest Park, GA 30050. Representative: Lavern R. Holdeman, 521 South 14th Street, P.O. Box 81849, Lincoln, NE 68501. *Household appliances and equipment, materials and supplies used in the manufacture, sale and distribution of household appliances (except in bulk)* from the facilities of General Electric Company at or near Louisville, KY and points in its commercial zone to points in the state of FL, for 180 days. Supporting shipper(s): General Electric Co., Appliance Park, Building 10, Louisville, KY 40225. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtreet Street, N.W., Room 300, Atlanta, GA 30309.

MC 144688 (Sub-15TA), filed March 6, 1979. Applicant: READY TRUCKING, INC., 4722 Lake Mirror Place, Forest Park, GA 30050. Representative: Lavern R. Holdeman, 521 South 14th Street, Suite 500 (P.O. Box 81849), Lincoln, NE 68501. *(1) Household cleaning products, water purifying compounds and dry acids (except in bulk) and (2) materials, equipment and supplies used in the manufacture, sale and distribution of commodities listed in (1) (except in bulk)* between the facilities of Purex Corporation at or near Auburndale, FL and the facilities of Purex Corporation at or near Atlanta, GA and points in its commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Purex Corp., 24600 S. Main Street, Carson, CA 90749. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree Street, N.W., Room 300, Atlanta, GA 30309.

MC 144688 (Sub-16TA), filed March 22, 1979. Applicant: READY TRUCKING, INC., 4722 Lake Mirror Place, Forest Park, GA 30050. Representative: Lavern R. Holdeman, 521 South 14th Street, Suite 500, Lincoln, NE 68501. *Animal and poultry feed, fish feed and corn products (except in bulk)* from the facilities of The Jim Dandy Company and its subsidiaries, at or near Birmingham and Decatur, AL and Springfield, TN to points in the state of FL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Jim Dandy Co., P.O. Box 10687, Birmingham, AL 35202. Send protests to: Sara K. Davis, T/A, ICC, 1252 W. Peachtree Street, N.W., Room 300, Atlanta, GA 30309.

MC 144819 (Sub-10TA), filed April 4, 1979. Applicant: C & N TRANSPORT, INC., 727 S. Overhead Drive, Oklahoma City, OK 73108. Representative: C. L. Phillips, Room 248, Classen Terrace Building, 1411 N. Classen, Oklahoma City, OK 73106. *Paper, paper products and cellulose products,* from the facilities of Proctor & Gamble Paper Products Co., at or near Neeley's Landing, MO, to points in AL, AR, CA, CO, GA, LA, OH, OK, OR, TN, TX, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Proctor & Gamble Paper Products Co., P.O. Box 599, Cincinnati, OH 45201. Send protests to: Connie Stanley, Transportation Assistant, Interstate Commerce Commission, Room 240, Old Post Office and Court House Building, 215 N.W. Third, Oklahoma City, OK 73102.

MC 144858 (Sub-7TA), filed March 21, 1979. Applicant: DENVER SOUTHWEST EXPRESS, INC., P.O. Box 9950, 1310 Stagecoach Road, Little Rock, AR 72209. Representative: John T. Wirth, 717 17th Street, Suite 2600, Denver, CO 80202. *Shampoo and toilet preparations* and *accessories* for the foregoing items (except commodities in bulk in tank vehicles), from Cranford, Piscataway and Clark, NJ, to points in AZ, CA, CO, NV, NM and UT, for 180 days as a common carrier over irregular routes. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Cosmair, Inc., 222 Terminal Avenue, Clark, NJ 07066. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 144859 (Sub-4TA), filed March 13, 1979. Applicant: SCOTT PALLETS, INC., Box 341, Amelia, VA 23002.

Representative: Calvin F. Major, attorney, 200 W. Grace Street, Richmond, VA 23219. Contract carrier—irregular routes. *Wire and nails,* from points in MD, OH and PA to points in MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): American Nail Corporation, 13743 Rider Trail, Earth City, MO 63045. Send protests to:Paul D. Collins, DS, ICC, Room 10–502 Federal Bldg., 400 North 8th Street, Richmond, VA 23240.

MC 144889 (Sub-4TA), filed February 20, 1979. Applicant: RONWAL TRANSPORTATION, INC., 2600 Calumet Avenue, Hammond, IN 43620. Representative: Walter R. Rymarowicz, address same as applicant. *Iron and steel articles* from the facilities of J & L Steel Company located in the Chicago Commercial Zone to points in IL on and north of a line commencing at the IN–IL state line at U.S. Hwy. 36 to Decatur, then along U.S. Hwy. 48 to the intersection of U.S. Hwy. 29, then along U.S. Hwy. 29 to the intersection of U.S. Hwy. 36, then west along U.S. Hwy. 36 to the IL–IA state line, for 180 days. Supporting Shipper(s): Jones & Laughlin Steel Corp., 3001 Dickey Road, East Chicago, IN 46312. Send protests to: Annie Booker, transportation assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chiago, IL 60604.

MC 144889 (Sub-5TA), filed March 2, 1979. Applicant: RONWAL TRANSPORTATION, INC., 2600 Calumet Avenue, Hammond, IN 46320. Representative: Walter C. Rymarowicz, address same as applicant. *Iron and Steel Articles,* from the facilities of Bethlehem Steel Corporation at Burns Harbor, IN to points in IL on and north of U.S. Hwy. 36, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Bethlehem Steel Corp., P.O. Box 248, Chesterton, IN 46304. Send protests to: Annie Booker, transportation assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 144889 (Sub-6TA), filed February 20, 1979. Applicant: RONWAL TRANSPORTATION, INC., 2600 Calumet Avenue, Hammond, In 46320. Representative: Walter C. Rymarowicz, address same as applicant. *Iron and Steel Articles and Rolling Mill Rolls* between the facilities of Union Rolls Corporation at Valparaiso, IN on the one hand, and on the other points in IL on and north of U.S. Hwy. 36, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Union Rolls Corp., P.O. Box 29, Valparaiso, IN 46383. Send protests to: Annie Booker, Transportation Assistant, Interstate Commerce Commission, Everett McKinley Dirksen Building, 219 South Dearborn Street, Room 1386, Chicago, IL 60604.

MC 144939 (Sub-3TA), filed February 21, 1979. Applicant: LARRY A. HOUSEHOLDER, d.b.a. HOUSEHOLDER TRUCKING, R.R. No. 1, Fenton, IA 50539. Representative: Larry D. Knox, 600 Hubbell Building, Des Moines, IA 50309. *Meat scraps, bone meal, and blood meal* from the facilities of John Morrell & Co. at Estherville, IA, to points in ND, SD, NE, KS, OK, AR, MO, MN, WI, and IL for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): John Morrell & Co., 208 S. LaSalle Street, Chicago, IL 60604. Send protests to: Herbert W. Allen, DS, ICC, 518 Federal Building, Des Moines, IA 50309.

MC 145018 (Sub-3TA), filed March 5, 1979. Applicant: NORTHEAST DELIVERY, INC., P.O. Box 127, Taylor, PA 18517. Representative: John W. Frame, Box 626, 2207 Old Gettysburg Road, Camp Hill, PA 17011. *Paper bags,* from the plantsite of terminal Paper Bag Co., Inc., at Yulee, FL to points in PA and WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper: Terminal Paper Bag Co., Inc., 529 5th Ave., New York, NY 10017. Send protests to: P. J. Kenworthy, DS, ICC, 314 U.S. Post Office Building, Scranton, PA 18503.

MC 145279 (Sub-2TA), filed March 14, 1979. Applicant: JOHN DAVID MEARS, JR. and BONNIE MEARS, d.b.a. MEARS TRUCKING CO., Highway 71 South, Malone, FL 32445. Representative: Felix A. Johnston, Jr., 1030 E. Lafayette Street, Suite 112, Talahassee, FL 32301. *Steel and steel beams,* from Gadsden County, FL to Jacksonville, FL, Lubbock, TX, and Birmingham, AL for 180 days. Supporting Shipper(s): Gulf Steel Corp., P.O. Box 110, 521 South Virginia Street, Quincy, FL 32351. Send protests to: G. H. Fauss, Jr., DS, ICC, Box 35008, 400 West Bay Street, Jacksonville, FL 32202.

MC 145338 (Sub-2TA), filed March 19, 1979. Applicant: MEDICAL EMERGENCY TRANSPORTATION CORPORATION, d.b.a. METCOR, P.O. Box 8, Califon, NJ 07830. Representative: Norman Weiss, 167 Fairfield Road, P.O. Box 1409, Fairfield, NJ 07006. *Contract carrier:* irregular routes: *Radiopharmaceuticals and Medical Isotopes,* from Newark International Airport at Newark, NJ to points in Adams, Berks, Bucks, Carbon, Chester, Columbia, Dauphin, Delaware, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montgomery, Northampton, Northumberland, Philadelphia, Schuykill, Sullivan, Wyoming and York counties, PA, restricted to the transportation of traffic having a prior movement by air and restricted against transportation of packages or articles weighing in the aggregate more than 40 pounds from one consignor to one consignee on any one day. Under a continuing contract or contracts with New England Nuclear Corporation of North Billerica, MA for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): New England Nuclear Corp., 601 Treble Cove Road, North Billerica, MA. Send protests to: District Supervisor, ICC, 428 East State Street, Room 204, Trenton, NJ 08608.

MC 145378 (Sub-No. 1TA), filed March 7, 1979. Applicant: DON ANDERSON HAULAGE LTD., P.O. Box 146, Unionville, ON, Canada L3R 2L8. Representative: Robert D. Gunderman, Esq., Suite 710 Statler Building, Buffalo, NY 14202. *Bridge Griders, the transportation of which becouse of size or weight require the use of special equipment, and related parts and assemblies.* From ports of entry on the International Boundary line between the US and Canada in NY to all points in NY, for 180 days. Supporting Shipper: Canron Limited (Eastern Structural Division), 100 Bisco Road, Rexdale, Ontario, Canada. Send protests to: Richard H. Cattadoris, DS, 111 West Huron Street, Buffalo, NY 14200.

MC 145399 (Sub-6TA), filed April 4, 1979. Applicant: SHAY DISTRIBUTING CO., INC., P.O. Box 3557, Orange, CA 92665. Representative: Paul M. Daniell, P.O. Box 872, Atlanta, GA 30301. *Frozen foodstuffs,* from the facilities of Butcher Boy Foods, Inc., at Vernon, Riverside and Compton, CA, to points in the United States, except AK and HI, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting Shipper(s): Butcher Boy Foods, Inc., P.O. Box 5647, Riverside, CA 92517. Send protest to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, P.O. Box 1551, Los Angeles, CA 90053.

MC 145439, (Sub-1TA), filed March 14, 1979. Applicant: DAVID STOCK, d.b.a. David Stock Trucking, Route 1, Box 108, Newton, WI 53063. Representative: Michael Wyngaard, 150 E. Gilman Street, Madison, WI 53703. Contract carrier; irregular routes; *Foodstuffs,* from Fredricksburg, IA; Chicago, IL; Green Bay, Hilbert, Livingston, Mayville,

Merrill, Milwaukee, Monroe and Sheboygan, WI to the facilities of Crescent Food Co. at or near Los Angeles, CA, under continuing contract(s) with Crescent Food Co. at Los Angeles, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Crescent Food Co., 5430 Santa Fe Avenue, Los Angeles, CA 90058. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 145468 (Sub-4TA), filed March 1, 1979. Applicant: K.S.S. TRANSPORTATION CORP., P.O. Box 3052, Route No. 1 and Adams Station, New Brunswick, NJ 08702. Representative: Daniel C. Sullivan, 10 S. LaSalle Street, Suite 1600, Chicago, IL 60603. Common carrier, irregular routes for 180 days. Such commodities as are utilized or distributed by restaurants (except commodities in bulk), From Oneida, NY and Rocky Mountain, NC to the facilities of Hardee's Food System, Inc. at Mason City, IA and Independence, MO. Supporting Shipper(s): Hardee's Food Systems, Inc., 1811 W. 19th, Mason City, IA. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Newark, NJ 07102.

MC 145468 (Sub-5TA), filed March 23, 1979. Applicant: K.S.S. TRANSPORTATION CORP., P.O. Box 3052, Route No. 1 and Adams Station, North Brunswick, NJ 08702. Representative: Elaine M. Conway, Sullivan & Associates, Ltd., 10 S. LaSalle Street, Chicago, IL 60603. Common carrier, irregular routes for 180 days. *Canned Foodstuffs*, from Clyman, WI to points in AL, AR, CO, FL, KS, KY, GA, IA, MA, MD, MI, MN, MO, NE, NY, NC, SC, PA, TN, TX, VA, WV, and OH. Supporting Shipper(s): Aunt Nellie's Foods, Inc., Box 67, Clyman, WI 53016. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 145499 (Sub-1TA), filed March 6, 1979. Applicant: R.M.S., INC., P.O. Box 249, Route 2, CO. Trunk F, Edgerton, WI 53534. Representative: James A. Spiegel, 6425 Odana Road, Madison, WI 53719. *Truck semi-trailers* (except those designed to be drawn by passenger automobiles) in initial movements in truckaway service, from Edgerton, WI, to points in the Chicago, IL Commercial Zone (as defined by the Commission in 41 FR 56652), for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): Dorsey Trailers, Inc., 405 E. Fulton Street, Edgerton, WI 53534. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 145499 (Sub-2TA), filed April 9, 1979. Applicant: R.M.S. INC. of WISCONSIN, P.O. Box 249, Edgerton, WI 53534. Representative: James Spiegel, 6425 Odana Road, Madison, WI 53719. (1) *Truck semi-trailers (except those designed to be drawn by passenger automobiles) in initial movements in truckaway service;* and (2) *used truck trailers and trailer parts and accessories in shipper and customer-owned trailers in secondary movements in truckaway service,* between Edgerton, WI and Cincinnati, OH; Des Moines, IA; Detroit and Grand Rapids, MI; Fort Wayne and Indianapolis, IN; Minneapolis and St. Paul, MN; Omaha, NE and St. Louis, MO, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Dorsey Trailers, Inc., 405 E. Fulton Street, Edgerton, WI 53534. Send protests to: Gail Daugherty, Transportation Assistant, Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building and Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, WI 53202.

MC 145529 (Sub-2TA), filed April 5, 1979. Applicant: ROBERT STEEN d.b.a. STEEN's FEEDS, East Elkhorn, Belle Fourche, SD 57717. Representative: Mark Menard, 5301 No. Cliff, P.O. Box 480, Sioux Falls, SD 57101. *Iron and steel, iron and steel articles* from the facilities of U.S. Steel Corp. at or near Gary, IN; South Chicago, Joiliet and Waukegan, IL to points in IA, MN & NE, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): United States Steel Corp., 1000 East 80th Place, Merrillville, IN 46410. Send protests to: J. L. Hammond, DS, ICC, Room 455, Federal Building, Pierre, SD 57501.

MC 145568 (Sub-1TA), filed March 14, 1979. Applicant: POLLARD TRANSPORTATION, INC., 582 West 150 South, Vernal, UT 84078. Representative: James T. Pollard (same address as applicant). *Machinery, equipment, materials, and supplies* used in, or in connection with the discovery, development, production, refining, manufacture, processing, storage, transmission, and distribution of natural gas and petroleum and their products and by-products between points in UT, CO, WY, ID, and NV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): There are nine supporting shippers. Their statements may be examined at the office listed below or at Headquarters. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 145579 (Sub-3TA), filed March 23, 1979. Applicant: D. IRVIN TRANSPORT LTD., Box 8, Station T, Calgary, AB, Canada T2H 2G7. Representative: Charles E. Johnson, P.O. Box 1982, Bismarck, ND 58501. *Drilling mud additives* from Gravette, AR to ports of entry on the International Boundary line between the U.S. and Canada, for furtherance in foreign commerce, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Dresser Industries, Magcobar Division, P.O. Box 479, Blackfalds, AB, Canada. Send protests to: Paul J. Labane, DS, ICC, 2602 First Avenue North, Billings, MT 59101.

MC 145588 (Sub-11TA), filed March 15, 1979. Applicant: GULF MID-WESTERN, INC., 12151 West 44th Avenue, Denver, CO 80033. Representative: William W. Selman, 18700 John F. Kennedy Boulevard, Houston, TX 77205. *Foodstuffs and canned goods*, from plant sites and storage facilities of Oconomowoc Canning Co. from throughout the State of WI to all points in the states of AL, AR, AZ, CA, CO, CT, DE, FL, GA, IA, IL, IN, KS, KY, LA, MA, MD, ME, MI, MN, MO, MS, NE, NC, ND, NH, NJ, NM, NY, OH, OK, OR, PA, RI, SC, SD, TN, TX, VA, VT, WA, WI, WV, for 180 days. An underlying ETA seeks 90 days authority. Supporting shippers(s): Oconomowoc Canning Co., Oconomowoc, WI. Send protests to: District Supervisor Herbert C. Ruoff, 492 U.S. Customs House, 721 19th Street, Denver, CO 80202.

MC 145669 (Sub-2TA), filed April 2, 1979. Applicant: PETROLEUM TANK LINE, 2600 Rice Avenue, West Sacramento, CA 95691. Representative: Alan F. Wohlstetter, Denning & Wohlstetter, 1700 K Street, N.W., Washington, D.C. 20006, phone: (202) 833-8884. *Diesel, gasoline, jet fuel and kerosene*, in bulk, in tank vehicles, from points in Butte, Contra Costa, Sacramento, San Mateo, San Joaquin, Solano and Yolo Counties, CA to points in Carson City, Churchill, Douglas, Esmeralda, Eureka, Humboldt, Lander, Lyon, Mineral, Nye, Pershing, Storey, and Washoe Counties, NV, for 90 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Texaco, Inc., P.O. Box 52332, Houston, TX 77052. Send protests to: A. J. Rodriguez, DS,

ICC, 211 Main Street, Suite 500, San Francisco, CA 94105.

MC 145679 (Sub-8TA), filed March 19, 1979. Applicant: A & A TRANSPORT SERVICES, INC., Maple Tree Industrial Park, Boston Road, P.O. Box 12, Palmer, MA 01069. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. *Meats and packinghouse products*, from the facilities of Wilson Foods Corporation located at Omaha, NE to points in CT, ME, MA, NH, NJ, NY, RI and VT, for 180 days. An underlying ETA for 90 days has been granted. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Boulevard, Oklahoma City, OK 73105. Send protests to: David M. Miller, DS, ICC, 436 Dwight Street, Springfield, MA 01103.

MC 145768 (Sub-1TA), filed March 15, 1979. Applicant: KREILKAMP TRUCKING, INC., R.R. #1, Allenton, WI 53002. Representative: Richard Westley, 4506 Regent St., Suite 100, Madison, WI 53705. *Farm machinery and related accessories and parts* from the facilities of Kasten Mfg. Corp., at or near Allenton, WI to points in IA, OH, IN, MI, MN, and IL, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kasten Mfg. Corp., 536 Main St., Allenton, WI 53002. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 145828 (Sub-2TA), filed March 15, 1979. Applicant: RONALD JONES, d.b.a. Algoma Farms, 1762 Leonard Rd., North, Oshkosh, WI 54901. Representative: James A. Spiegel, 6425 Odana Rd., Madison, WI 53719. Contract carrier; irregular routes; *Precast concrete beams, roof decks, joists, double T's, crypts and panels*, from Oshkosh, WI to points in IL, IA, IN, MI, MN, NE, ND and SD, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Duwe Precast Concrete Products, Inc., 1770 S. Koeller Rd., Oshkosh, WI 54901. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146068 (Sub-4TA), filed March 7, 1979. Applicant: CONSOLIDATED CARRIERS CORPORATION, Box 25842, Charlotte, NC 28205. Representative: Robert B. Walker, 915 Pennsylvania Bldg., 425 13th St., NW., Washington, DC 20004. *General commodities* which are, at the time, moving on freight forwarder bills of lading from GA, NC and SC to AZ, CA and UT, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Westransco Freight Company, PO Box 30514, Charlotte, NC 28230. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd.—Room CC516, Mart Office Building, Charlotte, NC 28205.

MC 146068 (Sub-5TA), filed March 20, 1979. Applicant: CONSOLIDATED CARRIERS CORP., Box 25842, Charlotte, NC 28212. Representative: Eric Meierhoefer, Suite 423, 1511 K Street, NW, Washington, DC 20005 *Aluminum slugs* from Harrisonburg, VA to Chico, CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Victor Industries, 365 20th St., Chico, CA 95926. Send protests to: District Supervisor Terrell Price, 800 Briar Creek Rd-Rm CC516, Mart Office Building, Charlotte, NC 28205.

MC 146078 (Sub-6TA), filed March 20, 1979. Applicant: CAL-ARK, INC., 854 Moline, P.O. Box 394, Malvern, AR 72104. Representative: Thomas W. Bartholomew (Same as applicant). (1) *Such merchandise* as is dealt in by wholesale, retail, chain grocery and food business houses, and (2) *materials, ingredients and supplies* used in the manufacture, distribution, and sale of the products in (1) above, between the facilities of the Ralston Purina Company at or near Oklahoma City, OK on the one hand, and on the other, points in the states of IA, OH, NY and PA, or 180 days as a common carrier over irregular routes, an underlying ETA seeks 90 days authority. Supporting shipper(s): Ralston Purina Company, Chekerboard Square, St. Louis, MO 63188. Send protests to: William H. Land, Jr., District Supervisor, 3108 Federal Office Building, 700 West Capitol, Little Rock, AR 72201.

MC 146149 (Sub-3TA), filed March 13, 1979. Applicant: KENNEDY FREIGHT LINES, INC., 7401 Fremont Pike, Perrysburg, OH 43551. Representative: Paul F. Beery, Esq., Beery & Spurlock Co., L.P.A., 275 East State St., Columbus, OH 43215. *Glass containers and fibreboard boxes*, from South Volney, NY to points in NC, for 180 days. An underlying ETA seeks 90 days authority. Common carrier-irregular routes. Supporting shipper(s): Owens-Illinois, Inc., P.O. Box 1035, Toledo, OH 43666. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 146149 (Sub-4TA), filed March 13, 1979. Applicant: KENNEDY FREIGHT LINES, INC., 7401 Fremont Pike, Perrysburg, OH 43551. Representative: Paul F. Beery, Esq., Beery & Spurlock Co., L.P.A., 275 East State St., Columbus, OH 43215. *Containers*, from the plantsite of the Van Dorn Company of Tampa, FL to points in NC, SC, TN and VA, for 180 days. An underlying ETA seeks 90 days authority. Common carrier-irregular routes. Supporting shipper(s): Davies Can Co., A Division of Van Dorn Company, 2685 East 79th St., Cleveland, OH 44101. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 146149 (Sub-5TA), filed March 13, 1979. Applicant: KENNEDY FREIGHT LINES, INC., 7401 Fremont Pike, Perrysburg, OH 43551. Representative: Paul F. Beery, Esq., Beery & Spurlock Co., L.P.A., 275 East State St., Columbus, OH 43215. *Carpeting*, from the plantsite of Homeland Carpet Company at or near Dalton, GA to points in OH and MI, for 180 days. An underlying ETA seeks 90 days authority. Common carrier-irregular routes. Supporting shipper(s): Homeland Carpet Co., 1734 Lawson Ave., Dalton, GA 30720. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 146149 (Sub-6TA), filed March 26, 1979. Applicant: KENNEDY FREIGHT LINES, INC., 7401 Fremont Pike, Perrysburg, OH 43551. Representative: Paul F. Beery, 275 E. State St., Columbus, OH 43215. *Wiping cloths, except commodities in bulk*, from points in the United States (except Alaska and Hawaii), to Jackson, TN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Jackson Bearing Co., P.O. Box 1561, Jackson, TN 38301. Send protests to: Interstate Commerce Commission, Bureau of Operations, 600 Arch St., Rm. 3238, Philadelphia, PA 19106.

MC 146158 (Sub-1TA), filed March 6, 1979. Applicant: MARVIN EFFENSON d.b.a. EFFENSON ENTERPRISES, 3130 Produce Row, Houston, TX 77023. Representative: Anthony F. Mercurio, 3703 Yoakum, Suite 200, Houston, TX 77006. Common carrier over irregular routes. *Bananas* from Gulfport, MS to Houston, TX for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Kroger Co., 701 Gellhorn, Houston, TX 77001. Chiquita Brands, Inc., 212 Veterans Blvd., Suite 100, Metairie, LA 70005. Send protests to: John F. Mensing, District Supervisor, 8610 Federal Bldg., 515 Rusk Avenue, Houston, TX 77002.

MC 146168 (Sub-1TA), filed March 2, 1979. Applicant: PONCHATOULA LEAD

CO., INC., Route 1, Box 66, Ponchatoula, LA 70454. Representative: Harold R. Ainsworth, 2307 American Bank Building, New Orleans, LA 70130. (1) *Antimonial lead*, from the facility of Schuylkill Metals Corp. in East Baton Rouge Parish, LA to points in MS, IL, TN, KY, AR, TX, LA, GA, FL, MO, and IN; and, (2) *Scrap batteries and scrap lead plates*, from points in MS, IL, TN, KY, AR, TX, LA, GA, FL, MO, and IN to the facilities of Schuylkill Metals Corp. in East Baton Rouge Parish, LA, under a continuing contract or contracts with Schuylkill Metals Corp. of East Baton Rouge Parish, LA, for 180 days. Applicant has filed an underlying ETA for 90 days. Supporting shipper(s): Schuylkill Metals Corporation, P.O. Box 73916, Baton Rouge, LA 70807. Send protests to: Connie A. Guillory, ICC, T-9038 Federal Bldg., 701 Loyola Ave., New Orleans, LA 70113.

MC 146239 (Sub-1TA), filed March 12, 1979. Applicant: INTERNATIONAL FOODS TRANSPORT, INC., P.O. Box 127, Hope, NJ 07844. Representative: Ronald I. Shapss, 450 Seventh Avenue, New York, NY 10001. Contract carrier, irregular routes for 180 days. Foodstuffs, excluding commodities in bulk. Between Chicago, IL; Hanover, PA; Baltimore, MD; New York, NY; Oakland and Stockton, CA; Savannah, GA; New Orleans, LA; Charleston, SC; Philadelphia, PA; Norfolk, VA; Miami, FL; and Detroit, MI; on the one hand, and, on the other, points in the United States (excluding Alaska and Hawaii). An underlying ETA seeking 90 days authority. Supporting shipper(s): SSC International, Inc., P.O. Box 825, Hackensack, NJ 07602. Send protests to: Joel Morrows, DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 146258 (Sub-4TA), filed March 1, 1979. Applicant: M. R. BRUTON, INC., P.O. Box 547, Cuba, MO 65453. Representative: Jack H. Blanshan, Atty., Suite 200, 205 W. Toughy Ave., Park Ridge, IL 60068. *Fresh meats and packinghouse products*, from the facilities of Wilson Foods Corporation at Marshall, MO to points in CA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Wilson Foods Corporation, 4545 Lincoln Blvd., Oklahoma City, OK 73105. Send protests to: P. E. Binder, OC, ICC, Rm. 1465, 210 N. 12th St., St. Louis, MO 63101.

MC 146299 (Sub-1TA), filed February 9, 1979. Applicant: D. Q. SERVICE, INC., 26019 Continental, Taylor, MI 48180. Representative: Jack Goodman, 39 South LaSalle Street, Chicago, IL 60603. *Industrial paint finishing equipment and materials, equipment and supplies*, (except commodities in bulk) used in the installation thereof, from Livonia, MI to Shreveport, LA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Otto Durr, Inc., 12163 Glove, Livonia, MI 48150. Send protests to: Timothy Quinn, District Supervisor, Interstate Commerce Commission, 604 Federal Building and U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, MI 48226.

MC 146318 (Sub-1TA), filed March 8, 1979. Applicant: RUSS E. JOHNSON, d.b.a. SANTA CLARA TRANSFER SERVICE, 1180 Richard St., Santa Clara, CA 95050. Representative: Russ E. Johnson (address same as above). *Contract carrier*: irregular routes: *Soda Ash*, from Sweetwater County, WY to Alameda County, CA, bulk/dump truck type equipment, for the accounts of The Clorox Company, and Brockway Glass Co., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): The Clorox Company, P.O. Box 24305, Oakland, CA 94623. Brockway Glass Co., 8717 G Street, Oakland, CA 94621. Send protests to: District Supervisor, M. M. Butler, 211 Main, Suite 500, San Francisco, CA 94105.

MC 146319 (Sub-1TA), filed March 7, 1979. Applicant: ELLIOT LAKE FREIGHT LINES LIMITED, P.O. Box 70, Spragge, Ontario, Canada. Representative: Robert D. Gunderman, Esq., 710 Statler Building, Buffalo, NY 14202. Uranium U-308 Trade Name "Yellow Cake" from points of entry on the International Boundary line between the United States and Canada located in the upper peninsula of MI to points in IL. An underlying ETA seeks 90 days authority. Supporting shipper(s): Denison Mines Limited, Spragge, Ontario. Send protests to: C. R. Flemming, D/S, 225 Federal Building, Lansing, MI 48933.

MC 146328 (Sub-1TA), filed February 23, 1979. Applicant: ALLIED DELIVERY SYSTEM CO., 6200 Roland Avenue, Cleveland, OH 44127. Representative: David A. Turano, Esq., 100 East Broad Street, Columbus, OH 43215. (1) *Paint, stains, and varnishes* (except in bulk) and (2) *related display materials* moving in mixed shipments with the commodities in (1) above, between Cleveland, OH, on the one hand, and, on the other, points in OH. Restricted to the transportation of traffic having a prior or subsequent movement in interstate commerce by motor vehicle, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): United Coatings, Inc., 3050 North Rockwell, Chicago, IL 60618. Send protests to: Mary Wehner, D/S, ICC, 731 Federal Office Building, Cleveland, OH 44199.

MC 146329 (Sub-2TA), filed March 6, 1979. Applicant: W-H TRANSPORTATION CO., INC., P.O. Box 1222, Wausau, WI 54401. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Tractors, tractor attachments, farm and industrial machinery and equipment and parts* from the facilities of J. I. Case at Racine, WI and Burlington, IA to the States of AR, AL, LA, MS, OK, TN and TX, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. I. Case Co., 700 State St., Racine, WI 53404. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146379 (Sub-2TA), filed February 28, 1979. Applicant: AUTO EXPRESS, INC., 50 Oak Street, Lodi, NJ 07644. Representative: George A. Olsen, P.O. Box 357, Gladstone, NJ 07934. Used automobiles, in secondary movements, in truckaway service (1) between Boston, MA, Philadelphia, PA and New York, NY on the one hand, and on the other, points in FL (2) Between Albany, NY on the one hand, and on the other, Boston, MA, (3) Between Manheim, PA and Bordentown, NJ on the one hand, and on the other, points in the New York, NY commercial zone, (4) between Boston, MA commercial zone on the one hand, and on the other, points in the New York, NY commercial zone, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): There are 10 supporting shippers on file. Their statements may be examined at the office of the ICC Newark, or at Washington, D.C. Send protests to: Joel Morrows, D/S, ICC, 9 Clinton St., Room 618, Newark, NJ 07102.

MC 146399 (Sub-1TA), filed March 2, 1979. Applicant: SERVICECRAFT DISTRIBUTION SYSTEMS, INC., 5650 Dolly Avenue, Buena Park, California 90620. Representative: Milton W. Flack, 4311 Wilshire Blvd., No. 300, Los Angeles, CA 90010. *Aluminum ingots and scrap aluminum*, in straight shipments of containers not exceeding 40 feet in length, having a subsequent movement by water, from Fontana and Buena Park, CA, to Los Angeles and Long Beach Harbors, CA, for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): U.S. Reduction Company, 4610 Kennedy Avenue, East Chicago, IN 46312. Send protests to: Irene Carlos,

Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California 90012.

MC 146409 (Sub-ITA), filed March 20, 1979. Applicant: WESTSHIP TRUCKING, INC., 5565 E. 52nd Ave., Commerce City, CO 80022. Representative: James O. Pearcy, President (address same as above). (1) *Electric household appliances and equipment; kitchen and bathroom appliances and equipment; oral hygiene appliances and equipment; hydro therapy equipment; sink and shower fixtures; smoke alarms; food processing machines; filters;* (2) *Materials, equipment and supplies used in the manufacture or distribution of the commodities named in (1) above;* Between the facilities of Teledyne Water Pik located in Larimer County, CO and Denver County, CO on the one hand, and on the other, Dallas, Ft. Worth and Houston, TX; New Orleans, LA; Mobile, AL; Tallahassee, Orlando, Tampa, Miami and Jacksonville, FL; Savannah, GA; Charleston, SC; Norfolk and Richmond, VA; Balitmore, MD; New York City, Syracuse and Dansville, NY; Youngstown, Cleveland and Toledo, OH; Detroit and Lansing, MI; and Chicago, IL, for 180 days. Underlying ETA seeks 90 days authority. Restricted to the above commodities being hauled solely in intermodal container-trailers, and restrained to the use of such equipment. Supporting shipper: Teledyne Water Pik, 1730 Prospect, Ft. Collins, CO 80521. Send protests to: D/S Roger L. Buchanan, ICC, 492 U.S. Customs House, 721 19th St., Denver, CO 80202.

MC 146418 (Sub-1TA), filed March 7, 1979. Applicant: WALTER A. SOWDEN, JR., d.b.a. SOWDEN TRANSPORTATION CO., 318 Talmage Avenue, Bound Brook, NJ 08805. Representative: Paul J. Keeler, P.O. Box 253, South Plainfield, NJ 07080. Contract carrier, irregular routes for 180 days. Scrap plastic, except in bulk in tank vehicles, Between points in ME, NH, VT, MA, RI, CT, NY, NJ, PA, WV, DE, MD, FL, MS, LA, TN, TX, WI, IL, IN, MI, and OH. Underlying ETA seeking authority for 90 days. Supporting shipper(s): Heritage International, Inc., 75 Claremont Road, Bernardsville, NJ 07924. Send protests to: Irwin Rosen, TS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 146419 (Sub-1TA), filed March 6, 1979. Applicant: RAYMOND J. SCHWANEBECK & LEE ALLEN SCHWANEBECK, d.b.a. SCHWANEBECK BROS., Rt. 1, Box 187C, Pittsville, WI 54466. Representative: Wayne Wilson, 150 E. Gilman St., Madison, WI 53703. *Such commodities as are manufactured, processed, sold, used, distributed or dealt in by manufacturers, converters, and printers of paper and paper products* (except commodities in bulk): (a) from the facilities of Consolidated Papers, Inc., at or near Stevens Point and Wisconsin Rapids, WI to points in AZ, CA, OR and WA; and (b) from the facilities of Nekoosa Papers Inc. at or near Nekoosa, Port Edwards and Stevens Point, WI to points in AZ, CA, OR and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Nekoosa Papers, Inc., Port Edwards, WI 54469 and Consolidated Papers, Inc., Wisconsin Rapids, WI 54494. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146428 (Sub-1TA), filed March 15, 1979. Applicant: CARDINAL EXPRESS CORPORATION, 1304 Douglas Ave., Racine, WI 53402. Representative: Monroe Thomas, 1304 Douglas Ave., Racine, WI 53402. *Materials, equipment, supplies and parts used in the manufacture and distribution of farm tractors, and attachments and parts thereof,* between the commercial zones of Chicago, IL; Davenport, IA; Rockford, IL and Milwaukee, WI on the one hand and the commercial zone of Racine, WI on the other, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): J. I. Case Co., 700 State St., Racine, WI 53404. Send protests to: Gail Daugherty, Transportation Asst., Interstate Commerce Commission, Bureau of Operations, U.S. Federal Building & Courthouse, 517 East Wisconsin Avenue, Room 619, Milwaukee, Wisconsin 53202.

MC 146438 (Sub-1TA), filed February 27, 1979. Applicant: ETV, INC., P.O. Box 93, Comstock Park, MI 49321. Representative: Wilhelmina Boersma, 1600 First Federal Building, Detroit, MI 48226. *Frozen foods* from the facilities of Chef Pierre, Inc. at or near Traverse City, MI to points in CA, NV, WA, MT, UT, OR, ID, AZ, and NM, for 180 days. Supporting shipper(s): Chef Pierre, Inc., P.O. Box 1009, Traverse City, MI 49684. An underlying ETA seeks 90 days authority. Send protests to: C. R. Flemming, D/S, ICC, 225 Federal Building, Lansing, MI 48933.

MC 146439 (Sub-1TA), filed March 7, 1979. Applicant: HEAVYWEIGHT TRUCKING CO., INC., 7164 Santa Clara Street, Buena Park, CA 90620. Representative: Thomas G. Horngren (same address as applicant). *Tanks, filter (water conditioning) and necessary equipment and media for their installation and operation,* from City of Industry, CA to points and places in the United States (except HI), for 180 days. An underlying ETA seeks up to 90 days operating authority. Supporting shipper(s): LA/Water Treatment Division, 17400 E. Chestnut Street, City of Industry, CA. Send protests to: Irene Carlos, Transportation Assistant, Interstate Commerce Commission, Room 1321 Federal Building, 300 North Los Angeles Street, Los Angeles, California.

MC 146458 (Sub-1TA), filed March 16, 1979. Applicant: VIRGIL MOELLER, d.b.a. MOELLER FARMS, Box 104, Spring Valley, MN 55975. Representative: Val M. Higgins, 1000 First National Bank Building, Minneapolis, MN 55402. *Dry animal and poultry feed, dry mineral mixtures, insecticides in containers, and livestock and poultry feeders,* from Quincy, IL to all points in MN, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Moorman Mfg. Co., Manager—Traffic Operations, 1000 North 30th Street, Quincy, IL 62301. Send protests to: Delores A. Poe, TA, ICC, 414 Federal Building & U.S. Court House, 110 South 4th Street, Minneapolis, MN 55401.

MC 146499 (Sub-1TA), filed March 6, 1979. Applicant: R. LEON PETERSON TRUCKING, INC., 835 North 600 East, Spanish Fork, UT 84660. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT 84111. Contract carrier: irregular route: *High pressure, reinforced rubber hose* and equipment, materials and supplies used in the manufacture, installation and distribution of high pressure, reinforced rubber hose between Nephi, UT on the one hand, and, on the other, points in AZ, CA, CO, IL IN, IA, KS, KY, MI, MN, MO, NE, NM, OH, OK, SD, TX and WY, for 180 days. An underlying ETA seeks 90 days authority. Supporting Shipper(s): NRP Division of Bastian-Blessing, 255 West 11th North, Nephi, UT 84648. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 145488 (Sub.-2TA), filed March 7, 1979. Applicant: R. LEON PETERSON TRUCKING, INC., 835 North 600 West, Spanish Fork, UT 84660. Representative: Bruce W. Shand, 430 Judge Building, Salt Lake City, UT, 84111. Contract carrier: irregular routes: *calcium carbide, foundry sand core binding compounds,*

resin coated sands, chemicals, and materials, equipment and supplies used in or in connection with metal foundry operations, (1) from points in OH, PA, WV, IN, MI, IL, WI, IA, MO, KS, WY, SD, and NV to CO, UT, and AZ, and (2) between AZ, CO, and UT, under a continuing contract(s) with Waterton Sand & Clay, Inc., for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Waterton Sand & Clay, Inc., 950 West Center, Lindon, UT 84062. Send protests to: L. D. Helfer, DS, ICC, 5301 Federal Bldg., Salt Lake City, UT 84138.

MC 146519 (Sub-2TA), filed March 13, 1979. Applicant: CALIANA MARKETING, INC., 2120 Prarieton Road, Terre Haute, IN 47802. Representative: Robert W. Loser II, 1009 Chamber of Commerce Bldg., Indianapolis, IN 46204. Contract carrier: Irregular routes: *Scrap metal,* from the facilities of Unarco Home Products at or near Paris, IL to Detroit, MI, for 180 days. Under contract with Unarco Home Products, Division of Unarco Industries, Inc. at Paris, IL. Supporting shipper: Unarco Home Products, Division of Unarco Industires, Inc., P.O. Box 429, Paris, IL 61944. Send protests to: Beverly J. Williams, Transportation Assistant, I.C.C., 46 E. Ohio St., Rm. 429, Indianapolis, IN 46204. An underlying ETA seeks 90 days authority.

MC 146589 (Sub-1TA), filed March 26, 1979. Applicant: REGIONAL TRANSPORTATION COMPANY, INC., 600 Secaucus Road, Secaucus, NJ 07094. Representative: Arthur A. Arsham, Esq., 277 Park Avenue, New York, NY 10017. Contract carrier, irregular routes for 180 days. Merchandise, equipment and supplies sold, used or distributed by a manufacturer of cosmetics (1) Between Springdale, OH; Glenview, IL; Morton Grove, IL; and Hoboken, NJ; Newark, DE; Rye, NY; Suffern, NY; and West Nyack, NY; (2) Between Springdale, OH; and Morton Grove, IL; (3) From Millville, NJ and Baltimore, MD to Springdale, OH; and Morton Grove, IL. An underlying ETA seeks 90 days authority. Supporting shipper(s): Avon Products, Inc., 9 West 57th Street, New York, NY 10019. Send protests to: Robert E. Johnston, DS, ICC, 9 Clinton Street, Room 618, Newark, NJ 07102.

MC 146648 (Sub-1TA), filed April 3, 1979. Applicant: NIMCO TRUCKING, INC., 308 South 25th Street, Boise, ID 83706. Representative: David E. Wishney, P.O. Box 837, Boise, ID 83701. Authority sought to operate as a *contract carrier,* by motor vehicle, over irregular routes, transporting: *Scrap metal, batteries and automobile bodies compressed and parts,* from the facilities of Northern Iron & Metals Co., Inc. at Boise, ID to points in CA, OR, UT, and WA, for 180 days. An underlying ETA seeks 90 days authority. Supporting shipper(s): Northern Iron and Metals Co., Inc., 308 S. 25th Street, Boise, ID 83706. Send protests to: Barney L. Hardin, ICC, Suite 110, 1471 Shoreline Drive, Boise, ID 83706.

MC 145859 (Sub-2TA), filed March 1, 1979. Applicant: SIERRA HIGHLANDS BUS CO., INC., 1559 Broadway, Fresno, CA 93721. Representative: Otto L. Johansen (same as above). *Passengers and their baggage* in the same vehicle on both special and charter operations, from Fresno County and Madera County, CA to 48 states in the U.S. and Alaska, for 180 days. An underlying ETA seeks 90 days authority. There are 7 statements in support attached to this application which may be examined at the ICC in Washington, DC or copies of which may be examined in the San Francisco, CA field office. Send protests to: District Supervisor M. M. Butler, 211 Main, Suite 500, San Francisco, CA 94105.

By the Commission.

H. G. Homme, Jr.,
Secretary.

[Notice No. 75]
[FR Doc. 79-13974 Filed 5-3-79; 8:45 am]
BILLING CODE 7035-01-M

Motor Carrier Board Transfer Proceedings

The following publications include motor carrier, water carrier, broker, and freight forwarder transfer applications filed under Section 212(b), 206(a), 211, 312(b), and 410(g) of the Interstate Commerce Act.

Each application (except as otherwise specifically noted) contains a statement by applicants that there will be no significant effect on the quality of the human environment resulting from approval of the application.

Protests against approval of the application, which may include request for oral hearing, must be filed with the Commission on or before June 4, 1979. Failure seasonably to file a protest will be construed as a waiver of opposition and participation in the proceeding. A protest must be served upon applicants' representative(s), or applicants (if no such representative is named), and the protestant must certify that such service has been made.

Unless otherwise specified, the signed original and six copies of the protest shall be filed with the Commission. All protests must specify with particularity the factual basis, and the section of the Act, or the applicable rule governing the proposed transfer which protestant believes would preclude approval of the application. If the protest contains a request for oral hearing, the request shall be supported by an explanation as to why the evidence sought to be presented cannot reasonably be submitted through the use of affidavits.

The operating rights set forth below are in synopses form, but are deemed sufficient to place interested persons on notice of the proposed transfer.

MC-FC-77850, filed September 5, 1978. Transferee: GEO. W. NOFFS MOVING & STORAGE, INC., 1735 E. Davis St. Arlington Heights, IL 60005. Transferor: AMODIO MOVING, INC., 1199 Whitney Ave., Hamden, CT 06517. Representative: Robert J. Gallagher, Suite 1200, 1000 Connecticut Ave., N.W., Washington, D.C. 20036. Authority sought for purchase by transferee of a portion of the operating rights of transferor in Certificate No. MC-107229, issued March 26, 1962, and acquired by transferor pursuant to No. MC-F 13402, as follows: *Household goods* as defined by the Commission, between Chicago, IL, and points in IL, IN, MI, and WI withing 100 miles of Chicago, on the one hand, and, on the other, points in KS, MO, IA, MN, WI, MI, IL, IN, KY, TN, AL, FL, GA, SC, NC, VA, WV, OH, PA, DE, NJ, NY, CT, RI, MA, VT, NH, ME, restricted against through shipments between Chicago, IL, and points within 100 miles thereof, on the one hand, and, on the other, points in MD and DC. Transferee holds no ICC authority and no temporary application has been filed.

MC-FC-77835, filed August 25, 1978. Transferee: HAROLD WILLIAMS, d.b.a. WILLIAMS MOVING CO. U.S. Highway 60, P.O. Box 518, Dexter, MO 63841. Transferor: COURTNEY VAN LINES, Inc., Rt. 4, Box 149 Lake Estates, Marion, IL 62959. Representative: Ernest A. Brooks, II, 1301 Ambassador Bldg., St. Louis, MO 63101. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 19240, issued November 4, 1969, as follows: *Household goods* as defined by the Commission, between points in Williamson, Franklin, Saline, Jackson, Johnson, Alexander, Pulaski, Massac, Pope, Hardin, Gallatin, White, Hamilton, Jefferson, Perry, Union, Wabash, Wayne, and Edwards Counties, IL, on the one hand, and, on the other, points in MO, KY, IN, IA, OH, WV, PA, NM, TX, KS, WI, OK, TN, MI, NE, CO, AL, AR, and DC. Transferee holds authority under docket No. MC 135743.

Application has not been filed for temporary authority under Section 210a(b).

MC–FC–77944, filed December 4, 1978. Transferee: HAYNES TRANPSORT CO., INC., P.O. Box 9, Salina, KS 67401. Transferor: TEJAS LINES, INC., P.O. Box 9, Salina, KS 67401. Representative: Clyde N. Christey, Kansas Credit Union Bldg., 1010 Tyler, Topeka, KS 66612. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates No. MC–141519, and Sub-Nos. 2, 4, and 5, issued February 12, 1976, February 12, 1976, August 23, 1977, and April 12, 1978, respectively, as follows: (A) *Anhydrous ammonia,* in bulk, in tank vehicles, (1) from the facilities of Farmland Industries, Inc., at or near Enid, OK, to points in KS, CO, MO, AR, LA, and TX (except points in Chambers, Montgomery, Harris, Fort Bend, Galveston, Liberty, and Brazoria Counties), restricted to the transportation of traffic originating at the named facilities and destined to the named destinations, (2) from the pipeline terminal facilities of Mid–America Pipeline Company, near Conway, KS, to points in CO, KS, MO, and NE, restricted to the transportation of traffic originating at the named origins and destined to the indicated destinations, (3) from the plant site of Farmland Industries, Inc., at or near Dodge City, KS, to points in CO, WY, TX, OK, MO, NE, and IA, (4) from the plant site of Hill Chemicals, Inc., at or near Borger, TX, to points in CO, KS, and OK, and (5) from the facilities of Farmland Industries, Inc., at or near Farnsworth, TX, to points in CO, KS, NM, and, OK; and (B) *anhydrous ammonia, nitrogen fertilizer solutions, and urea liquor,* from the plant sites of Oklahoma Nitrogen Company and Bison Nitrogen Products Co., at or near Woodward, OK, to points in AR, CO, IA, KS, LA, MO, NE, NM, SD, and TX. Transferee presently holds authority from this Commission under MC–145150. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC–77966, filed December 19, 1978. Transferee: LONGMONT TRANSPORTATION COMPANY, INC., 149 Kimbark St., Longmont, CO 80501. Transferor: LONGMONT, TURKEY PROCESSORS, INC., Longmont, CO 80501. Representative: Charles J. Kimball, 350 Capitol Life Center, 1600 Sherman St., Denver, CO 80203. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permits No. MC–141668 and MC–141668 (Sub-No. 1), issued October 12, 1977, and November 9, 1978, respectively, as follows: (1) *chemicals,* (2) *laboratory, graphic arts, electroplating, laundry, dry cleaning, and swimming pool supplies and equipment,* and (3) *materials* used in the manufacture, sale, and distribution thereof, from points in CA, CT, DE, IL, IN, MD, MI, NJ, NY, OH, PA, TX, WA, and WV, to Denver, CO, restricted against the transportation of commodities in bulk, under continuing contract in (1), (2), and (3) above, with Chemical Sales Company, of Denver, CO. (4) *Turkey products,* and *commodities* otherwise exempt under 49 U.S.C. § 10526(a)(6) (formerly section 203(b)(6) of the Interstate Commerce Act), when moving in mixed loads with turkey products, and (5) *materials, equipment and supplies* used in raising, manufacture, and distribution of the commodities in (4) above, (except commodities in bulk), between points in Weld and Boulder Counties, CO, on the one hand, and, on the other, points in the United States (except AK and HI), under continuing contract in (4) and (5) above, with Longmont Turkey Processors, Inc., of Longmont, CO, subject to the condition that Longmont Turkey Processors, Inc., shall maintain separate books and records for its transportation and nontransportation activities. Transferee presently holds no authority from this Commission. Application for temporary authority under 49 U.S.C. § 11349 (formerly section 210a(b) of the Interstate Commerce Act) was denied by decision served January 22, 1979.

MC–FC–77967, filed January 24, 1979. Transferee: TOMMY L. APPLETON, d.b.a. APP'S DELIVERY SERVICE, 1485 Karl St., San Jose, CA 95122. Transferor: T.P. Drayage, Inc., 1236 Connecticut, San Francisco, CA 94107. Representative: Marvin Handler, 100 Pine St., Suite 2550, San Francisco, CA 94111. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate of Registration No. MC 121701, acquired by the transferor in No. MC–FC–76375, authorizing the transportation of *general commodities,* with exceptions, between points in the San Francisco Territory. Transferee holds no authority from the Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349 (formerly Section 210a(b) of the Act).

MC–FC–77978, filed December 28, 1978. Transferee: ROBERT J. RATHWAY AND WILLIAM C. PAULL, Jr., A Partnership, WOLFE & WOLFE, R.D. #2, Box 169A, Perryopolis, PA 15473. Transferor: Lavern E. Wolfe, Wolfe & Wolfe, 305 Crossland Avenue, Uniontown, PA 15401. Representatives: John A. Pillar, Esq., Pillar and Mulroy, 1500 Bank Tower, 307 Fourth Avenue, Pittsburgh, PA 15222, Attorney for transferee. William J. Lavelle, Esq., 2310 Grant Building, Pittsburgh, PA 15219, Attorney for transferor. Authority sought to purchase by transferee of the operating rights of transferor as set forth in Certificates Nos. MC–141877 and MC–141877 (Sub-No. 1), issued November 23, 1976, and July 29, 1977, respectively, as follows: Foundry sand, from Twinsburg, OH, to points in Greene, Fayette, Washington, Allegheny, Westmoreland, Beaver, Armstrong, and Vanango Counties, PA, and from Connellsville and Uniontown, PA, to Newark, OH; and pulverized limestone (except in bulk, in dump vehicles), from the facilities of Benwood Limestone Co., at Benwood, WV, to points in Washington and Greene Counties, PA, and points in Marion and Monongalia Counties, WV. Transferee presently holds temporary authority under No. MC–144380. Application has been filed for temporary authority under Section 2110a(b).

MC–FC–77980, filed December 26, 1978. Transferee: TRANS-NATIONAL TRUCK, INC. (a NV Corporation), P.O. Box 4168, Amarillo, TX 69105. Transferor: Trans-National Truck, Inc. (a TX corporation) P.O. Box 4168, Amarillo, TX 79105. Representative: Charles W. Singer, 2480 E. Commercial Blvd., Ft. Lauderdale, FL 33308. Authority is sought to transfer to transferee all of the authority held by transferor in Certificate MC–133655 and sub numbers thereunder embracing a number of specified commodities from, to and between various points in the United States. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC–FC–77981, filed December 27, 1978. Portion of authority sought to be transferred from CARTAGE SERVICES, INC., 26380 Van Born Road, Dearborn, Michigan, 48125, to TRUCKING SERVICES, INC., 26400 Van Born Road, Dearborn Heights, Michigan, 48125. Applicant's attorney: Edwin M. Snyder, 22375 Haggerty Road, P.O. Box 400, Northville, MI 48167. Operating rights sought to be transferred are as follows: Contract Carrier Permit in MC–123372 Sub. 22 to transport over irregular routes: Lumber and pre-cut building

panels and sections, from the facilities of Fingerle Lumber Co., at or near Ann Arbor, Michigan, to points in Pennsylvania, Illinois, New York, Kentucky, Ohio, Wisconsin, and Indiana, under a continuing contract, or contracts, with Fingerle Lumber Co., also Common Carrier Certificate in MC–118594 to transport over irregular routes: Vermiculite (other than crude), in bags, from Dearborn, Michigan, to points in Williams, Henry, Fulton, Woods, Ottawa, Sandusky, Defiance, Paulding, Putnam, Hancock, Seneca, Van Wert, Allen, Hardin, Wyandot, Crawford, Mercer, Auglaize, Marion, Morrow, Darke, Shelby, Logan, Union, Delaware, Knox, Madison, Franklin, Champaign, Miami, Lucas, and Clark Counties, Ohio. Transferor holds authority under docket number MC 142439. Application for temporary authority has not been filed.

MC–FC 77982, filed December 28, 1978. Transferee: JAMES V. BEILFUSS, 6379 Hallen Ave., Belvidere, IL 61008. Transferor: Carl E. Parnell, 418 West 8th St., Belvidere, Il 61008. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 143442 Sub 2, issued June 30, 1978, as follows: (1) *Ice cream mix, yogurt, and non-dairy cream substitutes,* in bulk, in tank vehicles, and (2) *raw cream and whey,* in bulk, in tank vehicles, when moving in mixed loads with the commodities named in (1) above, between points in Illinois, on the one hand, and, on the other, points in Wisconsin. Transferee holds no authority from the Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349 (formerly Section 210a(b) of the Act).

MC–FC 77983, filed December 26, 1978. Transferee: CHEVALLEY MOVING & STORAGE OF LAWTON, INC., 402 S. W. Texas, Lawton, OK 73501. Transferor: STONE TRANSFER & STORAGE CO., a corporation, 1703 Linwood, Oklahoma City, OK 73106. Representative: C. L. Phillips, Room 248—Classen Terrace Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 74077, issued June 5, 1973, as follows: Household goods, Between Oklahoma City, OK., and points within 150 miles of Oklahoma City, on the one hand, and, on the other, points in AR, KS, MO, NE, NM and TX., Uncrated new household furniture, Between Oklahoma City, OK., on the one hand, and, on the other, points in KS, MO, TX and NM. Transferee presently holds authority in MC 145578. Application for temporary authority under Section 210a(b) has not been filed.

MC–FC–77996, filed November 8, 1978. Transferee: ROZELLA A. ANDERSON, 20801 Kendall Drive, San Bernardino, CA 92407. Transferor: RUTH W. MALLORY PLACE, doing business as MALLORY TRUCKING, 1977 Pennsylvania Ave., Colton, CA 92324. Representative: Mark A. Ostoich, 398 West Fourth St., San Bernardino, CA 92401. Authority sought for purchase by transferee of the operating rights of transferor in Certificates Nos. MC 112196 Sub 1 and MC 112196 Sub 5, issued March 8, 1963, authorizing in Sub 1 *cement* in bulk, from Crestmore, Oro Grande, and Victorville, CA, to Yuma, AZ; from Crestmore and Oro Grande, CA, and points within five miles of each, to points in Yuma County, AZ, within 75 miles of Yuma, AZ; from Oro Grande and Riverside, CA, and points within five miles of each origin point, to Ligurta, Wellton, and Tyson, AZ, and points within five miles of each destination point; *cement,* in bulk, in hopper type vehicles, form Victorville and Oro Grande, CA, to the facilities of Mojave Rock Materials, Co., at Kingman, AZ; and in Sub 5 *cement,* in bulk, in tank-type trucks and trailers, form Colton, CA, to the boundary of the United States and Mexico at Calexico, CA. Transferee holds no authority from the Commission. Application has not been filed for temporary authority.

MC–FC–77997, filed December 28, 1978. Transferee: ODEAN DUANE BAKKEN, doing business as BAKKEN TRUCK LINE, Northwood, IA 50459. Transferor: KATUIN BROS., INC., P.O. Box 311, Ft. Madison, IA 52627. Representative: Carl E. Munson, 469 Fischer Bldg., Dubuque, IA 52001. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates MC–126539 (Sub-Nos. 18, 22, 23, and 28), issued August 8, 1977, April 14, 1976, June 8, 1977, and January 16, 1978, respectively, as follows: *Meats, meat products and meat by-products, and articles distributed by meat-packing houses,* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), (1) from the facilities of Wilson Foods Corporation, at Cedar Rapids, IA, to points in MO, (2) from the facilities of Wilson & Co., Inc., at Cedar Rapids, IA, to those points in IL in the St. Louis, MO-East St. Louis, IL Commercial Zone, and (3) from the facilities of Hygrade Food Products Corp., at or near Storm Lake and Cherokee, IA, to points in IN and OH, restricted in (1), (2), and (3) above, to the transportation of traffic originating at the named origins and destined to the indicated destinations. *Liquid animal feed* and *liquid animal feed supplements,* in bulk, from the site of Land O'Lakes, Inc., at or near Clarence, IA, to points in IL (except Chicago), IA, NM, NE, ND, SD, and WI. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC–78001, filed December 11, 1978. Transferee: ASKINS MOVING & STORAGE, INCORPORATED, P.O. Box 3954, Florence, SC 29501. Transferor: PARRISH DRAY LINE, INC., P.O. Drawer 160, Leland, NC 28451. Representative: Frank A. Graham, Jr., 707 Security Federal Bldg., Columbia, SC 29201. Authority sought for purchase by transferee of a portion of the operating rights of transferor set forth in Certificate No. MC 78170, issued December 20, 1940, as follows: *Household goods,* between Sumter, SC, and points within 50 miles of Sumter, on the one hand, and, on the other, points in Virginia, North Carolina, South Carolina, Georgia, and Florida. Transferee holds authority in Certificate of Registration No. MC 58721 Sub 1. Application for temporary authority has not been filed.

MC–FC–78002, filed January 14, 1979. Transferee: HOMER MEEKS, Route 1, Binger, OK. Transferor: Frank Vincent, doing business as VINCENT TRUCKING, Route 1, Eakly, OK. Representative: David B. Schneider, P.O. Box 1540, Edmond, OK 73034. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit MC–139073 (Sub-No. 2), issued March 1, 1976, as follows: *Dry fertilizer,* from points in KS (except Military), MO (except Atlas), TX, and NM, to opints in Caddo and Washita Counties, OK, under continuing contract with Farmer Union Co-op Gin, of Eakly OK. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349 (formerly section 210a(b) of the Interstate Commerce Act).

MC–FC–78003, filed January 16, 1979. Transferee: BOYD MARTIN ENTERPRISES, INC., Route 5, Box 270, Fulton, MO 65251. Transferor: ELWOOD LYNCH, 1009 Halleck Street, Moberly, MO 65270. Representative: Tom B. Kretsinger, Attorney at Law, 20 East Franklin, Liberty, MO 64068. Authority

sought to purchase by transferee of the operating rights of transferor as set forth in Permits Nos. MC–138384 (Sub-No. 2) and MC–138384 (Sub-No. 4), issued January 2, 1974, and September 27, 1974, respectively, as follows: Malt beverages, from Belleville, IL, to Moberly, MO, and from Memphis, TN, to Moberly, MO, restricted to a transportation service to be performed under a contract with Hunt Distributing, Inc., of Moberly, MO. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under Section 210a(b).

MC–FC–78005, filed January 16, 1979. Transferee: A.F.D., INC., Route 94, Florida, NY 10921. Transferor: REDNER TRUCKING, INC. (William M. Gruner, trustee in bankruptcy), Box 35, Route 208, Walkill, NY. Representatives: Arthur J. Piken, 1 Lefrak City Plaza, Flushing, NY 11368; William Gruner, trustee in bankruptcy, P.O. Box 547, New Paltz, NY 12561. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate MC–134803, issued January 18, 1971, as follows: *General commodities* (except commodities in bulk, and household goods as defined by the Commission), between Central Valley, NY and points within 15 miles of Central Valley, on the one hand, and, on the other, New York, NY, and points in NJ within 20 miles of Rutherford, NJ. Transferee presently holds Certificate of Registration MC–70917 (Sub-No. 4), from the Commission. Application has not been filed for temporary authority under 49 U.S.C. 11349 (formerly section 210a(b) of the Interstate Commerce Act).

MC–FC–78007, filed January 18, 1979. Transferee: DAVID C. RICHARD, doing business as D & M EXPRESS, Route 19, Evans City, PA 16003. Transferor: DONNA HALLSTROM, doing business as D & M EXPRESS, P.O. Box 231, Evans City, PA 16033. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permits No. MC–136432, and Sub-Nos. 1 and 2, issued June 7, 1973, April 15, 1974, and September 23, 1976, respectively, as follows: *Railway car or locomotive brake shoes and brake shoe parts*, from the facilities of D & M Express, in Cranberry Township (Butler County), PA, to points in OH, WV, IN, MD, NY, PA, DE, KY, MI, NJ, and VA; from Waukegan, IL and Laurinburg, NC, to the storage facilities of D & M Express, in Cranberry Township (Butler County), PA; and from Laurinburg, NC, to points in DE, KY, MD, MI, NY, NJ, OH, PA, VA, and WV, under a continuing contract with Railroad Friction Products Corp., of Wilmerding, PA. *Abrasive grinding wheels*, from Carlisle, PA, to points in IL, IN, OH, MI, and WI; and from the storage facilities of D & M Express, in Cranberry Township (Butler County), PA, to points in IL, IN, OH, MI, and WI, under continuing contract with SGL Abrasives, a Division of SGL Industries, Inc. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349 (formerly section 210a(b) of the Interstate Commerce Act).

MC–FC–78010, filed January 11, 1979. Transferee: WOLTER TRUCK LINES, INC., Greenwood, DE. Transferor: BLUE HEN LINES, INC., P.O. Box 280, Milford, DE 19963. Representatives: Chester Zyblut, attorney for transferee, 366 Executive Bldg., 1030—15th St. NW, Washington, DC 20005; James D. Griffin, attorney for transferee, P.O. Box 612, Georgetown, DE 19947. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in MC–72069 and Sub-Nos. 3, 5, 7, 8, and 9, issued October 16, 1975, November 23, 1964, May 16, 1975, February 24, 1978, May 27, 1977, and March 17, 1978, respectively, as follows: *Fertilizer*, from Philadelphia, PA and Baltimore, MD, to points in MD and DE. *Fertilizer and fertilizer ingredients*, in bulk, from Hopewell, VA, to Laurel, DE, Cambridge, MD, and points in Kent County, DE; from Norfolk and Chesapeake, VA, to Cambridge, Berlin and Pocomoke City, MD, and points in New Castle and Kent Counties, DE; From Laurel, DE, to points in Caroline, Cecil, Dorchester, Kent, Somerset, Talbot, Worcester, Wicomico, and Queen Anne Counties, MD, and points in Accomack and Northampton Counties, VA. *Fertilizer*, from Cambridge, MD, to points in DE (except Dover, Middletown, and points in Sussex County). *Agricultural lime*, from points in Chester County, and Salisbury Township, (Lancaster County), PA, to points in DE, and those in MD east of the Susquehana River and the Chesapeake Bay. *Livestock, seeds, and poultry feed*, from Philadelphia, PA, to Kearney, NJ points in DE on and south of an east and west line passing through Wilmington, DE, and those in Cecil, Kent, Queen Anne, Talbot, Caroline, Dorchester, Wicomico, Worcester, and Somerset Counties, MD. *Anthracite coal*, from Minersville, Pottsville, and New Philadephia, PA, and points within five miles of each, to Milford, Lincoln, Ellendale, Houston, Milton, Lewes, Frederica, and Dover, DE. *Bituminous coal*, from points in Westmoreland and Fayette Counties, PA, to Milford, DE. And *insecticides*, from Philadelphia, PA, to Berlin, MD, and points in Sussex County, DE. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. 11349.

MC–FC–78012, filed January 24, 1979. Transferee: MIRMAN TRANSPORTATION, INC., 86 Jack London Square, Oakland, CA 94623. Transferor: MITCHELL BROS. TRUCK LINES, a corporation, 3841 N. Columbia Rd., Portland, OR 97217. Representatives: Michael S. Rubin, 256 Montgomery St., San Francisco, CA 94104; Lex F. Page, 3841 N. Columbia Rd., Portland, OR 97217. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate No. MC–32882 (Sub-No. 50), issued October 29, 1974, as follows: *General commodities* (except explosives, blasting supplies, and motor vehicles), in containers, having an immediately prior or subsequent movement by water, between ports of entry in CA, OR, and WA (except those on the International Boundary line between the United States and Canada), on the one hand, and, on the other, points in CA, ID, MT, NV, OR, UT, and WA. *Empty containers*, between points in CA, ID, MT, NV, OR, UT, and WA. Transferee presently holds no authority from this Commission. Application has been filed for temporary authority under 49 U.S.C. 11349 (formerly section 210a(b) of the Interstate Commerce Act).

MC–FC–78013, filed January 25, 1979. Transferee: COYLE TRANS., INC., 180 W. First St., South Boston, MA 02127. Transferor: Kemp Transfer, Inc., 265 South Main St., West Bridgewater, MA 02379. Representatives: Robert J. Gallagher, Suite 1200, 1000 Connecticut Ave., N.W., Washington, DC 20036. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate of Registration No. MC 120262 Sub 1, issued December 27, 1973, authorizing the transportation of *general commodities* (except household goods as defined by the Commission), over irregular routes, between points in Massachusetts. Transferee holds no authority from the Commission. Application has been filed for temporary authority.

MC–FC–78014, filed January 23, 1979. Transferee: PETTER ALAN PURKEY AND JANE MITCHELL McNAIR, a partnership, GRAYPORT TRANSFER AND STORAGE CO., Unit No. 2 Bldg., A

port warehouse, Hoquiam, WA 98550. Transferor: Grayport Transfer & Storage Co., Inc., P.O. Box E, 500 South Alder St., Aberdeen, WA 98520. Representatives: George Kargianis, Attorney at Law, 2120 Pacific Building, Third Avenue & Columbia Street, Seattle, WA 98104. Authority sought to purchase by transferee portion of the operating rights of transferor as set forth in Certificate No. MC–81495 (Sub-No. 1), issued April 11, 1966, as follows: Household goods, as defined in *Practices of Motor Common Carriers of Household Goods*, 17 M.C.C. 467, between Aberdeen, WA, and points in Grays Harbor County, WA, on the one hand, and, on the other, points in Oregon. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC–FC–78017, filed January 25, 1979. Transferee: HAROLD L. CHEW, doing business as ILLINOIS FILM SERVICE, Route 5, Carbondale, IL 62901. Transferor: J. R. McGINNIS, doing business as ILLINOIS FILM SERVICE, 1405 Old West Main, Carbondale, Il 62901. Representative: Ernest A. Brooks II, 1301 Ambassador Bldg., 411 North 7th St., St. Louis, MO 63101. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate No. MC 2332, issued January 31, 1979, as follows: *Motion picture films, theatre supplies, and advertising matter*, between St. Louis, MO, on the one hand, and, on the other, specified points in Illinois and Missouri; and *newspapers, periodicals, films and materials, supplies and equipment* used in the operation of motion-picture theatres, between St. Louis, MO, on the one hand, and, on the other, points in a specified portion of Illinois. Transferee holds no authority from the Commission. Application has not been filed for temporary authority.

MC–FC–78018, filed January 31, 1979. Transferee: SCARI'S DELIVERY SERVICE, INC., Arnold Ave. and Skeet Road, Wilmington, DE 19720. Transferor: JAMES C. KINDBEITER, Jr., doing business as DELAWARE MOTOR FREIGHT, 1800 Ogletown Road, Newark, DE 19711. Representative: Albert F. Beitel, 1625 I St., N.W., Suite 400, Washington, DC 20006. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 120609 Sub 2, issued December 9, 1969, as follows: *general commodities* with the usual exceptions, between points in that part of Delaware bounded on the east by the Delaware River, on the north by the Delaware-Pennsylvania State line, on the west by the Delaware-Maryland State line, and on the south by the Chesapeake and Delaware Canal. Transferee holds authority from the Commission under docket No. MC 115955. An application for temporary authority has not been filed.

MC–FC–78019, filed January 30, 1979. Transferee: TOK DISTRIBUTING SERVICE, INC., P.O. Box 501, Anchorage, AK 99510. Transferor: WILLIAM A. HOOD, JOHN W. HOOD, AND RICHARD HOOD, doing business as HOOD & SONS, P.O. Box 1087, Palmer, AK 99645. Representative: George L. Benesch, 213 W. 6th Ave., Suite No. 1, Anchorage, AK 99501. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 119723 Sub 1, issued May 15, 1963, as follows: *general commodities* with exceptions, between points in Valdez, AK; and between Veldez, AK, on the one hand, and, on the other, specified portions of Alaska. Transferee holds authority in Certificate No. MC 118534 Sub 2. No application for temporary authority has been filed.

MC–FC–78020, filed January 30, 1979. Transferee: JET TRANSFER CORP., East Road, North Clarendon, VT 05759. Transferor: RONALD A. HESS d.b.a., EQUINOX MOTORS, Route 7, P.O. Box 414, Manchester, VT 05254. Representative: David M. Marshall, 101 State Street, Suite 304, Springfield, MA 01103. Authority sought for purchase by Jet Transfer Corp. of the operating rights of Ronald A. Hess d.b.a. Equinox Motors. Operating rights sought to be purchased: Gasoline, kerosene, heating oils, fuel oils, and aviation fuel, from Albany, Fort Ann and Rensselaer, NY to points in VT and NH. The rights are contained in Permit No. MC 142741 Sub 2, issued February 16, 1978. The operations authorized therein are under a continuing contract, or contracts, with Johnson's Fuel Service, Inc. of Manchester Center, VT. Vendee presently holds no authority from the Commission. Application has been filed for Temporary Authority under Section 210(a)(b).

MC–FC–78021, filed January 30, 1979. Transferee: GOODWILL MOVING & STORAGE, INC., 1619 East 95th Street, Brooklyn, NY 11236. Transferor: A.J.N. EXPRESS SERVICE, INC., 1311 Washington Avenue, West Islip, NY 11795. Representative: Arthur J. Piken, One Lefrak City Plaza, Flushing, NY 11368. Authority sought for purchase by transferee of operating rights set forth in Certificate MC 103827, issued November 8, 1977, as follows: Household goods, as defined by the Commission, Between New York, NY, and points in Suffolk County, NY, on the one hand, and, on the other, Washington, DC, Alexandria, VA, points in CT, DE, MD, MA, NJ, NY and RI, and points in Pennsylvania on and east of specified highways. Transferee is a non-carrier. Application is filed simultaneously for temporary lease under Section 210(a)(b).

MC–FC–78022, filed January 8, 1979. Transferee: DOMAN MARPOLE TRANSPORT LIMITED, Duncan Financial Centre, Duncan, British Columbia, Canada. Transferor: DAVINDER FREIGHTWAYS LIMITED (same as transferee). Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. Authority sought for purchase by transferee of the operating rights of transferor in Certificates Nos. MC 134060 Subs 1, 5, 7, 11, 15, 17, and 19, issued November 17, 1970, August 27, 1971, October 25, 1972, June 24, 1975, July 11, 1977, October 30, 1978, and January 27, 1978, as follows: Sub 1: Lumber, between ports of entry on the United States-Canada Boundary line, located in Washington, on the one hand, and, on the other, points in those parts of Washington and Oregon on and west of U.S. Highway 97, restricted to traffic originating at or destined to points in Vancouver Island, British Columbia, Canada; Sub 5: Wood bark fiber extenders, in containers, from Longview and Anacortes, WA, to ports of entry on the United States-Canada Boundary line located at or near Blaine, Lynden, Sumas, and Seattle, WA; Sub 7: Sodium chlorate, in bulk, in tank vehicles, from the port of entry on the United States-Canada Boundary line at or near Blaine, WA, to Everett, WA; Sub 11: baled wood pulp, from the ports of entry on the United States-Canada Boundary line at or near Blaine and Sumas, WA, to Everett, WA; Sub 15: clay brick, clay tile, and clay pipe (except commodities the transportation of which because of size or weight require the use of special equipment), from Seattle and Tacoma, WA, to ports of entry on the United States-Canada Boundary line located at or near Blaine, WA, restricted to the transportation of traffic moving to Vancouver Island, British Columbia, Canada; Sub 17: Waste paper, from points in that part of Oregon and Washington on and west of U.S. Highway 97 to the ports of entry on the United States-Canada Boundary line located at or near Blaine and Sumas, WA; Sub 19: liquid sodium chlorate, in bulk, in tank vehicles, from the port of entry on the United States-Canada

Boundary line at or near Blaine, WA, to Bellingham, WA. Transferee holds no authority from the Commission. Application for temporary authority has not been filed.

MC–FC–78023, filed January 12, 1979. Transferee: BRANT TRANSPORTATION, INC., 38 Tower Avenue, South Weymouth, Massachusetts 02190. Transferor: MIKE KRASILOUSKY TRUCKING & MILLWRIGHT CO., INC., 1301 Metropolitan Avenue, Brooklyn, New York 11237. Applicants' representatives: Robert G. Parks, 20 Walnut Street, Suite 101, Wellesley Hills, Massachusetts 02181 and Piken & Piken, One Lefrak City Plaza, Flushing, New York 11368. Authority sought by Transferee for the partial purchase of operating rights of Transferor set forth in Certificate No. 30871, issued November 14, 1973, as follows: *Heavy Machinery*, between points in Connecticut, Massachusetts and Rhode Island. Transferee presently holds no authority from the Commission. Application has not been filed for temporary authority.

MF–FC–78024, filed February 2, 1979. Transferee: BAB TRANSFER, INC., Clinton St. Extention, Springfield, MA 01104. Transferor: Northways, Incorporated, (Kearons J. Whalen, III, Trustee in Bankruptcy), 31 Wendell Ave., Pittsfield, MA. Representative: David M. Marshall, 101 State St.—Suite 304, Springfield MA 01103. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC–72758 issued November 8, 1971, as follows: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Monroe Bridge, MA and Readsboro, VT, on the one hand, and, on the other, Albany, NY and points in MA. *Paper, paper products, and materials, equipment and supplies* used in the manufacture of paper and paper products, between Monroe Bridge, MA, on the one hand, and, on the other, Bennington, VT, Elizabeth, Bloomfield, and Hoboken, NJ, points in CT, and points in that part of NY east of a line begining at the United States-Canada Boundary line and extending along NY Hwy 374 to Chateaugay, then along a line from Chateaugay through Amsterdam and Middletown, NY, to the NY–NJ State line at a point near Greenwood Lake, NY. Transferee presently holds authority from the Commission in Certificate of Registration MC–97879 (Sub-No. 1). Application has not been filed for temporary authority under 49 U.S.C. § 11349 (formerly section 210a(b) of the Interstate Commerce Act).

MC–FC–78025, filed February 2, 1979. Applicant: HAROLD DEAN HEATH, d.b.a. BOB 's LIBERTY TRUCK LINE, 1108 Cordell, Excelsior Springs, MO 64024. Representative: Tom B. Kretsinger, 20 East Franklin, Liberty, MO 64068. Authority sought for purchase by Harold Dean Heath, d.b.a Bob's Liberty Truck Line, of a portion of the operating rights of H. H. Sperbeck, and individual d.b.a Pleasant Hill Transfer, P. O. Box 206, Pleasant Hill, Missouri 64080. The involved rights were issued October 1, 1975. Operating rights sought to be transferred are contained in MC 59703 Sub 2 as follows: General Commodities, except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Kansas City, Missouri and Liberty, Missouri. Transferee is a non-carrier. Application for temporary authority has not been filed

No. MC–FC–78026, filed February 7, 1979. Transferee: CARGO DISTRIBUTION, INC., 1300 Newark Turnpike, Kearny, NJ 07032. Transferor: Passaic Terminal and Transportation Co., Inc., 800 Bloomfield Ave., Clifton, NJ 07012. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 22829, issued September 15, 1942, as follows: *general commondities*, with exceptions, over irregular routes, between Passaic, NJ, and points in New Jersey within 30 miles of Passaic on the one hand, and, on the other, New York, NY, and points in Bergen, Passaic, Morris, Somerset, Middlesex, Union, Essex, and Hudson Counties, NJ. Transferee holds no authority from the Commission. Application has not been filed for temporary authority.

MC–FC–78027, filed February 5, 1979. Transferee: PAUL STRASSER, Box 191B, R. R. 1, Almena, WI 54805. Transferor: Walter Strasser, R. R. 2, Turtle Lake, WI 54889. Representative: James E. Ballenthin, 630 Osborn Bldg., St. Paul, MN 55102. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificates MC–88563 and MC–88563 (Sub-No. 3), issued September 8, 1966, and December 2, 1964, respectively, as follows: *General commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), from Minneapolis, MN, to Almena, Cumberland, Crystal Lake, Prairie Farm, Turtle Lake, Arland and Maple Grove (Barron County), WI, and Beaver and Clayton (Polk County), WI. *Wood*, from Turtle Lake, WI and points within 10 miles of Turtle Lake, to Minneapolis, MN. *Firewood*, from Prairie Farm, Vance Creek, and Crystal Lake Townships (Barron County), WI, to Minneapolis, MN. *Feed, seed, salt, and farm machinery*, from Minneapolis, MN, to Turtle Lake, WI and points within 10 miles of Turtle Lake. *Farm machinery and Feed*, from Minneapolis, MN, to Prairie Farm, Vance Creek, and Crystall Lake Townships (Barron County), WI. *Household goods* as defined by the Commission, *twine, and grain*, from Minneapolis, MN, to Almena, Crystal Lake, Arland, Vance Creek, Turtle Lake, and Prairie Farm Townships (Barron County), WI and Beaver and Clayton Townships, (Polk County), WI. *Livestock*, (a) from Almena, Clinton, Barron, Cumberland, Crystal Lake, Prairie Farm, Turtle Lake, Arland and Maple Grove (Barron County), WI and Beaver and Clayton (Polk County), WI, to Minneapolis, MN; (b) Between Prairie Farm, Vance Creek and Crystal Lake Townships (Barron County), WI, Turtle Lake, WI and points within 10 miles of Turtle Lake, on the one hand, and, on the other, South St. Paul, MN; and (c) Between Almena, Arland, Turtle Lake, and Clinton (Barron County), WI, and Beaver and Clayton Townships (Polk County), WI, on the one hand, and, on the other, South St. Paul, MN. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC–78028, filed February 2, 1979. Transferee: HERITAGE TRANSPORTATION COMPANY, a Corporation, 3848 Carson Street—Suite 310, Torrance, Ca 90503. Transferor: Penn-Pacific, Inc., 20815 Currier Road, Walnut, CA 91789. Representative: William J. Monheim, P.O. BOX 1756, Whittier, CA 90609. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Certificate MC 143060, issued January 17, 1978, as follows: (1) *Bananas*, and (2) *agricultural commodities* exempt from economic regulation under Section 203(b)(6) of the Act, when transported in mixed loads with bananas, from points in (a) Maricopa, Mohave, Pima, Pinal, Santa Cruz, and Yuma Counties, AZ, (b) that part of California in and south of Sonoma, Lake Colusa, Butte, Yuba, and Sierra Counties (except points in Inyo and Mono Counties), and (c) Nevada, to

ports of entry on the United States-Canada Boundary line in that part of Idaho, Montana, and North Dakota, and points in Washington east of U.S. Highway 97. Transferee presently holds no authority from the Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-78030, filed February 2, 1979. Transferee: BROWN & SONS, INC., P.O. Box 55, Gratis, OH 45330. Transferor: Weber Trucking Co., a Corporation, 1061 Township St., Cincinnati, OH 45225. Representative: Lewis S. Witherspoon, Suite 1940, 88 E. Broad St., Columbus, OH 43215. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in Permit No. MC-128657, issued November 18, 1971, as follows: *Scrap metal,* in dump vehicles, between points in OH, IN, KY, WV, MI, and PA, under continuing contract(s) with The David J. Joseph Co., of Cincinnati, OH. Transferee presently holds authority from this Commission under Permit MC-144211. Application has been filed for temporary authority under 49 U.S.C. § 11349.

MC-FC-78031, filed February 14, 1979. Transferee: PARK MOVING & STORAGE CO., INC., 1537 S. Philadelphia Blvd., Aberdeen, MD 21001. Transferor: Kent Freight Lines, Inc., 304 Stockhams Lane, Aberdeen, MD 21001. Representative: Wm. E. Derbyshire, P.O. Box 666, Aberdeen, MD 21001. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate MC-49117, issued October 8, 1975, as follows: *Household goods,* as defined by the Commission, between points in Baltimore, Cecil, and Harford Counties, MD, on the one hand, and, on the other, points in MD, PA, NY, NJ, DE, VA, WV, and DC. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC-FC-78032, filed February 14, 1979. Transferee: SHORE AIR FREIGHT SERVICE, INC., P.O. Box 18302, BWI Airport, MD 21240. Transferor: Mid-Atlantic Air Freight, Inc., 1825 K. St. NW., Washington, DC 20006. Representative: Marshall Kragen, 1835 K. St. NW—Suite 600, Washington, DC 20006. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Certificate MC-134296, issued July 29, 1974, as follows: *General commodities* (except classes A and B explosives, commodities in bulk, and those requiring special equipment), between the Friendship International Airport, near Glen Burnie, MD, on the one hand, and, on the other, points in Somerset, Worchester, Wicomico, Dorchester, Talbot, Caroline, Queen Annes, Kent, Cecil, St. Marys, Charles, Calvert, and Anne Arundel Counties, MD, restricted to the transportation of traffic having a prior or subsequent movement by air, and, restricted against the transportation of traffic originating at Friendship International Airport, Washington National Airport, and Dulles International Airport, and terminating at another of such named airports. Transferee presently holds no authority from this Commission. Application has not be filed for temporary authority under 49 U.S.C. § 11349.

MC-FC-78033, filing date, February 12, 1979. Transferee: CONLAN TRUCK LINES, INC., 11400 West Abbott Avenue, Hales Cormers, WI 53130. Transferor: Star Line Trucking Corporation, 18460 West Lincoln Avenue, New Berlin, WI 53151. Representative: Richard A. Westley, 4506 Regent Street, Madison, WI 53705. Authority sought for purchase by transferee of the operating rights set forth in Certificate No. MC-124383 (Sub. No. 12) issued November 12, 1975, as follows: Laundry care products, home care products, beauty care toiletry products, stainless steel cookware, cutlery and food supplements (except commodities in bulk), from the facilities of Amway Corporation located at or near Ada, MI to points in IA, WI, MN, and the Upper Peninsula of MI. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under Section 210a(b).

MC-FC-78034, filed February 9, 1979. Transferee: THE OHIO RIVER TRUCKING COMPANY, 1020 Second National Bank Bldg., Ashland, KY 41101. Transferor: LAWRENCE MCKENZIE, d.b.a. MCKENZIE TRUCKING SERVICE, Winchester, KY 40391. Representative: William P. Emrick, P.O. Box 1554, Ashland, KY 41101. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates Nos. MC-118811 Subs 4, 7, 9, 11, issued October 1, 1976, April 24, 1978, December 28, 1978, and November 6, 1978, respectively, as follows: Sub 4: *Scrap metal,* in dump vehicles, between the facilities of (a) Mansbach Metal Company, and (b) Kentucky Electric Steel Company, located at or near Ashland, KY, on the one hand, and, on the other, points in Franklin, Greene, Hamilton, Montgomery, Ross and Scioto Counties, OH, Cabell County, WV, and Wayne County, IN; Sub 7: *Scrap metal,* in dump vehicles, from points in Kanawha, Putnam and Wood Counties, WV, to the facilities of Kentucky Electric Steel Company and Mansbach Metal Company at or near Ashland, KY; Sub 9: *Scrap metal,* in dump vehicles, from Lexington, KY, to Ironton, OH; and Sub 11: *Scrap metal,* in dump vehicles, between points in Gallia and Jackson Counties, OH, on the one hand, and, on the other, the facilities of Kentucky Electric Steel Company and Mansbach Metal Company, at or near Ashland, KY; and from Ironton, OH, to the facilities of Kentucky Electric Steel Company, located at or near Ashland, KY. Transferee holds no authority from the Commission. No application for temporary authority has been filed.

MC-FC-78036, filed February 16, 1979. Transferee: WILCO GARMENT DELIVERY CO. INC., 2708 Summit Ave., Union City, NJ 07087. Transferor: WILLIAM LUSTBERG, d.b.a. WILCO GARMET DELIVERY, (Miriam Lustberg, Elecutrix) (Same address as transferee). Representative: Richard E. Sands, 450 Seventh Ave., New York, NY 10001. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificates Nos. MC-117190 Subs 2 and 4, issued May 14, 1968, and March 6, 1969, as follows: Sub 2: *Wearing apparel, and materials and supplies* used in the manufacture of wearing apparel, between New York, NY, on the one hand, and on the other, points in Dutchess County, NY; and Sub 4: *Wearing apparel and materials and supplies* used in the manufacture of wearing apparel, between Union City, NJ, on the one hand, and, on the other, Suffern and Middletown, NY; between New York, NY, and points in Bergen, Essex, and Hudson Counties, NJ, on the one hand, and, on the other, points in Greene, Orange, Sullivan, and Ulster Counties, NY; and between Kingston, NY, on the one hand, and, on the other, points in Bergen, Essex, and Hudson Counties, NJ. Transferee holds no authority from the Commission. Application for temporary authority has not been filed.

MC-FC-78037, filed February 26, 1979. Transferee: KAY LEASE SERVICE, INC., 443 Liberty Road, P. O. Box EE, Natchez, MS 39120. Transferor: J. C. BOWMAN TRUCKING COMPANY, Highway 61 North, P.O. Box 824, Natchez, MS 39120. Representatives: Joseph S. Zuccaro, P.O. Box 1047, Natchez, MS 39120. John A. Crawford, P.O. Box 22567, Jackson, MS 39205. Authority sought for purchase by transferee of the operating rights of

transferor set forth in Certificate No. MC 50242 Sub 1, issued June 18, 1973, authorizing *oilfield equipment, materials, and supplies,* between points in Louisiana and Mississippi; *trees,* between points in Mississippi, on the one hand, and, on the other, New Orleans, LA, and points in Louisiana within 10 miles of New Orleans; and *boats,* between points in Louisiana and Mississippi. Transferee holds no authority from the Commission. Application has been filed for temporary authority.

MC–FC–78038, filed February 21, 1979. Transferee: CARTAGE SERVICE, INC., 2437 East 14th St., Los Angeles, CA 90021. Transferor: LOS ANGELES CITY EXPRESS, INC. (Irving Sulmeyer, Trustee-in-Bankruptcy), 615 South Flower St., Los Angeles, CA 90017. Representative: Miles L. Kavaller, Suite 315, 315 South Beverly Drive, Beverly Hills, CA 90212. Authority sought for purchase by transferee of the operating rights of transferor in Certificate of Registration No. MC 97977 Sub 4, issued June 7, 1973, as follows: *General commodities* with exceptions, between named points in California. Transferee holds no authority from the Commission. Application for temporary authority has not been filed.

MC–FC–78039, filed February 16, 1979. Transferee: SCHIERDING TRUCKING CO., 3690 West Clay, St. Charles, MO 63301. Transferor: EUGENE J. and THOMAS E. GLOSIER, a partnership d.b.a. GLOSIER SERVICE CO., P.O Box 338, St. Charles, MO 63301. Representative: James E. Schierding (same as transferee). Authority sought for purchase by transferee of the operating rights of transferor in Permits Nos. MC 126758 Subs 6 and 8, issued October 25, 1974, as follows: *Malt beverages,* from Belleville, IL, to Memphis, TN, under contract with A. S. Barboro, Inc., and *malt beverages,* from Memphis, TN, to St. Charles, MO, under contract with R. C. Fischer and Son Distributing Company. Transferee holds authority in No. MC 142382 Sub 2. No temporary authority application has been filed.

MC–FC–78041, filed February 22, 1979. Transferee: ROBERT D. COSTA, d.b.a. CORLISS TOURS, 696 W. Foothill Blvd., Monrovia, CA 91016. Transferor: PACIFIC PALISADES EDUCATIONAL TOURS, a Corporation, d.b.a. TEENTOURS, P.O. Box 3372, Santa Monica, CA 90403. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in License No. MC–12786, issued June 18, 1962, as follows: Operations as a *broker* at Pacific Palisades, CA, in arranging for the transportation by motor vehicle, of passengers and their baggage, in special and charter operations, in all-expense round-trip tours, beginning and ending at points in Los Angeles County, CA, and extending to points in the United States (except AK and HI). By a concurrently filed petition, transferee seeks to change the location of broker operations from Pacific Palisades, CA to Monrovia, CA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC–78042, filed February 16, 1979. Applicant: OHIO VALLEY TRANSPORTATION, INC., 6121 Station B, Evansville, IN 47712. Representative: Donald W. Smith, P.O. Box 40248, Indianapolis, IN 46240. Authority sought for a purchase by Ohio Valley Transportation, Inc., of a portion of the operating rights of Lemmons & Co., a Bankrupt Corporation, 535 South Second Street, Booneville, Indiana 47601. Operating rights sought to be purchased: MC 138128, Sub 2—*Coal,* from points in Jefferson and Saline Counties, IL to points in Warrick and Vanderburgh Counties, IN, *Sand and gravel,* from points in White County, IL to points in Warrick County, IN, issued May 13, 1974. MC 138128, Sub 7—*Coal,* from points in Williamson County, IL to points in Vanderburgh and Warrick Counties, IN, issued July 12, 1976. Trustee in bankruptcy for transferor is Frank J. Folz. Transferee holds no ICC authority, and application for temporary authority has not been filed.

MC–FC 78043, filed February 26, 1979. Transferor: CHARLES W. TANNER, d.b.a. TANNER TRUCK LINE, F.F.D. 2, P.O. Box 310, Wamego, KS 66547. Transferee: MEINHARDT FARM EQUIPMENT INC., U.S. Highway 24, Wamego, KS 66547. Representative: Erle W. Francis, 719 Capitol Federal Bldg., Topeka, KS 66603. Authority sought for purchase by transferee of operating rights of transferor as set forth in certificate MC–36443 issued August 8, 1974 as follows: Over regular routes, *livestock* from 12 mile radius of Alma, KS to Kansas City, MO and Kansas City, KS; *livestock, mill feeds, machinery, coal, lunber, asphalt shingles* and *tanks* from Kansas City MO—Kansas City, KS to all points in above radius. Irregular routes, *livestock, seeds feeds, building and fencing materials, agricultural implements and parts, binder twine, windmills and parts, iron and steel tanks, baling wire, petroleum products, in containers and containers for petroleum products,* between Alma, KS and points within 15 miles, on the one hand and on the other, Kansas City and North Kansas City, MO and Kansas City, KS. The above commodities plus *fertilizers, home appliances, tires, tubes and batteries* between Alma KS and points within 20 miles except Manhattan, KS on the one hand and on the other, St. Joseph, MO, Kansas City, MO and Kansas City, KS; *livestock, agricultural commodities, wool, agricultural implements and parts thereof, and empty containers* from Wamego, KS and points within 15 miles thereof to Kansas City, KS and Kansas City and North Kansas City, MO: *general commodities* with usual exception from Kansas City, KS and Kansas City and North Kansas City, MO to points in the above specified Kansas territory, including Wamego, KS; *livestock and agricultural commodities* from points in the above specified Kansas territory, including Wamego, KS to St. Joseph, MO; *livestock and feed* from St. Joseph, MO to points in the above specified Kansas territory, including Wamego, KS; *wool* from above specified Kansas territory, including Wamego, KS to Lincoln, NE, and *grain* from Lincoln, NE and points within 10 miles thereof to points in above described Kansas territory, including Wamego, KS. Transferee presently holds no authority from this Commission. Application for temporary authority under Section 210(a)(b) has not been filed.

MC–FC–78044 filed February 23, 1979. Transferee: LARRY SCHEFUS TRUCKING, INC., Route 1, Box 202, Redwood Falls MN 56283. Transferor: C & D LEASING, INC., Fairfax, MN 55332. Representative: Larry Schefus, Route 1, Box 202, Redwood Falls, MN 56283. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC 140276 Sub 2, issued December 15, 1975, as follows: *Pre-cut, prefabricated buildings and accessories* for pre-cut, prefabricated buildings, over irregular routes, from Morton and Redwood Falls, MN, to points in IL, IA, KS, MO, MT, NE, ND, SD, and WI. Transferee holds no authority from te Commission. Application for temporary authority has not been filed.

MC–FC–78045 filed February 26, 1979. Transferee: TERRY SKALBERG, d.b.a. TERRY SKALBERG TRUCKING, Route 3, Red Oak, IA 51566. Transferor: Luverne Marcusson, 600 Reed Street, Red Oak, IA 51566. Applicant's

representative: Rian Ridenour, P.O. Box 82028, Lincoln, NE 68501. Authority sought for purchase of the operating rights of transferor as set forth in Permits MC–123025 (Sub–No. 1 and Sub–No. 4), issued *July 30, 1971* and *October 2, 1973*, respectively as follows: *Sand, gravel, dirt, rocks,* and *crushed limestone,* in dump vehicles, over irregular routes between points in NE and IA, (except points on and west of Interstate Highway 29, located in Pottawattamie, Mills, and Fremont Couties, IA); *Sand, gravel, dirt, rock,* and *crushed limestone,* in dump trucks, over irregular routes between points in IA (except Muscatine), MO (except Sequiota), and KS (except Bonner Springs). The service authorized in MC–123025, Sub–No. 1 is subject to the following conditions: Carrier shall maintain a completely separate accounting system for his private and for-hire operations; and carrier shall not at the same time and in the same vehicle transport property both as a private carrier and as a carrier for-hire. Application has not been filed for temporary authority under section 210(b). Transferee holds no authority from the Commission.

MC–FC–78047, filed February 26, 1979. Transferee: PROFIT INVESTMENT CORPORATION, INC., doing business as PICI, 11500 Stemmons Freeway, #Suite 185, Dallas, TX 75229. Transferor: JAMES S. HELWIG and ALLEN L. GRIMLAND, doing business as H & G LEASING, 2509 Inwood Rd., Dallas, TX 75235. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Ft. Worth, TX 76112. Authority sought for purchase by transferee of a portion of the operating rights of transferor, as set forth in Permit MC–143480, issued September 21, 1978, as follows: *Such merchandise* as is dealt in or used by wholesale and retail gift item stores, from points in MA, CT, NY, PA, NJ, and MD, to the facilities of Tuesday Morning, Incorporated, at Addison, TX; and from the facilities of Tuesday Morning, Incorporated, at Addison, TX, to the facilities of Tuesday Morning, Incorporated, at Memphis, TN, Atlanta, GA, and Washington, DC, under continuing contract(s) with Tuesday Morning, Incorporated, of Addison, Tx. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC–78048, filed February 21, 1979. Transferee: DELANEY BUS LINES, LIMITED, R.R. 1, Avonmore, Ontario, Canada K0C 1CO. Transferor: Allan J. McDonald, Limited, 1062 Jane St., Cornwall, Ontario, Canada K6J 1X7. Representative: Morton E. Kiel, Suite 6193, 5 World Trade Center, New York, NY 10048. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate MC–138829, issued March 28, 1974, as follows: *Passengers and their baggage,* in charter operations, from ports of entry on the United States-Canada Boundary line, in NY and MI, to points in that part of the United States in and east of WI, IL, KY, TN, and MS, and return, restricted to the transportation of passengers originating at Cornwell, Ingleside, Long Sault, and St. Andrews, Ontario, Canada. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC–78049, filed February 26, 1979. Transferee: PONY EXPRESS HORSE TRANSPORTATION, INC., 232 S. Cleveland St., Oceanside, CA 92054. Transferor: Van Champ Horse Van Service, Inc., 150 S. River St., Seattle, WA 98108. Representative: V. Van Dyke, 150 S. River St., Seattle, WA 98108. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificates MC–119246 (Sub-Nos. 1 and 8), issued March 11, 1971, and July 10, 1972, respectively, as follows: *Horses,* other than ordinary, and in the same vehicle with such horses, *stable supplies and equipment* used in their care, *mascots,* and the *personal effects* of attendants, (a) between points in Spokane and Whitman Counties, WA, on the one hand, and, on the other, points in ID, MT, and OR; (b) between points in WA, on the one hand, and, on the other, points in CA and AZ; (c) between points in ID, on the one hand, and, on the other, points in OR and WA (except points in Spokane and Whitman Counties, WA); (d) between points in WA (except those in Spokane and Whitman Counties), on the one hand, and, on the other, points in OR; (e) between points in OR, on the one hand, and, on the other, points in CA. *Horses,* other than ordinary horses, and, in the same vehicle therewith, *mascots, personal effects of attendants,* and *supplies and equipment* used in the care of such horses, between Townsend, MT, the site of the Les Turner ranch near Quincy, WA, and points in Spokane and King Counties, WA, on the one hand, and, on the other, points in Fayette County, KY. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

MC–FC–78051 filed February 26, 1979. Transferee: AARON SMITH TRUCKING COMPANY, INC., P.O. Box 153, Dudley, NC 28333. Transferor: George Foster, Kenly, NC 27542. Representative: John N. Fountain, P.O. Box 2246, Raleigh, NC 27602. Authority sought for purchase by transferee of the operating rights of transferor set forth in Certificate No. MC–124916, issued November 6, 1963, as follows: *fertilizer,* in bags, from Norfolk and Portmouth, VA, to points in North Carolina on and east of U.S. Highway 15 (except Durham, NC). Transferee holds authority from the Commission in dockets Nos. MC 143510 and MC 126139. Application for temporary authority has not been filed.

MC–FC–78052 filed February 21, 1979. Transferee: CLAVIN'S EXPRESS, INC., 3 Florence Street, Riverside, RI 02895. Transferor: J. N. Muldoon Co., 133 Oliver Street, Boston, MA 02110. Representatives: John F. O'Donnell, 60 Adams Street, P.O. Box 238, Milton, MA 02187; Francis E. Barrett, Jr., 10 Industrial Park Road, Hingham, MA 02043. Authority sought for purchase by transferee of the operating rights of transferor as set forth in Certificate No. MC–29802 issued July 26, 1955 as follows: Incandescent lamps from Boston, MA to Providence, RI; oil, in containers, from Boston, MA to New Haven, CT and Manchester, NH; machinery, hardware, office supplies and desks from Boston, MA to Hartford and New London, CT, Manchester and Nashua, NH, E. Greenwich, RI and New York, NY; fire escapes and parts, partitions, body wood, iron and screws from Boston, MA to Providence, RI; steamfitters tools and supplies from Boston, MA to Concord and Manchester, NH; hides, from Boston, MA to Nashua, NH; general commodites, except those of unusual value, Class A and B explosives, household goods, as defined by the Commission, commodities in bulk, commodities requiring special equipment, between Boston, MA and Providence, R.I. Transferee operates as a docket No. MC–78175. Application has been filed for temporary authority under section 210a(b).

MC–FC–78056, filed February 16, 1979. Transferee: EMERICK TRUCKING, INC., 4 Kennedy St., Uxbridge, MA 01569. Transferor: Gringeri Bros. Transportation Co., Inc. (M. G. Sherman, trustee in bankruptcy), 18 Tremont St., Boston, MA 02108. Representative: Frank J. Weiner, 15 Court Square, Boston, MA 02108. Authority sought for purchase by transferee of portions of the operating rights of transferor, as set forth in Certificates No. MC–117758 and

MC-117758 (Sub-No. 4), issued February 18, 1969, and October 24, 1975, respectively, as follows: *Frozen blueberries*, from Gloucester, MA, to New York, NY. *Uncrated new furniture*, from Boston, MA, to points in NJ and NY. *Furniture, frames and springs*, and *damaged or rejected shipments* of uncrated new furniture, from points in NJ and NY, to Boston, MA. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349 (formerly section 210a(b) of the Interstate Commerce Act).

Finance Docket No. 28960F, filed February 28, 1979. Transferee: CALIFORNIA RICE TRANSPORT, INC., P.O. Box 958, Sacramento, CA 95804. Transferor: Bulk Food Carriers, Inc., 425 California St., San Francisco, CA 94104. Representative: J. Raymond Clark, Suite 1150, 600 New Hampshire Ave. NW., Washington, DC 20037. Authority sought for purchase by transferee of the operating rights of transferor, as set forth in certificate W-1278 (Sub-No. 4), issued May 8, 1978, as follows: *Commodities* generally (except articles exceeding 19 feet in height, or 12 feet in width, or 90 feet in length or 100 net tons in weight), by self-propelled vessel and/or tug and barge service, (A) between ports and points on the Atlantic coast and its tributary waterways, on the one hand, and, on the other, ports and points on the Pacific coast and its tributary waterways; and (b) between ports and points on the Pacific Coast and its tributary waterways, on the one hand, and, on the other, ports and points on the Gulf Coast and its tributary waterways, restricted in (A) and (B) above, against (1) service to or from ports and points (a) on the Columbia River above or beyond The Dalles OR, (b) on the Mississippi River above or beyond Baton Rouge, LA, (c) on the Warrior Tombigbee River System above or beyond Mobile, AL, (d) on the Great Lakes, and (e) on the New York State Canal System, (2) operations via the Gulf Intracoastal Waterway, and (3) the transportation between ports and points on the Atlantic Coast, on the one hand, and, on the other, ports and points on the Pacific Coast of shipments (a) in or on containers or trailers, and (b) weighing less than 3,000 tons. Transferee presently holds no authority from this Commission. Application has not been filed for temporary authority under 49 U.S.C. § 11349.

[Notice No. 47]

[FR Doc. 79-13930 Filed 5-3-79; 8:45 am]

BILLING CODE 7035-01-M

Petitions, Applications, Finance Matters (Including Temporary Authorities), Alternate Route Deviations and Intrastate Applications; Republication Pursuant to Court Remand to the Interstate Commerce Commission

MC 18088 (Sub-55) (3d Republication), filed December 3, 1973, published in the **Federal Register** issues of April 11, 1974, October 17, 1975, and April 9, 1979, and republished this issue. The republication in the issue of April 9, 1979 is revoked and superseded in its entirety by this republication. Applicant: FLOYD & BEASLEY TRANSFER CO., INC., P.O. Drawer 8, Sycamore, AL 35149. Representative: Charles Ephraim, Suite 600, 1250 Connecticut Ave., NW., Washington, DC 20036. Following a partial grant by Joint Board No. 14 sustained by Decision and Order of the Commission, Division 1, dated October 12, 1977, the United States Court of Appeals for the Fifth Circuit in *North Alabama Express, Inc., et al.* v. *United States et al.*, 585 F. 2d 783, stayed the Commission's Order and remanded the proceedings to the Commission for republication in the **Federal Register** to include explicit notice of Applicant's intention to tack the authority sought to authority already held. By decision of the Commission of February 14, 1979 the proceeding was reopened for further consideration, further notice in the **Federal Register** was ordered, including information respecting tacking and affording interested persons 30 days from publication for protest. The portion of the authority sought which was granted by the Decision and Order of the Commission, Division 1, dated October 12, 1977 (the authority which applicant now seeks) is as follows: operation in interstate of foreign commerce, as a *common carrier* by motor vehicle, over regular routes, of *general commodities* (except those of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment): (1) between Pell City and Hamilton, AL: from Pell City over U.S. Hwy 78 to Hamilton, AL, and return over the same route, serving the off-route points of Birmingham, AL, the facilities of Winfield Cotton Mills at or near Winfield, AL, and the facilities of Fayette Cotton Mills at or near Fayette, AL; (2) between Pell City, AL, and junction Alternate U.S. Hwy 72 and U.S. Hwy 72 at or near Tuscumbia, AL: from Pell City over U.S. Hwy 231 to junction AL Hwy 67, then over AL Hwy 67 to junction Alternate U.S. Hwy 72, then over Alternate U.S. Hwy 72 to junction U.S. Hwy 72 at or near Tuscumbia, AL, and return over the same route, serving points in Coosa and Clay Counties, AL as off-route points; (3) between Pell City and Centreville, AL: from Pell City over U.S. Hwy 231 to Harpersville, AL, and then over AL Hwy 25 to Centreville, AL, and return over the same route, serving Vincent, AL, as an intermediate point for purpose of joinder only, and the plant site and warehouse facilities of Aliceville Cotton Mills at or near Aliceville, AL, as off-route points; (4) between Pell City and Cuba, AL: from Pell City over U.S. Hwy 231 to Rockford, AL, then over AL Hwy 22 to Selma, AL, then over U.S. Hwy 80 to Cuba, AL, and return over the same route, serving all intermediate points in AL.

Note.—The purpose of this republication is to give notice of Applicant's intention to tack the sought authority with existing authority (including irregular route authority) at points in East Central Alabama to provide service between points in AL, GA, SC, and TN. An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission on or before June 4, 1979. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named. All material previously submitted by the parties to this proceeding will remain a part of the record and will be considered by the Commission.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-13929 Filed 5-3-79; 8:45 am]

BILLING CODE 7039-01-M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 88
Friday, May 4, 1979

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).

CONTENTS

	Items
Commodity Futures Trading Commission	1, 2
Council on Environmental Quality	3
Equal Employment Opportunity Commission	4
Federal Communications Commission	5
Federal Energy Regulatory Commission	6
Federal Home Loan Bank Board	7
Federal Reserve System Board of Governors	8
Securities and Exchange Commission	9
U.S. Commission on Civil Rights	10
U.S. Consumer Product Safety Commission	11

1

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 10 a.m., May 8, 1979.

PLACE: 2033 K Street, NW., Washington, D.C., sixth floor hearing room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Foreign Brokers and Traders/Proposed Rules Requiring Foreign Brokers and Traders to Designate an Agent in the United States to Receive Service of Communications issued by the Commission.

1.35(g)/Summary of Comments.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-872-79 Filed 5-2-79; 10:42 pm]

BILLING CODE 6351-01-M

2

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 2 p.m., May 8, 1979.

PLACE: 2033 K Street, NW., Washington, D.C., Fifth floor hearing room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matter/Proposed order designating persons to issue subpoenas and take testimony in private investigation.

Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jane Stuckey, 254-6314.

[S-873-79 Filed 5-2-79; 10:42 am]

BILLING CODE 6351-01-M

3

May 2, 1979.

COUNCIL ON ENVIRONMENTAL QUALITY.

TIME AND DATE: 11:30 a.m. May 10, 1979.

PLACE: Conference room, 722 Jackson Place, N.W.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old business.
2. Briefing on GAO report: "Environmental Protection Issues Facing the Nation."
3. Briefing on Status of Agency NEFA Implementing Procedures.
4. Briefing on Annual Report.

CONTACT PERSON FOR MORE INFORMATION: Foster Knight, 395-4616.

[S-879-79 Filed 5-2-79; 1:43 pm]

BILLING CODE 3125-01-M

4

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.

TIME AND DATE: 9:30 a.m. (eastern time), Tuesday, May 8, 1979.

PLACE: Commission conference room, No. 6240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

STATUS: Part will be open to the public and part with be closed to the public.

MATTERS TO BE CONSIDERED.

Open to the public

1. Proposed Revisions of EEOC Compliance manual section 9, concerning Providing Copies of Charges of Discrimination to Respondents Headquarters Offices.
2. Proposed Revisions of Regulations Governing EEOC Employees' Responsibilities and Conduct.
3. Report on Lawyers' Review of "No Cause" Determinations.
4. Report on Commission Operations by the Executive Director.

Closed to the public

1. Litigation Authorization; General Counsel Recommendations.
2. Proposed Decisions in Charge Nos. TN03-1711 and 011-761681.
3. Proposed Contract for Updating Statutory Index.
4. Discussion of the Status of Particular Charges of Discrimiantion.

NOTE.—Any matter not discussed or concluded may be carried over to a later meeting.

CONTACT PERSON FOR MORE INFORMATION: Marie D. Wilson, Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued May 1, 1979.

[S-876-79 Filed 5-2-79; 11:59 am]

BILLING CODE 6570-06-M

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., Wednesday, May 2, 1979.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission meeting.

CHANGES IN THE MEETING: Inadvertently omitted.

Agenda, Item Number, and Subject

Common Carrier—6—Proposed amendment of accounting rules for telephone companies to provide for expensing station connection costs and to provide accounting requirements for terminal equipment offerings.

Additional information concerning this meeting may be obtained from the FCC Public Affairs Office, telephone number (202) 632-7260.

Issued: May 1, 1979.

[S-874-79 Filed 5-2-79; 10:53 am]

BILLING CODE 6712-01-M

6

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published April 30, 1979; 4 FR 25351.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 am., May 2, 1979.

CHANGE IN THE MEETING: The following item has been added:

Item Number, Docket Number and company

CP-3. CP79-214, Transcontinental Gas Pipe Line Corp.; CP79-221, National Fuel Gas Supply Corp.; CP79-260, Tennessee Gas Pipeline Corp.; CP79-275, Transcontinental Gas Pipe Line Corp.; and CP79-278, Texas Eastern Transmission Corp.

[CP-4. CP78-237, Northern Natural Gas Co.

Kenneth P. Plumb,
Secretary.

[S-878-79 Filed 5-2-79; 1:43 pm]

[BILLING CODE 6740-02-M

7

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, No. 84, April 30, 1979, page 25351.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., May 3, 1979.

PLACE: 1700 G Street, NW., sixth floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling (202-377-6677).

CHANGES IN THE MEETING: The following item has been added to the agenda for the open meeting:

Consideration of FDIC Indentification of FSLIC: Converting Mutual Savings Banks.

No. 237, May 2, 1979.

[S-877-79 Filed 5-2-79 12:35 pm]

BILLING CODE 6720-01-M

8

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: 10 a.m., Wednesday, May 9, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Proposed reauthorization of forms F.R. T-1 and F.R. T-2, required to be filed by non-member banks before they can extend credit to brokers or dealers.

Discussion Agenda

1. Further consideration of a program to improve Federal Reserve automated clearing house services.

2. Any agenda items carried forward from a previously announced meeting.

Note.—This meeting will be recorded for the benefit of those unable to attend. Casettes 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: May 2, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-881-79 filed 5-2-79; 3:10 pm]

BILLING CODE 6210-01-M

9

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 44 FR 24692; April 26, 1979.

STATUS: Open meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday, April 23, 1979.

CHANGES IN THE MEETING: Additional item—The following additional item will be considered at an open meeting scheduled for Thursday, May 3, at 10 a.m.

The Commission will consider a request for an administrative hearing be held on an application filed pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") by Investors Diversified Services, Inc., ("IDS"), the IDS Life Insurance Company ("IDS Life"), Alleghany Corporation ("Alleghany"), and two groups of open-end, diversified, management investment companies advised by IDS and IDS Life (the "Funds") requesting a temporary exemption from the provisions of Section 15(a) of the Act to permit the surviving corporation of a proposed merger of IDS into a wholly-owned subsidiary of Alleghany, and IDS Life to continue to render investment advisory services to the Funds after the assignment of their present advisory contracts on the same basis as such services are currently being provided, pending shareholder approval of new contracts. For further information, please contact Glen Payne at (202) 755-1739 or Katherine Malfa at (202) 755-1613.

Commissioners Loomis, Pollack and Karmel determined that Commission business required the above change and that no earlier notice thereof was possible.

May 1, 1979.

[S-871-79 Filed 5-2-79; 10:42 am]

BILLING CODE 8010-01-M

10

U.S. COMMISSION ON CIVIL RIGHTS.

DATE AND TIME: 9 a.m.-12 noon, Monday, May 7, 1979 (discussion on school desegregation); 1:30 p.m.-5:30 p.m. (monthly Commission agenda)

PLACE: Room 512, 1121 Vermont Avenue NW., Washington, D.C. 20425.

STATUS: Open to public.

MATTERS TO BE CONSIDERED:

I. Approval of Agenda.
II. Approval of Minutes of Last Meeting.
III. Staff Director's Report.

A. Status of Funds
B. Personnel Report
C. Office Directors' Reports
D. Correspondence

1. Letter from Henry Sawyer, Esq.

IV. Report on Civil Rights Developments in the Midwestern Region

V. State Advisory Committee Re-charters

A. California
B. Florida
C. Maine
D. Minnesota
E. Hawaii Interim Appointments
F. Illinois Interim Appointments
G. South Carolina Interim Appointments
H. Wisconsin Interim Appointments

VI. Status Report and Recommendation on Higher Education Desegregation.

VII. Recommendation re Response to National Coalition for Women and Girls in Education on Title IX.

VIII. Request for Justice Department Intervention in Pittsburgh School Desegregation litigation.

PERSON TO CONTACT FOR FURTHER INFORMATION: Barbara Brooks, Public Affairs Unit, 254-6697.

[S-875-79 Filed 5-2-79; 11:15 am]

BILLING CODE 6335-01-M

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U.S. CONSUMER PRODUCT SAFETY COMMISSION.

TIME AND DATE: 10 a.m., Wednesday, May 9, 1979, Commission meeting/briefing.

PLACE: Room 456 Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS: Part open, part closed—

A. Open to the Public

Matters To Be Considered

Briefing on Amendments to Section 7 Regulations.—The staff will brief the Commission on draft proposed regulations which would reorganize and amend CPSC regulations for developing proposed safety standards. The revisions are based on recent amendments to the Consumer Product Safety Act.

2. Briefing on Non-Adjudicative Rules.—The staff will brief the Commission on draft final rules for Investigations, Inspections and Inquiries under the Consumer Produce Safety Act.

B. Closed to the Public

3. Selection of TAB Members.—The Commission will select members of its Toxicological Advisory Board (TAB), which Congress authorized in recent legislation to provide specific scientific and technical advice to the Commission regarding the labeling of hazardous substances. (Closed under exemption 6: possible invasion of personal privacy.)

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Assistant Secretary, suite 300, 1111, 18th Street, NW., Washington, D.C. 20207, (202) 634-7700.

[S-880-79 Filed 5-2-79; 2:23 pm]

BILLING CODE 6355-01-M

federal register

Friday
May 4, 1979

Part II

Department of Health, Education, and Welfare

Office of Education

Direct Grant Programs, State-Administered Programs, and General; General Administrative Regulations

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of Education

[45 CFR Parts 100, 100a, 100b, 100c and 100d]

Direct Grant Programs, State-Administered Programs, And General; General Administrative Regulations

AGENCY: Education Division, Department of Health, Education, and Welfare (HEW).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Education Division, HEW, proposes general regulations to apply to all direct grant and State-administered programs administered by the Education Division. The proposed regulations advance the objectives of "Operation Common Sense" announced by the Secretary of HEW, in September 1977, and by the President's Executive Order 12044, March 23, 1978 on "Improving Government Regulations."

The objectives of "Operation Common Sense" are to assure that "regulations shall be as simple and clear as possible. They shall not impose unnecessary burdens on the economy on individuals, on public or private organizations, or on State and local governments."

These regulations cover how to apply for a grant, information that must be included in applications, the general criteria used to select applications for funding, administrative responsibilities of those who receive a grant or subgrant, and compliance procedures used by the Education Division, HEW.

DATES: Written comments must be received on or before July 3, 1979.

Workshops and Hearings

Times and locations of workshops and hearings are as follows:

City	Date/time	Address
Washington, D.C.	May 17, 1979. Workshop—9:30 a.m.–noon. Hearing—2:00 p.m.–4:30 p.m..	Auditorium, Regional Office Bldg. No. 3, 7th & D Streets, S.W., Washington, D.C. 20202.
Region IV, Atlanta	June 4, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Suite 2221, 101 Marietta Tower Bldg., Atlanta, Ga. 30323.
Region I, Boston	June 5, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Room 2403, John F. Kennedy Federal Building, Boston, Mass. 02203.
Region II, New York	June 6, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Auditorium, Bank Street College of Education, 640 West 112th Street, New York, N.Y. 10007.
Region III, Philadelphia	June 7, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Room 10030, 3535 Market Street, Philadelphia, Pa. 19108.
Region V, Chicago	June 8, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Center for Urban Education, 160 West Wendell Street (1050 North Wells), Chicago, Ill. 60606.
Region X, Seattle	June 11, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Room 380, New Federal Bldg., 915 Second Avenue, Seattle, Wash. 98174.
Region IX, San Francisco	June 12, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Room 209, Federal Office Bldg., 50 United Nations Plaza, San Francisco, Calif. 94102.
Region VIII, Denver	June 13, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Room 381, Federal Office Bldg., 1961 Stout Street, Denver, Colo. 80202.
Region VII, Kansas City	June 14, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Room 147, New Federal Office Bldg., 601 East 12th Street, Kansas City, Mo. 64106.
Region VI, Dallas	June 15, 1979. Workshop—9:00 a.m.–noon. Hearing—2:00 p.m.–5:00 p.m..	Room 7A23, Earl Cabell Federal Bldg., 1100 Commerce Street, Dallas, Tex. 75202.

ADDRESSES: Written comments should be addressed to: Dr. Marcell DuVall, 400 Maryland Avenue, SW. (Room 508, Reporters Building), Washington, D.C. 20202.

FOR FURTHER INFORMATION CONTACT: Dr. Marcell DuVall, 202–472–7773 or 472–7785.

FOR INFORMATION ON REGIONAL WORKSHOPS AND HEARINGS CONTACT: The appropriate Regional Commissioner for Education Programs. The Regional Commissioners are listed below in order of dates of hearings:

Region IV, Atlanta, Dr. William L. Lewis, (404) 221–2063.

Region I, Boston, Dr. Thomas J. Burns, (617) 223–7500.

Region II, New York, Dr. William D. Green, (212) 264–4370.

Region III, Philadelphia, Dr. Albert C. Crambert, (215) 596–1001.

Region V, Chicago, Dr. Juliette Noone Lester, (312) 353–5215.

Region X, Seattle, Mr. Allen Apodaca, (206) 442–0460.

Region IX, San Francisco, Dr. Caroline Gillin, (415) 556–4920.

Region VIII, Denver, Dr. John Runkel, (303) 837–3544.

Region VII, Kansas City, Dr. Harold Blackburn, (816) 374–2276.

Region VI, Dallas, Mr. Edward J. Baca, (214) 767–3626.

SUPPLEMENTARY INFORMATION:

Authority. The statutory authority is the General Education Provisions Act, (Pub. L. 90–247), as amended, and the statutes that authorize the programs covered.

I. Need for Regulations

Certain rules are needed for the proper administration of a Federal grant program. These rules relate to such matters as the types of institutions eligible to apply for a grant, the types of assistance available, the information which must be included in applications, and the criteria used to judge applications. Applicants must know this information to determine whether or not to apply and how to submit applications. These rules generally appear in the form of a program regulation and are published in the **Federal Register.**

The Office of Education has previously published general regulations (45 CFR Parts 100–100d) which provided administrative and fiscal requirements related to grant programs administered by the Office of Education. The National Institute of Education has published similar regulations. In the spirit of "Operation Common Sense," it has been determined that there should be a single set of regulations that establish administrative and fiscal requirements which apply to all grant programs administered by the Education Division. It is the objective of these proposed regulations to:

a. Be as clear and simple as possible.

b. Eliminate unnecessary burden resulting from requirements of previous regulations.

c. Consolidate into a single document common elements found in all Education Division program regulations. These common provisions will be eliminated from individual program regulations when the Education Division General Administrative Regulations (EDGAR) are finally published in the **Federal Register.**

d. Incorporate changes resulting from new legislation enacted since the last publication of the general provisions regulations.

e. Make the regulations of the Education Division comply with the Department's Administration of Grants Regulations (45 CFR Part 74).

Fellowship and student assistance programs were not considered appropriate for inclusion in general provisions regulations of the Education Division. An analysis of these programs revealed that there is significant statutory inconsistency between the programs in matters such as the type of assistance, application procedures, eligibility criteria and the amount and

terms of assistance. Although some common elements exist, the number of exceptions reduced the usefulness and readability of consolidated regulations. In addition, the regulatory provisions of these programs are not consistent with those relating to grant programs.

The public is invited to participate in the development of these regulations. After public comments on the proposed regulations are received and considered, final regulations will be published in the **Federal Register** together with an explanation of the Education Division's response to the comments. The regulations will later be codified in the Code of Federal Regulations (CFR), the official compilation of Federal regulations.

II. Summary of the Regulations

Part 100a applies to direct grant programs under which the Education Division makes grants directly to eligible agencies, organizations, institutions and individuals. Part 100b applies to a State-administered program under which each State is entitled to receive funds and either uses the funds itself or makes subgrants to eligible agencies, organizations and institutions. The definitions in part 100c apply to all Education Division programs, including student financial assistance and fellowship programs.

Additional requirements are imposed by 45 CFR Part 74, HEW's Administrative Regulations for the Administration of Grants. These requirements are adopted in these regulations by reference. To aid reviewers, a copy of part 74 is attached.

Some of the major subjects relating to direct grant programs found in Part 100a include:

a. The application process.
b. State review procedures.
c. Selection of new projects.
d. Approval of multi-year projects.
e. General administrative responsibilities.
f. Data collection instruments.
g. Procedures used by the Education Division to get compliance.

Some of the major subjects in part 100b relating to State-administered programs include:

a. State plans and applications.
b. Participation of children enrolled in private schools.
c. Conditions that the State and its subgrantees must meet after funds are awarded.
d. Administrative responsibilities of the State and its subgrantees.
e. Use of funds by the State and its subgrantees.
f. Complaint procedures of the State.

Part 100c—General, contains definitions which apply to all Education Division programs, records under the Freedom of Information Act and regulations removed from the Code of Federal Regulations. This is the only part of these regulations that relates to student financial assistance and fellowship programs.

III. Major Provisions

EDGAR was developed from existing general regulations, program regulations, other policy documents, and in some cases, new legislation.

To the extent possible, the sources for each section of EDGAR are listed after the section. The sources are primarily regulations in Title 45 of the CFR, as they existed August 31, 1978. In some cases, sources are the General Education Provisions Act (GEPA), the Grants Administration Manual (GAM), or the Office of Education Grant and Procurement Management Manual (OE III–2). The major provisions in each part and subpart of EDGAR are highlighted in the following summary:

Major Provisions in Part 100a

1. Subpart A—General

a. *Direct grants—discretionary and formula.* Section 100a.200 defines the terms "discretionary grant programs" and "formula grant programs."

The regulations in part 100a apply to both formula and discretionary direct grant programs. Unlike the existing general provisions regulations, the proposed part 100a attempts to distinguish between the two types of direct grant programs, and to provide better guidance as to which regulations apply to each.

b. *Relationship of other regulations.* EDGAR consolidates administrative and fiscal requirements currently in the general provisions regulations (45 CFR Parts 100–100d) and in individual program regulations of the Education Division. Additional requirements or exceptions to EDGAR for individual programs may be necessary in program regulations if required by statute or where the nature of the programs makes certain EDGAR requirements inappropriate. To make an EDGAR provision inapplicable, a program will put a specific exemption in its regulations.

c. *Relationship of EDGAR to 45 CFR Part 74.* EDGAR adopts by reference the HEW general regulations in 45 CFR Part 74 that apply to the administration of grants. This approach is a major change from the existing general provisions regulations, which copied the text of these provisions, rather than referencing them. By consolidating program requirements into EDGAR and eliminating these requirements from program regulations, EDGAR should reduce unnecessary burden on applicants who apply under more than one program. Similarly, the adoption by reference of Part 74, which applies to all grant programs of HEW, should reduce the burden on applicants who apply for grants under programs administered by different agencies in HEW. By adopting Part 74 by reference, these applicants will not have to read both Part 74 and EDGAR to determine if there is point-for-point consistency, as they had to do in the past.

There are also disadvantages to the adoption by reference of Part 74. Applicants and grantees who are only interested in Education Division programs will have to refer to an additional document to answer certain questions about these programs. The index planned for EDGAR and Part 74 should help the reader determine which subjects are covered in Part 74 and which in EDGAR. As pointed out in the "Introduction to Regulations of the Education Division" that precedes Part 100a, it is necessary to have an increasing number of documents which contain all of the rules that apply to a program. The Education Division is exploring means of packaging these various documents—statutes, regulations, application notices, etc.—that will help a reader to find the information he or she needs.

The HEW regulations in Part 74 incorporate provisions of Circular A–110 issued by the Office of Management and Budget which establishes government-wide grant policies. Part 74 provides standardized rules for all HEW grant programs. EDGAR provides exceptions to Part 74 where required by statute. For example, GEPA specifies that records relating to Education Division grants must be retained for 5 years, replacing the three-year requirement in Part 74.

The index planned will be attached as an appendix to part 100c of EDGAR when these regulations are published in final form in the **Federal Register.**

d. *Simplification.* EDGAR has been written in much simpler language than the existing regulations it replaces. This will reduce the amount of time spent in reading regulations. EDGAR also includes a brief introduction that explains in easy-to-understand terms how to use regulations and how to get the information needed to apply for assistance under Education Division programs. This is expected to reduce the time spent in both applying for and

administering grants and subgrants under Education Division programs.

2. Subpart C—How to Apply for a Grant

Note.—Subpart B is reserved for future regulations.

Under existing procedures, programs of the Education Division have a wide variety of methods for applying for a grant. In the development of EDGAR, each program was reviewed. An attempt has been made to select the best of these methods as the standards for all programs. Having only one set of application procedures for all programs should reduce applicant time spent determining whether differently worded requirements are intended to produce different results.

a. *Application notices.* The Education Division explains what kind of assistance is available under its various programs by publishing application notices in the Federal Register. These notices explain the process of applying for a grant and provide information to help potential applicants. Each notice states the deadline for submitting applications or preapplications under a program. The proposed regulations state how to meet a deadline date and provide a full set of rules relating to the application process.

b. *Application contents.* A number of significant reforms relating to the content of grant applications are included in EDGAR. EDGAR requires a general assurance in an application under a direct grant program. The applicant must assure that, if awarded a grant, compliance will be made with applicable statutes and regulations. This assurance will be used by the Education Division as a basis for eliminating more specific assurances required by program regulations and statutes. The result will be reduced paperwork in applying for an Education Division grant.

EDGAR includes a requirement for discretionary grant programs that the application must include information that responds to any selection criteria used under the program. This provision will be used as a basis for eliminating program regulation provisions that have redundant requirements—for example, a selection criterion on evaluation and another requirement in the regulations that the application must contain information on evaluation. This consolidation of selection criteria and application contents will provide a basis for eliminating program application requirements by sorting out those that are essential to the program from those that are not. The nonessential requirements will be eliminated, thus reducing the paperwork burden on grantees and making the entire process more systematic and logical.

EDGAR limits application submissions to an original and two copies for all Education Division programs. This will reduce printing and mailing costs for applicants, as well as the time previously spent making additional copies. It also provides for uniformity among programs.

c. *Multi-year projects.* EDGAR eliminates the current practice in a number of programs of requiring applicants for continuation awards to compete for funds. Under the EDGAR provision, continuations under a multi-year project would be funded without competition, subject to the standards stated in EDGAR, including satisfactory performance and availability of funds. This will eliminate full annual applications for those projects, a considerable paperwork reduction.

d. *Preapplications.* EDGAR provides the basis for the Education Division to expand its use of preapplications. Preapplications can significantly reduce the burden on applicants by screening out ineligible projects and by providing a vehicle for technical assistance by the Education Division. While the EDGAR does not accomplish this directly, any program, without further regulation, can now avail itself of this procedure.

e. *Open meetings.* The existing general provisions regulations (45 CFR Part 100d) address the statutory requirement for open meetings under the Elementary and Secondary Education Act (ESEA). EDGAR simplifies the procedures and requirements for the conduct of open meetings, which are required to be conducted by local educational agencies that submit applications under certain programs authorized by the ESEA.

EDGAR gives more discretion to local agencies on how they may conduct open meetings. All local educational agencies are subject to this requirement. Because the Education Amendments of 1978 made many more programs subject to this requirement, individual school districts are urged to give careful consideration to this provision. Under the statute, a grant application for an affected program cannot be accepted without the required certification that an open meeting was held.

f. *State reviews.* EDGAR includes provisions relating to the review by a State agency of individual grant applications. Federal law and implementing regulations require for certain programs that a State agency must review and approve or comment on each application or preapplication for a grant. These provisions, which were not in previous general provisions regulations, have been derived from various program regulations. EDGAR establishes a uniform process to be followed by the State agency under each of these programs, authorizes the Education Division to establish deadlines for the State agency to complete its review, and describes the effect of the State agency's action in approving, disapproving, commenting, or failing to comment.

g. *OMB Circular A–95 Clearinghouse procedures.* EDGAR includes provisions relating to the Office of Management and Budget (OMB) Circular A–95. This Circular requires an applicant, under certain Federal programs, to notify the appropriate State and areawide clearinghouses of the applicant's intent to apply for a grant from the Education Division.

EDGAR identifies those direct grant programs which are subject to this requirement. The regulations also specify the type of information to be included in the notice to the clearinghouse. EDGAR also specifies the number of days that the OMB Circular requires that the clearinghouse be given for its review of the application, and other aspects of this process.

3. Subpart D—How Grants Are Made

Consistent with the "Operation Common Sense" objective to consolidate common requirements, these regulations propose that general selection criteria be used to evaluate applications. EDGAR describes the elements of these criteria and how they are used, how projects would be selected, and procedures for setting the amount and determining the conditions of a grant.

a. *Selection criteria.* The inclusion of weighted criteria in EDGAR would be a major change from the existing General regulations. In addition to eliminating a large number of varying regulations, EDGAR criteria would provide a uniform base for awarding discretionary grants under many programs. This policy question is discussed in greater detail under the heading "Major Issues."

Reviewers should note that the selection criterion on quality of staff also has a focus on preventing the use of lower quality staff where there is a potential conflict of interest. This provision on hiring practices relates to three categories—(1) a member of the immediate family of a person on the project staff, (2) a member of the governing body of the grantee, (3) or a member of the immediate family of a person on that governing body.

b. *Selection process.* EDGAR describes in detail the process that would be used to select new projects. This process includes the procedure for returning applications to applicants under both discretionary and formula grant programs. Also explained is how the discretionary grant applications are reviewed by groups of experts and the way rank orderings are used for the selection of projects. The regulations reference current policy that the rankings and readers' comments are advisory only; that it is the program official's responsibility to make final award decisions.

Reviewers should note sections 100a.219–100a.221, which describe the circumstances under which projects may be selected for funding without competition with other projects.

The remaining provisions on project selection deal with matters such as budget, cost analysis, amounts and terms of the grant. Sections 100a.250–100a.254 set forth the procedures for multi-year projects and continuations. Continuations of multi-year projects do not compete with new projects for funding, and would not compete among themselves unless appropriations are inadequate to fund them all.

Part 100a of the existing general provisions regulations has few rules regarding the application selection process. By having the procedures that the Education Division uses to make awards, applicants will spend less time in trying to determine their rights and to get other information about the handling of their application.

4. Subpart E—What Conditions Must Be Met By A Grantee?

Subpart E prescribes conditions which grantees must meet. For example, grantees are required to comply with Federal statutes and regulations on nondiscrimination. Provisions in this subpart describe specific requirements, standards and qualifications for project staff selection, compensation, and conflict of interest.

Other conditions which are covered include allowable costs, indirect cost rates, coordination with other activities, evaluation, construction, equipment and supplies, and publications and copyright. Reviewers should note that copyright policy is a significant issue found in the discussion of "Major Issues."

This subpart also describes other requirements for certain projects. Reviewers should note section 100a.680 which cross references requirements in §§ 100b.650–100b.663. These sections set standards for children enrolled in private schools where the statute requires an opportunity for their participation. These requirements have been detailed in part 100b, rather than repeated in both parts 100a and 100b because many more applicants are affected by 100b (almost every school district in the United States receives funds under the programs covered under Part 100b). This approach is an example of keeping EDGAR consolidated and non-repetitive. However, comments are welcome on this approach.

5. Subpart F—What Are the Administrative Responsibilities of a Grantee?

Subpart F requirements apply to a grantee's administration of a project including compliance with statutes, regulations, and applications, responsibility to administer and supervise the project, and fiscal control and fund accounting procedures. Section 100a.707 provides a useful table for determining when an obligation is incurred for various kinds of property and services.

This subpart also includes codification of a major policy which reduces the number of fiscal and performance reports for most grantees to no more often than annually.

Other administrative responsibilities relate to records, privacy, and grantee data collection. The privacy provisions cross-reference the Family Educational Rights and Privacy Act and its implementing regulations under 45 CFR Part 99 (relating to student records) and section 439 of GEPA (relating to psychological and psychiatric research and testing).

These proposed regulations refer to clearance of grantee data collection instruments under OMB A–40 clearance procedures. Reviewers should be aware that the Department is separately developing procedures for another review which will partially replace OMB clearance.

The "Paperwork Control" requirements of Pub. L. 95–561 require that certain data collection activities be reviewed by the Secretary rather than by OMB. Coverage under this review will extend to:

> * * * collection of information and data acquisition activities of all Federal agencies, (i) whenever the respondents are primarily educational agencies or institutions, and (ii) whenever the purpose of such activities is to request information needed for the management of, or the formulation of, policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.
>
> (Section 400A(a)(1)(A) of the General Education Provisions Act, as amended by section 1212 of Pub. L. 95–561)

When the procedures are developed for the paperwork control review, they may be incorporated into the final regulations for EDGAR.

6. Subpart G—What Procedures Does the Education Division Use to Get Compliance

The HEW Grant Appeals Board is used for post-award disputes for most of the discretionary grant programs. EDGAR, Subpart G, identifies applicable regulations governing the jurisdiction of the board and procedures for suspension and termination.

The new Education Appeals Board, enacted under the Education Amendments of 1978, may handle certain kinds of disputes under direct grant programs. The extent of jurisdiction of the Education Appeals Board will be described more fully in a regulation to be published separately from this document. Clarification on the role of both appeals boards will be available when that regulation is completed.

Major Provisions in Part 100b

1. Subpart A—General

a. *State formula grants and subgrants.* Unlike the existing Part 100b general provisions regulations, the new EDGAR Part 100b applies to all programs that authorize formula grants to the States, even if the States do not have statutory authority under a particular program to make subgrants. These regulations simplify requirements and make clear what provisions apply under which conditions. They also implement a number of burden reduction reforms enacted in the Education Amendments of 1978.

b. *Relationship to program regulations.* EDGAR consolidates administrative and fiscal requirements currently in the general provisions regulations and in individual program regulations of the Education Division. If a program needs regulations that are not consistent with Part 100b, the implementing regulations for that program will be amended to identify the sections of Part 100b that do not apply.

c. *45 CFR Part 74.* EDGAR adopts the HEW general regulations in 45 CFR Part 74 that apply to these programs. The reasons for this approach are the same as described under the summary of major provisions in part 100a.

d. *Program statutes.* Program statutes determine eligibility and whether subgrants are authorized. Statutes also

designate the responsible State agency or permit the State to designate the agency, determine the extent to which a State may use grant funds directly or make subgrants to eligible applicants, and determine whether a State is required to distribute funds by an objective formula or through a discretionary procedure.

2. Subparts B and C—How a State Applies for a Grant; How a Grant is Made to a State

Subpart B establishes general requirements that a State must meet to apply for a grant under a State-administered program. Additional requirements are in the authorizing statute and the implementing regulations for the individual program.

a. *Major reforms.* This subpart of EDGAR implements a number of significant reforms recommended by HEW's Zero Based Review of Federal Planning Requirements Study and Regulations Reform Project. Reviewers should note that there is a general discussion on these reform studies under the heading "Recommendations and Studies."

1. *General State application.* EDGAR implements a general application for programs under which the State educational agency may make subgrants to local educational agencies. A State may submit a single application to cover all of these programs. GEPA Section 435, which authorizes the single State application, and other GEPA provisions that apply to part 100b are contained in Appendix A to Part 100b of EDGAR.

The general State application replaces the general application filed by States under the Education Amendments of 1974 and is an expansion of previous efforts to consolidate and reduce paperwork. The new general State application consolidates a number of provisions that apply to State-administered programs.

The general State application remains in effect until such time as Congress amends the statute. Paperwork will be reduced since the application will be used as a means of eliminating overlapping assurances in State plans under the various programs.

2. *Three-year State plans.* EDGAR implements a second major reform, the three-year State plan. The three-year plan will replace annual State plans and applications. This provision, also authorized under the Education Amendments of 1978, will be implemented no later than fiscal year 1981 for all the State-administered programs. Under any program, the Commissioner may ask States to submit the three-year plans on a staggered schedule. Program regulations may also provide for a longer effective period than three years if the program statute permits. Implementation of this procedure should reduce paperwork considerably.

3. *Certification requirements.* EDGAR implements a third major reform, the elimination of the State attorney general certification which was previously required in nearly all State plans. EDGAR provides that one set of necessary certifications will be accepted from the agency submitting the plan. As with the other major reforms, burden on the States will be reduced.

b. *General information on how a grant is made.* EDGAR provides provisions on the grant making process, including how to make an amendment to a State plan, the statutory and regulatory requirements which must be met before a plan can be approved, opportunity for a hearing before a plan is disapproved, and how allotments and reallotment of grants funds are made.

3. Subparts D and E—How To Apply to the State for a Subgrant; How a Subgrant is Made to an Applicant

Subparts D and E contain major consolidations of procedures currently followed under State-administered programs that authorize subgrants.

a. *Application procedures.* To get information about applying for subgrants, applicants should contact the State agency that administers the program. The EDGAR provides uniform procedures which the State must follow in notifying the subgrantee of the amount, period, and Federal requirements that apply to a subgrant. Procedures also address joint applications and projects, making approved applications available for public inspection, and amending applications.

A major reform implemented in EDGAR is the local educational agency general application which is authorized under the Education Amendments of 1978. The local educational agency application covers all State-administered programs under which the agency applies. The same advantages of the general State application occur—consolidation, reduced paperwork, and simplification. The use of this application will permit the Education Division to eliminate overlapping program regulations, therefore shortening the agency's annual application under each program. Appendix A to part 100b contains section 436 of GEPA which sets forth the contents of the single local educational agency application.

b. *State review procedures.* EDGAR codifies the rules and procedures which States must follow in reviewing applications for subgrants. This consolidation should result in greater consistency in the review and funding of subgrant applications. Reviewers should note that § 100b.401 implements the hearing procedures authorized by section 425 of the GEPA. Section 425 is contained in Appendix A to 100b.

4. Subpart F—What Conditions Must Be Met by the State and Its Subgrantees?

a. *General conditions.* EDGAR prescribes conditions which must be met by States and subgrantees. These provisions generally parallel requirements in part 100a, such as complying with Federal statutes and regulations on nondiscrimination, allowable costs, indirect cost rates, coordination, evaluation, participation of children enrolled in private schools, and construction. Some rules found in part 100a are not included in Part 100b because they are not appropriate for a State-administered program, such as rules on project staff and conflict of interest.

b. *Private schools.* Special attention is called to §§ 100b.650–100b.663 that set standards for children enrolled in private schools to participate where the statute provides for this opportunity. As previously noted, the same rules and procedures apply under Part 100a for a program that has a similar statutory requirement. At present, there are some program regulations but no general provisions for these requirements. Inclusion of such provisions in EDGAR is a major policy question which is discussed under "Major Issues."

EDGAR provisions address such matters as State and subgrantee responsibilities, consultation with representatives of private school students, and the determination of the number of eligible students and their needs. Also covered are the level of benefits and expenditures for the students, application requirements, use of funds, and use of personnel.

5. Subpart G—What Are the Administrative Responsibilities of the State and Its Subgrantees?

a. *State and subgrantees responsibilities.* Subpart G describes the various types of administrative requirements that apply to States and subgrantees. These rules on compliance, project supervision, fiscal control and fund accounting procedures, reports, records, privacy, and data collection are

similar to those in Part 100a. As pointed out in the description of administrative responsibilities under Part 100a, a major improvement in these regulations is a table describing when an obligation is incurred. The table is found in § 100b.707.

b. *State responsibilities.* This subpart also contains rules that States must follow on dissemination of information, providing technical assistance, encouraging eligible applicants to apply, and adopting complaint procedures.

6. Subpart H—What Procedures Does the Commissioner Use to Get Compliance?

Subpart H sets forth the procedures used by the Commissioner to get compliance. The applicable regulations in 45 CFR Part 74 on suspension and termination authority are identified. Unlike compliance for Part 100a, in which the HEW Grants Appeals Board is used for most post-award disputes, the principal tool of enforcement for State-administered programs will be the new Education Appeals Board, created under the Education Amendments of 1978. The board will conduct audit appeal hearings, withholding hearings, cease and desist hearings, and other designated proceedings. Appendix A to Part 100b contains section 451 of the GEPA which establishes the Board.

Major Provision in Part 100c

Definitions

The definitions in Part 100c apply to all Education Division programs, including student assistance and fellowship programs (which are not covered by Parts 100a and 100b). Part 100c also identifies the definitions in 45 CFR Part 74 which apply to Education Division programs. The definitions apply to a program unless a statute or regulation provides otherwise.

The consolidation and simplification of hundreds of separate definitions into one set of common definitions should help eliminate confusion and reduce burden on applicants and grantees.

IV. Major Issues

A number of policy issues surfaced in the development of EDGAR. The most sensitive of these issues are highlighted below. The Education Division is seeking public comment on these issues and the options identified. The comments received will serve as guidance in drafting the final regulations.

1. Should the EDGAR include regulations relating to affirmative action activities of applicants or grantees or both? If so, in what manner?

A review of Education Division affirmative action policies and procedures, completed in September 1978, revealed that most programs lack satisfactory compliance with and support of Federal civil rights and affirmative action statutes. The EDGAR Task Force met with program managers and with officials within the Education Division and the HEW Office for Civil Rights to consider whether the EDGAR should include regulations relating to affirmative action. Four options were considered.

One option was to continue with current practices. Nothing would be added to EDGAR. Programs would of course continue to require signed assurances of compliance with civil rights statutes and regulations.

A *second option* would be to add an additional criterion to the five general selection criteria to evaluate affirmative action by applicants.

A *third option* would combine a number of possible provisions into a general affirmative action statement in EDGAR.

Option four, proposed in EDGAR, would be to reflect affirmative action concerns in various sections of EDGAR. The following provisions are proposed (See the text of the regulations for context.)

• § 100a.110 *Describe the project.*

An application must describe the project in detail. The description must include—

* * * * *

(e) An assessment of the effect, if any, of the project on persons who are members of groups that have been traditionally under-represented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

• § 100a.115 *Demonstrate capability; include evaluation of completed project.*

(a) An application must include information that demonstrates the applicant's capability to—

* * * * *

(2) Meet the needs of the persons (if any) that the applicant plans to serve with the project.

* * * * *

• § 100a.140 *Give notice of the meeting; make information available.*

* * * * *

(c) The agency shall take steps to ensure that persons who are members of groups that have been traditionally underrepresented receive the type of notice required by paragraph (b)(1) and that these persons are encouraged to participate in the meeting. These persons include—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

* * * * *

• § 100a.141 *Certify that open meeting was held.*

If a local educational agency must hold an open meeting under § 100a.139, the agency shall certify in its application that—

* * * * *

(c) The agency made information available in accordance with § 100a.140(c);

• § 100a.205 *Selection criterion—evaluation plan.*

* * * * *

(b)The official looks for information that shows an objective quantifiable method of evaluation under § 100a.590.

* * * * *

• § 100a.206. *Selection criterion—adequacy of resources.*

(a) The appropriate official of the Education Division reviews each application for information that shows that the applicant plans to devote adequate resources to the project, including resources to meet the needs of persons to be served by the project who are members of groups that have been traditionally underrepresented, such as

(1) Members of racial or ethcic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

* * * * *

• § 100a.500 *Federal statutes and regulations on nondiscrimination.*

Each grantee shall comply with the following statutes and regulations.

Subject	Statute	Regulations
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–4).	45 CFR Part 80
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	45 CFR Part 86.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	45 CFR Part 90.

• § 100a.590 *Evaluation by the grantee.*

A grantee shall evaluate at least annually:

* * * * *

(c) The effect of the project on persons being served by the project, including persons who are members of groups that have been traditionally underrepersented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

• § 100a.620 *General conditions on publication.*

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the format and content of project materials that it publishes or arranges to have published. However, the grantee shall avoid race stereotype or sex bias in project materials. As used in this section—

(1) "Race stereotype" means an assumption that members of a racial group share common abilities, interests, values, or roles because they are members of that group; and

(2) "Sex bias" means an attitude that supports structuring the educational development of boys and girls differently on any basis other than physiological differences.

* * * * *

• § 100b.500 *Federal statutes and regulations on nondiscrimination.*

Each grantee shall comply with the following statutes and regulations.

Subject	Statute	Regulations
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d–4).	45 CFR Part 80.
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	45 CFR Part 86.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*	45 CFR Part 90.

• § 100b.761 *A State shall encourage eligible applicants to apply.*

(a) Each State shall encourage all [the word "all" added] eligible applicants to apply for subgrants.

* * * * *

Public comments are specifically invited on each of the provisions.

2. *Participation of children enrolled in private schools.*

EDGAR covers another subject not previously covered in general regulations—participation of students enrolled in private schools. Under a number of Office of Education programs, the program statute requires each recipient to use its grant or subgrant to provide services in which private school students can participate.

A number of problems arose in the attempt to consolidate existing program regulations under these statutes. Some of the statutes have different requirements on how a recipient must provide services. Some statutes include a "by-pass" authority that allows the Commissioner to provide the services directly (under certain circumstances). Other statutes do not include this authority. All of the statutes have varying eligibility and residency requirements. However, over the years the regulations on serving private school students have retained many rules that are alike. EDGAR proposes to consolidate these rules where possible.

The proposed EDGAR would govern the manner in which a recipient must serve private school students. It does not cover eligibility or residency requirements, or procedures for using the various "by-pass" authorities. Rules on these matters would remain in the program regulations. The EDGAR include standards for comparing services to private and public school students, rules on involving appropriate representatives of private school students in making decisions that affect those services, and protections to make sure that private schools are not improperly benefited by the use of program funds.

The basis principle in EDGAR, as it is in existing program regulations, is fair treatment of private school students. If their needs are the same as public school students, are they receiving the same kind of services? Are program funds being spent evenhandedly? Have representatives of private school students been fully involved in these decisions?

The Education Division specifically requests comments on this consolidation, including the balance drawn between the interests of the public and private school students.

3. *Should EDGAR include general selection criteria for direct grant programs?*

The EDGAR Task Force analyzed 107 sets of program selection criteria. The Task Force identified five selection criteria with general program applicability.

Under EDGAR, the appropriate official of the Education Division would use the five general weighted selection criteria in EDGAR and the specific program selection criteria to evaluate each application submitted for a new project under a discretionary grant program. If a program does not have selection criteria, the EDGAR criteria are used alone, unweighted, to evaluate applications.

The procedure for using the criteria is stated in EDGAR. If the selection criteria for a program are not weighted, each criterion is evaluated equally. If the selection criteria for a program are weighted, the appropriate Education Division official assigns in the program regulations a total number of points that an applicant may receive under all of the criteria. The specific program selection criteria use 70 percent of the total points assigned to the program and the EDGAR selection criteria use the remaining 30 percent of the total points. Each of the five EDGAR criteria have assigned weights which may be expressed as a percentage of the total points assigned to the program. The criteria and weights are—

(1) Plan of operation (10 percent).

(2) Quality of key personnel (7 percent).

(3) Budget and cost effectiveness (5 percent).

(4) Evaluation plan (5 percent).

(5) Adequacy of resources (3 percent).

Under a program that uses the EDGAR criteria, the program regulations may increase the weights assigned in EDGAR for any of the criteria. A program regulation may also change or eliminate EDGAR criteria, if necessary, for program purposes.

Reviewers are invited to comment on the desirability of the EDGAR approach as well as the options. One option

would allow programs complete flexibility to increase or decrease the weights assigned to these EDGAR criteria.

A second option would be to allow programs to (1) assign unique weights to EDGAR criteria and to (2) add detail to EDGAR criteria when justified for programmatic reasons.

A third option, and the one proposed in EDGAR, is to publish weighted EDGAR criteria with the understanding that they apply to all programs unless they are altered in specific program regulations.

4. *What should be the coypyright policy of the Education Division?*

Three policy options were considered with respect to materials developed under grants. One option would retain the current policy of limited copyright and sharing of royalties which has been in effect since 1968. Under this policy, grantees are required to request authorization to copyright. Copyright is normally authorized only for a period of five years. Generally fifty percent of net royalty income is remitted to the Government. A waiver of any of the requirements is permitted if it would promote effective dissemination.

Under a second option, the one proposed in EDGAR, the Education Division would adopt the liberal HEW policy (45 CFR Part 74) which permits unlimited copyright by a grantee unless otherwise provided in a particular grant. Part 74 would also govern the use of royalty income. Any exception would require provisions in individual program regulations.

A third option would be to adopt the HEW policy but allow individual programs to set their own copyright policy in program regulations.

The Education Division requests comments on these options, particularly whether it is advisable to retain the 1968 policy, and whether individual programs should be allowed to have varying policies.

The EDGAR proposes a different rule for Education Division contractors. Unless otherwise specified in the terms of a contract, the Education Division would reserve all rights, including the right to authorize copyright.

(5) Should EDGAR include regulations on "cooperative agreements?"

The Federal Grant and Cooperative Agreement Act of 1977 (Pub. L. 95-224, February 3, 1978), requires the use of procurement contracts for all agency acquisition activity and the use of assistance instruments (grants or cooperative agreements) for specified types of assistance relationships. The Act, which became effective on February 3, 1979, requires agencies to distinguish between grants and cooperative agreements.

Cooperative agreements are a new type of assistance instruments. *Grants* must be used for assistance actions whenever *no substantial Federal involvement* is anticipated with the recipient during performance. *Cooperative agreements* must be used for all assistance actions when *substantial Federal involvement* is anticipated with the recipient during performance. At the present time, however, there are no standard definitions for grants and cooperative agreements. We anticipate that it will take a period of time to identify and test the distinctions between the two types of instruments. These regulations propose to be silent on cooperative agreements. The Department issued guidelines on the new Act in Chapter 1-01 and 1-02 of its Grants Administration Manual (October 23, 1978) in which present administrative requirements apply both to grants and cooperative agreements. The Manual points out that the results of experience and the OMB study on this topic will allow for future elaboration.

The advantage of being silent in EDGAR is that maximum flexibility will permit development of key programmatic distinctions as well as identification of the nature and form of "substantial Federal involvement." In light of the developments, EDGAR can be amended in the future after this review is completed.

V. Recommendations and Studies

Several recommendations from HEW's Zero Based Review of Federal Planning Requirements Study (ZBR) and Regulations Reform Project (RRP) are included as reforms in these regulations.

The EDGAR implements the general State application for State-administered programs where funds flow through State educational agencies to local educational agencies. The EDGAR also implements the local educational agency general application, used under the State-administered programs. These general applications, which were authorized by the Education Amendments of 1978, will reduce paperwork by States and by local educational agencies since they will replace assurances and provisions previously required in each plan or application submitted each year. Also implemented as a result of the recommendations of both studies is the three-year State application under the State-administered programs. This three-year application will replace annual State plans and applications. This should reduce paperwork considerably.

The EDGAR implements the RRP recommendation to eliminate the State attorney general certification previously required under most State-administered programs. The previous requirement was for two sets of certifications, one from the State agency and one from the State attorney general. One set of necessary certifications would now be accepted from the agency submitting the plan. The EDGAR also follows the RRP recommendation in consolidating existing regulations on children enrolled in private schools.

VI. Burden Reduction

These proposed regulations would consolidate more than one thousand separate program regulations and definitions, many with differing requirements, into one set of requirements, written in much simpler language. The amount of time spent by applicants and grantees in reading regulations will be reduced substantially.

In addition to the reforms cited as a result of some of the ZBR and RRP recommendations, a number of other EDGAR provisions should result in burden reduction.

The EDGAR requires a general assurance in an application under a direct grant program that the applicant, if awarded a grant, will comply with applicable statutes and regulations. This assurance will be used as a basis for eliminating more specific assurances required by program regulations and program statutes. The result will be reduced paperwork in applying for an Education Division grant.

The EDGAR includes a requirement for direct grant programs that the application must include information that responds to the selection criteria under the program. This will be used as a basis for eliminating duplicative program regulations.

The EDGAR includes a set of general, weighted selection criteria. In addition to eliminating a large number of varying regulations, the EDGAR criteria provide a uniform base for awarding discretionary grants. Regardless of the number of programs an applicant applies under, the applicant can be fairly confident that the grant management aspects of its project will be judged on the same basis from program to program. For that type of applicant, the EDGAR criteria will save considerable time in formulating a plan of operation, staff qualifications, budget,

evaluation plan, and resources. Also, a successful grantee will be able to rely to a degree on its basic management approach if it applies again since at least some of the same standards will apply.

Other changes which should result in additional burden reduction include:

—Expanded use of pre-applications and elimination of time and costs of preparing full applications for ineligible projects

—Reduction of fiscal and performance reports to no more than an annual basis.

VII. Public Participation

The Education Division will hold public hearings and workshops on these proposed regulations in Washington, D.C., and in each of the 10 regions.

The combined workshop and public hearing in Washington, D.C. will serve as a pilot session. It will enable participants from State agencies, local educational agencies, community agencies, postsecondary institutions, educational organizations, private schools and colleges, and other interested parties to become familiar with EDGAR.

During the morning participants will be divided into groups to discuss with the Federal officials who drafted EDGAR their concerns about these proposed regulations. The morning workshop will be informative and will, also, provide an opportunity for participants to ask questions and to exchange ideas. Attention will be given to helping participants formulate their comments for the more formal hearing in the afternoon or for later submission of written comments.

At the Washington, D.C. workshop and public hearing, representative organizations will be asked to contact their affiliates or clients and assist in obtaining the widest possible attendance at the regional hearings. The afternoon session will be a formal hearing to receive oral comments.

Each of the 10 regions will hold a workshop and public hearing similar to the one described for Washington.

In oral comments at a hearing and in written comments sent to the EDGAR Task Force, each commenter should (1) identify specifically that section of the proposed regulations to which comments are being addressed; (2) describe his or her concern with respect to that section; and (3) recommend specific action. This is the kind of information that the Education Division needs in order to give maximum consideration to each commenter's concerns.

Written comments received in response to this notice will be available for public inspection, both during and after the comment period, at the EDGAR Task Force office, Room 508, Reporters Building, 7th and D Streets, SW., Mondays through Fridays between 8:00 a.m. and 4:00 p.m., except Federal holidays.

Dated: February 16, 1979.

Mary F. Berry,

Assistant Secretary for Education.

Dated: February 13, 1979.

Ernest L. Boyer,

U.S. Commissioner of Education.

Dated: February 16, 1979.

Patricia Albjerg Graham,

Director of the National Institute of Education.

Dated: February 16, 1979.

Lee Kimche,

Director of the Institute of Museum Services.

Approved: April 18, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Introduction to Regulations of the Education Division

I. What can I Learn from this Introduction?

In this introduction, you will find information that will help you answer the following questions:

- What is the Education Division?
- What kinds of Federal programs of assistance does the Education Division administer?
- What Education Division regulations apply to these programs?
- How do I use Education Division regulations?
- What steps should I take to apply for assistance under an Education Division program?

II. What is the Education Division?

- The Education Division is an agency in the U.S. Department of Health, Education, and Welfare.
- The Education Division includes four parts:

—The Office of the Assistant Secretary for Education (including the National Center for Education Statistics);

—The United States Office of Education;

—The Institute of Museum Services; and

—The National Institute of Education.

- Each of these Offices and Institutes administers Federal programs of assistance.

III. What Kinds of Federal Programs of Assistance Does the Education Division Administer?

- The Education Division provides assistance under two kinds of programs:

—Student financial assistance programs; and

—Grant programs.

- Student financial assistance programs include guaranteed loans, fellowships, and grants for individual students.
- Grant programs are generally divided into two kinds:

—State-administered programs; and

—Direct grant programs.

- Under a State-administered program, each State is entitled to receive funds, and, depending on the requirements of the program statute, either uses the funds itself or makes subgrants to eligible agencies, organizations, and institutions.
- Under a direct grant program, the Education Division makes grants directly to eligible agencies, organizations, and institutions, and (under a few programs) individuals. Subgrants are not authorized.

IV. What Federal Regulations Apply to These Programs?

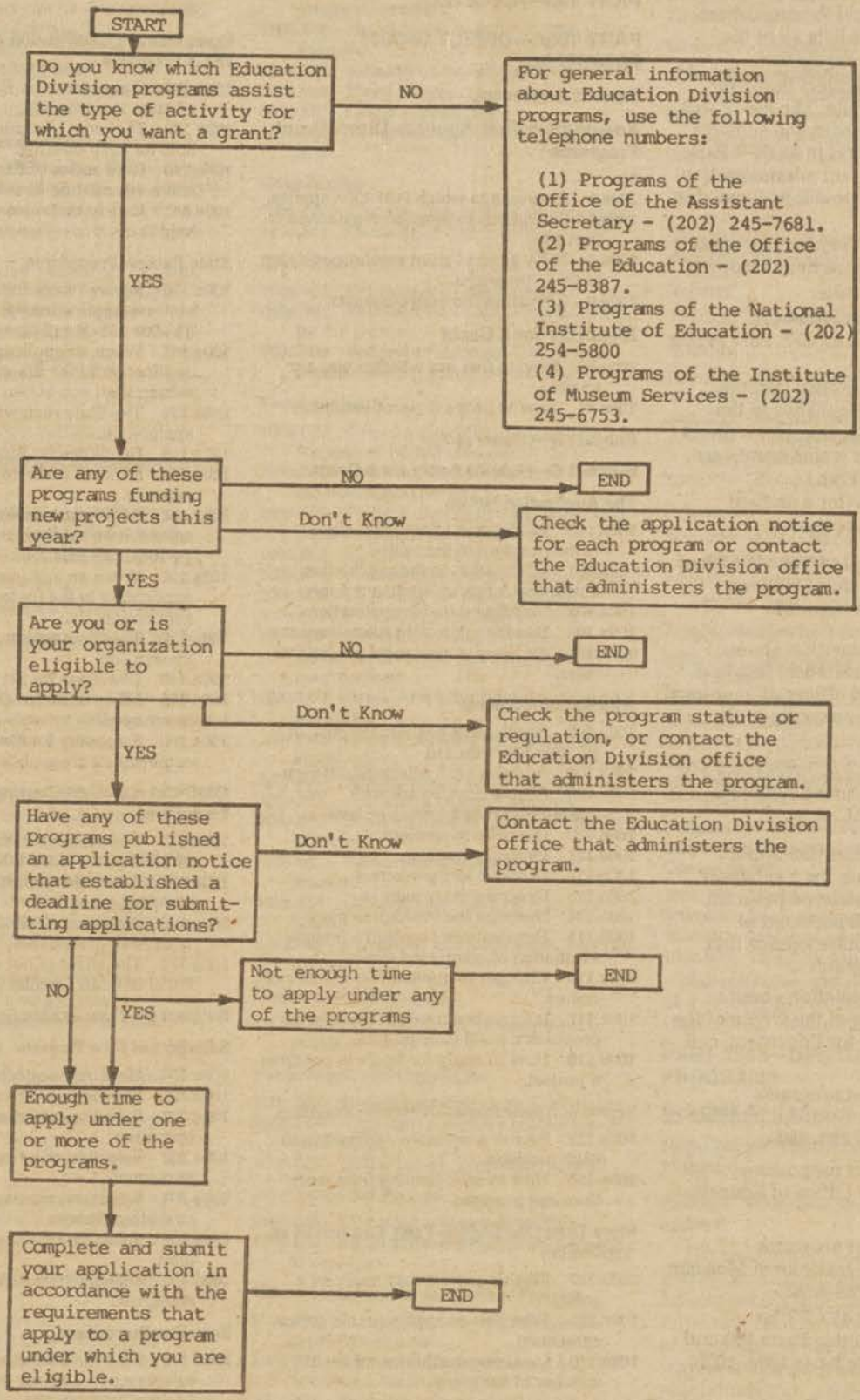
- The Education Division publishes its regulations in the Federal Register, and codifies the regulations in Title 45 of the Code of Federal Regulations (45 CFR). There is usually a regulation for each Federal program of assistance. For example, regulations for the Guaranteed Student Loan Program of the Office of Education are located in Part 177 of Title 45 (45 CFR Part 177).
- In addition to these program regulations, there are general regulations that apply to certain categories of programs:

—Certain student financial assistance programs are subject to general regulations in 45 CFR Part 168.

—Grant programs are subject to the Education Division General Administrative Regulations (EDGAR) in 45 CFR Parts 100a and 100b. Part 100a applies to direct grant programs. Part 100b applies to State-administered programs.

—All programs are subject to the general definitions in Part 100c of the EDGAR.

To apply under a direct grant program, consider using the steps suggested in the following chart:



V. How Do I Use Education Division Regulations?

• Each regulation has a table of contents in the front of the regulation. The table of contents lists all of the headings used in the regulation.

• There will be a subject index for EDGAR in the final rule. The index will list, in alphabetical order, the subjects covered in EDGAR and in 45 CFR Part 74, HEW's general grant administration regulations. The index will be located in Appendix A.

• To have a set of requirements that apply to a program, you need a copy of:

—The program statute;

—The program regulations;

—The EDGAR and 45 CFR Part 74 (for a grant program);

—The application notice that the Education Division publishes in the **Federal Register** each year (for a direct grant program under which grants are awarded competitively);

—45 CFR Part 168 (for a student financial assistance program).

VI. What Steps Should I Take if I Want To Apply for Assistance Under an Education Division Program?

• For general information about student financial assistance, talk to a student financial aid officer at your local college or university, or write to the following address:

Bureau of Student Financial Assistance, U.S. Office of Education, 400 Maryland Avenue, SW., Washington, D.C. 20202.

• For general information about applying to your State for a subgrant under a State-administered program, contact your State department of education or other State agency that administers the program.

• For general information about a direct grant program of the Office of the Assistant Secretary for Education, call (202) 245–7681.

• To find out about programs administered by the National Institute of Education, call (202) 254–5800.

• To find out about programs administered by the Office of Education, call (202) 245–8387.

• To find out about programs administered by the Institute of Museum Services, call (202) 245–6753.

It is proposed that 45 CFR be amended by: (1) Deleting Parts 100 and 100d and (2) Revising Parts 100a, 100b, and 100c as follows:

Subchapter A—Education Division General Administrative Regulations

PART 100—[DELETED]

PART 100A—DIRECT GRANT PROGRAMS

Subpart A—General

Regulations That Apply to Direct Grant Programs

Sec.

100a.1 Programs to which Part 100a applies.
100a.2 Exceptions in program regulations to Part 100a.
100a.3 HEW general grant regulations apply to these programs.
100a.4 Education Division contracts.

Eligibility for a Grant

100a.50 How to find out whether you are eligible.
100a.51 How to prove nonprofit status.

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

The Application Notice

100a.100 Publication of an application notice; content of the notice.
100a.101 Information in the application notice that helps an applicant apply.
100a.102 Deadline date for applications.
100a.103 Deadline date for preapplications.
100a.104 Applicants must meet procedural rules.

Application Contents

100a.107 Application content: Purpose of §§ 100a.108–100a.118.
100a.108 Address each selection criterion.
100a.109 Assure compliance with appropriate requirements of law.
100a.110 Describe the project.
100a.111 Include a timeline.
100a.112 Describe key personnel.
100a.113 Describe the resources.
100a.114 Describe the evaluation plan.
100a.115 Demonstrate capability; include evaluation of completed project.
100a.116 Changes to application; number of copies.
100a.117 Information needed if applicant proposes a multi-year project.
100a.118 How to apply for funds to continue a project.

Separate Applications—Alternate Programs

100a.125 Submit a separate application to each program.
100a.126 How to seek funding from more than one program.

More Than One Eligible Party Can Join in an Application

100a.127 Eligible parties may apply as a group.
100a.128 Who acts as applicant; the group agreement.
100a.129 Legal responsibilities of each member of the group.

Preapplications

100a.130 Consideration of a preapplication.
100a.131 The effect of not submitting a preapplication.
100a.132 Result of a preapplication.
100a.133 The basis for the preapplication decision.

Open Meeting Certification Under Certain ESEA Programs

100a.138 Open meetings: Purpose of §§ 100a.139–100a.141.
100a.139 The local educational agency shall hold an open meeting.
100a.140 Give notice of the open meeting; make information available.
100a.141 Certify that open meeting was held.

State Review Procedures

100a.150 Review procedure if State must approve applications: Purpose of §§ 100a.151–100a.153.
100a.151 When an applicant must submit its application to the State; proof of submission.
100a.152 The State reviews each application.
100a.153 Deadlines for State approval.
100a.154 Effect of State approval; failure to approve.
100a.155 Review procedure if State may comment on applications: Purpose of §§ 100a.156–100a.158.
100a.156 When an applicant must submit its application to the State; proof of submission.
100a.157 The State reviews each application.
100a.158 Deadlines for State comments.
100a.159 Effect of State comments or failure to comment.
100a.160 Procedure for State approval of or comment on preapplications.

OMB Circular A–95 Clearinghouse Procedures

100a.170 Clearinghouse procedures: Purpose of §§ 100a.170–100a.173.
100a.171 Notify the appropriate clearinghouses.
100a.172 Applicant shall show compliance with A–95 procedures.
100a.173 The effect of not complying with Part I of OMB Circular A–95.

Subpart D—How Grants Are Made

Selection of New Projects

100a.200 How new projects are selected.
100a.201 How to use the selection criteria.
100a.202 Selection criterion—plan of operation.
100a.203 Selection criterion—quality of key personnel.
100a.204 Selection criterion—budget and cost effectiveness.
100a.205 Selection criterion—evaluation plan.
100a.206 Selection criterion—adequacy of resources.

Selection Procedures

100a.215 How the Education Division selects a new project: Purpose of §§ 100a.216–100a.221.
100a.216 Returning an application to the applicant.

100a.217 How the Education Division reviews an application.
100a.218 How the Education Division selects new projects.
100a.219 A project can be selected for funding without competition.
100a.220 Procedures the Education Division uses under § 100a.219(a).
100a.221 Procedures the Education Division uses under § 100a.219(b).

Procedures To Make a Grant

100a.230 How the Education Division makes a grant: Purpose of §§ 100a.231–100a.236.
100a.231 Additional budget information.
100a.232 The cost analysis; basis for grant amount.
100a.233 Setting the amount of the grant.
100a.234 The conditions of the grant.
100a.235 The notification of grant award.
100a.236 Effect of the grant.

Approval of Multi-Year Projects

100a.250 Project period can be longer than one year.
100a.251 The budget period.

Continuation Awards and Extension of a Project

100a.253 Continuation of a multi-year project after the first budget period.
100a.254 Extension of a project period.

Miscellaneous

100a.260 Allotments and reallotments.

Subpart E—What Conditions Must Be Met by a Grantee?

Nondiscrimination

100a.500 Federal statutes and regulations on nondiscrimination.

Project Staff

100a.510 Use of a project director.
100a.511 Waiver of requirement for a full-time project director.
100a.515 Qualifications of project staff.
100a.516 Inservice training for project staff.
100a.517 Use of consultants.
100a.518 Compensation of consultants—employees of institutions of higher education.
100a.519 Changes in key staff members.
100a.520 Minimum wage rates.
100a.521 Dual compensation of staff.

Conflict of Interest

100a.524 Conflict of interest: Purpose of § 100a.525.
100a.525 Conflict of interest—participation in a project.

Allowable Costs

100a.530 General cost principles.
100a.531 Limit on total cost of a project.
100a.532 Use of funds for religion prohibited.
100a.533 Acquisition of real property; construction.
100a.534 Foreign travel.
100a.535 Training grants—automatic increases for additional dependents.

Indirect Cost Rates

100a.560 General indirect cost rates; exceptions.
100a.561 Approval of indirect cost rates.
100a.562 Indirect cost rates for educational training projects.
100a.563 Restricted indirect cost rate—programs covered.
100a.564 Restricted indirect cost rate—formula.
100a.565 Administrative charge.
100a.566 Fixed charges.
100a.567 Other expenditures.
100a.568 Using the restricted indirect cost rate.

Coordination

100a.580 Coordination with other activities.
100a.581 Methods of coordination.

Evaluation

100a.590 Evaluation by the grantee.
100a.591 Federal evaluation—cooperation by the grantee.
100a.592 Federal evaluation—satisfying requirement for grantee evaluation.

Construction

100a.600 Use of a grant for construction: Purpose of §§ 100a.601–100a.615.
100a.601 Applicant's assessment of environmental impact.
100a.602 Preservation of historic sites must be described in the application.
100a.603 Grantee's title to site.
100a.604 Availability of cost-sharing funds.
100a.605 Beginning the construction.
100a.606 Completing the construction.
100a.607 General considerations in designing facilities and carrying out construction.
100a.608 Areas in the facilities for cultural activities.
100a.609 Comply with safety and health standards.
100a.610 Access by the handicapped.
100a.611 Avoidance of flood hazards.
100a.612 Supervision and inspection by the grantee.
100a.613 Relocation assistance by the grantee.
100a.614 Grantee must have operational funds.
100a.615 Operation and maintenance by the grantee.

Equipment and Supplies

100a.618 Charges for use of equipment or supplies.

Publications and Copyrights

100a.620 General conditions on publication.
100a.621 Copyright policy for grantees and contractors.
100a.622 Definition of "project materials."

Inventions and Patents

100a.625 Invention and patent policy.
100a.626 Show Federal support; give papers to vest title.

Other Requirements for Certain Projects

100a.680 Participation of children enrolled in private schools.
100a.681 Indian Self-Determination and Education Assistance Act.
100a.682 Protection of human research subjects.
100a.683 Treatment of animals.
100a.684 Health or safety standards for facilities.
100a.685 Day care services.

Subpart F—What Are the Administrative Responsibilities of a Grantee?

General Administrative Responsibilities

100a.700 Compliance with statutes, regulations, and applications.
100a.701 The grantee administers or supervises the project.
100a.702 Fiscal control and fund accounting procedures.
100a.703 Obligation of funds during the grant period.
100a.707 When obligations are made.
100a.708 Prohibition of subgrants.

Reports

100a.720 Financial and performance reports.

Records

100a.730 Records related to grant funds.
100a.731 Records related to compliance.
100a.732 Records related to performance.
100a.733 Records related to State approval of applications.
100a.734 Record retention period.

Privacy

100a.740 Protection of and accessibility to student records.
100a.741 Protection of students' privacy in research and testing.

Data Collection by a Grantee

100a.750 Approval by the Education Division.
100a.751 Procedures if approval is required.
100a.752 Responsibility for data collection.
100a.753 Confidentiality of response.
100a.754 Exception from coverage.
100a.755 Definitions used in §§ 100a.750–100a.753.

Subpart G—What Procedures Does the Education Division Use To Get Compliance?

100a.900 Waiver of regulations prohibited.
100a.901 Suspension and termination.
100a.902 Informal procedures.
100a.903 Effective date of termination.

Authority: Sec. 408(a)(1) of Pub. L. 90–247, as amended, 88 Stat. 559, 560 (20 U.S.C. 1221e–3(a)(1), unless otherwise noted.

PART 100a—DIRECT GRANT PROGRAMS

Subpart A—General

Regulations That Apply to Direct Grant Programs

§ 100a.1 Programs to which Part 100a applies.

The regulations in Part 100a apply to grants under the programs of the Education Division that are listed in the following table. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the program.

(20 U.S.C. 1221e–3(a)(1))

Name of program*	Authorizing statute	Implementing regulations	CFDA number
I. OFFICE OF THE ASSISTANT SECRETARY FOR EDUCATION			
Fund for the Improvement of Postsecondary Education	Section 404 of the General Education Provisions Act (20 U.S.C. 1221d).	Part 1501	13.925.
Capacity Building for Statistical Activities in State Educational Agencies.	Section 406 of the General Education Provisions Act (20 U.S.C. 1221-1).	Part 164	13.922.
II. NATIONAL INSTITUTE OF EDUCATION			
Programs of the National Institute of Education	Section 405 of the General Education Provisions Act (20 U.S.C. 1221e).	Parts 1430, 1450, 1451, 1460, 1470, 1480, and 1490.	13.950.
III. INSTITUTE OF MUSEUM SERVICES			
Museum Services Program	Section 206 of the Museum Services Act (20 U.S.C. 965).	Part 64	13.923.
IV. OFFICE OF EDUCATION			
A. GENERAL PROGRAMS			
Program Planning and Evaluation	Section 416 of the General Education Provisions Act (20 U.S.C. 1226b).	Part 107	None.
National Diffusion Network	Section 422(a) of the General Education Provisions Act (20 U.S.C. 1231a(a)).	Part 193	None.
B. ELEMENTARY AND SECONDARY EDUCATION PROGRAMS			
Assistance for School Construction in Areas Affected by Federal Activities.	Public Law 81-815, except section 16 (20 U.S.C. 631-645, 647).	Part 114	13.477.
Handicapped Children and Children with Specific Learning Disabilities.	Section 3(d)(2)(C) of Public Law 81-874 (20 U.S.C. 238).	Part 115, Subpart H	13.478.
Entitlements Related to Low-Rent Public Housing	Section 5(e)(3) of Public Law 81-874 (20 U.S.C. 240).	Part 115, Subpart I	13.478.
School Construction Assistance in Cases of Certain Disasters.	Section 16 of Public Law 81-815 (20 U.S.C. 646)	Part 112	13.477.
Assistance for Current School Expenditures in Cases of Certain Disasters.	Section 7 of Public Law 81-874 (20 U.S.C. 241-1)	Part 113	13.478.
Coordination of Migrant Education	Section 143 of the Elementary and Secondary Education Act (20 U.S.C. 2763).	None	None.
Transition of Neglected or Delinquent Children	Section 153 of the Elementary and Secondary Education Act (20 U.S.C. 2783).	None	None.
Basic Skills Improvement—National Program	Title II-A of the Elementary and Secondary Education Act (20 U.S.C. 2881-2890).	None	None.
Basic Skills Improvement—State Leadership Program	Section 224 of the Elementary and Secondary Education Act (20 U.S.C. 2904).	None	None.
Special Programs for Improving Basic Skills	Title II-C of the Elementary and Secondary Education Act (20 U.S.C. 2911-2912).	None	None.
Special Projects	Title III-A of the Elementary and Secondary Education Act (20 U.S.C. 2941-2943).	None	None.
Metric Education	Title III-B of the Elementary and Secondary Education Act (20 U.S.C. 2951-2954).	None	None.
Arts in Education	Title III-C of the Elementary and Secondary Education Act (20 U.S.C. 2961-2963).	None	None.
Preschool Partnership	Title III-D of the Elementary and Secondary Education Act (20 U.S.C. 2971).	None	None.
Consumer Education	Title III-E of the Elementary and Secondary Education Act (20 U.S.C. 2981-2986).	None	None.
Youth Employment	Title III-F of the Elementary and Secondary Education Act (20 U.S.C. 2991-2992).	None	None.
Law-related Education	Title III-G of the Elementary and Secondary Education Act (20 U.S.C. 3001-3003).	None	None.
Environmental Education	Title III-H of the Elementary and Secondary Education Act (20 U.S.C. 3011-3018).	None	None.
Health Education	Title III-I of the Elementary and Secondary Education Act (20 U.S.C. 3021-3024).	None	None.
Correction Education	Title III-J of the Elementary and Secondary Education Act (20 U.S.C. 3031-3034).	None	None.
Dissemination of Information	Title III-K of the Elementary and Secondary Education Act (20 U.S.C. 3041).	None	None.
Biomedical Sciences	Title III-L of the Elementary and Secondary Education Act (20 U.S.C. 3051-3057).	None	None.

Name of program*	Authorizing statute	Implementing regulations	CFDA number
Population Education	Title III-M of the Elementary and Secondary Education Act (20 U.S.C. 3061-3062).	None	None.
Federal Financial Assistance for Strengthening State Departments of Education-Special Project Grants.	Section 505 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	119	None.
Comprehensive Educational Planning and Evaluation	Sections 531-534 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	Part 129	None.
Bilingual Education	Title VII of the Elementary and Secondary Education Act (20 U.S.C. 3221-3261).	Part 123	13.403.
Financial Assistance for Demonstration Projects for Reducing School Dropouts.	Section 807 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	Part 124	None.
Grants for Demonstration Projects to Improve School Health and Nutrition Services for Children from Low-Income Families.	Section 808 of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	Part 127	None.
Community Education Programs	Sections 809-813 of the Elementary and Secondary Education Act (20 U.S.C. 3289-3293).	None	None.
Gifted and Talented Children	Section 905 of the Elementary and Secondary Education Act (20 U.S.C. 3315).	None	None.
Educational Proficiency Standards	Title IX-B of the Elementary and Secondary Education Act (20 U.S.C. 3331-3332).	None	None.
Women's Educational Equity	Title IX-C of the Elementary and Secondary Education Act (20 U.S.C. 3341-3348).	None	None.
Safe Schools	Title IX-D of the Elementary and Secondary Education Act (20 U.S.C. 3351-3354).	None	None.
Follow Through Program	Sections 551-556 of the Community Services Act of 1974 (20 U.S.C. 2929-2929e).	Part 158	13.439.
Guidance and Counseling	Title III-D of the Education Amendments of 1976 (20 U.S.C. 2531-2534).	Part 191	13.577.
C. EDUCATION OF THE HANDICAPPED PROGRAMS			
Regional Resource Centers	Section 621 of the Education of the Handicapped Act (20 U.S.C. 1421).	Part 121b	13.450
Centers and Services for Deaf-Blind Children	Section 622 of the Education of the Handicapped Act (20 U.S.C. 1422).	Part 121c	13.445
Early Education for Handicapped Children	Section 623 of the Education of the Handicapped Act (20 U.S.C. 1423).	Part 121d	13.444
Severely Handicapped Children	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	None	13.568
Auxiliary Activities	Section 624 of the Education of the Handicapped Act (20 U.S.C. 1424).	Part 121e	None.
Training Personnel for the Education of the Handicapped	Sections 631, 632, and 634 of the Education of the Handicapped Act (20 U.S.C. 1431, 1432, 1434).	Part 121f	13.451.
Recruitment of Personnel and Dissemination of Information	Section 633 of the Education of the Handicapped Act (20 U.S.C. 1433).	Part 121g	13.452.
Research in the Education of the Handicapped	Part E of the Education of the Handicapped Act (20 U.S.C. 1441-1444).	Part 121h	13.443.
Instructional Media for the Handicapped	Part F of the Education of the Handicapped Act (20 U.S.C. 1451-1454).	Part 121i	13.446.
Regional Education Programs for Handicapped Persons	Sections 625-627 of the Education of the Handicapped Act (20 U.S.C. 1424a-1426).	Part 121k	13.560.
Removal of Architectural Barriers to the Handicapped	Section 607 of the Education of the Handicapped Act (20 U.S.C. 1406). *	None	None.
D. OCCUPATIONAL AND ADULT EDUCATION PROGRAMS			
Commissioner's Discretionary Programs of Vocational Education.	Title I-B and Section 103(a)(1)(B) of the Vocational Education Act (20 U.S.C. 2301-2461).	Part 105	13.496, 13.558, 13.586, 13.587, and 13.588.
Career Education-Model Programs	Section 10 of the Career Education Incentive Act (20 U.S.C. 2609).	None	None.
Career Education Information Program	Section 11 of the Career Education Incentive Act (20 U.S.C. 2610).	None	None.
Adult Education Programs	Sections 309 and 316 of the Adult Education Act (20 U.S.C. 1207a and 1211c).	None	None.
E. HIGHER EDUCATION PROGRAMS			
College Library Resources Program	Title II-A of the Higher Education Act (20 U.S.C. 1021-1028).	Part 131	13.406.
Grants for Training in Librarianship	Section 222 of the Higher Education Act (20 U.S.C. 1031-1033).	Part 132	13.468.
Library Research and Demonstration	Section 223 of the Higher Education Act (20 U.S.C. 1034).	Part 133	13.475.
Strengthening Research Library Resources	Title II-C of the Higher Education Act (20 U.S.C. 1041-1046).	Part 136	13.576.
Modern Foreign Language and Area Studies (except Foreign Language and Area Studies Fellowships—See Part 100c).	Title VI of the National Defense Education Act (except sections 511(b) and 603).	Part 146 (except Subpart D)	13.435 and 13.436.
Higher Education Programs in Modern Foreign Language Training and Area Studies.	Section 102(b)(6) of the Mutual Educational and Cultural Exchange Act (22 U.S.C. 2452(b)(6).	Part 148	13.440.
Citizen Education for Cultural Understanding Program	Section 603 of the National Defense Education Act (20 U.S.C. 512a).	Part 146a	None.
Educational Opportunity Centers	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d-1).	Part 154	13.543.

Name of program*	Authorizing statute	Implementing regulations	CFDA number
E. HIGHER EDUCATION PROGRAMS—Continued			
Upward Bound Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 155	13.492.
Special Services for Disadvantaged Students	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 157	13.482.
Talent Search Program	Sections 417A and 417B of the Higher Education Act (20 U.S.C. 1070d and 1070d–1).	Part 159	13.488.
Strengthening Developing Institutions Program	Title III of the Higher Education Act (20 U.S.C. 1051–1056).	Part 169	13.454.
Training for Higher Education Personnel	Section 533 of the Higher Education Act (20 U.S.C. 1119a–1).	Part 198	13.417.
Financial Assistance for Construction of Higher Education Facilities (except Loans for Construction of Academic Facilities and Annual Interest Grants for Construction of Academic Facilities).	Parts A and B of Title VII of the Higher Education Act (20 U.S.C. 1132b–1).	Part 170 (except Subparts D and E)	13.455.
Instructional Equipment Grants for Institutions of Higher Education.	Title VI of the Higher Education Act (20 U.S.C. 1121–1129).	Part 171	13.518.
Financial Assistance for Community Service and Continuing Education Programs—Special Programs and Projects.	Section 106 of the Higher Education Act (20 U.S.C. 1005a).	Part 173, Subpart C	13.557.
Cooperative Education Programs	Title VIII of the Higher Education Act (20 U.S.C. 1133–1133b).	Part 182	13.510.
Veteran's Cost-of-Instruction Payments to Institutions of Higher Education.	Section 420 of the Higher Education Act (20 U.S.C. 1070e–1).	Part 189	13.540.
Public Service Education Program—Public Service Institutional Grants.	Sections 901–904 of the Higher Education Act (20 U.S.C. 1134–1134c).	Part 194, Subpart A	13.555.
Graduate and Professional Study Institutional Grant	Sections 901–904 of the Higher Education Act (20 U.S.C. 1134–1134b).	Part 179 (except Subpart C)	13.580.
State Postsecondary Education Commissions Program—Inter-state Planning.	Section 1203(c) of the Higher Education Act (20 U.S.C. 1142b(c)).	None	13.550.
Community Colleges	Title X of the Higher Education Act (20 U.S.C. 1135 through 1135c–1).	None	None.
Ethnic Heritage Studies Program	Title IX-E of the Elementary and Secondary Education Act (20 U.S.C. 3361–3367).	Part 184	13.549.
F. OTHER PROGRAMS			
Special Projects	The Special Projects Act (20 U.S.C. 1851–1853, 1861–1867, 887d).	Part 160	13.541.
Metric Education Program	Section 403 of the Education Amendments of 1974 (20 U.S.C. 1862).	Part 160a	13.561.
Program for the Gifted and Talented	Section 404 of the Education Amendments of 1974 (20 U.S.C. 1863).	Part 160b	13.562.
Community Education Program	Section 405 of the Education Amendments of 1974 (20 U.S.C. 1864).	Part 160c	13.563.
Career Education Program	Section 406 of the Education Amendments of 1974 (20 U.S.C. 1865).	Part 160d	13.554.
Consumer's Education Program	Section 811 of the Elementary and Secondary Education Act (20 U.S.C. 887d).	Part 160e	13.564.
Women's Educational Equity Act Program	Section 408 of the Education Amendments of 1974 (20 U.S.C. 1866).	Part 160f	13.565.
Arts Education Program	Section 409 of the Education Amendments of 1974 (20 U.S.C. 1867).	Part 160g	13.566.
National Reading Improvement Program (except State Reading Improvement Programs—See Part 100b).	Parts A and C of Title VII of the Education Amendments of 1974.	Part 162 (except Subpart C)	13.533.
National Alcohol and Drug Abuse Prevention Program	Public Law 93–422 (21 U.S.C. 1001–1007)	Part 182a	13.420.
Financial Assistance for Environmental Education Projects	The Environmental Education Act (20 U.S.C. 1531–1536).	Part 183	13.522.
Educational Broadcasting Facilities Program	Part IV of the Title III of the Communications Act of 1934 (47 U.S.C. 390–395 and 397–399).	Part 153	13.413.
Television Program Assistance	Section 1527 of the Education Amendments of 1978 (20 U.S.C. 1221j).	None	None.
Teacher Corps Program	Section V–A of the Higher Education Act (20 U.S.C. 1101–1107a).	Part 172	13.489.
Teachers Centers Program	Section 532 of the Higher Education Act (20 U.S.C. 1119a).	Part 197	13.416.
Territorial Teacher Training	Section 1525 of the Education Amendments of 1978	None	None.
Education Information Management System	Section 400A (f) and (g) of the General Education Provisions Act (20 U.S.C. 1221–3 (f) and (g)).	None	None.
Indian Elementary and Secondary School Assistance (Part A)	Title III of Public Law 81–874 (20 U.S.C. 241aa–241ff)	Part 186	13.534 and 13.551.
Indian Education (Part B) (except the Indian Fellowship Program—See Part 100c).	Section 1005 of the Elementary and Secondary Education Act (20 U.S.C. 3385).	Part 187	13.535.
Indian Education (Part C)	Section 314 of the Adult Education Act (20 U.S.C. 1211a).	Part 188	13.536.
Desegregation of Public Education	Title IV of the Civil Rights Act (42 U.S.C. 2000c through 2000c–9).	Part 180	13.405.
Emergency School Aid	Title VI of the Elementary and Secondary Education Act (20 U.S.C. 3191–3207).	Part 185	13.525, 13.526, 13.528, 13.529, 13.530, 13.532, 13.589, and 13.590.
Racially Isolated School Districts	Section 1522 of the Education Amendments of 1978	None	None.

* Some programs may not be funded. Check the application notices published under § 100a.100.

§ 100a.2 Exceptions in program regulations to Part 100a.

If a program has regulations that are not consistent with Part 100a, the implementing regulations for that program identify the sections of Part 100a that do not apply.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.3 HEW general grant regulations apply to these programs.

The HEW general grant regulations in Part 74 of this title apply to the programs covered by this part. To find subjects covered under Part 74, look in the table of contents at the beginning of Part 74.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.4 Education Division contracts.

(a) A contract of the Education Division is governed by:

(1) Chapters 1 and 3 of Title 41 of the Code of Federal Regulations;

(2) Any applicable program regulations; and

(3) The request for proposals for the procurement, if any, referenced in *Commerce Business Daily*.

(b) The regulations in Part 100a do not apply to a contract of the Education Division except where they specifically provide otherwise.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.5(b); 121h.1(b)(2d sent.); 123.62(b); 146 Appendix Chapter V, Sec 1.1(a); 160a.4; 160e.1(c)(2)(i); 160e.8(b)(1)(ii); 160f.1(c)(2); 160f.9(a)(2); 185.84(b): 191.25(b); 193.3; 193.15; 193.25; 1400.2(g))

Eligibility for a Grant

§ 100a.50 How to find out whether you are eligible.

Eligibility to apply for a grant under a program of the Education Division is governed by the authorizing statute and implementing regulations for that program. The table in § 100a.1 gives references to the statutes and regulations that apply to the direct grant programs of the Education Division.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.51 How to prove nonprofit status.

(a) Under some programs, an applicant must show that it is a nonprofit organization. (See the definition of "nonprofit" in § 100c.1)

(b) An applicant may show that it is a nonprofit organization by any of the following means:

(1) Proof that the Internal Revenue Service currently recognizes the applicant as an organization to which contributions are tax deductible under section 501(c)(3) of the Internal Revenue Code;

(2) A statement from a State taxing body or the State attorney general certifying that—(i) the organization is a nonprofit organization operating within the State, and (ii) no part of its net earnings may lawfully benefit any private shareholder or individual;

(3) A certified copy of the applicant's certificate of incorporation or similar document if it clearly establishes the nonprofit status of the applicant; or

(4) Any of the items described in subparagraphs (1) through (3) of this paragraph if that item applies to a State or national parent organization, together with a statement by the parent organization that the applicant is a local nonprofit affiliate.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 123.14(c)(2); 184.22(a); 185.61(b))

Subpart B—[Reserved]

Subpart C—How To Apply for a Grant

The Application Notice

§ 100a.100 Publication of an application notice; content of the notice.

(a) Each fiscal year each appropriate official of the Education Division publishes application notices in the **Federal Register** that explain what kind of assistance is available under the programs that he or she administers.

(b) The application notice for a program explains one or more of the following:

(1) How to apply for a grant to start a new project.

(2) How to apply for a grant to continue an existing project already being funded by the Education Division.

(3) How to preapply for a grant to start a new project, if preapplications are used under the program.

(c) The appropriate official of the Education Division publishes the application notice for each program together in a single notice in the **Federal Register** unless the official finds that it is necessary to publish a separate notice for a particular program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.15(1st sent.); 114.2; 114 App. § 2.5; 148.12(a)(4th sent.); 148.22(a)(3rd sent.); 148.32(a)(2nd sent.);148.42(d); 154.5(c); 169.26(b); 169.36(b); 172.137)

Note.—The term "appropriate official of the Education Division is defined in § 100c.1 of this title to mean the official that has overall administrative responsibility for an Education Division program. For each program, that official is one of the following—

(a) The Assistant Secretary;

(b) The Commissioner;

(c) The Director of the National Institute of Education; or

(d) The Director of the Institute of Museum Services.

§ 100a.101 Information in the application notice that helps an applicant apply.

(a) The application notice for each program gives important information that can help an applicant. The information usually includes—

(1) How an applicant can get an information package that contains detailed information about the program and the application form that the applicant must use;

(2) Where in the Education Division an applicant must send its application;

(3) The amount of funds available to start new projects;

(4) The number of new projects the Education Division expects to fund under the program;

(5) The average amount of funding that the Education Division expects to provide to a new project under the program;

(6) The average duration of a new project that the Education Division expects to approve under the program;

(7) The amount of funds available to continue existing projects already being funded under the program;

(8) The number of these existing projects the Education Division expects to fund under the program;

(9) The average amount of funding that the Education Division expects to provide to these existing projects; and

(10) A reference to the regulations that apply to the program.

(b) If the appropriate official of the Education Division either requires or permits preapplications under a program, an application notice for the program explains how an applicant can get the preapplication form.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.102 Deadline date for applications.

(a) An application notice for each program sets a deadline date for applications.

(b) If an applicant wants a grant for a new project, the applicant shall—

(1) Mail the application to the Education Division on or before the deadline date; or

(2) Hand deliver the application to the Education Division before 4:30 p.m. (Washington, D.C. time) on or before the deadline date.

(c) If an applicant wants a grant to continue a project, the applicant, to be assured of consideration, shall—

(1) Mail the application to the Education Division on or before the deadline date; or

(2) Hand deliver the application to the Education Division before 4:30 p.m. (Washington, D.C. time) on or before the deadline date.

(d) The appropriate official of the Education Division accepts each of the following as proof of mailing:

(1) A legible U.S. Postal Service dated postmark; or

(2) A mail receipt with the date of mailing stamped by the U.S. Postal Service.

Note.—The U.S. Postal Service does not uniformly provide a dated postmark. An applicant should check with its local post office before relying on this method.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 115.12; 127.5(a)(3rd sent.); 146.15(a)(1st sent.); 146.25(a)(1st sent.); 146.53(a)(1st sent.); 155.7(a)(1st sent.); 157.5(a)(1st sent.); 159.6(a)(1st sent.); 160a.24(1st sent.))

§ 100a.103 Deadline date for preapplications.

(a) If the appropriate official of the Education Division invites or requires preapplications under a program, an application notice for the program sets a deadline date for preapplications.

(b) An applicant shall submit its preapplication in accordance with the procedures for applications in § 100a.102(b) and (d).

(20 U.S.C. 1221e–3(a)(1))

(Sources: 127.5(a)(3rd sent.); 160a.23(a)(1st sent., wds. 4–10); 160b.5(a)(wds. 31 to end); 160f.7(a)(1)(1st sent., wds. 28 to end))

§ 100a.104 Applicants must meet procedural rules.

The appropriate official of the Education Division may make a grant only to an eligible party that—

(a) Submits an application; and

(b) Complies with all procedural rules that govern the submission of the application.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 119.2(a)(2nd sent.); 160e.8(a); 160f(a); 160f.8(b)(1)(1st sent.); 179.4(c))

Application Contents

§ 100a.107 Application contents: Purpose of §§ 100a.108–100a.118.

(a) An applicant shall include in its application the information described in §§ 100a.108 through 100a.118.

(b) An applicant shall also include in its application any other information that is required under a particular program.

(c) If a program does not need some of the information required by these sections, the implementing regulations for the program identify the sections that do not apply.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.15; 100a.16(g); 105.605(a)(3); 105.615(a)(3); 105.625(c); 123.14(a)(Rejected); 123.24(a)(Rejected); 129.3(b); 142.5(j); 153.5(a)(3); (i)+(iii); 154.5(a); 155.7(a); 157.5(a); 159.6(a); 160a.24; 169.15(a); 169.34(a); 169.36(a); 170.17(a); 170.52; 170.73; 171.9(a); 183.41(b)(Rejected); 187.14(n); 187.24(o); 187.44(k); 187.55(m); 187.65(m); 188.7(g); 192.5(b))

§ 100a.108 Address each selection criterion.

If an applicant applies for a grant under a program that uses selection criteria, the application must include information that addresses each selection criterion that applies to the program.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 105.110; 105.605(a)(2); 105.615(a)(2); 105.626(b); 136.05(b); 146.15(a); 146.25(a); 146.34; 146.36(a)(1); 146.53(a); 160b.21(b)(4); 160c.14(b)(1); 160c.15(b)(1); 160d.7; 160c.8(c)(6); 160f.8(c); 162.12(d); 162.4c(b)(2)(x); 172.134; 179.23(c); 187.14(b); 187.24(b); 187.34(b); 187.44(b); 187.55(b); 187.65(b); 188.7(g); 191.31(c)(3); 191.44(b)(2); 197.9(a)(5); 198.6(c))

§ 100a.109 Assure compliance with appropriate requirements of law.

An application must include an assurance that a grantee will comply with the requirements imposed by the appropriate official of the Education Division concerning—

(a) Special requirements of law;

(b) Program requirements; and

(c) Administrative requirements.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.15; 105.605(a)(1); 105.614(b); 105.15(a)(1); 105.625(a); 153.53(b)(3); 157.5(c)+(d); 158.25(a); 160c.14(c); 160c.32(d)(4); 160c.33(d); 160e.8(c)(1); 160e.11(b); 160f.8(c)(1); 162.40(a)(1); 162.52(a)(5); 169.15(a)(3); 169.36(a)(8); 170.17(a)(3rd sent., 2nd clause); 170.53(b); 171.8(b); 171.9(a)(2nd sent., 2nd clause); 178a.6(a)(3rd sent.); 184.22(b); 185.13(c); 185.13(1) (5)+(m); 185.33; 185.53(c)(1); 185.93–2(b)(1); 186.33(b)(1); 189.21(b)(6); 192.5(b)(4); 193.13(b))

§ 100a.110 Describe the project.

An application must describe the project in detail. The description must include—

(a) The purpose of the project;

(b) Each objective of the project;

(c) The methods the applicant proposes to use to meet these objectives;

(d) How the applicant plans to use its resources and personnel to achieve each objective; and

(e) An assessment of the effect, if any, of the project on persons who are members of groups that have been traditionally underrepresented; such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.16(a); 121d App. § 3.2(a)(4); 112.8(a); 114.62(c)(7); 123.14(e); 123.53(a)(3); 123.24(a)(1st sent.); 123.33(a); 124.5; 136.05(a)(2); 146.15(a); 146.25(a); 154.5(a)(3); 160a.22(a); 160b.3(b)(8); 160c.14(b)(1); 160c.15(b)(1); 160c.31(a)(1)(i)+(iii); 160f.8(c)(3)+(4)(i); 162.52(a)(1)+(3); 162.61(c)(1)(i)+(iii); 169.26(a)(10); 171 App. § 4.2(a); 171 guides § 5.1(a)–(c); 172.110(a)(1)+(7); 172.127; 178a.6(a); 185.73(e)(1); 187.14(d)(2); 187.24(d)(2); 187.34(d)(2); 187.44(d)(2); 187.55(d)(1)+(2); 187.65(d)(1)+(2); 188.7(a)–(c); 191.31(c)(1)(ii)+(iii); 191.44(b)(1)(ii)+(ii 192.5(a)(1); 193.13(b); 194.5(a))

§ 100a.111 Include a timeline.

(a) An application must propose a project period for the project.

(b) An application must describe when, in each budget period of the project, the applicant plans to meet each objective of the project.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.16(a); 121d App. § 4.1; 121h App. § 3.2(a)(4); 160a.14(b)(7); 160a.15(e); 160c.31(a)(1)(ii); 160d.6(b)(5); 160e.8(c)(4)(ii)(D)(1); 162.12(a)(2); 162.52(a)(2); 162.61(c)(1)(ii); 172.110(a)(2); 187.14(d)(3); 187.24(d)(3); 187.34(d)(3); 187.44(d)(3); 187.55(d)(3); 187.65(d)(3); 191.31(c)(1)(vi); 191.44(b)(1)(viii))

§ 100a.112 Describe the key personnel.

An application must include the name and qualifications of each key person in the proposed project. This information must include—

(a) The name and qualifications of the project director (if any);

(b) The name and qualifications of each of any other key personnel in the project; and

(c) The time that each person referred to in paragraphs (a) and (b) of this section plans to commit to the proposed project.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.113 Describe the resources.

An application must describe the resources the applicant plans to devote to the project, including—

(a) Facilities; and

(b) Equipment and supplies.

§ 100a.114 Describe the evaluation plan.

An application must include a description of the plan to evaluate the project under § 100a.590 and the implementing regulations of the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.115 Demonstrate capability; include evaluation of completed project.

(a) An application must include information that demonstrates the applicant's capability to—

(1) Conduct the project; and

(2) Meet the needs of the persons (if any) that the applicant plans to serve with the project.

(b) If an applicant wants a grant for a new project that furthers the objectives of a project already completed by the applicant, the applicant shall include an evaluation of the completed project.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.604(e); 155.7(a)(3)(ii); 159.6(a)(3)(ii); 160c.14(b)(2)(i)+(3); 160c.15(b)(2)(i)+(3); 160e.8(c)(2)(i); 160f.8(c)(2)(v)+(5); 185.73(e); 185.73(e)(4); 185.74(f) (2nd sent.); 197.9(b)(1)-(3))

§ 100a.116 Changes to application; number of copies.

(a) An applicant may make changes to its application on or before the deadline date for submitting applications under the program.

(b) Each applicant shall submit an original and two copies of its application to the Education Division, including any information that the applicant supplies voluntarily.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 123.14(a); 153.5(a)(5); 160f.8(b)(3); 173 App A§ 4.1; 183.41(b))

§ 100a.117 Information needed if applicant proposes a multi-year project.

An applicant that proposes a multi-year project shall include in its application—

(a) Information that shows why a multi-year project is needed;

(b) A budget for the first budget period of the project; and

(c) An estimate of the Federal funds needed for each budget period of the project after the first budget period.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.209; 123.04(c); 136.10(b)&(c); 160d.9(a); 160e.5(b)&(c); 160f.5(a)&(c); 162.17(b); 162.44(b)&(c); 162.55(b)&(c); 162.63(b)&(c); 197.7(c); 198.8(c))

§ 100a.118 How to apply for funds to continue a project.

(a) An applicant shall comply with paragraph (b) of this section if—

(1) The applicant wants funds to continue a project already approved on a multi-year basis;

(2) The applicant is about to complete one or more of the budget periods; and

(3) The budget period for which the applicant wants a continuation award is within the approved project period.

(b) An applicant for a continuation award shall—

(1) Comply with the deadline date for continuation applications (see § 100a.102(c)); and

(2) Submit the following:

(i) A revised face page (standard form 424) and revisions to any other affected pages.

(ii) A budget that covers the next budget period, and an estimate of the amount of funds that will remain unobligated at the end of the current budget period.

(iii) An estimate of the Federal funds needed for each budget period that comes after the next budget period.

(c) The criteria the appropriate official of the Education Division uses to decide whether to make a continuation grant are in § 100a.253.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 123.04(e); 123.14(a) (Rejected); 127.5(c); 173 App A § 4.1 (Rejected); 183.41(b))

Separate Applications—Alternate Programs

§ 100a.125 Submit a separate application to each program.

An applicant shall submit a separate application to each program under which it wants a grant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.126 How to seek funding from more than one program.

If an applicant wants to submit its application under more than one program, the applicant shall list in each application the other programs under which the applicant is applying.

(20 U.S.C. 1221e-3(a)(1))

More Than One Eligible Party Can Join in an Application

§ 100a.127 Eligible parties may apply as a group.

(a) Eligible parties may apply as a group for a grant.

(b) Depending on the program under which a group of eligible parties seeks assistance, the name used to refer to the group may vary. The list that follows contains some of the names used to identify a group of eligible parties:

(1) Combination of institutions of higher education;

(2) Consortium;

(3) Joint applicants;

(4) Cooperative arrangements.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.19(a); 100a.19(b); 121c.10(a); 158.43(1st sent. and 2nd sent., 3rd clause); 160a.15(b); 171 Guidelines § 2.2(b) 1st sent.; 172.32; 172.106)

§ 100a.128 Who acts as applicant; the group agreement.

(a) If a group of eligible parties applies for a grant, the members of the group shall either—

(1) Designate one member of the group to apply for the grant; or

(2) Establish a separate, eligible legal entity to apply for the grant.

(b) The members of the group shall enter into an agreement that—

(1) Details the activities that each member of the group plans to perform; and

(2) Binds each member of the group to every statement and assurance made by the applicant in the application.

(c) The applicant shall submit the agreement with its application.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 119.10(b); 121c.10(b); 123.11(b); 123.21(c); 123.31(b); 146.15(b); 146.25(b); 154.3(a)(2); 154.5(b); 155.6(b); 157.4(b); 159.5(b); 160a.15(d); 169.22(a)(2); 171 Guidelines § 2.2(b)(2nd sent.))

§ 100a.129 Legal responsibilities of each member of the group.

(a) If the appropriate official of the Education Division makes a grant to a group of eligible applicants, the applicant for the group is the grantee and is legally responsible for—

(1) The use of all grant funds; and

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements.

(b) Each member of the group is legally responsible to—

(1) Carry out the activities it agreeds to perform; and

(2) Use the funds that it receives under the agreement in accordance with Federal requirements that apply to the grant.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 119.10(b); 121c.10(b); 123.21(c); 123.31(b); 146.15(b); 146.25(b); 154.3(a)(2); 154.5(b); 155.6(b); 157.4(b); 159.5(b); 160a.15(d); 169.22(a)(2); 171 Guidelines § 2.2(b) (2nd sent.); 172.42)

Preapplications

§ 100a.130 Consideration of a preapplication.

The appropriate official of the Education Division considers a preapplication if—

(a) The applicant complies with the procedural rules that govern submission of the preapplication; and

(b)(1) The preapplication is submitted in response to an application notice that invites or requires preapplications; or

(2) The preapplication is submitted by a government. (See Subpart N of Part 74 of this title.)

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.31; 160a.23(a) (1st sent.); 160b.5(a); 160f.7(a)(1) (1st sent.))

§ 100a.131 The effect of not submitting a preapplication.

(a) If the appropriate official of the Education Division invites but does not require preapplications under a program, an applicant may apply for a grant under the program even if the applicant did not preapply.

(b) If the appropriate official of the Education Division requires preapplications under a program and an applicant does not preapply, the applicant may not apply for a grant under the program.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.132 Result of a preapplication.

(a) If an applicant submits a preapplication under a program, the appropriate official of the Education Division—

(1) Informs the applicant that it is eligible and encourages it to apply for grant under the program;

(2) Informs the applicant that it is eligible but does not encourage it to apply for a grant under the program; or

(3) Informs the applicant that it is ineligible for assistance under the program.

(b) An applicant may apply under a program even if the official does not encourage it to apply.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 114 App. A § 2.6(b)+(c); 124.3 (last sent.); 127.5(a) (2nd sent.); 160b.5(b)(4); 160c.12(b)(2); 160f.7(a)(3) (2nd sent.))

§ 100a.133 The basis for the preapplication decision.

To decide whether to encourage a preapplicant to apply, the appropriate official of the Education Division uses the same criteria that the official uses to select an applicant for a grant. (See §§ 100a.200–100a.206 for a description of how selection criteria work.)

(20 U.S.C. 1221e–3(a)(1))

(Sources: 124.3 (last sent.); 160b.5(b)(3); 160c.12(b)(3); 160f.7(d) (separate criteria approach rejected))

Open Meeting Certification under Certain ESEA Programs

§ 100a.138 Open meetings: Purpose of §§ 100a.139–100a.141.

(a) Sections 100a.139–100a.141 implement Section 1006 of the Elementary and Secondary Education Act of 1965, as amended (ESEA).

(b) Section 1006 requires a local educational agency that submits an application under certain ESEA programs to certify that it has held an open meeting regarding the contents of the application.

(c) Section 1006 aplies to each ESEA program listed in § 100a.1.

(20 U.S.C. 887e)

(Source: 100d.1)

§ 100a.139 The local educational agency shall hold an open meeting.

(a) If a local educational agency applies for a grant under an ESEA program listed in § 100a.1, the agency shall hold at least one meeting.

(b) The agency shall make the meeting open to the public.

(c) The agency shall inform the people who attend the meeting of—

(1) The ESEA program under which the agency wants a grant;

(2) The kinds of activities that are authorized under the statute and program regulations; and

(3) The activities for which the agency wants the grant.

(d) The agency shall give each person who attends the meeting an opportunity to comment or make recommendations on the proposed activities.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.140 Give notice of the meeting; make information available.

(a) If a local educational agency must hold an open meeting under § 100a.139, the agency shall give notice of the time, place, and purpose of the meeting.

(b) The agency shall give notice that—

(1) Is likely to reach the general public in the area served by the project; and

(2) Gives the public time to prepare for the meeting.

(c) The agency shall take steps to ensure that persons who are members of groups that have been traditionally underrepresented receive the type of notice required by paragraph (b)(1) of this section and that these persons are encouraged to participate in the meeting. These persons include—

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(d) The agency shall make the following material availble for inspection by the public at least 24 hours before the open meeting begins.

(1) An outline of the information described in § 100a.139(c).

(2) A draft copy of the agency's application if the application has been prepared.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100d.2(b))

§ 100a.141 Certify that open meeting was held.

If a local educational agency must hold an open meeting under § 100a.139, the agency shall certify in its application that—

(a) The agency held at least one open meeting under § 100.139;

(b) The agency gave notice of each open meeting in accordance with § 100a.140 (a) and (b);

(c) The agency made information available in accordance with § 100a.140(c);

(d) The agency gave meaningful consideration to any comments or recommendations that it received at each open meeting; and

(e) The agency has included the results of the that consideration in its application.

(20 U.S.C. 887e)

(Source: 100d.3)

State Review Procedures

§ 100a.150 Review procedure if State must approve applications—purpose of §§ 100a.151–100a.153.

If the authorizing statute for a program requires the State to approve each application, the State and the applicant shall use the procedures in §§ 100a.151–100a.153

(20 U.S.C. 1221e–3(a)(1))

§ 100a.151 When an applicant must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 100a.150 shall submit a copy of its application to the State at least 15 days before the deadline date for submitting the application to the Education Division.

(b) The applicant shall attach to its application a copy of its letter that requests the State to approve the application.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 162.13(b); 162.39(a)(2))

§ 100a.152 The State reviews each application.

Each State that receives an application under § 100a.151 shall review the application to decide if the State wishes to approve or disapprove the application.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.153 Deadlines for State approval.

(a) The appropriate official of the Education Division may publish in the Federal Register a notice that establishes a deadline for receipt of State approvals of applications under a program covered by § 100a.150.

(b) If a State approves an application, the appropriate State official shall:

(1) Sign a statement that approves the application; and

(2) Submit the application and the statement by the deadline date for State approvals. The procedures in § 100a.102(b) and (d) (how to meet a deadline) apply to this submission.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 162.13(c) (1st sent.)+(d)(1); 162.13(e) (Rejected; 162.39(a)(3) (1st sent.)+(a)(4))

§ 100a.154 Effect of State approval; failure to approve.

(a) If a State approves an application on or before the deadline for State approval, the appropriate official of the Education Division may select that project for a grant.

(b) If a State does not approve an application on or before the deadline for State approval, the appropriate official of the Education Division may not select that project for a grant.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 124.4; 162.13(c) (2nd sent.); 162.39(a)(3) (2nd sent.))

§ 100a.155 Review procedure if State may comment on applications—purpose of §§ 100a.156–100a.158.

If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each application, the State and the applicant shall use the procedures in §§ 100a.156–100a.158.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.156 When an applicant must submit its application to the State; proof of submission.

(a) Each applicant under a program covered by § 100a.155 shall submit a copy of its application to the State on or before the deadline date for submitting its application to the Education Division.

(b) The applicant shall attach to its application a copy of its letter that requests the State to comment on the application.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 105.207; 105.604(a) (1st sent.); 123.24(b)(9); 129.4 (b)(2); 160a.28(b); 160b.23(c)(1) (1st sent.); 160c.13(b); 160d.10 (2nd+3rd sents.); 160e.7(b); 160f.8(e)(2); 160g.15(b); 179.23(b); 182a.13(d) (1st sent.); 181.31(c); 185.13(j); 194.5(b))

§ 100a.157 The State reviews each application.

A State that receives an application under § 100a.156 may review and comment on the application.

(20 U.S.C. 1221e–3(a)(1))

((Sources: 129.4(b)(3); 170.73 (3rd sent.))

§ 100a.158 Deadlines for State comments.

(a) The appropriate official of the Education Division may publish in the Federal Register a notice that establishes a deadline for receipt of State comments on applications under a program covered under § 100a.155.

(b) The State shall make its comments in a written statement signed by an appropriate State official.

(c) The appropriate State official shall submit comments by the deadline date for State comments. The procedures in § 100a.102(b) and (d) (how to meet a deadline) apply to this submission.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 105.604(a) (2nd sent.); 129.4(c); 160a.28(c) (1st sent.); 160b.23(c)(1) (2nd sent.); 160c.13(c) (1st sent.); 160e.7(c) (1st sent); 160f.8(e)(3) (1st sent.); 160g.15(c) (1st sent.); 170.73(4th–6th sents.); 182a.13(d) (2d sent.); 191.32(d) (1st sent.))

§ 100a.159 Effect of State comments or failure to comment.

(a) The appropriate official of the Education Division considers those comments of the State that relate to—

(1) Any selection criteria that apply under the program; or

(2) Any other matter that affects the selection of projects for funding under the program.

(b) If the State fails to comment on an application on or before the deadline date for the appropriate program, the State waives its right to comment.

(c) If the applicant does not give the State its opportunity to comment, the appropriate official of the Education Division may not select that project for a grant.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 129.4(a) (2nd sent.); 160a.13(b)(5); 160a.28(a)+(c) (2d sent.); 160c.13(c) (2d sent.); 160e.7(c) (2d sent.); 160f.8(e)(1)+(3) (2d sent.); 160g.15(a)+(c) (2d sent.); 185.13(j) (2nd sent.); 185.53(c)(2) (3rd sent.); 185.63(b)(3)(iii); 191.32(d) (2d sent.))

§ 100a.160 Procedure for State approval of or comment on preapplications.

(a) If the authorizing statute for a program requires that a State approve each preapplication, the State and the applicant shall use the approval procedures in §§ 100a.151–100a.153 for the preapplication.

(b) If the authorizing statute or implementing regulations for a program require that a State be given an opportunity to comment on each preapplication, the State and the applicant shall use the comment procedures in §§ 100a.156–100a.158 for the preapplication.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 124.3; 160c.12(b)(4); 160f.7(b))

OMB Circular A–95 Clearinghouse Procedures

§ 100a.170 Clearinghouse procedures—Purpose of §§ 100a.170–100a.173.

(a) Sections 100a.170 through 100a.173 implement Part I of OMB Circular A–95.

(b) Part I of OMB Circular A–95 requires an applicant under certain Federal programs to notify the appropriate State and areawide clearinghouses of the applicant's intent to apply. The clearinghouses may comment on the application.

(c) The following programs listed in § 100a.1 are covered by Part I of OMB Circular A–95:

Name of program	Authorizing statute	Implementing regulations	CFDA number
Environmental education.	Title III–H of the Elementary and Secondary Education Act (20 U.S.C. 3011.	None	None
Follow through program.	Sections 551–554 of the Community Services Act of 1974 (42 U.S.C. 2292g).	Part 158	13.433
Model programs under the research in the education of the handicapped program.	Section 641 of the Education of the Handicapped Act (20 U.S.C. 1441).	Part 121h	13.443
Community service and continuing education programs—special programs and projects.	Section 106 of Title I the Higher Education Act of 1965 (20 U.S.C. 1005a).	Subpart 6 of part 173.	13.557

(20 U.S.C. 1221e–3(a)(1))

(Source: Catalog of Federal Domestic Assistance)

§ 100a.171 Notify the appropriate clearinghouses.

(a) An applicant under a program listed in §§ 100.270 shall include in its notice to the clearinghouses a summary of the project. The summary must include—

(1) The identity of the applicant;

(2) The geographic location of the proposed project (include a map, if appropriate);

(3) A brief description of the proposed project that helps the clearinghouses identify any State and local agencies that have plans or projects that may be affected by the project. The description must include—

(i) The type of project;

(ii) The purpose of the project;

(iii) The general size of the project;

(iv) The estimated cost of the project;

(v) The beneficiaries of the project; and

(vi) Any other information that will help the clearinghouse identify affected agencies;

(4) A statement that shows whether the applicant must prepare an Environmental Impact Statement;

(5) The name of the program and the Catalog of Federal Domestic Assistance number for the program; and

(6) The date the applicant expects to submit its application to the Education Division.

(b) If an applicant uses the preapplication procedure in this subpart, the applicant shall submit a copy of the preapplication to the appropriate clearinghouses on the same date it submits the preapplication to the Education Division.

(20 U.S.C. 1221e-3(a)(1))

(Source: OMB Circular A-95)

§ 100a.172 Applicant shall show compliance with A-95 procedures.

An applicant under a program listed in §§ 100a.170 shall include the following in its application:

(a) The comments of each clearinghouse that commented on the application; or

(b) A statement that the applicant used the procedures of OMB Circular A-95 but did not receive any clearinghouse comments.

(20 U.S.C. 1221e-3(a)(1))

(Source: OMB Circular A-95)

§ 100a.173 The effect of not complying with Part I of OMB Circular A-95.

(a) OMB Circular A-95 gives a clearinghouse 30 days to—

(1) Review the applicant's notice;

(2) Notify affected agencies and governments; and

(3) Consult with the applicant about the application.

(b) The Circular also permits a clearinghouse to take an additional 30 days to review the application.

(c) The appropriate official of the Education Division may make a grant under a program listed in § 100a.170 only if the applicant has complied with Part I of OMB Circular A-95.

(20 U.S.C. 1221e-3(a)(1))

(Source: OMB Circular A-95)

Subpart D—How Grants Are Made

Selection of New Projects

§ 100a.200 How new projects are selected.

(a) The Education Division administers two different kinds of direct grant programs. A direct grant program is either a discretionary grant or a formula grant program.

(b) *Discretionary grant programs.* (1) A discretionary grant program is one that permits the appropriate official of the Education Division to select new projects on the basis of the quality of competing applications. To receive a grant under this kind of program, an applicant usually must compete with other applicants (but see § 100a.219).

(2) The appropriate official of the Education Division uses the selection criteria in EDGAR and the specific selection criteria for a program to evaluate each application submitted for a new project under a discretionary grant program.

(3) Sections 100a.202–100a.206 contain the EDGAR selection criteria.

(4) The specific selection criteria for a program are in the implementing regulations for that program. However, if a discretionary grant program does not have specific selection criteria, the program uses the EDGAR criteria alone to evaluate applications. If used alone, the EDGAR criteria are not weighted.

(5) If a discretionary grant program has criteria that are inconsistent with one or more of the EDGAR selection criteria, the implementing regulations for that program identify the EDGAR selection criteria that do not apply.

(c) *Formula grant programs.* (1) A formula grant program is one that entitles certain applicants to receive grants if they meet the requirements of the program. Applicants do not compete with each other for the funds, and each grant is either for a set amount or for an amount determined under a formula.

(2) The appropriate official of the Education Division uses the program statute and regulations to select new projects under a formula grant program. The EDGAR selection criteria in §§ 100a.202–100a.206 are not used to evaluate applications.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.201 How to use the selection criteria.

(a) If the selection criteria for a program are not weighted, the appropriate official of the Education Division evaluates each criterion equally.

(b) If the selection criteria for a program are weighted—

(1) The appropriate official of the Education Division assigns in the program regulations a total number of points that an applicant may receive under all of the criteria;

(2) The specific program selection criteria use 70 percent of the total points assigned to the program; and

(3) The EDGAR selection criteria use the remaining 30 percent of the total points assigned to the program.

(c) The last paragraph under each EDGAR selection criterion gives the weight assigned to that criterion under EDGAR. This weight is expressed as a percentage of the total points assigned to the program. To find the number of points assigned to an EDGAR selection criterion under a particular program, use the following steps:

(1) Find the percentage given in the last paragraph of the EDGAR selection criterion in which you are interested.

(2) Find the total number of points assigned to the program in which you are interested.

(3) Multiply the percentage you found under step (1) by the number you found under step (2).

Example: You are interested in finding out how many points the EDGAR selection criterion "Evaluation plan" gets under the bilingual vocational training program. The EDGAR criterion "Evaluation plan" is in § 100.205. Paragraph (c) of that section indicates that the criterion gets 5% of the total number of points used by a program. The bilingual vocational training program is in Subpart 5 of Part 105 of this title. Section 105.606 gives the selection criteria for this program. Section 105.606 indicates that the program has a maximum of 100 points for selection criteria. Multiply 100 by 5% (.05)-the answer is 5 points. This is the number of points that §§ 100a.205 assigns to "Evaluation plan" under the bilingual vocational training program.

(d) If the selection criteria for a program are weighted, the program regulations may increase, but may not decrease, the weight of an EDGAR criterion. This is done by adding points to the EDGAR selection criterion. The appropriate official of the Education Division uses part of the 70% weight devoted to specific program selection criteria to add weight to an EDGAR criterion.

(20 U.S.C. 1221e-3(a)(1))

§§ 100a.202 Selection criterion—plan of operation.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the plan of operation for the project.

(b) The official looks for information that shows:

(1) High quality in the design of the project;

(2) An effective plan of management that insures proper and efficient administration of the project;

(3) A clear description of how the objectives of the project relate to the purpose of the program; and

(4) The way the applicant plans to use its resources and personnel to achieve each objective.

(c) Under a program using weighted selection criteria, this criterion is assigned 10 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110(c)+(e); 105.211(c)+(d); 105.606(b)(c); 105.616(b)+(c); 105.626(c)+(d); 123.15(a)(2); 123.25(b); 123.26(b); 123.27(b); 123.349(a)(2); 132 App A(a)(3)+(5); 132 App A(b)(1)+(3); 133 App A(a)(3)+(4); 136.06(b)(1)+(3); 153.12(b)(6); 158.52(b)+(c); 160a.25(a)(9),(12)+(14); 160b.6(b)(2); 160b.46(a); 160c.17(b); 160c.18(b); 160c.35(a)(3); 160d.7(c); 160e.9(a); (3); 160f.10(a)(3)(i)+(iii); 162.14(a)(8); 162.14(c)(8); 162.41(a); 162.53(b)(1), (2)+(3); 172.151(a)+(b); 180.44; 185.14(b)(2); 185.24; 185.34(b)(1), (2)+(3); 185.35(b)(1); 185.54(b)(2); 185.64(b)(2); 184.91-2(b)(2); 185.92-3(a)(2); 185.94-3; 185.106(6); 185.107(b)+(d)(3); 187.12(c); 187.22(c); 187.32(c); 187.42(c); 187.53(c); 187.63(c); 191.33(b); 191.45(b)(2)+(3); 194.8(c); 198.7(f)(1))

§§ 100a.203 Selection criterion—quality of key personnel.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the key personnel the applicant plans to use on the project.

(b) The official looks for information that shows—

(1) The qualifications of the project director (if any);

(2) The qualifications of each of the other key personnel used in the project;

(3) The qualifications of any of the following persons who are hired for the project—

(i) Any member of the immediate family of a person on the project staff;

(ii) Any member of the governing body of the grantee; or

(iii) Any member of the immediate family of a person on that governing body.

(4) The time that each person referred to in paragraphs (b)(1)—(3) of this section plans to commit to the project; and

(5) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(c) To determine the qualifications of a person, the official considers evidence of past experience in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Under a program using weighted selection criteria, this criterion is assigned 7 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110(h); 105.211(g); 105.606(f); 105.616(f); 105.626(h); 123.15(a)(2); 123.25(b); 123.26(b); 123.27(b); 123.34(a)(3); 123.54(c); 132 App A(a) (6)+(7); 132 App A(b)(5); 132 App A(c)(6); 133 App A(a)(5); 136.06(b)(5); 153.12(b)(8); 154.8(c)(4); 155.8(c)(3); 155.8(h)(3); 157.6(c)(3); 157.6(f)(3); 158.42(b)(2); 158.52(g); 159.7(c)(3); 159.7(f)(3); 160b.6(b)(4); 160b.32(c); 160b.46(a)(9); 160c.17(b); 160c.18(b); 160c.35(a)(2); 160d.7(g); 160d.15(f); 160e.9(a)(1); 160f.10(a)(1) (iv)+(v); 162.14(a)(3); 162.14(c)(3); 162.41(d); 162.62(a)(2); 179.26(b)(6); 180.14(c); 180.24(c); 180.34(c); 162.14(a)(2); 182a.25(a)(2); 185.149b](3); 185.24; 185.34(b)(2); 185.35(b)(2); 185.54(b); 185.64(b); 185.91-2(b)(3) (ii); 185.92-3(a)(3)(ii); 185.94-3; 185.106(c)(2); 185.107(c)(2); 187.12(f); 187.22(e); 187.32(e); 187.42(f); 187.53(f); 187.63(f); 188 15(b)(6); 191.33(d); 191.45(b)(5); 193.14(d); 193.24(b)(3); 194.8(c); (2); 198.7(b))

§§ 100a.204 Selection criterion—budget and cost effectiveness.

(a) The appropriate official of the Education Division reviews each application for information that shows that the project has an adequate budget and is cost effective.

(b) The official looks for information that shows:

(1) The budget for the project is adequate to support the project activities; and

(2) Costs are reasonable in relation to the objectives of the project.

(c) Under a program using weighted selection criteria, this criterion is assigned 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110(i); 105.211(h); 105.505(b)(8)+(9); 105.606(g); 105.616(g); 105.626(i); 123.15(a)(3); 123.25(c); 123.26(c); 123.27(c); 123.34(a)(10); 123.54(f); 132 App A(a)[9]; 132 App A(c)(6); 133 App A(a)(1); 136.06(b)(4); (146.14(a)(4)) (146.24(a) (5)); 153.12(b)(7); 154.6(c)(10); 155.8(c)(4); 157.6(c)(4); 159.7(c)(4); 160b.24(c)(1) (iii); 160c.35(a)(3)(iv); 160d.7(h); 160d.15(g); 160e.9(a)(3)(iv); 160f.10(a)(3)(v); 162.14(a)(5); 162.41(e); 162.62(a)(4); 179.26(b)(3); 180.14(d); 180.24(e); 180.34; 180.44; 185.14(b)(4)(ii)+(iv); 185.24; 185.34(b)(3); 185.35(b)(3); 185.54(b)(4); 185.64(b)(4); 185.91-2(b)(4); 185.92-3(a)(4); 185.94-3; 185.106(d)(1)+(2); 185.107(d)(1)+(2); 187.12(b)(8); 187.22(b)(5); 187.32(b)(5); 187.42(b)(2); 187.53(b)(6); 187.63(b)(6); 188.15(f)(3); 188.16; 191.33(e); 191.45(b)(6); 193.14(g); 193.24(b)(8); 194.8(c)(5); 198.7(d))

§ 100a.205 Selection criterion—evaluation plan.

(a) The appropriate official of the Education Division reviews each application for information that shows the quality of the evaluation plan for the project.

(b) The official looks for information that shows an objective, quantifiable method of evaluation under § 100a.590.

(c) Under a program using weighted selection criteria, this criterion, is assigned 5 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.10(f); 105.211(f); 105.606(e); 105.616(e); 105.626(f); 121F.20(b), (e), (f), (h), (i)(1)+(j)(2)+(3); 123.15(a)(4); 123.25(d); 123.26(d); 123.27(d); 123.34(a)(8); 132 App A(a)(12)+(13); 132 App A(b)(2)+(12); 132 App A(c)(6); 133 App A(a)(6); 146.24(a)(2); 155.8(c)(2); 155.8(h)(2); 157.6(c)(2); 157.6(f)(2); 158.52(f); 159.7(c)(2); 159.7(f)(2); 160a.25(a)(11); 160b.6(b)(5); 160d.7(e); 160e.9(a)(3); 160f.10(a)(2)(iii); 160f.10(a)(3)(ii); 162.14(a)(8); 162.14(b)(3); 162.14(c)(3); 162.53(b)(4); 179.26(b)(2); 180.14(e); 180.24(d); 180.34; 180.44; 185.14(b)(5); 185.24; 185.34(b)(4); 185.35(b)(4); 185.54(b)(5); 185.64(b)(5); 185.91-2(b)(5); 185.92-3(a)(5); 185.94-3; 185.106(e); 185.107(e); 187.12(d); 187.22(d); 187.32(d); 187.42(d); 185.53(d); 187.63(d); 188.15(d); 188.16; 191.33(c); 191.45(b)(4); 193.14(b); 193.24(b)(2); 194.8(c)(7); 198.7(f)(2))

§ 100a.206 Selection criterion—adequacy of resources.

(a) The appropriate official of the Education Division reviews each application for information that shows that the applicant plans to devote adequate resources to the project, including resources to meet the needs of persons to be served by the project who are members of groups that have been traditionally underrepresented, such as

(1) Members of racial or ethnic minority groups;

(2) Women;

(3) Handicapped persons; and

(4) The elderly.

(b) The official looks for information that shows:

(1) The facilities that the applicant plans to use are adequate; and

(2) The equipment and supplies that the applicant plans to use are adequate.

(c) Under a program using weighted selection criteria, this criterion is assigned 3 percent of the total number of points assigned to the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.110(j)(2); 105.211(i)(2); 105.606(h)(2); 105.616(h)(2); 105.626(j)(2); 121f.20(c); 132 App A(a)(8); 132 App A(b)(6); 132 App A(c)(6); 133 App A(a)(5); 153.12(b)(8); 155.8(c)(3); 155.8(h)(3); 157.6(c)(3); 157.6(f); 159.7(c)(3); 159.7(f); 160b.6(b)(4); 160e.9(a)(1); 160f.10(a)(1)(vi); 162.14(a)(4); 162.62(a)(3); 185.91-2(b)(3)(iii); 185.92-2(b)(3)(iii); 185.92-3(a)(3)(iii); 185.106(d)(4); 185.107(d)(4); 187.12(g)(1); 187.22(f)(1); 187.32(f)(1); 187.42(e)(2); 188.15(b)(7); 193.14(e); 193.24(b)(4); 194.8(c)(8); 198.7(c))

Selection Procedures

§ 100a.215 How the Education Division selects a new project: Purpose of §§ 100a.216-100a.221.

Sections 100a.216—100a.221 describe the process the appropriate official of the Education Division uses to select new projects. All of these sections apply to a discretionary grant program. However, only § 100a.216 applies to a formula grant program (see § 100a.200 for a description of the difference between a discretionary grant program and a formula grant program).

(20 U.S.C. 1221e-3(a)(1))

§ 100a.216 Returning an application to the applicant.

(a) The appropriate official of the Education Division returns an application to an applicant if—

(1) The applicant is not eligible;

(2) The application does not contain the information required under the program; or

(3) The proposed project cannot be funded under the authorized statute or implementing regulations for the program.

(b) If the appropriate official of the Education Division returns an application under this section, the official includes a statement that gives the reason that the application was returned.

(20 U.S.C. 1221e-3(a)(1))

(Sources: OE III-2.7.IC; 153.8(a)(1st sent.); 156.8(a)(1st sent.); 178a.7; 183.30(2nd sent.); 183.31)

§ 100a.217 How the Education Division reviews an application.

(a) The appropriate official of the Education Division uses a group of experts to review an application unless the circumstances under § 100a.219 exist.

(b)(1) The appropriate official of the Education Division may use one or more groups of experts to review the applications submitted under each program.

(2) Each group of experts consists of 3 or more persons who are well qualified to review the applications.

(3) In each group of experts, there is at least one person who is not an employee of the Federal Government.

(4) A person may not serve with a group of experts if—

(i) The person is an employee of HEW who is involved in the administration of the program for which the group is reviewing applications; or

(ii) Ther person was involved within the past year in the administration of the program for which the group is reviewing applications.

(5) If the appropriate official of the Education Division signs a waiver for a person covered by paragraph (b)(4) of this section, the person may serve on a group of experts.

(c) A group of experts uses the selection criteria that apply to the program to rate the quality of each application.

(d) after the groups of experts have completed their review and have rated the applications, the appropriate official of the Education Division prepares a rank ordering of the applications. The rank ordering of applications is based on the ratings of the applications by the groups of experts.

(e)(1) If the official has information that affects the rank ordering of applications, he or she attaches this information to the rank ordering.

(2) The official only attaches information to a rank ordering if the information is—

(i) Relevant to a matter that affects selection of projects for funding under the program; and

(ii) Gained through appropriate procedures such as site visits or recommendations of advisory groups.

(20 U.S.C. 1221e-3(a)(1))

(Sources: OE III-2.7.2A1; III-2.7.2D; III-2.8)

§ 100a.218 How the Education Division selects new projects.

(a) Under each program, the appropriate official of the Education Division selects the projects of highest quality based on the selection criteria that apply to the program.

(b) In deciding which projects to select, the official considers the following:

(1) The information in each application;

(2) The rank ordering of the applications; and

(3) The information attached to the rank ordering of applications.

(c) In each competition under a program the official selects projects until the funds available for new projects are used up.

(d) If a project is not selected under the procedures of this section, the appropriate official of the Education Division—

(1) Returns the application to the applicant; and

(2) Informs the applicant why the application was not selected.

(20 U.S.C. 1221e-3(a)(1))

(Source: OE III-2.8.1)

§ 100a.219 A project can be selected for funding without competition.

The appropriate official of the Education Division may select a project for funding without competition with other projects if—

(a) The objectives of the project cannot be achieved unless the official makes the grant before the date grants can be made under the selection procedure in §§ 100a.217 and 100a.218; or

(b)(1) The project was reviewed by a group of experts under the preceding competition of the program;

(2) The group of experts rated the project high enough to deserve selection under § 100a.218; and

(3) The proposed project was not selected for a grant because the application was mishandled by the Education Division.

(20 U.S.C. 1221e-3(a)(1))

(Sources: OE III-2.13.1A; III-2.13.2A intro.)

§ 100a.220 Procedures the Education Division uses under § 100a.219(a).

If the special circumstances of § 100a.219(a) appear to exist for an application, the appropriate official of the Education Division uses the following procedures:

(a) The official assembles a board to review the application.

(b) The board consists of—

(1) A program officer of the program under which the applicant wants a grant;

(2) An HEW grants officer; and

(3) An HEW employee who is not a program officer of the program but who is well qualified to review the application.

(c) The board reviews the application to decide if—

(1) The special circumstances under § 100a.219(a) are satisfied;

(2) The proposed project rates high enough, based on the selection criteria that apply to the program, to deserve selection; and

(3) If the proposed project is selected, it will not have an adverse impact on the budget of the program.

(d) The board forwards the results of its review to the appropriate official of the Education Division.

(e) The appropriate official of the Education Division may select the proposed project if each of the conditions in paragraph (c) of this section are satisfied.

(f) If the official does not select the project, the applicant may submit its application under the procedures in Subpart C.

(20 U.S.C. 1221e-3(a)(1))

(Source: OE III-2.13.1B-f)

§ 100a.221 Procedures the Education Division Uses Under § 100a.219(b).

If the special circumstances of § 100a.219(b) appear to exist for an application, the appropriate official of the Education Division may select the project if—

(a) The official has documentary evidence that the special circumstances of § 100a.219(b) exist;

(b) The official has a statement that explains the circumstances of the mishandling; and

(c) The appropriate program officer recommends that the project be selected.

(20 US.C. 1221e-3(a)(1))

(Source: OE III-213.2A1-4, B-D)

Procedures To Make a Grant

§ 100a.230 How the Education Division makes a grant: purpose of §§ 100a.231-100.236.

If the appropriate official of the Education Division selects a project under §§ 100a.218, 100a.220, or 100a.221, the official follows the procedures in §§ 100a.231-100a.236 to set the amount and determine the conditions of a grant.
(20 U.S.C. 1221e-3(a)(1))

§ 100a.231 Additional budget information.

After selecting a project for funding, the appropriate official of the Education Division may ask the applicant to submit additional budget information.

(20 U.S.C. 1221e-3(a)(1))

(Source: 115.13)

§ 100a.232 The cost analysis; basis for grant amount.

(a) Before the appropriate official of the Education Division sets the amount of a grant, the official does a cost analysis of the project. The official—

(1) Verifies the cost data in the detailed budget for the project.

(2) Evaluates specific elements of costs; and

(3) Examines costs to determine if they are necessary, reasonable, and allowable under applicable statutes and regulations.

(b) The official uses the cost analysis as a basis for determining the amount of the grant to the applicant. The cost analysis shows whether the applicant can achieve the objectives of the project with reasonable efficiency and economy under the budget in the application.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.233 Setting the amount of the grant.

The appropriate official of the Education Division may fund up to 100 percent of the allowable costs in the budget. In deciding what percent of the allowable costs to fund, the official considers—

(a) Matching or cost sharing requirements that apply; and

(b) Any other financial resources available to the applicant.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.50; 158.65a(c))

§ 100a.234 The conditions of the grant.

The appropriate official of the Education Division makes a grant to an applicant only after determining—

(a) The approved costs; and

(b) Any special conditions.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.235 The notification of grant award.

(a) To make a grant, the appropriate official issues a notification of grant award and sends it to the grantee.

(b) The notification of grant award sets the amount of the grant and gives other information about the grant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.236 Effect of the grant.

The grant obligates both the Federal Government and the grantee to the requirements that apply to the grant.

(20 U.S.C. 1221e-3(a)(1))

Approval of Multi-Year Projects

§ 100a.250 Project period can be longer than one year.

(a) The appropriate official of the Education Division generally approves a project period of not more than 12 months.

(b) If an applicant cannot achieve the objectives of the project in 12 months, the official may approve a project period of up to 60 months.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.209; 113.8(a); 121.5(b); 123.04(b); 136.10(a)+(c); 146.17(a); 146.27(a); 160a.17; 160c.5(a); 160d.9(a)+(b); 160d.17(a)+(b); 160e.5(b)+(c); 160f.5(a)+(c); 160g.4; 162.17(c); 162.44(c); 162.55(c);162.63(c); 164.06 (1st sent.); 172.30; 179.27(a)+(b); 180.20(c); 180.39(b); 180.57(b); 180.65(b); 182.34(b) (3rd sent.)+(c)(1); 191.34; 191.46; 197.7(a)+(b); 198.8(a); 105.107; 105.302(b); 105.433; 113.2(b) (1st + 2nd sents.); 121.5(a) (1st sent.); 127.5(d); 132.13; 162.17(a); 162.44(a); 162.55(a); 162.63(a); 169.27; 182.34(a); 187.6(a)+(b); 187.78; 188.11(a)+(b); 187.7(a) (2nd clause))

§ 100a.251 The budget period.

(a) The appropriate official of the Education Division usually approves a budget period of not more than 12 months, even if the project has a multi-year project period.

(b) If the official approves a multi-year project period, the official—

(1) Makes a grant to the project for the initial budget period; and

(2) Indicates his or her intention to make continuation awards to fund the remainder of the project period.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 113.8(a); 121.5(b); 136.10(c) (2nd sent., 2nd clause); 146.17(b); 146.27(b); 160a.17; 160c.5(a); 160d.9(a)+(b); 169d.17(b); 160e.5(c); 160f.5(c) (2nd clause); 160g.4; 162.44(c); 162.55(c); 162.63(c); 172.30; 182.34(b) (93rd sent.); 180.20(c); 180.39(b); 180.57(b); 180.65(b); 187.6(b); 191.29(a)(5); 191.46))

Continuation Awards and Extension of a Project

§ 100a.253 Continuation of a multi-year project after the first budget period.

(a) The appropriate official of the Education Division may make a continuation award for a budget period after the first budget period of an approved multi-year project if—

(1) The Congress has appropriated sufficient funds under the program;

(2) The official is satisfied that the grantee will satisfactorily complete the budget period that is about to end;

(3) The grantee has submitted every report that it must submit before the date of the continuation award; and

(4) Continuation of the project is in the best interest of the Federal Government.

(b) A grantee that is in the final budget period of a project period may seek continued assistance for the project under the procedures for selecting new projects. (See Subpart C.)

(20 U.S.C. 1221e-3(a)(1))

(Sources: 105.209; 105.308; 105.438; 113.8(a); 121h.4(b); 121.89(b); 121i.119(b); 123.04(d); 123.15(b); 136.10(c)(d)+(e); 157.6(a)+(b); 158.13(a); 158.52; 159.7(a)+(b); 160.4(c); 160a.17(b); 160c.5(a); 160d.9(a); 160d.17(b); 160e.5(c); 160f.5(c); 160g.4; 162.44 (c)(d)+(e); 162.55(c)(d)+(e); 162.63(c)(d)+(e); 172.30; 172.150(c); 180.20(c); 180.39(b); 180.57(b); 180.65(b); 182.34(b)(3rd sent.); 187.6(c); 188.11(c)+(d); 191.34; 191.46; 198.8(d))

§ 100a.254 Extension of a project period.

The appropriate official of the Education Division may extend a project period if:

(a) Special or unusual circumstances exist that delay completion of the project;

(b) The grantee provides the official with a written request or the extension;

(c) The grantee requests the extension at least 45 days before the end of the project period;

(d) The grantee states the reason that it needs the extension;

(e) The extension does not violate any statute or regulation; and

(f) The extension does ot involve the obligation of additional Federal funds.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.54(a)(2nd sent.) and (b); 100-100d App. A para. 2(b); 164.06 (3rd+4th sents.); 1405.9(a)(2nd sent.)+(b))

Miscellaneous

§ 100a.260 Allotments and reallotments.

(a) Under some of the programs listed in § 100a.1, the appropriate official of the Education Division allots funds under a statutory or regulatory formula.

(b) If the official determines that a grantee does not need all of the funds that are alloted under one of these programs, the official reallots the unneeded funds among grantees in the same way that the official reallots funds among states under §§ 100b.230-100b.235.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 119.9(a), (b); 129.20; 186.25(b); 192.3(b), (c), (d))

Subpart E-What Conditions Must Be Met by a Grantee?

Nondiscrimination

§ 100a.500 Federal statutes and regulations on nondiscrimination.

Each grantee shall comply with the following statutes and regulations:

Subject	Statute	Regulations
Discrimination on the basis of race, color, or national origin.	Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d through 2000d-4.	45 CFR Part 80.
Discrimination on the Basis of Sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681-1683).	45 CFR Part 86.
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84.
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	45 CFR Part 90.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.160; 100a.262; 112.17; 113.19; 114.63(c)(1)(ix); 114.63(c)(2(x); 115.16; 158.85; 160f.3(d)(3); 171 App. Sec. 2.2(a); 189.4)

Project Staff

§ 100a.510 Use of a project director.

(a) This section applies to each grantee that uses a project director to administer its project.

(b) The grantee shall insure that its project director has—

(1) Approprite professional qualifications, experience, and administrative skills; and

(2) A clear commitment to the objectives of the project.

(c) The grantee shall give its project director sufficient authority to conduct the project effectively and to spend project funds.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 155.5(e)(3)+(4); 155.9(a)(3)+(4); 157.7(b)(6); 159.9(b)(6))

§ 100a.511 Waiver of requirement for a full-time project director.

(a) The appropriate official of the Education Division may waive a program regulation that requires a full-time project director if:

(1) The project will not be adversely affected by the waiver; and

(2)(i) The project director is needed to coordinate two or more related projects; or

(ii) The project director must teach a minimum number of hours to retain faculty status.

(b) The waiver either permits the grantee—

(1) To use a part-time project director; or

(2) Not to use any project director.

(c)(1) An applicant grantee may request the waiver.

(2) The request must be in writing and must demonstrate that a waiver is appropriate under this section.

(3) The appropriate official of the Education Division gives a waiver of a program regulation in writing. The waiver is effective on the date the official signs the waiver.

(20 U.S.C. 1221e-3(a)(1))

(Cross reference: Changes in key people in a research project—See § 74.103(c) of this title)

(Sources: 155.9(a)(3); 157.7(b)(6); 159.9(b)(6))

§ 100a.515 Qualifications of project staff.

A grantee shall operate its project with a staff that is adequate in education, experience, and number to achieve the objectives of the project.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 155.5(d)(4); 157.7(b)(7); 159.9(b)(7))

§ 100a.516 Inservice training for project staff.

A grantee shall provide any necessary preservice and inservice training for its project staff.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 157.7(b)(8); 159.9(b)(8))

§ 100a.517 Use of consultants.

(a) Subject to federal statutes and regulations, a grantee shall use its general policies and practices when it hires, uses, and pays a consultant as part of the project staff.

(b) The grantee may not use its grant to pay a consultant unless:

(1) There is a need in the project for the services of that consultant; and

(2) The grantee cannot meet that need by hiring an employee rather than a consultant.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.518 Compensation of consultants—employees of institutions of higher education.

If an institution of higher education receives a grant for research or for educational services, it may pay a consultant's fee to one of its employees only in unusual circumstances and only if—

(a) The work performed by the consultant is in addition to his or her regular departmental load; and

(b)(1) The consultation is across departmental lines; or

(2) The consultation involves a separate or remote operation.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100-100d App. A para. 20c; HEW GAM Ch. 1-45)

§ 100a.519 Changes in key staff members.

A grantee shall comply with § 74.103(c)(2) of this title (replacement or lesser involvement of any key project staff), whether or not the grant is for research.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.260; 100-100d App. A para. 23)

§ 100a.520 Minimum wage rates.

The grantee shall pay a project staff member not less than any minimum wage required under Federal law.

(20 U.S.C 1221e-3(a)(1))

(Sources: 155.12(b), 157.12(b), 158.68; 159.12(b))

§ 100a.521 Dual compensation of staff.

A grantee may not use its grant to pay a project staff member for time or work for which that staff member is compensated from some other source of funds.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.261; 100-100d App. A para. 17; 1410.15)

Conflict of Interest

§ 100a.524 Conflict of interest: Purpose of § 100a.525.

(a) The conflict of interest regulations of the Education Division that apply to a grant are in § 100a.525.

(b) These conflict of interest regulations do not apply to a "government" as defined in § 74.3 of this title.

Note: A government must provide a conflict of interest assurance under the standard application required by Subpart N of Part 74.

(c) The regulations in § 100a.525 do not apply to a grantee's procurement contracts. The conflict of interest regulations that cover those procurement contracts are in Part 74 of this title.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.525 Conflict of interest—participation in a project.

(a) A grantee may not permit a person to participate in an administrative decision regarding a project if:

(1) The decision is likely to benefit that person or a member of his or her immediate family; and

(2) The person—

(i) Is a public official; or

(ii) Has a family or business relationship with the grantee.

(b) A grantee may not permit any person participating in the project to use his or her position for a purpose that is—or gives the appearance of being—motivated by a desire for a private gain for that person or for others.

(20 U.S.C. 1221e-3(a)(1))

(**Sources:** 100a.250; 187.82(a); 1410.14)

Allowable Costs

§ 100a.530 General cost principles.

The general principles to be used in determining costs applicable to grants and cost-type contracts under grants are referenced in Subpart Q of Part 74 of this title.

(20 U.S.C. 1221e-3(a)(1))

(**Sources:** 100a.80-100a.84; 100-100d App. A para. 4b and 9; 100-100d Apps. B, C and D; 119.6; 136.08(b); 155.14; 157.14; 159.14; 160b.7(a)(1); 160c.36(a); 160f.15(a)(1); 162.18(b); 162.64; 164.05(a); 189.34(b); 191.35(a); 197.8(a)(6); 198.4(a)(2))

§ 100a.531 Limit on total cost of a project.

A grantee shall insure that the total cost to the Federal Government is not more than the amount set forth in the notification of grant award.

(20 U.S.C. 1221e-3(a)(1))

(**Sources:** 100a.51; 100-100d App. A para. 3a; 153.14(a)(1st sent.); 160c.10(b); 189.34)

§ 100a.532 Use of funds for religion prohibited.

(a) A grantee may not use its grant to pay for any of the following:

(1) Religious worship, instruction, or proselytization;

(2) Equipment or supplies to be used for any of those activities;

(3) Construction, remodeling, repair, operation, or maintenance of any facility or part of a facility to be used for any of those activities; or

(4) An activity of a school or department of divinity.

(b) As used in this section, **"school or department of divinity"** means an institution or a component of an institution whose program is specifically for the education of students to—

(1) Prepare them to enter into a religious vocation; or

(2) Prepare them to teach theological subjects.

(20 U.S.C. 1221e-3(a)(1))

(**Sources:** 112.11; 113.14; 123.13(e); 131.4(a)+(b); 136.08(c); 158.66; 169.5; 171 App. Sec. 4.2(c); 173.16; 179.25(c); 182.18(b); 185.13(f); 187.4; 189.21(b)(3); 194.7(c))

§ 100a.533 Acquisition of real property; construction.

A grantee may not use its grant for acquisition of real property or for constuction unless specifically permitted by the authorizing statute or implementing regulations for the program.

(20 U.S.C 1221e-3(a)(1))

(**Sources:** 184.23(b); 185.72(d); 185.92-1; 185.103(b)(3))

§ 100a.534 Foreign travel.

A grantee may not use its grant for foreign travel unles approved in advance by the appropriate official of the Education Division. The term "foreign travel" does not include travel between the United States, Puerto Rico, and the U.S. Virgin Islands.

(20 U.S.C. 1221e-3(a)(1))

(**Source:** 100-100d App. A para. 13)

§ 100a.535 Training grants—automatic increases for additional dependents.

The appropriate official increases an educational training grant to cover the cost of additional dependents not specified in the notification of grant award if—

(a) Allowances for those dependents are authorized by the program statute and are allowable under the grant; and

(b) Appropriations are available to cover the cost.

(20 U.S.C. 1221e-3(a)(1))

(**Source:** 100-100d App. A para. 3c)

Indirect Cost Rates

§ 100a.560 General indirect cost rates; exceptions.

(a) Appendices C-F to Part 74 of this title describe the differences between direct and indirect costs and include the principles for determining the general indirect cost rate that a grantee may use for grants under most programs.

(b) Sections 100a.562-100a.568 provide restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e-3(a)(1))

§ 100a.561 Approval of indirect cost rates.

(a) The appropriate official of the Education Division approves an indirect cost rate for a grantee other than a local educational agency.

(b) Each State educational agency, on the basis of a plan approved by the Commissioner, shall approve an indirect cost rate for each local educational agency that requests it to do so.

(c) Each indirect cost rate for a grantee must be approved annually.

(20 U.S.C. 1221e-3(a)(1))

(**Source:** 100c.2(a)+(b))

§ 100a.562 Indirect cost rates for educational training projects.

(a) The appropriate official of the Education Division may approve an indirect cost rate for an educational training project at the lesser of—

(1) The actual indirect cost rate of the grantee; or

(2) Eight percent of the total direct costs of the project.

(b) This section does not apply to—

(1) A State (as defined in § 74.3 of this title); or

(2) A local government (as defined in § 74.3 of this title).

(20 U.S.C. 1221e-3(a)(1))

(**Sources:** 100-100d App. A para 4c; 155.11(c); 157.11(c); 159.11(c); 160c.36(a); 160f.15(d))

§ 100a.563 Restricted indirect cost rate—programs covered.

Sections 100a.564-100a.568 apply to each program that has a statutory requirement not to supplant Federal funds, including the following:

Program	*Authorizing statute*
Bilingual Education	Title VII of the Elementary and Secondary Education Act
Follow Through Program	Sections 551-554 of the Community Services Act of 1974
Indian Elementary and Secondary School Assistance (Part A)	Title III of Public Law 81-874
Strengthening Developing Institutes Program	Title III of the Higher Education Act

(20 U.S.C. 1221e-3(a)(1))

(**Source:** 100c.1)

§ 100a.564 Restricted indirect cost rate—formula.

(a) An indirect cost rate for a grant under a program covered by § 100a.563 is determined with the following formula:

Indirect cost rate = (Administrative charges + Fixed charges) − (Other expenditures).

(b) Administrative charges, fixed charges, and other expenditures must be determined under §§ 100a.565–100a.567.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100c.2(c))

§ 100a.565 Administrative charge.

(a) As used in § 100a.564, **"administrative charge"** means the cost of an activity that is for the direction and control of the grantee's affairs that are organization-wide. An activity is not organization-wide if it is limited to one activity, component of the grantee, subject, phase of operations, or other single responsibility.

(b) The term includes a service function, such as accounting, payroll, or personnel, that is normally at the grantee's level even if the function is physically located elsewhere for convenience or better management.

(c) The term does not include expenditures for:

(1) The governing body of the grantee;

(2) Compensation of the chief administrative officer of the grantee;

(3) Compensation of the chief administrative officer of each of the components of the grantee; and

(4) Operation of the immediate offices of these officers.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100c.2(d))

§ 100a.566 Fixed charges.

As used in § 100a.564, "fixed charges" only include contributions of the grantee to:

(a) Retirement, including State, county, or local retirement funds, social security, and pension payments; and

(b) Property, employee, and liability insurance.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100c.2(e))

§ 100a.567 Other expenditures.

(a) As used in § 100a.564, **"other expenditures"** means the grantee's total expenditures for its Federal and non-Federal activities in the most recent year for which data are available.

(b) The term does not include:

(1) Administrative charges determined under § 100a.565;

(2) Fixed charges determined under § 100a.566;

(3) Capital outlay;

(4) Debt service;

(5) Fines and penalties;

(6) Contingencies; and

(7) Election expenses.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100c.2(c))

§ 100a.568 Using the restricted indirect cost rate.

(a) Under the programs referenced in § 100a.563, the maximum amount of indirect costs under a grant is determined under the following formula:

Indirect costs = (Indirect cost rate) × (Total direct costs of the grant minus any costs for capital outlay, debt service, or election expenses).

(b) If a grantee uses an indirect cost rate, the administrative and fixed charges covered by that rate must be excluded from the direct costs it charges to the grant.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100c.2(f) + (g))

Coordination

§ 100a.580 Coordination with other activities.

(a) A grantee shall, to the extent possible, coordinate its project, with other activities that serve similar purposes.

(b) The grantee shall continue this coordination during the entire project period.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100a.275)

§ 100a.581 Methods of coordination.

Depending on the objectives and requirements of a project, coordination could include one or more of the following:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Using the grant funds so as not to duplicate or counteract the effects of funds made available under other programs.

(d) Using the grant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e–3(a)(1))

Evaluation

§ 100a.590 Evaluation by the grantee.

A grantee shall evaluate at least annually:

(a) The grantee's progress in achieving the objectives set forth in its approved application;

(b) The effectiveness of the project in meeting the purposes of the program; and

(c) The effect of the project on persons being served by the project, including persons who are members of groups that have been traditionally underrepresented, such as members of racial or ethnic minority groups, women, handicapped persons, and the elderly.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.276; 121b.11(b) (2nd sent.); 121b.13(a); 121c.34(b); 121e.5; 123.23(a)(5); 127.8(d); 155.9(a)(5); 160b.53(f); 178a.4(c)(5); 187.81(d))

§ 100a.591 Federal evaluation—cooperation by a grantee.

A grantee shall cooperate in any evaluation of the program by the Secretary or the appropriate official of the Education Division.

(20 U.S.C. 1226c, 1231a)

(Sources: 123.14(b)(7)(i); 123.24(b)(7)(i); 123.53(b)(2)(i); 158.3(b); 160b.3(b)(7)(ii); 160c.14(g); 160c.15(g); 160c.31(d); 160f.8(g); 162.38(b); 162.40(a)(3); 185.13(d); 187.81(d)(2))

§ 100a.592 Federal evaluation—satisfying requirement for grantee evaluation.

If a grantee cooperates in a Federal evaluation of a program, the appropriate official of the Education Division may determine that the grantee meets the evaluation requirements of the program, including § 100a.590.

(20 U.S.C. 1226c, 1231a)

Construction

§ 100a.600 Use of a grant for construction—purpose of §§ 100a.601–100a.615.

Sections 100a.601–100a.615 apply to:

(a) An applicant if it requests funds for construction; and

(b) A grantee if its grant includes funds for construction.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.155; 105.507; 1422.1(a) + (d))

§ 100a.601 Applicant's assessment of environmental impact.

The applicant shall provide the HEW regional office with its assessment of the impact of the project on the quality of the environment in accordance with section 102(2)(c) of the National Environmental Policy Act of 1969 and Executive Order No. 11514 (34 FR 4247).

(42 U.S.C. 4332(2)(c).)

(Sources: 100a.185; 1422.7)

§ 100a.602 Preservation of historic sites must be described in the application.

(a) The applicant shall describe in its application the project's relationship to and probable effect on any district, site, building, structure, or object that is included in the National Register of Historic Preservation of the National Park Service.

(b) In deciding whether to make a grant, the appropriate official of the Education Division considers:

(1) The information provided by the applicant under paragraph (a) of this section; and

(2) Any comments by the advisory council on historic preservation.

(16 U.S.C. 470f)

(Sources: 100a.186; 1422.41)

§ 100a.603 Grantee's title to site.

The grantee must have or get a full title or other interest in the site, including right of access, that is sufficient to insure the grantee's undisturbed use and possession of the facilities for not less than the useful life of the facilities or 50 years, whichever is longer.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.161; 170.53(a); 1422.3)

§ 100a.604 Availability of cost-sharing funds.

(a) The grantee shall insure that sufficient funds are available to meet any non-Federal share of the cost of constructing the facility.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.171; 1422.15)

§ 100a.605 Beginning the construction.

(a) The grantee shall begin work on the project within a reasonable time after the grant is made.

(b) The grantee shall get approval by the appropriate official of the Education Division of the final working drawings and specifications before the construction is advertised or placed on the market for bidding.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.158; 100a.159(a); 1422.13; 1422.35)

§ 100a.606 Completing the construction.

(a) The grantee shall complete the project within a reasonable time.

(b) The grantee shall complete the construction in accordance with the application and approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.158; 100a.159(b); 1422.13; 1422.35)

§ 100a.607 General considerations in designing facilities and carrying out construction.

(a) The grantee shall insure that the construction is—

(1) Functional;

(2) Economical; and

(3) Not elaborate in design or extravagant in the use of materials, compared with facilities of a similar type constructed in the State or other applicable geographic area.

(b) The grantee, shall, in developing plans for the facilities, consider excellence of architecture and design, and inclusion of works of art. The grantee may not spend more than 1 percent of the cost of the project on inclusion of works of art.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.157; 112.2(h); 1422.1(c); ESEA section 502(b)(c))

§ 100a.608 Areas in the facilities for cultural activities.

The grantee shall make reasonable provision, consistent with the other uses to be made of the facilities, for areas in the facilities which are adaptable for artistic and other cultural activities.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.173; 1422.11)

§ 100a.609 Comply with safety and health standards.

In planning for and designing facilities the grantee shall observe nationally recognized safety and health standards and codes, including:

(a) National Fire Protection Association standards;

(b) Standards under the Occupational Safety and Health Act of 1970 (Pub. L. 91-576); and

(c) State and local codes, to the extent that they are more stringent.

(29 U.S.C. 651)

(Sources: 100a.184; 1422.5)

§ 100a.610 Access by the handicapped.

Each grantee shall comply with the Federal regulations on access by the handicapped that apply to construction and alteration of facilities. These regulations are—

(a) For residential facilities—24 CFR Part 40; and

(b) For non-residential facilities—41 CFR Subpart 101-19.6.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.189; 105.503(e); 1422.33)

§ 100a.611 Avoidance of flood hazards.

In planning the construction, the grantee shall, in accordance with the provisions of Executive Order No. 11988 of February 10, 1978 (43 FR 6030) and such rules and regulations as may be issued by the Secretary to carry out those provisions—

(a) Evaluate flood hazards in connection with the construction; and

(b) As far as practicable, avoid uneconomic, hazardous, or unnecessary use of flood plains in connection with its construction.

(E.O. No. 11296.)

(Sources: 100a.190; 112.2(e)(2); 1422.37)

§ 100a.612 Supervision and inspection by the grantee.

The grantee shall maintain competent architectural engineering supervision and inspection at the construction site to insure that the work conforms to the approved drawings and specifications.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.172; 1422.25)

§ 100a.613 Relocation assistance by the grantee.

The grantee is subject to the regulations on relocation assistance and real property acquisition in part 15 of this title.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.191; 1422.39)

§ 100a.614 Grantee must have operational funds.

The grantee shall insure that sufficient funds will be available when construction is completed for effective operation and maintenance of the facility.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.171; 1422.15)

§ 100a.615 Operation and maintenance by the grantee.

The grantee shall operate and maintain the facilities in accordance with applicable Federal, State, and local requirements for the operation and maintenance of those facilities.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100a.170; 1422.31)

Equipment and Supplies

§ 100a.618 Charges for use of equipment or supplies.

A grantee may not charge students or school personnel for the ordinary use of equipment or supplies purchased with grant funds.

(20 U.S.C. 1221e-3(a)(1))

(Source: 134.82)

Publications and Copyrights

§ 100a.620 General conditions on publication.

(a) *Content of materials.* Subject to any specific requirements that apply to its grant, a grantee may decide the

format and content of project materials that it publishes or arranges to have published. However, the grantee shall avoid race stereotype or sex bias in project materials, as used in this section—

(1) **"Race stereotype"** means an assumption that members of a racial group share common abilities, interests, values, or roles because they are members of that group; and

(2) **"Sex bias"** means an attitude that supports structuring the educational development of boys and girls differently on any basis other than physiological differences.

(b) *Required statement.* The grantee shall insure that any publication that contains project materials also contains the following statements:

"The contents of this (insert type of publication: e.g., book, report, film) were developed with financial assistance from the (insert name of agency in the Education Division that provided the grant), Department of Health, Education, and Welfare. However, those contents do not necessarily represent the position or policy of that agency and a reader should not infer endorsement by the Federal Government."

(20 U.S.C. 1221e–3(a)(1))

§ 100a.621 Copyright policy for grantees and contractors.

(a) A grantee may copyright project materials in accordance with Part 74 of this title.

(b) A contractor may not copyright any project materials developed under the contract unless specifically permitted in the contract.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.622 Definition of "project materials."

As used in § 100a.620 **"project materials"** means copyrightable work developed with funds from a grant or contract of the Education Division.

(20 U.S.C. 1221e–3(a)(1))

Inventions and Patents

§ 100a.625 Invention and patent policy.

Grantees and contractors are subject to the HEW policy regarding inventions and patents in 45 CFR Parts 6 and 8.

§ 100a.626 Show federal support; give papers to vest title.

(a) Any patent application filed by the grantee for an invention made under a grant shall include the following statement in the first paragraph:

"The invention described in this application was made under a grant from the (insert name of agency in the Education Division that gave the grant), Department of Health, Education, and Welfare."

(b) On request, the grantee shall furnish HEW with executed instruments prepared by the Federal Government, and other papers that may be necessary, to vest in the Federal Government the rights reserved to it in accordance with a determination made in accordance with Part 8 of this title. These instruments and papers enable the Government to apply for and prosecute a patent application, in any country, to cover each invention for which the Federal Government has the right to file an application.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100–100d App. A para. 12; 1409.5; 1415.17)

Other Requirements for Certain Projects

§ 100a.680 Participation of children enrolled in private schools.

If the authorizing statute for a program requires that a grantee must provide an opportunity for participation by children enrolled in private schools, the grantee shall provide that opportunity in accordance with the requirements that apply to subgrantees under §§ 100b.650–100b.663 of this title.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 123.16(d); 158.29; 158.30; 160b.25(b)+(c); 162.12(c)(2)(i)(C)+(c)(2)(ii)(B); 162.40(b)(2)(ix); 185.42(a)+(b)(2)+(e)–(h); 185.95–6)

§ 100a.681 Indian Self-Determination and Education Assistance Act.

The Indian preference provisions of Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) apply to the following programs:

(a) Vocational education—The contract program for Indian Tribes and Indian Organizations (see Subpart 2 of Part 105 of this title).

(b) The Indian Education Act (Part B) (See Part 187 of this title).

(c) The Indian Education Act (Part C) (See Part 188 of this title).

(25 U.S.C. 450e(b))

(Sources: 105.202; 187.3; 188.4)

§ 100a.682 Protection of human research subjects.

If a grantee uses a human subject in a research project, the grantee shall protect the person from physical, psychological, or sociological harm.

(20 U.S.C. 1221e–3(a)(1))

(Source: 1410.2)

§ 100a.683 Treatment of animals.

If a grantee uses an animal in a project, the grantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89–544, as amended).

(Sources: 100a.270; 100–100d App. A para. 24; 1410.3)

§ 100a.684 Health or safety standards for facilities.

A grantee shall comply with any Federal health or safety requirements that apply to the facilities that the grantee uses for the project.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100–11d App. A para. 16)

§ 100a.685 Day care services.

(a) If a grantee uses program funds to provide day care services, the grantee shall comply with the Federal Interagency Day Care Regulations in Part 71 of this title.

(b) The appropriate official of the Education Division may waive this requirement by publication of a notice in the **Federal Register.**

(20 U.S.C. 1221e–3(a)(1))

Subpart F—What are the Administrative Responsibilities of a Grantee?

General Administrative Responsibilities

§ 100a.700 Compliance with statutes, regulations, and applications.

A grantee shall comply with applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, and applications.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100–100d App. A para. 2a; 153.16(b)(2); 183.4(b)(3); 185.13(m); 1405.1)

§ 100a.701 The grantee administers or supervises the project.

(a) A grantee shall directly administer or supervise the administration of the project.

(b) The grantee may not transfer responsibility to others, in whole or in part, for using program funds or for carrying out of project activities.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.18(a); 100a.30; 100–100d App. A para. 15, 105.604(b); 105.624(a); 121c.10(b)(5)–(c); 123.14(b)(1); 123.24(b)(1); 123.33(b)(1); 132.7(c); 148.16(a); 148.26(a); 160a.21(a); 160b.22(e); 160c.11(d)(2); 162.11(b)(4)(i)–(iii); 162.61(d)(1)–(3); 183.4(b)(1); 185.13(b); 186.12(a); 1400.5; 1403.5(a); 1414.1(b))

§ 100a.702 Fiscal control and fund accounting procedures.

A grantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100–100d App. A para. 5a; 123.14(b)(3); 123.24(b)(3); 123.33(b)(3); 169.26(a)(15); 169.36(a)(12); 170.4; 171.7(a); 186.12(e); 192.4(i))

§ 100a.703 Obligation of funds during the grant period.

A grantee may only use grant funds for obligations it makes during the grant period.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.707 When obligations are made.

The following table shows when a grantee makes obligations for various kinds of property and services.

If the obligation is for—	*Then the obligation is made—*
(a) Acquisition of real or personal property	On the date the grantee makes a binding written commitment to acquire the property.
(b) Personal services by an employee of the grantee	When the services are performed.
(c) Personal services by a contractor who is not an employee of the grantee	On the date the grantee makes a binding written commitment to get the personal services.
(d) Performance of work other than personal services	On the date the grantee makes a binding written commitment to get the work.
(e) Public utility services	When the grantee receives the services.
(f) Travel	When the grantee's personnel take the travel.
(g) Rental of real or personal property	When the grantee uses the property.
(h) A preaward cost that was properly approved by the appropriate official of the Education Division under the cost principles in Appendices C–F to Part 74 of this title.	On the date the grant was made.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100a.55)

§ 100a.708 Prohibition of subgrants.

A grantee may not make a subgrant under a program listed in 100a.1 unless specifically authorized by statute.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 160c.11(d)(1); 162.61(d)(2))

Reports

§ 100a.720 Financial and performance reports.

(a) This section applies to the reports required under Subpart I (Financial reporting) and J (Performance reporting) or Part 74 of this title.

(b) A grantee shall submit these reports annually, unless the appropriate official of the Education Division allows less frequent reporting. However, a grantee of the National Institute of Education shall submit these reports quarterly.

(c) The appropriate offical of the Education Division may, under § 74.7 (Special grant or subgrant conditions) or § 74.72(e) (Grantee accounting systems), require a grantee to report more frequently than annually.

(20 U.S.C. 1221e–3(a)(1))

Records

§ 100a.730 Records related to grant funds.

A GRANTEE SHALL KEEP RECORDS THAT FULLY SHOW—

(a) The amount of funds under the grant;

(b) How the grantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

(Sources: 100a.477; 100–100d App. A para. 5a–b; GEPA Section 437(a))

§ 100a.731 Records related to compliance.

A grantee shall keep records to show its compliance with Federal statutes and regulations that apply to the grant.

(20 U.S.C. 1221e–3(a)(1))

§ 100a.732 Records related to performance.

(a) A grantee shall maintain records of significant project experiences and results.

(b) The grantee shall use the records under paragraph (a) to—

(1) Determine progress in accomplishing project objectives; and

(2) Revise those objectives, if necessary.

(20 U.S.C. 1221e–3(a)(1))

(Source: 172.52)

(Cross-reference: Procedures for revising objectives—See 45 CFR 74.103 (b) and (c))

§ 100a.733 Records related to State approval of applications.

(a) This section applies to programs that require State approval of applications.

(b) The State shall establish a complete case file on each application it receives.

(c) The State shall keep a full record of—

(1) Any hearing related to an application; and

(2) Any proceeding by which the State establishes relative priorities or recommends Federal shares for eligible projects.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 170.5; 171.9)

§ 100a.734 Record retention period.

A grantee is subject to the requirements in Subpart D of Part 74 of this title with respect to records that it must keep. However, Section 437(a) of the GEPA requires that a grantee must keep records for five years after the completion of the activity for which it uses grant funds.

(20 U.S.C. 1232c)

(Sources: 100a.477(a); 100–100d App. A para. 5e; 119.61; 170.5; 171.9; 192.12; GEPA Section 437(a))

Privacy

§ 100a.740 Protection of and accessibility to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under Part 99 of this title. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231g)

(Sources: 185.91–3(c); GEPA Section 438)

§ 100a.741 Protection of students' privacy in research and testing.

(a) Section 439(a) of GEPA provides that parents or guardians of children who participate in a research or experimentation project funded by the Office of Education must be given access to instructional material used in that project; and

(b) A grantee shall comply with Section 439(b) of GEPA with respect to psychiatric or psychological examination, testing, or treatment of students as part of a project funded by the Office of Education.

(20 U.S.C. 1232h)

(Source: GEPA Section 439)

Data Collection by a Grantee

§ 100a.750 Approval by the Education Division.

A grantee does not have to get approval from the Education Division for the use of a data collection instrument unless—

(a) Approval is specifically required under the grant; or

(b) Approval by OMB is required for some other reason under OMB Circular A–40.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.263(d)(1); 100–100d App. A para. 21)

Note.—The OMB review will be replaced by review by the Secretary under the "paperwork control" requirement in Pub. L. 95–561. Procedures for that review are being developed separately and may be incorporated in EDGAR at a later date. That review will cover activities of all Federal agencies whenever—

(a) The respondents are primarily educational agencies or institutions; and

(b) The purpose of these activities is to request information needed for the management of, or the formulation of policy related to Federal education programs or research or evaluation studies related to the implementation of Federal education programs.

§ 100a.751 Procedures if approval is required.

If approval of a data collection instrument is specifically required under a grant, or if approval by the Office of Management and Budget is required under OMB Circular A–40 for some other reason, the grantee shall submit seven copies of each of the following to the appropriate official of the Education Division:

(a) The proposed data instrument.

(b) A completed Office of Management and Budget Standard Form 83.

(c) The supporting statement required in the "Instructions for Requesting OMB Approval under the Federal Reports Act," as set forth in Standard Form No. 83A.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100a.263(d)(2))

§ 100a.752 Responsibility for data collection.

Unless the Office of Management and Budget approves a data collection instrument, the grantee may not in any way represent or imply that the data is being collected by or for the Federal Government. This does not preclude the grantee from acknowledging the assistance it received under the grant.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100a.263(e))

§ 100a.753 Confidentiality of response.

In using data collection instruments, a grantee shall provide for anonymity and confidentiality of responses from individuals.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100a.263(c)(2); 1410.1)

§ 100a.754 Exception from coverage.

The regulations in §§ 100a.750—100a.753 do not apply to instruments that deal solely with—

(a) Functions of technical proficiency, such as scholastic aptitude, school achievement, and vocational proficiency;

(b) Routine demographic information; or

(c) Routine institutional information.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100a.263)

§ 100a.755 Definitions used in §§ 100a.750–100a.753.

As used in §§ 100a.750–100a.753:

"Data collection instrument" means a report form, application form, schedule, questionnaire, or similar instrument for getting answers to identical questions from ten or more respondents.

"Respondent" is an individual or organization from whom information is collected either directly or indirectly.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100a.263(a))

Subpart G—What Procedures Does the Education Division Use to Get Compliance?

§ 100a.900 Waiver of regulations prohibited.

(a) No official, agent, or employee of HEW may waive any regulation that applies to an Education Division program, unless the regulation specifically provides that it may be waived.

(b) No act or failure to act by an official, agent, or employee of HEW can affect the right of the appropriate official of the Education Division to enforce a regulation.

(43 Dec. Comp. Gen. 31 (1963)

(Source: 100a.483)

§ 100a.901 Suspension and termination.

(a) The appropriate official of the Education Division uses the Department's Grant Appeals board to resolve disputes within the jurisdiction of that board. The regulations governing the Grant Appeals board are in Part 16 of this title (See 45 CFR 16.5 for jurisdiction of the board).

(b) The Commissioner may use the Education Appeals Board to resolve disputes that are not within the jurisdiction of the Grant Appeals Board.

(c) The following regulations in Part 74 of this title apply to suspension and termination of a grant:

(1) Section 74.113 (Violation of terms).

(2) Section 74.114 (Suspension).

(3) Section 74.115 (Termination).

(4) The last sentence of § 74.73(c) (Financial reporting after a termination).

(4) Section 74.112 (Amounts payable to the Federal Government).

(20 U.S.C. 1221e–3(a)(1))

(Sources: 111.1; 111.2(b)(c); 111.3; 111.4; 111.5; 111.6; 111.7; 111.8; 111.9; 111.10; 111.69(a) (third sent.) and (b)–(h))

§ 100a.902 Informal procedures.

Although either the appropriate official of the Education Division or the grantee may request an informal meeting regarding a proposed termination, the grantee is considered, for purposes of § 16.5(b)(2) of this title, to have exhausted Education Division informal procedures when the grantee receives the notice of termination.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100a.495(g)(2))

§ 100a.903 Effective date of termination.

Termination is effective—

(a) On delivery to the grantee of the notice of termination; or

(b) If the Grant Appeals Board takes jurisdiction of the termination proceeding, on final decision under § 16.10 of this title.

(20 U.S.C. 1221e–3(a)(1))

PART 100b—STATE-ADMINISTERED PROGRAMS

Subpart A—General

Regulations That Apply to State-Administered Programs

Sec.

100b.1 Programs to which these regulations apply.
100b.2 Exceptions in program regulations to Part 100b.
100b.3 HEW general grant regulations apply to these programs.
100b.4 Statutes determine eligibility and whether subgrants are made.
100b.5 A State distributes funds by formula or competition.

Subpart B—How a State Applies for a Grant

State Plans and Applications

100b.100 Effect of this subpart.
100b.101 The general State application.
100b.102 Definition of "State plan" for Part 100b.
100b.103 Three-year State plans.
100b.104 A State shall include certain certifications in its State plan.
100b.105 The Governor has 45 days to comment on the State plan.
100b.106 State plan is public information.

Amendments

100b.140 Amendments to a State plan.
100b.141 An amendment requires the same procedures as the document being amended.
100b.142 An amendment is approved on the same basis as the document being amended.

Subpart C—How a Grant is Made to a State

Approval or Disapproval by the Commissioner

100b.201 A State plan must meet all statutory and regulatory requirements.
100b.202 Opportunity for hearing before a State plan is disapproved.
100b.203 The notification of grant award.

Allotments and Reallotments of Grant Funds

100b.230 Allotments are made under program statute.
100b.231 Funds that exceed a State's needs are realloted.
100b.232 Limits on amount of reallotment to a State.
100b.233 The notice of reallotment.
100b.234 Realloted funds are part of a State's grant.
100b.235 The statement of need for funds.

Subpart D—How To Apply to the State for a Subgrant

100b.300 Contact the State for procedures to follow.
100b.301 Local educational agency general application.
100b.302 The notice to the subgrantee.
100b.303 Joint applications and projects.
100b.304 State and subgrantee shall make subgrant application available to the public.
100b.305 Amendments to applications.

Subpart E—How a Subgrant Is Made to an Applicant

100b.400 State procedures for reviewing an application.
100b.401 An applicant has an opportunity for a hearing.

Subpart F—What Conditions Must be met by the State and its Subgrantees

Nondiscrimination

100b.500 Federal statutes and regulations on nondiscrimination.

Allowable costs

100b.530 General cost principles.
100b.531 Specific cost principles in Part 100a.

Indirect Cost Rates

100b.560 General indirect cost rates; exceptions.
100b.561 Approval of indirect cost rates.
100b.562 Restricted indirect cost rate; programs covered.

Coordination

100b.580 Coordination with other activities.
100b.581 Methods of coordination.

Evaluation

100b.591 Federal evaluation—cooperation by a grantee.
100b.592 Federal evaluation—satisfying requirement for State or subgrantee evaluation.

Construction

100b.600 Where to find construction regulations.

Participation of Children enrolled in Private Schools

100b.650 Private schools; purpose of §§ 100b.651–100b.663.
100b.651 Responsibility of a State.
100b.652 Responsibility of a subgrantee.
100b.653 Consultation with representatives of private school students.
100b.654 Needs, number of students, and types of services.
100b.655 Same or different benefits for private school students.
100b.656 Level of expenditures for students enrolled in private schools.
100b.657 Information in an application for a subgrant.
100b.658 Separate classes prohibited.
100b.659 Funds not to benefit a private school.
100b.660 Use of public school personnel.
100b.661 Use of private school personnel.
100b.662 Equipment and supplies.
100b.663 Construction.

Other Requirements for Certain Programs

100b.680 Inventions and patents.
100b.682 Protection of human research subjects.
100b.683 Treatment of animals.
100b.684 Health or safety standards for facilities.
100b.685 Day care services.

Subpart G—What are the Administrative Responsibilities of the State and its Subgrantees

General Administrative Responsibilities

100b.700 Compliance with statutes, regulations, State plan, and applications.
100b.701 State or subgrantee administers or supervises each project.
100b.702 Fiscal control and fund accounting procedures.
100b.703 When a State may begin to obligate funds.
100b.704 When certain subgrantees may begin to obligate funds.
100b.705 Funds may be obligated during a "carryover period."
100b.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.
100b.707 When obligations are made.

Reports

100b.720 Financial and performance reports by a State.
100b.721 A subgrantee makes reports required by the State.

Records

100b.730 Records related to grant funds.
100b.731 Records related to compliance.
100b.734 Record retention period.

Privacy

100b.740 Protection of and accessibility to student records.
100b.741 Protection of student's privacy in research and testing.

Use of Funds by States and Subgrantees

100b.750 More than one program may assist a single activity.
100b.751 Federal funds may pay 100 percent of costs.

State Administrative Responsibilities

100b.760 A State shall perform certain duties with respect to the applications for subgrants.
100b.761 A State shall encourage eligible applicants to apply.
100b.762 Other responsibilities of the State.

Complaint Procedures of the State

100b.780 A State shall adopt complaint procedures.
100b.781 An organization or individual may file a complaint.
100b.782 Minimum complaint procedures.

Subpart H—What Procedures Does the Commissioner Use To Get Compliance

100b.900 Waiver of regulations prohibited.
100b.901 Regulations in Part 74 on suspension and termination.
100b.902 Education Appeals Board.
100b.903 Judicial review.

Authority: Section 408(a)(1) of Pub. L. 90–247, as amended, 88 Stat. 559, 560 (20 U.S.C. 1221e–3(a)(1)), unless otherwise noted.

PART 100b—STATE-ADMINISTERED PROGRAMS

Subpart A—General

Regulations That Apply to State-Administered Programs

§ 100b.1 Programs to which these regulations apply.

The regulations in part 100b apply to the programs of the Office of Education that are listed in the following table. In addition to the name of the program, the table gives the statute that authorizes the program, the regulations that implement the program, and the number that the Catalog of Federal Domestic Assistance (CFDA) gives to the progam.

(20 U.S.C. 1221e–3(a)(1))

(Note.—Some programs are not funded. Check with the State agency responsible for administering the program.)

§ 100b.2 Exceptions in program regulations to Part 100b.

If a program has regulations that are not consistent with part 100b, the implementing regulations for that program identify the sections of part 100b that do not apply.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.3 HEW general grant regulations apply to these programs.

The HEW general grant regulations in Part 74 of this title apply to the programs covered by this part. To find subjects covered under Part 74, look in the table of contents at the beginning of Part 74.

(20 U.S.C. 1221e–3(a)(1))

Name of program	Authorizing statute	Implementing regulations	CFDA number
A. Elementary and Secondary Education Programs			
Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children (except Coordination of Migrant Education and Transition of Neglected or Delinquent Children—See Part 100a).	Title I-A of the Elementary and Secondary Education Act (except Sections 143 and 153) (20 U.S.C. 2701–2754).	Parts 116 and 116a	13.428 and 13.512.
Grants to State Agencies for Programs to Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.	Sections 151–153 of the Elementary and Secondary Education Act (20 U.S.C. 2781–2783).	Parts 116, 116c	13.431.
Grants to State Educational Agencies for Programs to Meet the Special Educational Needs of Migratory Children.	Sections 141–143 of the Elementary and Secondary Education Act (20 U.S.C. 2761–2763).	Parts 116, 116d	13.429.
State Basic Skills Program	Title II-B of the Elementary and Secondary Education Act (20 U.S.C. 2901–2904).	None	None.
Financial Assistance for School Library Resources, Textbooks and Other Instructional Materials.	Title II of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	Part 117	None.
Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.	Title III of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978).	Part 118	None.
Instructional Materials and School Library Resources, Improvement in Local Educational Practices, and Guidance, counseling, and Testing.	Title IV of the Elementary and Secondary Education Act (20 U.S.C. 1801–1832).	Parts 134, 134a and 134b	13.570 and 13.571.
Strengthening State Educational Agency Management	Title V-B of the Elementary and Secondary Education Act (20 U.S.C. 3161–3163.	None	None.
Federal Financial Assistance for Strengthening State Departments of Education—Basic Grants.	Title V-A (except section 505—See Part 100a) of the Elementary and Secondary Education Act (as in effect September 30, 1978).	Part 119, Subpart B	None.
Community Schools Program	Title VIII of the ESEA (except Sections 809–813—See Part 100a) (20 U.S.C. 3281–3288).	None	None.
Gifted and Talented Children Program	Title IX of the Elementary and Secondary Education Act (except Section 905—See Part 100a) (20 U.S.C. 3311–3314; 3316–3318).	None	None.
Indochinese Refugee Children Program	Title II of the Indochina Refugee Children Assistance Act (20 U.S.C. 1211b).	None	None.
Strengthening Instruction in Academic Subjects in Public Schools.	Title III-A of the National Defense Education Act of 1958 (20 U.S.C. 441–444).	Part 141	None.
State Reading Improvement Programs	Title VII-B of the Education Amendments of 1974 (20 U.S.C. 1941–1944).	Part 162, Subpart C	None.
B. Education of the Handicapped Programs			
State-operated programs for Handicapped Children	Sections 146–147 of the Elementary and Secondary Education Act (20 U.S.C. 2771–2772).	Parts 116, 116b	13.427.
Assistance to States for Education of Handicapped Children	Part B of the Education of the Handicapped Act (20 U.S.C. 1411–1418; 1420).	Part 121a	13.449.
Incentive Grants	Section 619 of the Education of the Handicapped Act (20 U.S.C. 1419).	Part 121m	13.449.
C. Occupational and Adult Education Programs			
State Vocational Education Programs	Part A of Title I of the Vocational Education Act (20 U.S.C. 2301–2461).	Part 104	13.493, 13.494, 13.495, 13.499, and 13.500.
Career Education—State Allotment Program	Career Education Incentive Act (except sections 10, 11, and 12) (20 U.S.C. 2601–2614).	None	None.
State Adult Education Programs	Adult Education Act (except sections 309, 314, and 316—See Part 100a) (20 U.S.C. 1201–1211a).	Part 166	13.400.
D. Higher Education Programs			
Community Service and Continuing Education Programs (except Special Programs and Projects—See Part 100a).	Title I of the Higher Education Act (except section 106) (20 U.S.C. 1001–1005; 1006–1011).	Part 173 (except Subpart C)	13.491.
State Student Incentive Grant Program	Sections 415A–415E of the Higher Education Act (20 U.S.C. 1070c through 1070c–4).	Part 192	13.548.
Educational Information Centers Program	Sections 418A and 418B of the Higher Education Act (20 U.S.C. 1070d–2 and 1070d–3).	Part 137	13.585.
Incentive Grants for State Student Financial Assistance Training Program.	Section 493C of the Higher Education Act (20 U.S.C. 1088B–3).	Part 178a	13.582.
State Postsecondary Education Commissions Program—Intrastate Planning.	Section 1203(a) of the Higher Education Act (20 U.S.C. 1088b–3).	Part 199a	13.550.
E. Other Programs			
Library Services, Public Library Construction and	Library Services and Construction Act (20 U.S.C.	Part 130	13.464, 13.408, and 13.465.
Assistance to States for State Equalization Plans	Section 842 of the Education Amendments of 1974 (20 U.S.C. 246).	Part 156	13.572.

§ 100b.4 Statutes determine eligibility and whether subgrants are made.

(a) Under a program listed in § 100b.1, the Commissioner makes a grant—

(1) To the State agency designated by the authorizing statute for the program; or

(2) To the State agency designated by the State in accordance with the authorizing statute.

(b) The authorizing statute determines the extent to which a State may—

(1) Use grant funds directly; or

(2) Make subgrants to eligible applicants.

(c) The regulations in Part 100b on subgrants apply to a State under a program only if subgrants are authorized under that program.

(d) The authorizing statute determines the eligibility of an applicant for a subgrant.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.5 A State distributes funds by formula or competition.

If a program statute authorizes a State to make subgrants, the statutes requires the State to use one of the following two methods to distribute funds:

(a) An objective formula; or

(b) A competition among the applicants or some other procedure that gives the State discretion to select sugrantees.

(20 U.S.C. 1221e–3(a)(1))

Subpart B—How a State Applies for a Grant

State Plans and Applications

§ 100b.100 Effect of this subpart.

This subpart establishes general requirements that a State must meet to apply for a grant under a program listed in § 100b.1. Additional requirements are in the authorizing statute and the implementing regulations for the program.

(20 U.S.C. 1221e–3(a)(1)

§ 100b.101 The general State application.

(a) This section applies to the programs listed in § 100b.1 under which the State educational agency may make subgrants to local educational agencies.

(b)(1) A State shall submit to the Commissioner a general application that contains the assurances set forth in Section 435(b) of the General Education Provisions Act (GEPA).

(2) The State may submit—

(i) A single general application to cover all of the programs;

(ii) A group of general applications, each general application covering either a group of programs or an individual progam.

(20 U.S.C. 1232d)

(Source: GEPA Section 435)

(Note. Appendix A to this part contains the sections of GEPA that are relevant to part 100b.)

§ 100b.102 Definition of "State plan" for Part 100b.

As used in this part, "State plan" means any of the following documents that a State submits to the Commissioner under the authorizing statute for a program listed in § 100b.1: *

(a) *Compensatory education.* The application under Section 162 of Title I of the Elementary and Secondary Education Act.

(b) *Basic skills.* The agreement under Title II–B of the Elementary and Secondary Education Act.

(c) *Library resources.* State plan under Title II of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(d) *Innovative projects; Guidance and Counseling.* The State plan under Title III of the Elementary and Secondary Education Act (as in effect on Sept. 30, 1978).

(e) *Libraries; Innovative projects; Guidance and Counseling.* The State plan under Title IV of the Elementary and Secondary Education Act.

(f) *State educational agencies.* The State plan under Title V–B of the Elementary and Secondary Education Act.

(g) *State educational agencies.* The application under Title V–A of the Elementary and Secondary Education Act (as in effect September 30, 1978).

(h) *Community schools.* The State plan under Title VIII of the Elementary and Secondary Education Act.

(i) *Gifted and talented children.* The application under Section 904(b)(1) of Title IX of the Elementary and Secondary Education Act.

(j) *Indochinese children.* The application under Section 205 of Title II of the Indochina Refugee Children Assistance Act.

(k) *Academic subjects.* The State plan under Title III–A of the National Defense Education Act.

(l) *Reading.* The agreement under Title VII–B of the Education Amendments of 1974.

(m) *Handicapped Children.* The State plan under Part B of the Education of the Handicapped Act.

(n) *Handicapped children.* The application under Section 619 of the Education of the Handicapped Act.

(o) *Vocational education.* The annual program plan under Part A of Title I of the Vocational Education Act.

(p) *Career education.* The application under Section 6 of the Career Education Incentive Act.

(q) *Adult education.* The State plan under the Adult Education Act.

(r) *Community services.* The State plan under Title I of the Higher Education Act.

(s) *State student incentives.* The application under Section 415C of the Higher Education Act.

(t) *State student incentives.* The application under Section 493C of the Higher Education Act.

(u) *Postsecondary commissions.* The application for State postsecondary education commission—interstate planning, under section 1203(a) of the Higher Education Act.

(v) *Libraries.* The basic State plan under the Library Services and Construction Act.

(w) *State equalization.* The application under Section 842 of the Education Amendments of 1974.

(20 U.S.C. 1221e–3(a)(1))

(*Note.—Some of the programs listed in this section are not currently funded.)

§ 100b.103 Three-year State plans.

(a) Beginning no later than fiscal year 1981, each State plan will be effective for a period of three fiscal years, unless the program regulations provide for a longer effective period.

(b) If the Commissioner determines that the three-year State plans under a program should be submitted by the States on a staggered schedule, the Commissioner may require groups of States to submit or resubmit their plans in different years.

(20 U.S.C. 1231g(a))

(Source: GEPA Section 430(a))

§ 100b.104 A State shall include certain certifications in its State plan.

(a) A State shall include the following certifications in a State plan:

(1) That the plan is submitted by the State agency that is eligible to submit the plan.

(2) That the State agency has authority under State law to perform the functions of the State under the program.

(3) That the State legally may carry out each provision of the plan.

(4) That all provisions of the plan are consistent with State law.

(5) That a State officer, specified by title in the certification, has authority under State law to receive, hold, and

disburse Federal funds made available under the plan.

(6) That the State officer who submits the plan, specified by title in the certification, has authority to submit the plan.

(7) That the agency that submits the plan has adopted or otherwise formally approved the plan.

(8) That the plan is the basis for State operation and administration of the program.

(Sources: 104.171(a)+(b)+(h); 116.3(a)(4); 117.5(e)+(f); 118.6(c); 118.7(b); 121a.112(a)+(b); 130 App.; 141.4; 141.5; 141.8; 166.14; 166 App. A; 173.12; 173.21)

(20 U.S.C. 1221e-3(a)(1))

§ 100b The Governor has 45 days to comment on the State plan.

(a) Before a State submits a State plan to the Commissioner, the State shall give its Governor 45 days to comment on the plan.

(b) The State shall attach to the plan any comments the Governor makes.

(c) If the Governor does not comment, the official who submits the State plan shall certify that—

(1) The State submitted the plan to the Governor at least 45 days before submitting it to the Commissioner; and

(2) The Governor did not comment.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100b.36; 118.22(b)(2); 130 App. A para. 3; 130 App. B Sec. 1.2(d); 166.16(a); 166 App. A (10); OMB Circular A-95)

§ 100b.106 State plan is public information.

A State shall make the following documents available for public inspection:

(a) All State plans and related official materials;

(b) All documents that the Commissioner transmits to the State regarding a program; and

(c) All documents that the State uses to administer or operate a program.

(20 U.S.C. 1221e-3(a)(1))

(Source: 104.141(f)(9))

Amendments

§ 100b.140 Amendments to a State plan.

(a) If the Commissioner determines that an amendment to a State plan is essential during the effective period of the plan, the State shall make the amendment.

(b) A State shall also amend a State plan if there is a significant and relevant change in—

(1) The information or the assurances in the plan;

(2) The administration or operation of the plan; or

(3) The organization, policies, or operations of the State agency that received the grant, if the change materially affects the information or assurances in the plan.

(29 U.S.C. 1221e-3(a)(1); GEPA Section 430(a))

(Sources: 100b.28; 116d.8(a); 117.5(d); 118.6; 173.11; GEPA Section 430(a))

§ 100b.141 An amendment requires the same procedures as the document being amended.

A State shall use the same procedures to amend a State plan or other document it submits to the Commissioner, as it uses to prepare and submit the document itself.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100b.28; 100b.36; 116d.8; 118.6(e); 118.22(b)(2); 130 App. para. 3; 166.64(b); 166 App. A (10))

§ 100b.142 An amendment is approved on the same basis as the document being amended.

The Commissioner uses the same procedures to approve an amendment to a State plan or other document a State submits as the Commissioner uses to approve the document itself.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100b.28)

Subpart C—How a Grant is Made to a State

Approval or Disapproval by the Commissioner

§ 100b.201 A State plan must meet all statutory and regulatory requirements.

The Commissioner approves a State plan if it meets the requirements of the Federal statutes and regulations that apply to the plan.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116d.39; 117.5(g); 130.16(b); 141.3; 141.9; 166.16(b))

§ 100b.202 Opportunity for a hearing before a State plan is disapproved.

The Commissioner may disapprove a State plan only after—

(a) Notifying the State;

(b) Offering the State a reasonable opportunity for a hearing; and

(c) Holding the hearing, if requested by the State.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 104.271(a); 117.5(g); 130.16(b); 141.9; 166.16(b); 173.15(a))

§ 100b.203 The notification of grant award.

(a) To make a grant to a State, the Commissioner issues a notification of grant award and sends it to the State.

(b) The notification of grant award tells the amount of the grant and provides other information about the grant.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 117.5(g); 141.9)

Alltoments and Reallotments of Grant Funds

§ 100b.230 Allotments are made under program statute.

The Commissioner allots program funds to a State in accordance with the authorizing statute for the program.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.231 Funds that exceed a State's needs are realloted.

(a) If the Commissioner determines that a State has more funds than it needs under a program, the Commissioner may reduce a grant under the program to the amount needed by the State.

(b) The Commissioner may determine that a State has more funds than it needs on the basis of—

(1) Statements the State submits under § 100b.235; and

(2) Other relevant information that is available to the Commissioner.

(c) If the Commissioner reduces a grant to a State under paragraph (a) of this section, the Commissioner reallots the funds to other States.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116d.22(d); 118.52(a); 130.42; 134.74(b); 162.26(a); 141.39(a)+(c))

§ 100b.232 Limits on amount of reallotment to a State.

If the Commissioner reallots funds to a State under § 100b.231, the amount of the reallotment—

(a) Cannot result in the State's receiving more than its maximum entitlement under the program; and

(b) Cannot be more than the amount the State needs under the program.

(20 U.S.C. 1221e-3(a)(1))

(Source: 116a.11(a)(3))

§ 100b.233 The notice of reallotment.

Before any reallotment, the Commissioner notifies each State affected by the reallotment. The notice specifies the total amount of the State's grant after the reallotment.

(20 U.S.C. 1221e-3(a)(1))

(Source: 173.23(c))

§ 100b.234 Realloted funds are part of a receiving State's grant.

Funds that a State receives as a result of a reallotment are part of the State's grant for the appropriate fiscal year. However, the Commissioner does not consider a reallotment in determining the maximum or minimum amount to

which a State is entitled for a following fiscal year.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116d.11(b); 118.52(a); 130.42)

§ 100b.235 The statement of need for funds.

A State shall, if requested by the Commissioner, submit a statement to the Commissioner showing its anticipated need for funds during the current fiscal year. The State shall include in the statement any additional information that the Commissioner requests. The State shall submit the statement by the date that the Commissioner specifies.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 117.43(b); 118.52(b); 130.42; 141.33(b); 162.26(b); 173.23(b) (first and third sents.)

Subpart D—How to Apply to the State for a Subgrant

§ 100b.300 Contact the State for procedures to follow.

An applicant for a subgrant can find out the procedures it must follow by contacting the State agency that administers the program.

(20 U.S.C. 1221e-3(a)(1))

(Source: 121a.180)

(Cross-reference: See Subparts E and G for the general responsibilities of the State regarding applications for subgrants.)

§ 100b.301 Local educational agency general application.

A local educational agency that applies for subgrants under one or more programs listed in § 100b.1 shall submit to the State a general application that contains the assurances set forth in section 436(b) of the GEPA.

(20 U.S.C. 1232e)

(Source: GEPA Section 436)

§ 100b.302 The notice to the subgrantee.

A State shall notify a subgrantee in writing of—

(a) The amount of the subgrant;

(b) The period during which the subgrantee may obligate the funds; and

(c) The Federal requirements that apply to the Subgrant.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.303 Joint applications and projects.

(a)(1) Two or more eligible parties may submit a joint application for a subgrant.

(2) Each joint applicant shall—

(i) Carry out the activities that the applicant agreed to carry out; and

(ii) Use the funds in accordance with Federal requirements.

(3) The State may not make a subgrant that exceeds the sum of the entitlements of the separate applicants.

(b) A subgrantee may combine funds with another subgrantee to conduct a joint project. However, each subgrantee shall use an accounting system that permits identification of the costs paid for under its subgrant.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116a.19(d); 166.11(b)(4)(i))

§ 100b.304 State and subgrantee shall make subgrant application available to the public.

A State and a subgrantee shall make an approved subgrant application available for public inspection.

(20 U.S.C. 1221e-3(a)(1))

(Source: 116.5(e))

§ 100b.305 Amendments to applications.

If a subgrantee amends its application, it shall use the same procedures as those it must use to submit an application.

(20 U.S.C. 1221e-3(a)(1))

Subpart E—How a Subgrant is Made to an Applicant

§ 100b.400 State procedures for reviewing an application.

A State that receives an application for a subgrant shall take the following steps:

(a) The State shall review the application.

(b) The State shall approve an application if—

(1) The application is submitted by an applicant that is entitled to receive a subgrant under the program; and

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program.

(c) The State may approve an application if—

(1) The application is submitted by an applicant under a program in which the State has the discretion to select subgrantees;

(2) The applicant meets the requirements of the Federal statutes and regulations that apply to the program; and

(3) The State determines that the project should be funded under the authorizing statute and implementing regulations for the program.

(d) The State may not approve an application if—

(1) The applicant does not meet the requirements of the Federal statutes or regulations that apply to the program; or

(2) The application is for an amount that would result in the applicant receiving more than its maximum entitlement under the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116.5; 116.19(a); 121a.193)

§ 100b.401 An applicant has an opportunity for a hearing.

(a) If a State does not approve an application for a subgrant, the State shall provide the applicant with an opportunity for a hearing in accordance with section 425 of the GEPA.

(b) Under the following programs listed in § 100b.1, the State shall notify an applicant of its right to a hearing and provide an opportunity for the hearing before it may disapprove the application:

(1) Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children.

(2) State-operated Programs for Handicapped Children.

(3) Grants to State Agencies for Programs to Meet the Special Educational Needs of Children in Institutions for Neglected or Delinquent Children.

(4) Grants to State Educational Agencies to Meet the Special Educational Needs of Migratory Children.

(5) Financial Assistance for School Library Resources Textbooks and Other Instructional Materials.

(6) Supplementary Centers and Services, Guidance, Counseling, and Testing Programs.

(7) Assistance to States for Education of Handicapped Children.

(8) Strengthening Instruction in Academic Subjects in Public Schools.

(9) State Vocational Education.

(10) Indochinese Refugee Children.

(c) Under the other programs listed in § 100b.1, the State does not have to provide an opportunity for a hearing before the State disapproves an application.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116.5(c); 118.8(f)(3); 118.23(f); 121a.114; 130.19(b)(3)(v))

Subpart F—What Conditions Must be Met by the State and its Subgrantees?

Nondiscrimination

§ 100b.500 Federal statutes and regulations on nondiscrimination.

A State and a subgrantee shall comply with the following statutes and regulations:

Subject	Statute	Regulation
Discrimination on the basis of race, color, or national origin	Title VI of the Civil Rights Act of 1964 (45 U.S.C. 2000d through 2000d–4.	45 CFR Part 80
Discrimination on the basis of sex	Title IX of the Education Amendments of 1972 (20 U.S.C. 1681–1683).	45 CFR Part 86
Discrimination on the basis of handicap	Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).	45 CFR Part 84
Discrimination on the basis of age	The Age Discrimination Act (42 U.S.C. 6101 *et seq.*)	45 CFR Part 90

(20 U.S.C. 1221e–3(a)(1))

(**Sources:** 100b.160; 100b.262; 104.553 (1st + 2nd sents.); 121a.50; 121a.239; App. para. 6; 166 App. A para. 9; 166 App. C Sec. 2.1)

Allowable Costs

§ 100b.530 General cost principles.

Subpart Q of part 74 of this title references the general cost principles that apply to grants, subgrants, and cost-type contracts under grants and subgrants.

(20 U.S.C. 1221e–3(a)(1))

(**Sources:** 100b.80–100b.84; 100–100d Apps. B, C, and D.)

§ 100b.531 Specific cost principles in Part 100a.

A State and a subgrantee shall comply with § 100a.532–100a.534 regarding the use of Federal funds for—

(a) Religion (§ 100a.532);

(b) Acquisition of real property; construction (§ 100a.533); and

(c) Foreign Travel (§ 100a.534).

(20 U.S.C. 1221e–3(a)(1))

(**Sources:** 100b.59; 166.23(b); 166.44; 166 App. C Sec. 5.4(b); 173.1(g); 173.17)

Indirect Cost Rates

§ 100b.560 General indirect cost rates; exceptions.

(a) Appendices C–D to Part 74 of this title include—

(1) A description of the difference between direct and indirect costs; and

(2) The principles for determining the general indirect cost rate that a State or subgrantee may use under some programs.

(b) Section 100b.562 provides restrictions on indirect cost rates under certain programs.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.561 Approval of indirect cost rates.

(a) A State or a subgrantee other than a local educational agency may not use an indirect cost rate unless the rate is approved by the Commissioner.

(b) A State educational agency, on the basis of a plan approved by the Commissioner, shall annually establish an indirect cost rate for a local educational agency that requests it to do so.

(20 U.S.C. 1221e–3(a)(1))

(**Source:** 100c.2(a)+(b))

§ 100b.562 Restricted indirect cost rate; programs covered.

A State and a subgrantee shall use a restricted indirect cost rate, computed under §§ 100a.564—100a.568 of this title, for each program listed in § 100b.1 that has a statutory requirement not to use Federal Funds to supplant other funds. These programs include the following:

Program	*Authorizing Statute*
State Vocational Education, Programs	Part A of Title I of the Vocational Education Act
Financial Assistance to Local Educational Agencies to Meet the Special Educational Needs of Educationally Deprived Children	Title I–A of the Elementary and Secondary Education Act
Grants to State Agencies for Programs to Meet the Special Educational Needs of Migratory Children	Sections 141–143 of the Elementary and Secondary Education Act
State-operated Programs for Handicpped Children	Sections 146–147 of the Elementary and Secondary Education Act
Grants to State Agencies for Programs to Meet the Special Educational Needs of children in Institutions for Neglected or Delinquent Children	Section 151–153 of the Elementary and Secondary Education Act
State Basic Skills Improvement Program	Title II of the Elementary and Secondary Education Act
Financial Assistance for School Library Resources, Textbooks, and other Instructional Materials	Title II of the Elementary and Secondary Education Act (as in effect Sept 30, 1978)
Supplementary Centers and Services, Guidance, Counseling, and Testing Programs	Title III of the Elementary and Secondary Education Act (as in effect Sept. 30, 1978)
Strengthening Instruction on Academic Subjects in Public Schools	Title III–A of the National Defense Education Act
State Adult Education Programs	Adult Education Act
Community Service and Continuing Education Programs	Title I of the Higher Education Act

(20 U.S.C. 1221e–3(a)(1))

(**Source:** 100c.1)

§ 100b.581 Methods of coordination.

Depending on the objectives and requirements of a project, coordination could include one or more of the following:

(a) Planning the project with organizations and individuals who have similar objectives or concerns.

(b) Sharing information, facilities, staff, services, or other resources.

(c) Using the grant or subgrant funds so as not to duplicate or counteract the effects of funds used under other programs.

(d) Using the grant or subgrant funds to increase the impact of funds made available under other programs.

(20 U.S.C. 1221e–3(a)(1))

(**Source:** 118.22(b)(1))

Evaluation

§ 100b.591 Federal evaluation—cooperation by a grantee.

A State and a subgrantee shall cooperate in any evaluation of the program by the Secretary or the Commissioner.

(20 U.S.C. 1226c; 1231a)

§ 100b.592 Federal evaluation satisfying requirement for State or subgrantee evaluation.

If a State or a subgrantee cooperates in a Federal evaluation of a program, the Commissioner may determine that the State or subgrantee meets the evaluation requirements of the program.

(20 U.S.C. 1226c; 1231a)

Construction

§ 100b.600 Where to find construction regulations.

(a) A State or a subgrantee that uses program funds for construction shall comply with the rules on construction that apply to applicants and grantees under §§ 100a.600—100a.615.

(b) The State shall perform the functions that the appropriate official of the Education Division performs under §§ 100a.602 (preservation of historic sites) and 100a.605 (approval of drawings and specifications).

(c) the State shall provide to the Commissioner the information required under § 100a.602(a) (preservation of historic sites).

(20 U.S.C. 1221e–3(a)(1))

(**Sources:** 100b.155; 100b.157; 100b.158; 100b.159; 100b.161; 100b.170; 100b.171; 100b.172; 100b.173; 100b.184; 100b.185; 100b.186; 1090b.189; 100b.190; 100b.191; 104.553(3rd sent.); 116.32(a) (4th sent.); 130.5(c); 130 App.B sec. 2.2(b)+(c))

Participation of Children Enrolled in Private Schools

§ 100b.650 Private schools; purpose of §§ 100b.651—100b.663.

(a) Under some programs, the authorzing statute requires that students enrolled in private schools be given an opportunity to participate. Sections 100b.651–100b.663 apply to those programs and provide rules for that participation.

(b) If any other rules for that participation apply under a particular program, they are in the authorizing statute or implementing regulations for that program.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.651 Responsibility of a State.

(a) A State shall insure that its subgrantees provide students enrolled in private schools with an opportunity to participate in accordance with the requirements in §§ 100b.652–100b.662 and in the authorizing statute and implementing regulations for the program.

(b) If the State carries out a project directly, it shall comply with these requirements as if it were a subgrantee.

(U.S.C. 1221e–3(a)(1))

§ 100b.652 Responsibility of a subgrantee.

(a) A subgrantee shall give students enrolled in private schools genuine opportunities to particiate in a program.

(b) The subgrantee shall provide those opportunities consistent with the number of those students and their needs.

(Sources: 116a.23(a)(2d sent.); 121a.452(b))

(c) The subgrantee shall maintain continuing administrative direction and control over benefits it provides under the program to students enrolled in private schools.

(Sources: 104.533(c); 116a.23(f)(2d sent.); 121a.456(b); 134.98)

(20 U.S.C. 1221e–3(a)(1))

§ 100b.653 Consultation with representatives of private school students.

(a) An applicant for a subgrant and a subgrantee shall consult with appropriate representatives of students enrolled in private schools.

Coordination

§ 100b.580 Coordination with other activities.

(a) State and a subgrantee shall, to the extent possible, coordinate each of its projects with other activities that serve similar purposes.

(b) The State and subgrantee shall continue this coordination during the entire period that it carries out the project.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 100b.275; 116d.39(d)–(f); 118.22(b); 118.26(b); 166.13(c)(2nd sent.)+(e)–(g); 166 App. C Secs. 3.2(c)(2)(2nd para.)+(c)(3), 3.6; 5.5(b)(4), 5.7(b)(7)+(c)(6)–(9))

(b) This consultation must take place before the applicant or subgrantee makes any decision that affects the participation of the private school students.

(c) The applicant or subgrantee shall give the representatives a genuine opportunity to express their views regarding the decision.

(d) The following are examples of decisions that are subject to this section:

(1) Whether the applicant will participate in a program;

(2) Which children will receive benefits under the program;

(3) How the children's needs will be identified;

(4) What benefits will be provided;

(5) How the benefits will be provided; and

(6) How the project will be evaluated.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 116a.23(b); 121a.453; 134.90)

§ 100b.654 Needs; number of students; types of services.

A subgrantee shall determine the following matters on a basis comparable to that used by the subgrantee in providing for participation of public school students:

(a) The needs of students enrolled in private schools.

(b) The number of those students who will participate in a project.

(c) The benefits that the subgrantee will provide under the program to those students.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 104.533(b)(1)+(2); 116a.23(b); 118.15(a)(2d sent.); 121a.453; 134.92)

§ 100b.655 Same or different benefits for private school students.

(a) If a subgrantee concentrates program funds on a particular group, attendance area, or grade or age level, the subgrantee shall insure equitable participation by students enrolled in private schools who—

(1) Have the same needs; and

(2) Are in that group, attendance area, or age or grade level.

(b)(1) A subgrantee shall provide different program benefits to students enrolled in private schools from the program benefits it provides to students enrolled in public schools, if the differences are necessary to meet the special needs of the students enrolled in the private schools.

(2) However, the program benefits for the students enrolled in private schools must be comparable in quality, scope, and opportunity for participation to the program benefits for students enrolled in public schools who have needs of equal importance.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 116a.23(c); 121a.455; 134.95)

§ 100b.656 Level of expenditures for students enrolled in private schools.

(a) Subject to paragraph (b) of this section, a subgrantee shall spend the same average amount of program funds on:

(1) A student enrolled in a private school who receives benefits under the program; and

(2) A student enrolled in a public school who receives benefits under the program.

(b) The subgrantee shall spend a different average amount on program benefits for a student enrolled in a private school if the costs of meeting the needs of students enrolled in private schools are different from the costs of meeting the needs of students enrolled in public schools.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 134.93; 134.94)

§ 100b.657 Information in an application for a subgrant.

An applicant for a subgrant shall include the following information in its application:

(a) A description of how the applicant will meet the Federal requirements for participation of children enrolled in private schools.

(b) The number of children enrolled in private schools who will receive benefits under the program.

(c) The basis the applicant used to select the children.

(d) The manner and extent to which the applicant complied with § 100b.653 (consultation).

(e) The places and times that the children will receive benefits under the program.

(f) The differences, if any, between the program benefits the applicant will provide to public and private school students, and reasons for the differences.

(20 U.S.C. 1221e–3(a)(1))

§ 100b.658 Separate classes prohibited.

A subgrantee may not use program funds for classes that are separated on the basis of school enrollment or religion of the students if—

(a) The classes are in a public facility; and

(b) The classes include students enrolled in public schools and students enrolled in private schools.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 166a.23(e); 118.15(b)(2d sent.); 121a.458; 134.101)

§ 100b.659 Funds not to benefit a private school.

(a) A subgrantee may not use program funds to finance the existing level of instruction in a private school or to otherwise benefit the private school.

(b) The subgrantee shall use program funds to meet the special needs of students enrolled in private schools, rather than

(1) The needs of a private school; or

(2) The general needs of the students enrolled in a private school.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116a.23(d)(1st sent.); 117.6(e)(2nd sent.); 118.15(c)(6))

§ 100b.660 Use of public school personnel.

A subgrantee may make public personnel available in other than public facilities only—

(a) To the extent necessary to provide program benefits specially designed for students enrolled in a private school; and

(b) If those benefits are not normally provided by the private school.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116a.23(f)(1st sent.); 121a.456(a))

§ 100b.661 Use of Private school personnel.

(a) A subgrantee may use program funds to pay for the services of an employee of a private school if—

(1) The employee performs the services outside—

(i) His or her regular hours of duty; and

(ii) The regular hours of the private school; and

(2) The employee performs the services under public supervision and control.

(b) This section does not apply to the following programs:

(1) Instructional Materials and School Library Resources, Improvement in Local Educational Practices, and Guidance, Counseling, and Testing—Title IV of the Elementary and Secondary Education Act; and

(2) Indochina Refugee Children Program—Title II of the Indochina Refugee Children Assistance Act.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116a.23(f)(3rd sent.); 118.15(c)(1); 121a.456(c)(1))

§ 100b.662 Equipment and supplies.

(a) A public agency shall keep title to and exercise continuing administrative control of all equipment and supplies that the subgrantee acquires with program funds. This public agency is usually the subgrantee.

(b) The public agency may place equipment and supplies in a private school for a limited period of time.

(c) The public agency shall insure that the equipment or supplies placed in a private school—

(1) Are used only for the purposes of the program; and

(2) Can be removed from the private school without remodeling the private school facilities.

(d) The public agency shall remove equipment or supplies from a private school if—

(1) The equipment or supplies are no longer needed for the purposes of the program; or

(2) Removal is necessary to avoid use of the equipment or supplies for other than program purposes.

(Sources: 104.533(c); 116a.23(f)(2d sent.); 117.6(f); 118.15(c)(3); 121a.457(a)+(b); 134.98; 134.100(b))

§ 100b.663 Construction.

A subgrantee shall insure that program funds are not used for the construction of private school facilities.

(20 U.S.C. 1221e-3(a)(1)

(Sources: 116.23(f)(3rd sent.); 118.15(c)(4); 121a.456(c)(2))

Other Requirements for Certain Programs

§ 100b.680 Inventions and patents.

A State and a subgrantee shall comply with §§ 100a.625 and 100a.626 of this title with respect to any invention made under a grant or subgrant.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.682 Protection of human research subjects.

If a State or a subgrantee uses a human subject in a research project, the State or subgrantee shall protect the person from physical, psychological, or sociological harm.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.683 Treatment of animals.

If a State or a subgrantee uses an animal in a project, the State or subgrantee shall provide the animal with proper care and humane treatment in accordance with the Animal Welfare Act of 1970.

(Pub. L. 89-544, as amended)

§ 100b.684 Health or safety standards for facilities.

A State and a subgrantee shall comply with any Federal health or safety requirements that apply to the facilities that the State or subgrantee uses for a project.

(20 U.S.C. 1221e-3(a)(1))

§ 100b.685 Day care services.

(a) If a State or a subgrantee uses program funds to provide any day care services, the State or subgrantee shall comply with the Federal Interagency Day Care Regulations in part 71 of this title.

(b) The Commissioner may waive this requirement by publication of a noice in the **Federal Register.**

(20 U.S.C. 1221e-3(a)(1))

(Source: 104.612(b))

Subpart G—What are the Administrative Responsibilities of the State and Its Subgrantees?

General Administrative Responsibilities

§ 100b.700 Compliance with statutes, regulations, State plan, and applications.

A State and a subgrantee shall comply with the State plan and applicable statutes, regulations, and approved applications, and shall use Federal funds in accordance with those statutes, regulations, plan, and applications.

(Sources: 104.301; 104.792(b); 116.4(a); 116.48; 116b.32(b)(2), 116.52; 117.5(d); 121a.15; 121a.600(a); 130.30; 141.3; 141.6(a), 141.46; 166.12(a)(last sent.); 166.41)

§ 100b.701 The State or subgrantee administers or supervises each project.

(a) A State or a subgrantee shall directly administer or supervise the administration of each project.

(b) The State or subgrantee may not transfer responsibility to others, in whole or part, for using program funds or for carrying out project activities.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 118.23(c)(1); 121a.600(a)(1); 130 App.; 166.11(b)(4)(i))

§ 100b.702 Fiscal control and fund accounting procedures.

A state and a subgrantee shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 130 App. A para. 1(b); 141.11(b))

§ 100b.703 When a State may begin to obligate funds.

A State may not begin to obligate funds under a program until the later of the following two dates:

(a) The date that the State submits the State plan to the Commissioner in substantially approvable form.

(b) The date that the funds are first available for obligation by the Commissioner.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 100b.35; 116d.6(d)(1))

§ 100b.704 When certain subgrantees may begin to obligate funds.

(a) This section applies to a program if the authorizing statute requires a State to make subgrants on the basis of an objective formula. (See § 100b.5.)

(b) An applicant for a subgrant may not begin to obligate funds under a program until the later of the following two dates:

(1) The date that the State may begin to obligate funds under § 100b.703; or

(2) The date that the applicant submits its application to the State in substantially approvable form.

(20 U.S.C. 1221e-3(a)(1))

(Source: 116.5(b); 116a.19(a); 116d.6(d)(2); 121a.193(a))

§ 100b.705 Funds may be obligated during a "carryover period."

(a) If any grant funds are not obligated by a State or a subgrantee by the end of the fiscal year for which Congress appropriated the funds, it may obligate the funds during a carryover period of one additional fiscal year.

(b) The State shall return to the Federal Government any carryover funds not obligated by the end of the carryover period by the State and its subgrantees.

(20 U.S.C. 1225(b)

(Sources: 100b.55(b); GEPA Section 412)

§ 100b.706 Obligations made during a carryover period are subject to current statutes, regulations, and applications.

A State and a subgrantee shall use carryover funds in accordance with—

(a) The Federal statutes and regulations that apply to the program and are in effect for the carryover period; and

(b) Any State plan, application, or other document that the program statute and regulations require the State or subgrantee to submit for the carryover period.

(20 U.S.C. 1225 (b))

(Source: GEPA Section 412(b))

§ 100b.707 When obligations are made.

The following table shows when a State or a subgrantee makes obligations for various kinds of property and services.

If the obligation is for—	Then the obligation is made—
(a) Acquisition of real or personal property.	On the date the State or subgrantee makes a binding written commitment to acquire property.
(b) Personal services by an employee of the State or subgrantee.	When the services are performed.
(c) Personal services by a contractor who is not an employee of the State or subgrantee.	On the date the State or subgrantee makes a binding written commitment to get the services or work.
(d) Performance or work other than personal services.	On the date the State or subgrantee makes a binding written commitment to get the work.
(e) Public utility services	When the State or subgrantee receives the services.
(f) Travel	When the State's or subgrantee's personnel take the travel.
(g) Rental of real or personal property.	When the State or subgrantee uses the property.

(20 U.S.C. 1221e–3(a)(1))

(Source: 100b.55)

Reports

§ 100b.720 Financial and performance reports by a State.

(a) This section applies to a State's reports required under subparts I (Financial reporting) and J (Performance reporting) of part 74 of this title.

(b) A State shall submit these reports annually, unless the Commissioner allows less frequent reporting.

(c) However, the Commissioner may under § 74.7 (Special grant or subgrant conditions) or § 74.72(e) (Grantee accounting systems), require a State to report more frequently than annually.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 116b.11(a); 116d. (c); 130 App. para. 1(e); 141.11(c); 166.52)

§ 100b.721 A subgrantee makes reports required by the State.

A State may require a subgrantee to furnish reports that the State needs to carryout its responsibilities under the program.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 116b.23(b); 116d.6(c); 118.23(c)(5); 166.27)

Records

§ 100b.730 Records related to grant funds.

A State and a subgrantee shall keep records that fully show—

(a) The amount of funds under the grant or subgrant;

(b) How the State or subgrantee uses the funds;

(c) The total cost of the project;

(d) The share of that cost provided from other sources; and

(e) Other records to facilitate an effective audit.

(20 U.S.C. 1232f)

(Sources: 100a.477; 100–100d App. A para. 5a + b; 116d.6(c); 141.11(c); GEPA Section 437(a))

§ 100b.731 Records related to compliance.

A State and a subgrantee shall keep records to show its compliance with the Federal statutes and regulations that apply to a grant or subgrant.

(20 U.S.C. 1221e–3(a)(1))

(Source: 130 App. para. 1(f))

§ 100b.734 Record retention period.

A State and a subgrantee are subject to the requirements in subpart D of part 74 of this title with respect to records that it must keep. However, Section 437(a) of the GEPA requires that the State and the subgrantee must keep records for five years after completion of the activity for which it uses grant or subgrant funds.

(20 U.S.C. 1232f(a))

(Source: GEPA Section 437(a))

Privacy

§ 100b.740 Protection of and accessibility to student records.

Most records on present or past students are subject to the requirements of Section 438 of GEPA and its implementing regulations under part 99 of this title. (Section 438 is the Family Educational Rights and Privacy Act of 1974.)

(20 U.S.C. 1231g)

(Source: GEPA Section 438)

§ 100b.741 Protection of students' privacy in research and testing.

(a) Section 439(a) of GEPA provides that parents or guardians of children who participate in a research or experimentation project funded by the Office of Education must be given access to instructional material used in that project; and

(b) A State and a subgrantee shall comply with Section 439(b) of GEPA with respect to psychiatric or psychological examination, testing, or treatment of students as part of a project funded by the Office of Education.

(20 U.S.C. 1232h)

(Source: GEPA Section 439)

(Note: Appendix A to this part contains sections of GEPA that are relevant to Part 100b.)

Use of Funds by States and Subgrantees

§ 100b.750 More than one program may assist a single activity.

A State or a subgrantee may use funds under more than one program to support different parts of the same project if the State or subgrantee meets the following conditions:

(a) The State or subgrantee complies with the requirements of each program

with respect to the part of the activity assisted with funds under that program; and

(b) The State or subgrantee has an accounting system that permits identification of the costs funded under each program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116.41(b); 130 App. para. 1(f))

§ 100b.751 Federal funds may pay 100 percent of costs.

A State or a subgrantee may use program funds to pay up to 100 percent of the cost of a project if—

(a) The State or subgrantee is not required to match the funds; and

(b) The project can be assisted under the authorizing statute and implementing regulations for the program.

(20 U.S.C. 1221e-3(a)(1))

State Administrative Responsibilities

§ 100b.760 A State shall perform certain duties with respect to applications for subgrants.

With respect to each program that authorizes subgrants, a State shall perform the following duties and any other duties required by statute or regulations:

(a) Disseminate information regarding the availability of funds under each program.

(b) Develop procedures for applicants to follow in competing and submitting applications for subgrants.

(c) Provide application forms.

(d) Assist applicants in applying for funds.

(e) Review applications and, within the limits of available funds, award subgrants.

(f) Notify each applicant as to whether it will receive a subgrant.

(g) Not act in any manner that excludes eligible applicants under the program.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 104.32(c); 104.32; 104.33; 116.4(a);116.5(a); 116.13(a), (b), and (f); 116d.11(a); 117.21(c) and (f); 118.8(f)(1); 118.23(b)(2) and (e); 121a.181; 130 App. B sec. 2.2(a); 134.37(a); 116.12(b); 116 App. C secs. 5.5(a), 5.6, 5.7, 5.8, 5.9, and 5.11(a)+(b); 173.12(c))

§ 100b.761 A State shall encourage eligible applicants to apply.

(a) Each State shall encourage all eligible applicants to apply for subgrants.

(b) The State shall inform eligible applicants of—

(1) The availability of subgrants;

(2) The objectives of the programs;

(3) The objectives of the State plan of each program;

(4) The assistance the State provides to an applicant in completing and submitting an application; and

(5) The procedures that State uses to select applications for funding.

(20 U.S.C. 1222c.-3(a)(1))

(Sources: 116a.22(a)(1); 118.23(b)+(c)(7); 166.12(b)(2)(i); (iv); (viii); 166 App. C 3.4(c); 166 App. C 5.8, 5.8)

§ 100b.762 Other responsibilities of the State.

(a) A State shall—

(1) Provide technical assistance, as required by statute and regulations, to evaluate projects;

(2) Develop and use procedures to monitor each project; and

(3) Develop procedures, issue rules, or take whatever action may be necessary to avoid illegal, imprudent, wasteful, or extravagant use of funds by the State or a subgrantee.

(b) This section does not apply to the program under Title I of the Elementary and Secondary Education Act (See § 100b.1).

(c) For the program under Title IV of the Elementary and Secondary Education Act (See § 100b.1), a State meets the requirements of this Section if it complies with sections 505 and 506 of that Act.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116.11; 116d.4(a))

Complaint Procedures of the State

§ 100b.780 A State shall adopt complaint procedures.

(a) A state shall adopt written procedures for—

(1) Receiving and resolving any complaint that the State or subgrantee is violating a Federal statute or regulations that applies to a program;

(2) Reviewing an appeal from a decision of a subgrantee with respect to a complaint; and

(3) Conducting an independent on-site investigation of a complaint if the State determines that an on-site investigation is necessary.

(b) Sections 100b.780–100b.782 do not apply to the program under Title I of the Elementary and Secondary Education Act. (See §100b.1)

(c) For the program under Title IV of the Elementary and Secondary Education Act (See § 100b.1), a State meets the requirements of §§ 100b.780–100b.782 if it meets the requirements of section 507 of that Act.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 116.6(a); 116.7(b); 121a.602(a); 134.102(b))

§ 100b.781 An organization or individual may file a complaint.

An organization or individual may file a written signed complaint with a State. The complaint must include—

(a) A statement that the State or a subgrantee has violated a requirement of a Federal statute or regulation that applies to a program; and

(b) The facts on which the statement is based.

(20 U.S.C. 1221e-3(a)(1))

(Sources: 121a.602(a); 134.102(a))

§ 100b.782 Minimum complaint procedures.

A state shall include the following in its complaint procedures:

(a) A specific time limit, which must be 60 days or less unless exceptional circumstances exist, for—

(1) Resolving a complaint or completing a review of an appeal from a subgrantee's decision with respect to a complaint; and

(2) If necessary, carrying out an independent on-site investigation.

(b) The right to request the Commissioner to review the final decision of the State.

(20 U,S.C. 1221e-3(a)(1))

(Source: 116.6; 134.102(b))

Subpart H—What Procedures Does the Commissioner Use to Get Compliance?

§ 100b.900 Waiver of regulations prohibited.

(A) No official, agent, or employee of HEW may waive any regulation that applies to an Office of Education program unless the regulation specifically provides that it may be waived.

(b) No act or failure to act by an official, agent, or employee of HEW can affect the responsibility of the Commissioner to enforce a regulation.

(43 Dec. Comp. Gen. 31 (1963))

(Source: 100b.483)

§ 100b.901 Regulations in Part 74 on suspension and terminiation.

The following regulations in Part 74 of this title apply to suspension and termination of a grant:

(a) Section 74.113 (Violation of terms).

(b) Section 74.114 (Suspension).

(c) Section 74.115 (Termination).

(d) The last sentence of § 74.73(c) (Financial reporting after a termination).

(e) Section 74.112 (Amounts payable to the Federal Government).

(20 U.S.C. 1221e-3(a)(1))

§ 100b.902 Education Appeals Board.

The Education Appeals Board, established under Part E of the GEPA, has the following functions:

(a) Audit appeal hearings under Section 452 of the GEPA;

(b) Withholding hearings under Section 453 of the GEPA;

(c) Cease and desist hearings under Section 453 of the GEPA; and

(d) Any other proceeding designated by the Commissioner.

(20 U.S.C. 1234)

(Sources: 104.282; 104.283; 104.284; 104.285; 104.286; 104.287; 104.288; 104.291; 116.a23–1(e)(1); 121a.113(c); 121a.580; 121a.582; 121a.583; 134.108(c); GEPA Section 451)

§ 100b.903 Judicial review.

(a) After a hearing, a State is usually entitled to judicial review of the Commissioner's decision.

(b) Whether a State is entitled to judicial review is governed by the statute that required the hearing.

(20 U.S.C. 1221e–3(a)(1))

(Sources: 104.289; 116a.23–1(e)(2); 121a.593; 134.109; 173.95[c])

Attachment No. 1—Selected Sections of the General Education Provisions Act

These selected sections of the General Education Provisions Act are published here as Attachment No. 1 to assist readers in understanding the statutory basis for some of the provisions in part 100b of this notice of Proposed Rulemaking. This will not be published with the final rule.

Selected Sections of the General Education Provisions Act

Review of Applications

Sec. 425. (a) In the case of any applicable program under which financial assistance is provided to (or through) a State educational agency to be expended in accordance with a State plan approved by the Commissioner, and in the case of the program provided for in title I of the Elementary and Secondary Education Act of 1965, any applicant or recipient aggrieved by the final action of the State educational agency, and alleging a violation of State or Federal law; rules, regulations, or guidelines governing the applicable program, in

(1) Disapproving or failing to approve its application or program in whole or part,

(2) Failing to provide funds in amounts in accord with the requirements of laws and regulations,

(3) Ordering, in accordance with a final State audit resolution determination, the repayment of misspent or misapplied Federal funds, or

(4) Terminating further assistance for an approved program, may within thirty days request a hearing. Within thirty days after it receives such a request, the State educational agency shall hold a hearing on the record and shall review such final action. No later than 10 days after the hearing the State educational agency shall issue its written ruling, including reasons therefor. If it determines such final action was contrary to Federal or State law, or the rules, regulations and guidelines, governing such applicable program it shall rescind such final action.

(b) Any applicant or recipient aggrieved by the failure of a State educational agency to rescind its final action after a review under such subsection (a) may appeal such action to the Commissioner. An appeal under this subsection may be taken only if notice of such appeal is filed with the Commissioner within twenty days after the applicant or recipient has been notified by the State educational agency of the results of its review under subsection (a). If on such appeal, the Commissioner determines the final action of the State educational agency was contrary to Federal law, or the rules, regulations, and guidelines governing the applicable program, he shall issue an order to the State educational agency prescribing appropriate action to be taken by such agency. On such appeal, findings of fact of the State educational agency, if supported by substantial evidence, shall be final. The Commissioner may also issue such interim orders to State educational agencies as he may deem necessary and appropriate pending appeal or review.

(c) Each State educational agency shall make available at reasonable times and places to each applicant or recipient under a program to which this section applies all records of such agency pertaining to any review or appeal such applicant or recipient is conducting under this section, including records of other applicants.

(d) If an State educational agency fails or refuses to comply with any provision of this section, or with any order of the Commissioner under subsection (b), the Commissioner shall forthwith terminate all assistance to the State educational agency under the applicable program affected.

Single State Application

Sec. 435. (a) In the case of any State which applies, contracts, or submits a plan, for participation in any applicable program in which Federal funds are made available for assistance to local educational agencies through, or under the supervision of, the State educational agency of that State, such State shall submit (subject, in the case or programs under titles I and IV of the Elementary and Secondary Education Act of 1965, to the provisions of title V of such Act) to the Commissioner a general application containing the assurances set forth in subsection (b). Such application may be submitted jointly for all programs covered by the application, or it may be submitted separately for each such program or for groups of programs. Each application submitted under this section must be approved by each official, agency, board, or other entity within the State which, under State law, is primarily responsible for supervision of the activities conducted under each program covered by the application.

(b) An application submitted under subsection (a) shall set forth assurances, satisfactory to the Commissioner—

(1) That each program will be administered in accordance with all applicable statutes, regulations, program plans, and applications;

(2) That the control of funds provided under each program and title to property acquired with program funds will be in a public agency, or in a nonprofit private agency, institution, or organization if the statute authorizing the program provides for grants to such entities, and that the public agency or nonprofit private agency, institution, or organization will administer such funds and property;

(3) That the State will adopt and use proper methods of administering each applicable program, including—

(A) Monitoring of agencies, institutions, and organizations responsible for carrying out each program, and the enforcement of any obligations imposed on those agencies, institutions, and organizations under law,

(B) Providing technical assistance, where necessary, to such agencies, institutions, and organizations,

(C) Encouraging the adoption of promising or innovative educational techniques by such agencies, institutions, and organizations,

(D) The dissemination throughout the State of information on program requirements and successful practices, and

(E) The correction of deficiencies in program operations that are identified through monitoring or evaluation;

(4) That the State will evaluate the effectiveness of covered programs in meeting their statutory objectives, at such intervals (not less often than once every three years) and in accordance with such procedures as the Commissioner may prescribe by regulation, and that the State will cooperate in carrying out any evaluation of each program conducted by or for the Secretary or other Federal official;

(5) That the State will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to the State under each program;

(6) That the State will make such reports to the Commissioner (including reports on the results of evaluations required under paragraph (4)) as may reasonably be necessary to enable the Commissioner to perform his duties under each program, and that the State will maintain such records, in accordance with the requirements of section 437 of this Act, and afford access to the records as the Commissioner may find necessary to carry out his duties; and

(7) That the State will provide reasonable opportunities for the participation by local agencies, representatives of the class of individuals affected by each program and other interested institutions, organizations, and individuals in the planning for an operation of each program, including the following:

(A) The State will consult with relevant advisory committees, local agencies, interest groups, and experienced professionals in the development of program plans required by statute;

(B) The State will publish each proposed plan, in a manner that will ensure circulation throughout the State, at least sixty days prior to the date on which the plan is submitted to the Commissioner or on which the plan becomes effective, whichever occurs earlier, with an opportunity for public comments on such plans to be accepted for at least thirty days;

(C) The State will hold public hearings on the proposed plans if required by the Commissioner by regulation; and

(D) The State will provide an opportunity for interested agencies, organizations, and individuals to suggest improvements in the administration of the program and to allege that there has been a failure by any entity to comply with applicable statutes and regulations.

(c) Each general application submitted under this section shall remain in effect for the duration of any program it covers. The Commissioner shall not require the resubmission or amendment of that application unless required by changes in Federal or State law or by other significant changes in the circumstances affecting an assurance in that application.

Single Local Educational Agency Application

Sec. 436. (a) Each local educational agency which participates in an applicable program under which Federal funds are made available to such agency through a State agency or board shall submit to such agency or board a general application containing the assurances set forth in subsection (b). That application shall cover the participation by that local education agency in all such programs.

(b) The general application submitted by a local educational agency under subsection (a) shall set forth assurances—

(1) That the local educational agency will administer each program covered by the application in accordance with all applicable statutes, regulations, program plans, and applications;

(2) That the control of funds provided to the local educational agency under each program and title to property acquired with those funds, will be in a public agency and that a public agency will administer those funds and property;

(3) That the local educational agency will use fiscal control and fund accounting procedures that will ensure proper disbursement of, and accounting for, Federal funds paid to that agency under each program;

(4) That the local educational agency will make reports to the State agency or board and to the Commissioner as may reasonably be necessary to enable the State agency or board and the Commissioner to perform their duties and that the local educational agency will maintain such records, including the records required under section 437, and provide access to those records, as the State agency or board or the Commissioner deem necessary to perform their duties;

(5) That the local educational agency will provide, reasonable opportunities for the participation by teachers, parents, and other interested agencies, organizations, and individuals in the planning for an operation of each program;

(6) That any application, evaluation, periodic program plan or report relating to each program will be made readily available to parents and other members of the general public;

(7) That in the case of any project involving construction—

(A) The project is not inconsistent with overall State plans for the construction of school facilities, and

(B) In developing plans for construction, due consideration will be given to excellence of architecture and design and to compliance with standards prescribed by the Secretary under section 504 of the Rehabilitation Act of 1973 in order to ensure that facilities constructed with the use of Federal funds are accessible to and usable by handicapped individuals; and

(8) That the local educational agency has adopted effective procedures for acquiring and disseminating to teachers and administrators participating in each program significant information from educational research, demonstrations, and similar projects, and for adopting, where appropriate, promising educational practices developed through such projects.

(c) A general application submitted under this section shall remain in effect for the duration of the programs it covers. The State agencies or boards administering the programs covered by the application shall not require the submission or amendment of such application unless required by changes in Federal or State law or by other significant change in the circumstances affecting an assurance in such application.

Protection of Pupil Rights

Sec. 439. (a) All instructional material, including teacher's manuals, films, tapes, or other supplementary instructional material which will be used in connection with any research or experimentation program or project shall be available for inspection by the parents or guardians of the children engaged in such program or project. For the purpose of this section "research or experimentation program or project" means any program or project in any applicable program designed to explore or develop new or unproven teaching methods or techniques.

(b) No student shall be required, as part of any applicable program, to submit to psychiatric examination, testing, or treatment, or psychological examination, testing, or treatment, in which the primary purpose is to reveal information concerning:

(1) Political affiliations;

(2) Mental and psychological problems potentially embarrassing to the student or his family;

(3) Sex behavior and attitudes;

(4) Illegal, anti-social, self-incriminating and demeaning behavior;

(5) Critical appraisals of other individuals with whom respondents have close family relationships;

(6) Legally recognized privileged and analogous relationships, such as those of lawyers, physicians, and ministers; or

(7) Income (other than that required by law to determine eligibility for participation in a program or for receiving financial assistance under such program), without the prior consent of the student (if the student is an adult or emancipated minor), or in the case of unemancipated minor, without the prior written consent of the parent.

PART E—Enforcement Education Appeal Board

Sec. 451. (a) The Commissioner shall establish in the Office of Education an Education Appeal Board (hereinafter in this part referred to as the "Board") the functions of which shall be to conduct—

(1) Audit appeal hearings pursuant to section 452 of this Act,

(2) Withholding hearings pursuant to section 453 of this Act,

(3) Cease and desist hearings pursuant to section 454 of this Act, and

(4) Other proceedings designated by the Commissioner.

(b) The members of the Board shall be designated by the Secretary, in consultation with the Assistant Secretary for Education and the Commissioner, and may include individuals who are officers or employees of the United States, as well as individuals who are not fulltime employees of the Federal Government.

(c) The Board shall be composed of not less than fifteen nor more than thirty members, of whom no more than one-third shall be officers or employees of the Department. The Secretary shall designate one of the members of the Board to be the Chairman.

(d) For the purposes of conducting hearings as provided in subsection (a) the Chairman may appoint hearing panels of not less than three members of the Board, or the Chairman may designate the entire Board to sit as a panel for any case or class of cases. On any such panel—

(1) The majority of members shall not be individuals in the full-time employment of the Federal Government,

(2) The membership shall not include any individual who is a party to, or has any responsibility for, any particular matter assigned to that panel, and

(3) The Chairman of the Board shall designate one member of each such panel to be the presiding officer.

(e) The proceedings of the Board shall be conducted according to such rules as the Commissioner shall prescribe by regulation in conformance with the rules relating to hearings in title 5, United States Code, sections 554, 556 and 557 respecting—

(1) The receipt of oral or written testimony,

(2) Notice of the issues to be considered,

(3) The right to counsel,

(4) Intervention of third parties,

(5) Transcripts of proceedings, and

(6) Such other matters as may be necessary to carry out the functions of the Board.

(f) If there has been established within the Department of Health, Education, and Welfare an appeal board which the Commissioner determines is capable of carrying out the functions of the Board established under this section, he may, with the approval of the Secretary, designate such

Department appeal board to carry out the functions of this section.

Audit Determinations

Sec. 452. (a) Whenever the Commissioner determines that an expenditure not allowable under a program listed in section 435(a) of this title, or conducted under title VI and title VII of the Elementary and Secondary Education Act of 1965 or under the Emergency School Aid Act, has been made by a State or by a local educational agency, or that a State or local educational agency has otherwise failed to discharge its obligation to account for funds under any such program, the Commissioner shall give such State or local educational agency written notice of a final audit determination, and he shall at the same time notify such State or agency of its right to have such determination reviewed by the Board.

(b) A State or a local educational agency that has received written notice of a final audit determination and that desires to have such determination reviewed by the Board shall submit to the Board an application for review not later than thirty days after receipt of notification of the final audit determination. The application for review shall be in the form and contain the information specified by the Board. The Board shall return to the Commissioner for such action as he deems appropriate any final audit determination which, in the judgment of the Board, contains insufficient detail to identify with particularity those expenditures which are not allowable. Unless the Board determines that a final audit determination lacks sufficient detail, the burden shall be upon the State or local educational agency to demonstrate the allowability of expenditures disallowed in the final audit determination.

(c) When a State or a local educational agency has submitted an application for review with respect to a final audit determination, no action shall be taken by the Commissioner to collect the amount determined to be owing until the Board has issued a final decision upholding the audit determination as to all or any part of such amount. The filing of such an application shall not affect the authority of the Commissioner to take any other adverse action against such State or agency under this part.

(d) A decision of the Board with respect to an application for review under this section shall become final unless within sixty days following receipt by the State or by the local educational agency of written notice of the decision—

(1) The Commissioner for good cause shown, modifies or sets aside the decision, in whole or in part, in which case the decision shall become final sixty days after such action by the Commissioner, or

(2) The State or the local educational agency files a petition for judicial review as provided in section 455 of this Act.

(e) A final audit determination by the Commissioner under subsection (a) with respect to which review has not been requested pursuant to subsection (b), or a final decision of the Board under this section upholding a final audit determination against a State or a local educational agency shall establish the amount of the audit determination as a claim of the United States which the State or the local educational agency shall be required to pay to the United States and which may be collected by the Commissioner in accordance with the Federal Claims Collection Act of 1966.

(f)(1) Notwithstanding any other provision of law, the Commissioner may, subject to the notice requirements of paragraph (2), compromise any claim established under this section for which the initial determination was found to be not in excess of $50,000, where the Commissioner determines that (A) the collection of any or all of the amount thereof would not be practical or in the public interest, and (B) the practice which resulted in the claim has been corrected and will not recur.

(2) Not less than forty-five days prior to the exercise of the authority to compromise a claim pursuant to paragraph (1), the Commissioner shall publish in the Federal Register a notice of his intention to do so. Such notice shall provide interested persons an opportunity to comment on any proposed action under this subsection through the submission of written data, views, or arguments.

(g) No State and no local educational agency shall be liable to refund any amount expended under an applicable program which is determined to be unauthorized by law if that expenditure was made more than five years before that State or local educational agency is given the notice required by subsection (a).

(h) The Secretary shall employ, assign, or transfer sufficient professional personnel to ensure that all matters brought before the Board may be dealt with in a timely manner.

Withholdings

Sec. 453. (a) Whenever the Commissioner has reason to believe that any recipient of funds under any applicable program (other than a program to which regulations promulgated under section 497A of the Higher Education Act of 1955 apply), has failed to comply substantially with any requirement of law applicable to such funds, he shall notify such recipient in writing of his intention to withhold, in whole or in part, further payments under such program, including payments for State or local administrative costs, until he is satisfied that the recipient no longer fails to comply with such assurances or other terms.

(b) The notification required under subsection (a) shall state (1) the facts upon which the Commissioner has based his belief and (2) a notice of opportunity for a hearing to be held on a date at least thirty days after the notification has been sent to the recipient. The hearing shall be held before the Board and shall be conducted in accordance with rules prescribed pursuant to section 451(e) of this Act.

(c) Pending the outcome of any proceeding initiated under this section, the Commissioner may suspend payments to such a recipient, after such recipient has been given reasonable notice and opportunity to show cause why such action should not be taken.

(d) The decision of the Board in any proceeding brought under this section shall become final unless within sixty days following receipt by the recipient of written notice of the decision—

(1) The Commissioner for good cause shown, modifies, or sets aside the decision in whole or in part, in which case the decision as modified shall become final sixty days after such action by the Commissioner, or

(2) The recipient files a petition for judicial review as provided in section 455 of this Act.

Cease and Desist Orders

Sec. 454. (a) Whenever the Commissioner has reason to believe that any State or any local educational agency that receives funds under any applicable program has failed to comply substantially with any requirement of law applicable to such funds, in lieu of proceeding under section 453 of this Act, the Commissioner may issue and cause to be served upon such State or upon such local educational agency a complaint (1) stating the charges upon which his belief is based, and (2) containing a notice of a hearing to be held before the Board on a date at least thirty days after the service of that complaint.

(b) The State or the local educational agency upon which such a complaint has been served shall have the right to appear before the Board on the date specified and to show cause why an order should not be entered by the Board requiring such State or such local educational agency to cease and desist from the violation of law charged in the complaint.

(c) The testimony in any hearing held under this section shall be reduced to writing and filed with the Board. If upon that hearing the Board shall be of the opinion that the State or the local educational agency is in violation of any requirement of law as charged in the complaint, it shall make a report in writing stating its findings of fact and shall issue and cause to be served upon the State or the local educational agency an order requiring the State or the local educational agency to cease and desist from the practice, policy, or procedure which resulted in such violation.

(d) The report and order of the Board shall become final on the sixtieth day following the date upon which the order of the Board was served upon the State or the local educational agency unless before that day the State or local educational agency files a petition for judicial review as provided in section 455 of this Act.

(e) A final order of the Board under this section may be enforced, as determined by the Commissioner, by—

(1) The withholding of any portion of the amount payable, including amounts payable for administrative costs, under the affected program to the State or the local educational agency against which the final order has been issued, or

(2) The Commissioner certifying the facts to the Attorney General whose duty it shall be to cause appropriate proceeding to be brought for the enforcement of the order

Judicial Review

Sec. 455. (a) Any recipient of funds under an applicable program that would be adversely affected by any action under section 452, 453, or 454 of this Act, and any State entitled to receive funds under a program listed in section 435(a) of this title whose application therefor has been disapproved by the Commissioner, shall be entitled to judicial review of such action in accordance with the provision of this section

(b) Any State, local educational agency, or other recipient entitled to judicial review under subsection (a) that desires such review of any action by the Commissioner or the Board qualifying for review under this section shall, within sixty days of that action, file with the United States Court of Appeals for the circuit in which that State, local educational agency, or other recipient is located, a petition for review of such action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner. The Commissioner thereupon shall file in the court the record of the proceedings on which the action was based, as provided in section 2112 of title 28, United States Code.

(c) The findings of fact by the Board, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Board to take further evidence, and the Board may thereupon make new or modified findings of fact and may modify its previous action, and shall certify to the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(d) The court shall have jurisdiction to affirm the action of the Board or the Commissioner or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

Use of Recovered Funds

Sec. 456. (a) Whenever the Commissioner has recovered funds following a final audit determination with respect to any applicable program, he may consider those funds to be additional funds available for that program and may arrange to repay to the State or the local agency affected by that action not to exceed 75 percent of those funds upon determination that—

(1) The practices or procedures of the State or local agency that resulted in the audit determination have been corrected, and that the State or the local agency is in all other respects in compliance with the requirement of that program;

(2) The State or the local agency has submitted to the Commissioner a plan for the use of those funds pursuant to the requirements of that program and, to the extent possible, for the benefit of the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) The use of those funds in accordance with that plan would serve to achieve the purpose of the program under which the funds were originally granted.

(b) Any payments by the Commissioner under this section shall be subject to such other conditions as the Commissioner deems necessary to accomplish the purposes of the Affected programs, including—

(1) The submission of periodic reports on the use of funds provided under this section; and

(2) Consultation by the State or local agency with parents or representatives of the population that will benefit from the payments.

(c) Notwithstanding any other provisions of law, the Commissioner may authorize amounts made available under this section to remain available for expenditure, subject to such conditions as he deems appropriate, for up to three fiscal years following the fiscal year in which the audit determination referred to in subsection (a) was made.

(d) At least thirty days prior to entering into an arrangement under this section, the Commissioner shall publish in the **Federal Register** a notice of his intent to do so and the terms and conditions under which payments will be made. Interested persons shall have an opportunity for at least thirty days to submit comments to the Commissioner regarding the proposed arrangement.

PART 100c—GENERAL

Sec.

100c.1 Definitions that apply to all Education Division Programs.
100c.2 Records under the Freedom of Information Act.

Authority: Sec. 408(a)(1) of Pub. L. 90–247, as amended, 88 Stat. 559, 560 (20 U.S.C. 1221e–3(a)(1)), unless otherwise noted.

PART 100c—GENERAL

§ 100c.1 Definitions that apply to all Education Division programs.

(a) Unless a statute or regulation provides otherwise, the definitions in this section apply to the regulations for—

(1) The Museum Services Program (Part 64 of this title);

(2) Programs of the Office of Education (Parts 100–199 of this title);

(3) Programs of the National Institute of Education (Parts 1400–1499 of this title); and

(4) Programs of the Office of the Assistant Secretary for Education (Parts 164 and 1501 of this title).

(b) The following definitions in Part 74 of this title apply to the regulations listed in paragraph (a) of this section. The section of Part 74 which contains the definition is given in the parentheses.

Budget (74.104)
Contract (includes definition of SUBCONTRACT) (74.3)
Equipment (74.132)
Federally recognized Indian tribal government (74.3)
Grant (74.3)
Grantee (74.3)
HEW (74.3)
Local government (74.3)
Personal property (74.132)
Real property (74.132)
Recipient (74.3)
Subgrant (74.3)
Subgrantee (74.3)
Supplies (74.132)

(c) The following definitions also apply to the regulations listed in paragraph (a) of this section:

"Acquisition" means taking ownership of property, receiving the property as a gift, entering into a lease-purchase arrangement, or leasing the property. The term includes processing, delivery, and installation of property.

(Sources: 134a.5; 117.20; 100.1; 131.2)

"Applicant" means a party requesting a grant or subgrant under a program of the Education Division.

(Sources: 100.1; 114.1(b); 115.3(b); 1400.1)

"Application" means a request for a grant or subgrant under a program of the Education Division.

(Sources: 100.1, 1400.1, 115.3(c), 114.4)

"Appropriate Official of the Education Division" means the official that has overall administrative responsibility for an Education Division program. For each program, that offical is one of the following—

(a) The Assistant Secretary;

(b) The Commissioner;

(c) The Director of the National Institute of Education; or

(d) The Director of the Institute of Museum Services.

"Assistant Secretary" means the Assistant Secretary for Education of the Department of Health, Education, and Welfare or an official or employee of the Education Division to whom the Assistant Secretary has delegated authority.

(Source: 185.02(a))

"Award" means an amount of funds that the Education Division provides under a grant or contract.

(Source: 1400.1)

"Budget Period" means an interval of time into which a project period is divided for budgetary purposes.

(Sources: HEW GAM 1–85; 100.1; 1400.1)

"Commissioner" means the U.S. Commissioner of Education or an official or employee of the Office of Education to whom the Commissioner has delegated authority.

(Sources: 100.1; 105 App A; 100–100d App A para. 1(2); 190.2(d); 116.2(b))

"Department" means the U.S. Department of Health, Education, and Welfare.

(Sources: 100–100d App A para. 1(b); 1400.1)

"EDGAR" means the Education Division General Administrative Regulations (parts 100a, 100b, and 100c of this title).

"Director of the Institute of Museum Services" means the Director of the Institute of Museum Services or an officer or employee of the Institute of Museum Services to whom the Director has delegated authority.

"Director of the National Institute of Education" means the Director of the National Institute of Education or an officer or employee of the National Institute of Education to whom the Director has delegated authority.

"Education Division" means the HEW agency, headed by the Assistant Secretary, that is composed of—

(a) The Office of the Assistant Secretary (which includes the National Center for Education Statistics);

(b) The Office of Education;

(c) The National Institute of Education; and

(d) The Institute of Museum Services.

(Source: GEPA Section 401)

"Elementary school" means a day or residential school that provides elementary education, as determined under State law.

(Sources: 160f.2; 191.12; 100.1; 116.2(b) App. sec. 403)

"Facilities" means one or more structures in one or more locations.

(Sources: 153.3; 1422.1(b); 100b.156)

"Fiscal year" means a period beginning on October 1 and ending on the following September 30.

(Source: 100.1; 1400.1; 1501.3)

"GEPA" means The General Education Provisions Act.

"Grant period" means the period for which funds have been awarded.

(Sources: HEW GAM 1–85; 100–100d App A para. 1(h); 1400.1; 100.1)

"Local educational agency" means:

(a) A public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform service functions for public elementary or secondary schools in—

(1) A city, county, township, school district, or other political subdivision of a State; or

(2) Such combination of school districts or counties as a State recognizes as an administrative agency for its public elementary or secondary schools; or

(b) Any other public institution or agency that has administrative control and direction of a public elementary or secondary schools.

(Sources: 129.1(j); 127.1(j); 121.2; 121a.8; 160f.2; 116.2(b); 181.2; 141.1; 104 App A; 197.2; 123.02(d); 196.12; 160.3; 123.02(d); 144.2; 166.73(a); 162.2; 160b.2; 124.2; 112.1; 160a.3; 185.02; 160g.2; 127.2; 113.1; 172.3; 134.2; 114.1(m); 158.2; 118.2; 117.2; 160.2; 160c.2; 186.2; 118.23)

"Minor remodeling" means minor alternations, in a previously completed building. The term also includes the extension of utility lines, such as water and electricity, from points beyond the confines of the space in which the minor remodeling is undertaken but within the confines of the previously completed building. The term does not include building construction, structural alternations to buildings, building maintenance, or repair.

(Sources: 1400.1, 100.1, 134.2; 141.1; 142.3; 186.2)

"Nonprofit", as applied to an agency, organization, or institution, means that it is owned and operated by one or more corporations or associations whose net earnings do not benefit, and cannot lawfully benefit, any private shareholder or entity.

(Sources: 160f.2, 175.2, 190.2, 100.1, 1501.3)

"Nonpublic" as applied to elementary or secondary school means nonprofit elementary or secondary school that is operated or controlled by an organization that is not a public agency.

(Sources: 160.62, 191.12, 160b.2, 197.2)

"Preschool" means the educational level from a child's birth to the time at which the State provides elementary education.

(Source: 100.1)

"Private" as applied to an agency, organization, or institution, means that it is not under public supervision or control.

(Sources: 1401.1; 1501.3)

"Project" means the activity described in an application.

(Source: HEW GAM 1–85)

"Project period" means the period for which the appropriate offical of the Education Division approves a project.

(Source: HEW GAM 1–85, 1400.1)

"Public", as applied to an agency, organization, or institution, means that the agency, organization, or institution as under the administrative supervision or control of a government other than the Federal Government.

(Source: 1400.1; 1501.3)

"Secondary school" means a day or residential school that provides secondary education, as determined under the State law. In the absence of State law, the Commissioner determines whether the term includes education beyond the twelfth grade.

(Sources: 155.4(f); 159.2; 160f.2; 100.1; 141.1; 191.12; 116.2(b)

"Secretary" means the Secretary of the Department of Health, Education, and Welfare, or an official or employee of the Department to whom the Secretary has delegated authority.

(Sources: 1400.1, 105 App A: 100.1)

"Service function", with respect to a local educational agency—

(a) Means an educational service that is performed by a legal entity, such as an intermediate agency—

(1)(i) Whose jurisdiction does not extend to the whole State; and

(ii) That is authorized to provide consultative, advisory, or educational program services to public elementary or secondary schools; or

(2) That has regulatory functions over agencies having administrative control or direction of public elementary or secondary schools.

(b) The term does not include a service that is performed by a cultural or educational resource.

(Source: 100.1)

"State" includes each of the 50 States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Sources: 107.1(h); 117.2; 119.1(n); 123.02(h); 129.1(n); 130.3; 141.1; 148.2; 154.2; 155.2; 157.2; 159.2; 160.3; 160c.2; 180.3; 189.1; 192.2; 121a.15; 105 App. A; 153.3; 158.2; 178a.2; 187.2; 193.2; 191.12; 175.2; 176.2; 190.2; 172.3)

"State educational agency" means the State board of education or other agency or officer primarily responsible for the supervision of public elementary and secondary schools in a State. In the absence of this officer or agency, it is an officer or agency designated by the Governor or State law.

(Sources: 197.1; 107.1(1); 121.2; 134.2; 160a.3; 160g.2; 185.02; 158.2; 197.2; 164.03; 117.1; 123.02(1); 141.1; 160b.2; 162.2; 186.2; 187.2; 116.2(b); 160f.2; 172.3; 166.73(a); 119.1(0); 129.1(1); 160.3; 160d.2; 191.12)

"Work of art" means an item that is incorporated into facilities primarily because of its aesthetic value.

(20 U.S.C. 1221e-3(a)(1))

(Source: 100.1)

§ 100c.2 Records under the Freedom of Information Act.

The Education Division makes records available in accordance with the Freedom of Information Act and the Department's regulations in part 5 of this title. The Education Division uses the fee schedule in § 5.1.

(5 U.S.C. 552)
(Sources: 100.5; 100.6; 100.7)

PART 100d—[Deleted]

Part 74—Administration of Grants

As revised on August 2, 1978 (43 FR 34076)

Note: Part 74 is republished as Attachment No. 2 to the EDAG NPRM to assist readers in following cross references to Part 74. This will not be published with the final rule.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

[45 CFR Part 74]

Administration of Grants

Subpart A—General

Sec.
74.1 Purpose and scope of this part.
74.2 Scope of subpart.
74.3 Definitions.
74.4 Applicability of this part.
74.5 Appeals.
74.6 Deviations.
74.7 Special grant or subgrant conditions.

Subpart B—Cash Depositories

74.10 Physical segregation and eligibility.
74.11 Checks-paid basis letter of credit.
74.12 Minority-owned banks.

Subpart C—Bonding and Insurance

74.15 General.
74.16 Construction and facility improvement.
74.17 Fidelity Bonds.
74.18 Source of Bonds.

Subpart D—Retention and Access Requirements for Records

74.20 Applicability.
74.21 Length of retention period.
74.22 Starting date of retention period.
74.23 Substitution of microfilm.
74.24 Access to records.
74.25 Restrictions on public access.

Subpart E—Waiver of Single State Agency Requirements

74.30 Policy.

Subpart F—Grant-Related Income

74.40 Scope of subpart.
74.41 Meaning of program income.
74.42 General program income.
74.43 Program income—proceeds from sale of real property and from sale of equipment and supplies acquired for use.
74.44 Program income—royalties and other income earned from a copyrighted work.
74.45 Program income—royalties or equivalent income earned from patents or from inventions.
74.46 Program income—income after grant or subgrant support not otherwise treated.
74.47 Interest earned on advances of grant funds.

Subpart G—Cost Sharing or Matching

Sec.
74.50 Scope of subpart.
74.51 Definitions.
74.52 Basic rule: Costs and contributions acceptable.
74.53 Qualifications and exceptions.
74.54 Valuation of donated services.
74.55 Valuation of donated supplies and loaned equipment or space.
74.56 Valuation of donated equipment, buildings, and land.
74.57 Appraisal of real property.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

74.60 Scope of subpart.
74.61 Standards.

Subpart I—Financial Reporting Requirements

74.70 Scope and applicability of subpart.
74.71 Definitions.
74.72 General.
74.73 Financial Status Report.
74.74 Federal Cash Transactions Report.
74.75 Request for Advance or Reimbursement.
74.76 Outlay Report and Request for Reimbursement for Construction Programs.

Subpart J—Monitoring and Reporting of Program Performance

74.80 Scope of Subpart.
74.81 Monitoring by recipients.
74.82 Performance reports under nonconstruction grants.
74.83 Performance reports under construction grants.
74.84 Significant developments between scheduled reporting dates.
74.85 Site visits.

Subpart K—Grant and Subgrant Payment Requirements

Sec.
74.90 Scope of subpart.
74.91 Definitions.
74.92 Basic standard.
74.93 Payment methods under nonconstruction grants.
74.94 Payment methods under construction grants.
74.95 Withholding of payments.
74.96 Requesting advances or reimbursements.
74.97 Payments to subgrantees.

Subpart L—Programmatic Changes and Budget Revisions

74.100 Scope and applicability of this subpart.
74.101 Relationship to cost principles.
74.102 Prior approval procedures.
74.103 Programmatic changes.
74.104 Budgets generally.
74.105 Budget revisions-nonconstruction projects.
74.106 Budget revisions-construction projects.
74.107 Construction and nonconstruction work under the same grant or subgrant.
74.108 Authorized funds exceeding needs.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

74.110 Definitions.
74.111 Closeout.
74.112 Amounts payable to the Federal Government.
74.113 Violation of terms.
74.114 Suspension.
74.115 Termination.
74.116 Applicability to subgrants.

Subpart N—Forms for Applying for Grants

74.120 Scope of subpart.
74.121 Authorized forms and instructions for governmental organizations.
74.122 Preapplications for Federal Assistance for governmental organizations.
74.123 Notice of Preapplication Review Action for governmental organizations.
74.124 Application for Federal Assistance (Nonconstruction Programs) for governmental organizations.
74.125 Application for Federal Assistance (for Construction Programs) for governmental organizations.
74.126 Application for Federal Assistance (Short Form) for governmental organizations.
74.127 Authorized forms and instructions for nongovernmental organizations.

Subpart O—Property

General

74.130 Scope and applicability of this subpart.
74.131 Prohibition against additional requirements.
74.132 Definitions.
74.133 Title to real property, equipment, and supplies.

Real Property

74.134 Real property.

Equipment and Supplies

74.135 Exemptions for equipment and supplies subject to certain statutes.
74.136 Rights to require transfer of equipment.
74.137 Use of equipment.
74.138 Replacement of equipment.
74.139 Disposition of equipment.
74.140 Equipment management requirements.
74.141 Supplies.

Federal Share of Real Property, Equipment, and Supplies

74.142 Federal share of property.
74.143 Subgrantee's share of market value or sales proceeds.

Intangible Personal Property

74.144 Inventions and patents.
74.145 Copyrights.

Subpart P—Procurement Standards

74.160 Scope of subpart; terminology.
74.161 General.
74.162 Code of conduct.
74.163 Free competition.
74.164 Procedural requirements.
74.165 Requirement for governments to use formal advertising.
74.166 Contract provisions.

Subpart Q—Cost Principles

74.170 Scope of subpart.
74.171 Governments.
74.172 Institutions of higher education.
74.173 Hospitals.
74.174 Other nonprofit organizations.
74.175 Subgrants and cost-type contracts.
74.176 Costs allowable with approval.
Appendix A—[Reserved]
Appendix B—[Reserved]
Appendix C—Principles for determining costs applicable to grants and contracts with State and local governments.
Appendix D—Part I—Principles for determining costs applicable to research and development under grants and contracts with educational institutions. Part II—Principles for determining costs applicable to training and other educational services under grants and contracts with educational institutions.
Appendix E—Principles for determining costs applicable to research and development under grants and contracts with hospitals.
Appendix F—Principles for determining costs applicable to grants and contracts with nonprofit institutions.

Authority: 5 U.S.C. 301.

Subpart A—General

§ 74.1 Purpose and scope of this part.

This part establishes uniform requirements for the administration of HEW grants and principles for determining costs applicable to activities assisted by HEW grants.

§ 74.2 Scope of subpart.

This subpart contains general rules pertaining to this Part 74 (definitions, purpose and scope, applicability, and appeals) and procedures for control of deviations from the part.

§ 74.3 Definitions.

As used in this part:

"Awarding party" means (1) with respect to a grant, the granting agency, and (2) with respect to a subgrant, the grantee. (See § 74.4(b))

"Contract" means (except as used in the definitions for "grant" and "subgrant" in this section and except where qualified by "Federal") a procurement contract under a grant or subgrant, and "subcontract" means a procurement subcontract under such a contract.

"Cost-type contract" means a contract or subcontract in which the contractor or subcontractor is paid on the basis of the costs it incurs, but the term does not include such subcontracts under a non-cost-type contract or subcontract.

"Expenditure report" means: (1) For nonconstruction grants, the "Financial Status Report" (or other equivalent report); (2) for construction grants, the "Outlay Report and Request for Reimbursement for Construction Programs" (or other equivalent report). (See subpart I of this part.)

"Federally recognized Indian tribal government" means the governing body or a governmental agency of any Indian tribe, band, nation, or other organized group or community (including any Native village as defined in section 3 of the Alaska Native Claims Settlement Act, 85 Stat. 688) certified by the Secretary of the Interior as eligible for the special programs and services provided by him through the Bureau of Indian Affairs. However, for policies applicable to tribal government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Government" means a State or local government or a Federally recognized Indian tribal government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Grant" means an award of financial assistance in the form of money, or property in lieu of money, by the Federal Government to an eligible recipient. The term includes such financial assistance when provided by contract, but does not include any Federal procurements subject to the procurement regulations in 41 CFR, nor does it include technical assistance, which provides services instead of money, or other assistance in the form of revenue sharing, loans, loan guarantees, interest subsidies, insurance, or direct appropriations. Also, the term does not include assistance, such as a fellowship or other lump sum award, which the recipient is not required to account for on an actual cost basis.

"Grantee" means the government, nonprofit corporation, or other legal entity to which a grant is awarded and which is accountable to the Federal Government for the use of the funds provided. The grantee is the entire legal entity even if only a particular component of the entity is designated in the award document. For example, a grant award document may name as the grantee an agency of a State, or one school or campus of a university. In these cases, the granting agency usually intends, or actually requires, that the named component assume primary or sole responsibility for administering the grant-assisted project or program. Nevertheless, the naming of a component of a legal entity as the grantee in a grant award document shall not be construed as relieving the whole legal entity from accountability to the Federal Government for the use of the funds provided. (This definition is not intended to affect the eligibility provisions of grant programs in which eligibility is limited to organizations, such as State welfare departments, which may be only components of a legal entity.) The term "grantee" does not include any secondary recipients such as subgrantees, contractors, etc., who may receive funds from a grantee pursuant to a grant.

"Granting agency" means any organizational component of HEW authorized to award and administer grants.

"HEW" means the U.S. Department of Health, Education, and Welfare.

"Local government" means a local unit of government including specifically a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (whether or not incorporated as a nonprofit corporation under State law), "sponsor or sponsoring local organization" of a watershed project (as defined in 7 CFR 620.2, 40 FR 12472, March 19, 1975), any other regional or interestate government entity, or any agency or instrumentality of a local government. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"OGP" means the Office of Grants and Procurement, which is an organizational component within the Office of the Secretary, HEW, and reports to the Assistant Secretary for Management and Budget.

"OMB" means the Office of Management and Budget within the Executive Office of the President.

"Recipient" means grantee or subgrantee. (See § 74.4(b).)

"State" means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. However, for policies applicable to government hospitals and institutions of higher education, see § 74.4(c), "Applicability of this part."

"Subgrant" means an award of financial assistance in the form of

money, or property in lieu of money, made under a grant by a grantee to an eligible subgrantee. The term includes financial assistance when provided by contract, but does not include procurements; nor does it include any form of assistance which is excluded from the definition of "grant" in this section.

"Subgrantee" means the government, nonprofit corporation, or other legal entity to which a subgrant is awarded and which is accountable to the grantee for the use of the funds provided. The subgrantee is the entire legal entity even if only a particular component of the entity is designated in the subgrant award document.

"Terms of a grant or subgrant" means all requirements of the grant or subgrant, whether in statute, regulations, the award document or elsewhere.

§ 74.4 Applicability of this part.

(a) *General.* Except where inconsistent with Federal statutes, regulations, or other terms of a grant, this part applies to all HEW grants. However, unless expressly made applicable by the granting agency, this part shall not apply when the grantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(b) *Subgrants.* For each substantive provision in this part, either the language of the provision itself or other text in the same subpart will indicate whether the provision affects only grants, only subgrants, or both. Use of the term "recipient" (as defined in § 74.3) in a provision shall be taken as referring equally to grantees and subgrantees. Similarly, use of the term "awarding party" (as defined in § 74.3) shall be taken as referring equally to granting agencies and to grantees awarding subgrants. However, unless expressly made applicable by the granting agency, this part need not be applied by the grantee to a subgrant if the subgrantee is a Federal agency, foreign government or organization, international organization such as the United Nations, for-profit organization, or individual.

(c) *Public institutions of higher education and hospitals.* Grants and subgrants to institutions of higher education and hospitals operated by a government shall be subject only to provisions of this subpart that apply to nongovernmental organizations.

§ 74.5 Appeals.

In accordance with parts 16 and 75 of this title, grantees may appeal certain postaward administrative decisions made by HEW officials.

§ 74.6 Deviations.

(a) Except as provided in § 74.7, a deviation is any exception to this part not required by Federal statute without allowance of agency discretion. A deviation may be either:

(1) Use of any policy, procedure, form, standard, or grant or subgrant term which is inconsistent with an applicable provision of this part, or

(2) Failure to use any applicable policy, procedure, form, standard, or grant or subgrant term which is required by this part.

(b) In order to maintain uniformity to the greatest extent feasible, deviations shall be kept to a minimum. A deviation, whether proposed by an applicant, a recipient, or an official of the granting agency, may be authorized only when it is necessary to meet programmatic objectives, or to conserve grant funds, or when it is otherwise essential in the public interest.

(c) Except as provided in paragraph (d) of this section, a deviation from this part may be made only when authorized by both:

(1) The head of the granting agency or other officials if designated in or pursuant to formal deviation control procedures established by the agency, and

(2) OGP.

(d) Deviations from subpart Q of this part and appendixes C, D, E, and F to this part in individual cases (i.e., where only a single grant or subgrant is involved) shall not require OGP approval.

§ 74.7 Special grant or subgrant conditions.

(a) Without regard to the deviation control procedures of § 74.6, special grant conditions more restrictive than those prescribed in this part 74 may be imposed as needed when the granting agency has determined that the grantee:

(1) Is financially unstable,

(2) Has a history of poor performance, or

(3) Has a management system which does not meet the standards of this part.

(b) When special conditions are imposed under paragraph (a) of this section, the grantee will be notified in writing:

(1) Why the special conditions were imposed and

(2) What corrective action is needed.

Furthermore, in accordance with OMB Circulars A–102 and A–110, OMB and other Federal agencies in a granting relationship with the grantee will be provided copies of the notice to the grantee.

(c) Grantees may apply the provisions of paragraphs (a) and (b) of this section to their subgrantees. Whenever they do so, a copy of the notice to the subgrantee shall be furnished to the granting agency.

Subpart B—Cash Depositories

§ 74.10 Physical segregation and eligibility.

Except as provided in § 74.11, awarding parties shall not impose grant or subgrant terms which:

(a) Require the recipient to use a separate bank account for the deposit of grant or subgrant funds, or

(b) Establish any eligibility requirements for banks or other financial institutions in which recipients deposit grant or subgrant funds.

§ 74.11 Checks-paid basis letter of credit.

A separate bank account shall be used when payments under letter of credit are made on a "checks-paid" basis. A checks-paid basis letter of credit is one under which funds are not drawn until the recipient's checks have been presented to its bank for payment. (See Subpart K for definition of "letter of credit.")

§ 74.12 Minority-owned banks.

Consistent with the national goal of expanding opportunities for minority business enterprises, grantees and subgrantees are encouraged to use minority-owned banks. Upon request, OGP will furnish a list of minority-owned banks.

Subpart C—Bonding and Insurance

§ 74.15 General.

In administering grants and subgrants, recipients shall observe their regular requirements and practices with respect to bonding and insurance. No additional bonding and insurance requirements, including fidelity bonds, shall be imposed by the terms of the grant or subgrant except as provided in §§ 74.16 through 74.18.

§ 74.16 Construction and facility improvement.

(a) *Scope of this section.* This section covers requirements for bid guarantees, performance bonds, and payments bonds when the recipient will contract for construction or facility improvement

(including alterations and renovations of real property) under a grant or subgrant.

(b) *Definitions.* (1) "Bid guarantee" means a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, if its bid is accepted, execute the required contractual documents within the time specified.

(2) "Performance bond" means a bond executed in connection with a contract to secure fulfillment of all the contractor's obligations under the contract.

(3) "Payment bond" means a bond executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

(c) *Bids and contacts of $100,000 or less.* The recipient shall follow its own requirements and practices relating to bid guarantees, performance bonds, and payment bonds.

(d) *Bids and contracts exceeding $100,000.* The recipient may follow its own regular policy and requirements if the HEW granting agency has determined that the Federal Governments's interest will be adequately protected. If this determination has not been made, the minimum requirements shall be as follows:

(1) A bid guarantee from each bidder equivalent to 5 percent of the bid price;

(2) A performance bond on the part of the contractor for 100 percent of the contract price; and

(3) A payment bond on the part of the contractor for 100 percent of the contract price.

§ 74.17 Fidelity bonds.

(a) If the grantee is not a government, the granting agency may require it to carry adequate fidelity bond coverage where the absence of coverage for the grant-supported activity is considered as creating an unacceptable risk.

(b) If the subgrantee is not a government, the granting agency or the grantee may require that it carry adequate fidelity bond coverage where the absence of coverage for the subgrant-supported activity is considered as creating an unacceptable risk.

(c) A fidelity bond is a bond indemnifying the recipient against losses resulting from the fraud or lack of integrity, honesty or fidelity of one or more employees, officers or other persons holding a position of trust.

§ 74.18 Source of bonds.

Any bonds required under §§ 74.16(d)(1) through (3) or 74.17 shall be obtained from companies holding certificates of authority as acceptable sureties (31 CFR Part 223). A list of these companies is published annually by the Department of the Treasury in its Circular 570.

Subpart D—Retention and Access Requirements for Records

§ 74.20 Applicability.

(a) Except as provided in paragraph (b) of this section, this subpart applies to all financial and programmatic records, supporting documents, statistical records and other records of recipients and of contractors and subcontractors under grants and subgrants, which are:

(1) Required to be maintained by the terms of an HEW grant, or

(2) Otherwise reasonably considered as pertinent to an HEW grant.

(b) This subpart does not apply to records maintained by the contractor or subcontractor for any of the following types of awards it has received under a grant or subgrant:

(1) Any contract or subcontract of $10,000 or less, or

(2) Any contract or subcontract awarded using the formal advertising method of procurement, whether or not required to be so awarded, or

(3) Any subcontract awarded under a contract or subcontract described in paragraph (b)(2) of this section.

§ 74.21 Length of retention period.

(a) Except as provided in paragraphs (b) and (c) of this section, records shall be retained for 3-years from the starting date specified in § 74.22.

(b) If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the 3-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 3-year period, whichever is later.

(c) In order to avoid duplicate recordkeeping, awarding parties may make special arrangements with recipients to retain any records which are continuously needed for joint use. The awarding party will request transfer of records to its custody when it determines that the records possess long-term retention value. When the records are transferred to or maintained by the awarding party the 3-year retention requirement is not applicable to the recipient.

§ 74.22 Starting date of retention period.

(a) *General.* (1) Where HEW grant support is continued or renewed at annual or other intervals, the retention period for the records of each funding period starts on the day the grantee submits to HEW its single or last expenditure report for that period. However, if HEW grant support is continued or renewed quarterly, the retention period for each year's records starts on the day the grantee submits to HEW its expenditure report for the last quarter of the Federal fiscal year. In all other cases, the retention period starts on the day the grantee submits its final expenditure report to HEW. If an expenditure report has been waived, the retention period starts on the day the report would have been due. "Expenditure report" is defined in § 74.3.

(2) Exceptions to this paragraph are contained in paragraphs (b) through (d) of this section.

(b) *Equipment records.* The retention period for the equipment records required by § 74.140(a) starts from the date of the equipment's disposition (§ 74.139) or replacement (§ 74.138) or transfer at the direction of the awarding party (§ 74.136).

(c) *Records for income transactions after grant or subgrant support.* (1) In some cases an HEW requirement concerning the disposition of program income, as defined in subpart F of this part, will be satisfied by applying the income to costs incurred after expiration or termination of grant or subgrant support for the activity giving rise to the income. In such a case, the retention period for the records pertaining to the costs starts from the end of the recipient's fiscal year in which the costs are incurred.

(2) In some cases, there may be an HEW requirement concerning the disposition of copyright royalties or other program income which is earned after expiration or termination of grant or subgrant support. Where there is such a requirement, the retention period for the records pertaining to the earning of the income starts from the end of the recipient's fiscal year in which the income is earned. (See subpart F of this part.)

(d) *Indirect cost rate proposals, cost allocation plans, etc.*—(1) *Applicability.* This paragraph applies to the following types of documents, and their supporting records:

(i) Indirect cost rate computations or proposals;

(ii) Cost allocation plans under Appendix C to this part;

(iii) Hospital patient care rate computations or proposals; and

(iv) Any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(2) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the grantee) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.

(3) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the grantee) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

§ 74.23 Substitution of microfilm.

Copies made by microfilming, photocopying, or similar methods may be substituted for the original records.

§ 74.24 Access to records.

(a) *Records of grantees.* HEW and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the grantee which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(b) *Records of subgrantees.* HEW, the Comptroller General of the United States, and the grantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the subgrantee which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(c) *Records of contractors and subcontractors.* Except as provided in § 74.20(b), HEW, the Comptroller General of the United States, the grantee, and (if the contract was awarded under a subgrant) the subgrantee, or any of their authorized representatives, shall have the right of access to any books, documents, papers, or other records of the contractor or subcontractor which are pertinent to the HEW grant, in order to make audit, examination, excerpts, and transcripts.

(d) *Expiration of right of access.* The rights of access in this section shall not be limited to the required retention period but shall last as long as the records are retained.

§ 74.25 Restrictions on public access.

Unless required by Federal statutes, awarding parties may not impose grant or subgrant terms which limit public access to records covered by this subpart except after a determination by the granting agency that the records must be kept confidential and would have been excepted from disclosure under HEW's "Freedom of Information" regulation (part 5 of this title) if the records had belonged to HEW. This section does not require recipients or their contractors and subcontractors to permit public access to their records.

Subpart E—Waiver of Single State Agency Requirements

§ 74.30 Policy.

Requests to HEW from Governors, or other duly constituted State authorities, for waiver of single State agency requirements in accordance with section 204 of the Intergovernmental Cooperation Act of 1968 will be given expeditious handling. Whenever possible, such requests will be granted.

Subpart F—Grant-Related Income

§ 74.40 Scope of subpart.

This subpart contains policies and requirements relating to (a) program income and (b) interest and other investment income earned on advances of grant funds.

§ 74.41 Meaning of program income.

(a) Except as explained in paragraphs (b) and (c) of this section, program income means gross income earned by a recipient from activities part or all of the cost of which is either borne as a direct cost by a grant or counted as a direct cost towards meeting a cost sharing or matching requirement of a grant. It includes but is not limited to such income in the form of fees for services performed during the grant or subgrant period, proceeds from sale of tangible personal or real property, usage or rental fees, and patent or copyright royalties. If income meets this definition, it shall be considered program income regardless of the method used to calculate the amount paid to the recipient—whether, for example, by a cost-reimbursement method or fixed price arrangement. Nor will the fact that the income is earned by the recipient from a Federal procurement contract or from a procurement contract under a Federal grant awarded to another party affect the income's classification as program income.

(b) For research grants that are subject to an institutional cost-sharing agreement, income shall be considered program income only if it is earned from an activity part or all of the cost of which is borne as a direct cost by the Federal grant funds. An institutional cost-sharing agreement is one entered into between HEW and a grantee covering all of HEW's research project grants to the grantee in the aggregate.

(c) The following shall not be considered program income:

(1) Revenues raised by a government recipient under its governing powers, such as taxes, special assessments, levies, and fines. (However, the receipt and expenditure of such revenues shall be recorded as a part of grant or subgrant project transactions when such revenues are specifically earmarked for the project in accordance with the terms of the grant or subgrant.)

(2) Tuition and related fees received by an institution of higher education for a regularly offered course taught by an employee performing under a grant or subgrant.

(d) For the purposes of this subpart, program income is divided into several categories. Each category is treated in a separate section of this subpart.

§ 74.42 General program income.

(a) *Definition.* General program income means all program income accruing to a grantee during the period of grant support or to a subgrantee during the period of subgrant support, other than the special categories of such income treated in §§ 74.43 through 74.45.

(b) *Use.* (1) General program income shall be retained by the recipient and used in accordance with one or a combination of the alternatives in paragraphs (c), (d), and (e) of this section, as follows: The alternative in paragraph (c) may always be used by recipients and must be used if neither of the other two alternatives is permitted by the terms of the grant. The alternatives in paragraphs (d) or (e) may be used only if expressly permitted by the terms of the grant. In specifying alternatives that may be used, the terms of the grant may distinguish between income earned by the grantee and income earned by subgrantees and between the sources, kinds, or amounts of income.

(2) The terms of a subgrant may restrict the use of general program income earned by the subgrantee to only one or some of the alternatives permitted by the terms of the grant, but the alternative in paragraph (c) of this section shall always be permitted.

(c) *Deduction alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program. If there is a cost-sharing or

matching requirement, costs borne by the income may not count toward satisfying that requirement. Therefore, the maximum percentage of Federal participation is applied to the net amount determined by deducting the income from total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless the granting agency authorizes deferral to a later period.

(2) To illustrate this alternative, assume a project in which the grantee incurs $100,000 of allowable costs and receives no third-party in-kind contributions. If the grantee earns $10,000 in general program income and this alternative applies, that $10,000 must be deducted from the $100,000 before applying the maximum percentage of Federal participation. If that pecentage is 90 percent, the most that could be paid to the grantee would therefore be $81,000 (90 percent times $90,000).

(d) *Cost-sharing or matching alternative.* (1) Under this alternative, the income is used for allowable costs of the project or program but, in this case, the costs borne by the income may count toward satisfying a cost-sharing or matching requirement. Therefore, the maximum percentage of Federal participation is applied to total allowable costs and third-party in-kind contributions. The income shall be used for current costs unless the granting agency authorizes deferral to a later period.

(2) To illustrate this alternative, assume the same situation as in paragraph (c)(2) of this section. Under this alternative, the 90 percent maximum pecentage of participation would be applied to the full $100,000, and $90,000 could therefore be paid to the grantee. (It should be noted that if $20,000 of general program income is earned, only $80,000 could be paid, since a grant cannot pay for costs which have been borne by general program income.)

(e) *Additional costs alternative.* Under this alternative, the income is used for costs which are in addition to the allowable costs of the project or program but which nevertheless further the objectives of the Federal statute under which the grant was made. Provided that the costs borne by the income further the broad objectives of that statute, they need not be of a kind that would be permissible as charges to Federal funds.

Examples of purposes for which the income may be used are:

(1) Expanding the project or program.

(2) Continuing the project or program after grant or subgrant support ends.

(3) Supporting other projects or programs that further the broad objectives of the statute.

(4) Obtaining equipment or other assets needed for the project or program or for other activities that further the statute's objectives.

§ 74.43 Program income—Proceeds from sale of real property and from sale of equipment and supplies acquired for use.

The following kinds of program income shall be governed by subpart O of this part:

(a) Proceeds from the sale of real property purchased or constructed under a grant or subgrant.

(b) Proceeds from the sale of equipment and supplies fabricated or purchased under a grant or subgrant and intended primarily for use in the grant- or subgrant-supported project or program rather than for sale or rental.

§ 74.44 Program income—Royalties and other income earned from a copyrighted work.

(a) This section applies to royalties, license fees, and other income earned by a recipient from a copyrighted work developed under the grant or subgrant. Income of that kind is covered by this section whether a third party or the recipient itself acts as the publisher, seller, exhibitor, or performer of the copyrighted work. In some cases the recipient incurs costs to earn the income but does not charge these costs to HEW grant funds, to required cost-sharing or matching funds, or to other program income. Costs of that kind may be deducted from the gross income in order to determine how much must be treated as program income.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no HEW requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

§ 74.45 Program income—Royalties or equivalent income earned from patents or from inventions.

Disposition of royalties or equivalent income earned on patents or inventions arising out of activities assisted by a grant or subgrant shall be governed by determinations made or agreements entered into under HEW's patent regulations. (See parts 6 and 8 of this title.) If the determination or agreement does not provide for the disposition of the royalties or equivalent income, the disposition shall be in accordance with the recipient's own policies.

§ 74.46 Program income—Income after grant or subgrant support not otherwise treated.

(a) This section applies to program income not treated elsewhere in this part which arises from or is attributable to an activity while supported by a grant or subgrant but which does not accrue until after the period of grant or subgrant support. An example is proceeds from the sale or rental of a residual inventory of merchandise fabricated or purchased by a grant-supported workshop during the period of support.

(b) The terms of the grant govern the disposition of income subject to this section. If the terms do not treat this kind of income, there are no HEW requirements governing the disposition. A grantee is not prohibited from imposing requirements of its own on the disposition of this kind of income which is earned by its subgrantees provided those requirements are in addition to and not inconsistent with any requirements imposed by the terms of the grant.

§ 74.47 Interest earned on advances of grant funds.

(a) Except when exempted by Federal statute (see paragraph (b) of this section for the principal exemption), grantees shall remit to the Federal Government any interest or other investment income earned on advances of HEW grant funds. This includes any interest or investment income earned by subgrantees and cost-type contractors on advances to them that are attributable to advances of HEW grant funds to the grantee. Unless the grantee receives other instructions from the responsible HEW official, the grantee shall remit the amount due by check or money order payable to the Department of Health, Education, and Welfare.

(b) In accordance with the Intergovernmental Cooperation Act of 1968 (Pub. L. 90–577), States, as defined in the act, shall not be accountable to the Federal Government for interest or investment income earned by the State itself, or by its subgrantees, where this income is attributable to grants-in-aid, as defined in the act (42 U.S.C. 4213).[1]

[1] "State" is defined in the act to include any agency or instrumentality of a State, and the definition does not exclude a hospital or institution of higher education which is such an agency or instrumentality. "Grant-in-aid" is defined in the act to exclude "payments under research and development contracts or grants which are awarded

Footnotes continued on next page

(c) Recipients are cautioned that they are subject to the provisions in § 74.61(e) for minimizing the time between the transfer of advances and their disbursement. Those provisions apply even if there is no accountability to the Federal Government for interest or other investment income earned on the advances.

Subpart G—Cost Sharing or Matching

§ 74.50 Scope of subpart.

(a) This subpart contains rules for satisfying Federal requirements for cost sharing or matching. These rules apply whether the cost sharing or matching is required by Federal statute or by other terms of the grant.

(b) HEW and a grantee may enter into an institutional cost-sharing agreement covering all of HEW's research project grants to that grantee in the aggregate. Except as provided by the institutional cost-sharing agreement, this subpart applies to the satisfaction of the grantee's obligation under the agreement, as well as to the satisfaction of cost-sharing or matching requirements that apply only to a single grant.

§ 74.51 Definitions.

For purposes of this subpart:

"Cost sharing or matching" means the value of third-party in-kind contributions and that portion of the costs of a grant-supported project or program not borne by the Federal Government.

"Equipment" has the same meaning given to that term in § 74.132, except that instead of "acquisition cost," the words "market value at the time of donation" shall be substituted.

"Supplies" means all tangible personal property other than "equipment" as defined in this section.

"Third-party in-kind contributions" means property or services which benefit a grant-supported project or program and which are contributed by non-Federal third parties without charge to the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant.

§ 74.52 Basic rule: Costs and contributions acceptable.

With the qualifications and exceptions listed in § 74.53, a cost-sharing or matching requirement may be satisfied by either or both of the following:

(a) Allowable costs incurred by the grantee, the subgrantee, or a cost-type contractor under the grant or subgrant. This includes allowable costs borne by non-Federal grants or by other cash donations from non-Federal third parties.

(b) The value of third-party in-kind contributions applicable to the period to which the cost-sharing or matching requirement applies.

§ 74.53 Qualifications and exceptions.

(a) *Costs borne by other Federal grants.* (1) Except as provided by Federal statute, a cost-sharing or matching requirement may not be met by costs borne by another Federal grant. This prohibition does not apply to costs borne by general program income earned from a contract awarded under another Federal grant.

(2) For the purposes of this part, general revenue sharing funds under 31 U.S.C. 1221 are not considered a Federal grant. Therefore, in the absence of any provision of Federal statute to the contrary, allowable costs borne by these funds may count towards satisfying a cost-sharing or matching requirement.

(b) *Costs or contributions counted towards other Federal cost-sharing requirements.* Neither costs nor the values of third-party in-kind contributions may count towards satisfying a cost-sharing or matching requirement of an HEW grant if they have been or will be counted towards satisfying a cost-sharing or matching requirement of another Federal grant, a Federal procurement contract, or any other award of Federal funds.

(c) *Costs financed by general program income.* Costs financed by general program income, as defined in § 74.42, shall not count towards satisfying a cost-sharing or matching requirement of the HEW grant supporting the activity giving rise to the income unless the terms of the grant expressly permit the income to be used for cost sharing or matching. (This is the alternative for use of general program income described in § 74.42(d).)

(d) *Records.* Costs and third-party in-kind contributions counting towards satisfying a cost-sharing or matching requirement must be verifiable from the records of recipients or cost-type contractors. These records must show how the value placed on third-party in-kind contributions was arrived at. To the extent feasible, volunteer services shall be supported by the same methods that the organization uses to support the allocability of its regular personnel costs.

(e) *Special standards for third-party in-kind contributions.* (1) Third-party in-kind contributions shall count towards satisfying a cost-sharing or matching requirement only where, if the party receiving the contributions were to pay for them, the payments would be allowable costs.

(2) A third-party in kind contribution shall not count as direct cost sharing or matching where, if the party receiving the contribution were to pay for it, the payment would be an indirect cost. Cost-sharing or matching credit for such contributions shall be given only if the recipient or contractor has established, along with its regular indirect cost rate, a special rate for allocating to individual projects or programs the value of the contributions. (Information on how to establish these rates can be obtained from the Division of Cost Allocation in any HEW regional office's Regional Administrative Support Center.)

(3) The values placed on third-party in-kind contributions for cost-sharing or matching purposes shall conform to the rules in the succeeding sections of this subpart. If a third-party in-kind contribution is of a type not treated in those sections, the value placed upon it shall be fair and reasonable.

§ 74.54 Valuation of donated services.

(a) *Volunteer services.* Unpaid services provided to a recipient by individuals shall be valued at rates consistent with those ordinarily paid for similar work in the recipient's organization. If the recipient does not have employees performing similar work, the rates shall be consistent with those ordinarily paid by other employers for similar work in the same labor market. In either case, a reasonable amount for fringe benefits may be included in the valuation.

(b) *Employees of other organizations.* When an employer other than a recipient or cost-type contractor furnishes free of charge the services of an employee in the employee's normal line of work, the services shall be valued at the employee's regular rate of pay exclusive of the employer's fringe benefits and overhead costs. If the services are in a different line of work, paragraph (a) of this section shall apply.

§ 74.55 Valuation of donated supplies and loaned equipment or space.

(a) If a third party donates supplies, the contribution shall be valued at the market value of the supplies at the time of donation.

(b) If a third party donates the use of equipment or space in a building but retains title, the contribution shall be

Footnotes continued from last page
directly and on similar terms to all qualifying organizations, whether public or private." (42 U.S.C. 4201)

valued at the fair rental rate of the equipment or space.

§ 74.56 Valuation of donated equipment, buildings, and land.

If a third party donates equipment, buildings, or land, and title passes to a recipient, the treatment of the donated property shall depend upon the purpose of the grant or subgrant, as follows:

(a) *Awards for capital expenditures.* If the purpose of the grant or subgrant is to assist the recipient in the acquisition of property, the market value of that property at the time of donation may be counted as cost sharing or matching.

(b) *Other awards.* If assisting in the acquisition of property is not the purpose of the grant or subgrant, the following rules apply:

(1) If approval is obtained from the awarding party, the market value at the time of donation of the donated equipment or buildings and the fair rental rate of the donated land may be counted as cost sharing or matching. In the case of a subgrant, the terms of the HEW grant may require that the approval be obtained from the granting agency as well as the grantee. In all cases, the approval may be given only if a purchase of the equipment or buildings or a purchase or rental of the land would be approved as an allowable direct cost.

(2) If approval is not obtained under paragraph (b)(1) of this section, no amount may be counted for donated land, and only depreciation or use allowances may be counted for donated equipment and buildings. The depreciation or use allowances for this property are not treated as third-party in-kind contributions. Instead, they are treated as costs incurred by the recipient. They are computed and allocated (usually as indirect costs) in accordance with the cost principles specified in subpart Q of this part, in the same way as depreciation or use allowances for purchased equipment and buildings. The amount of depreciation or use allowances for donated equipment and buildings is based on the property's market value at the time it was donated.

§ 74.57 Appraisal of real property.

In some cases under §§ 74.55 and 74.56, it will be necessary to establish the market value of land or a building or the fair rental rate of land or of space in a building. In these cases, the granting agency may require that the market value or fair rental rate be established by a certified real property appraiser (or by a representative of the U.S. General Services Administration, if available) and that the value or rate be certified by a responsible official of the party to which the property or its use is donated. For subgrants, this requirement may also be imposed by the grantee.

Subpart H—Standards for Grantee and Subgrantee Financial Management Systems

§ 74.60 Scope of subpart.

This subpart prescribes standards for financial management systems of grant- and subgrant-supported activities. Awarding parties shall not impose additional standards on recipients unless specifically provided for in a Federal statute (e.g. the Joint Funding Simplification Act, Pub. L. 93-510) or these regulations. However, suggestions and assistance may be provided in establishing or improving financial management systems when needed or requested.

§ 74.61 Standards.

Grantees and subgrantees shall meet the following standards for their grant and subgrant financial management systems.

(a) *Financial reporting.* Accurate, current, and complete disclosure of the financial results of each project or program shall be made in accordance with the financial reporting requirements of the grant or subgrant. The terms of grants and subgrants shall not require financial reporting on the accrual basis if the recipient's accounting system is maintained on the cash basis. When accrual reporting is statutorily required, a recipient whose accounting system is not maintained on that basis shall not be required to convert it to the accrual basis; the recipient may develop the accrual information through an analysis of the documentation on hand.

(b) *Accounting records.* Records which identify adequately the source and application of funds for grant- or subgrant-supported activities shall be maintained. These records shall contain information pertaining to grant or subgrant awards, authorizations, obligations, unobligated balances, assets, outlays, income, and, if the recipient is a government, liabilities.

(c) *Internal control.* Effective control and accountability shall be maintained for all grant or subgrant cash, real and personal property covered by subpart O of this part, and other assets. Recipients shall adequately safeguard all such property and shall assure that it is used solely for authorized purposes.

(d) *Budgetary control.* The actual and budgeted amounts for each grant or subgrant shall be compared. If appropriate or specifically required, recipients shall relate financial information to performance or productivity data, including the production of unit cost information. If unit cost data are required, estimates based on available documentation will be accepted whenever possible.

(e) *Advance payments.* Procedures shall be established to minimize the time elapsing between the advance of Federal grant or subgrant funds and their disbursement by the recipient. When advances are made by a letter-of-credit method, the recipient shall make drawdowns as close as possible to the time of making disbursements. Grantees advancing cash to subgrantees shall conform sustantially to the same standards of timing and amount as apply to advances by Federal agencies to grantees, including requirements for timely reporting of cash disbursements and balances. (See subpart K of this part.)

(f) *Allowable costs.* Procedures shall be established for determining the reasonableness, allowability, and allocability of costs in accordance with the applicable cost principles prescribed by subpart Q of this part and the terms of the grant.

(g) *Source documentation.* Accounting records shall be supported by source documentation such as cancelled checks, paid bills, payrolls, contract and subgrant award documents, etc.

(h) *Audits.*—(1) *General.* External or internal audits shall be made in accordance with generally accepted auditing standards, including the standards of the U.S. General Accounting Office's publication "Standards for Audit of Governmental Organizations Programs, Activities, and Functions."[1] The auditors engaged by the recipient shall meet the criteria for qualifications and independence in that publication.

(2) *Purpose and scope.* The purpose of these audits shall be to determine the effectiveness of the financial management systems and internal procedures established by the recipient to meet the terms of its grants and subgrants. The recipient's auditors need not examine every grant or subgrant awarded to the recipient. Rather, audits generally should be made on an organization-wide basis to test the fiscal integrity of financial transactions and compliance with the terms of awards. These tests would include an

[1] Available from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

appropriate sampling of Federal grants and subgrants.

(3) *Frequency.* These audits shall be conducted on a continuing basis or at scheduled intervals, usually once a year, but at least every two years. The frequency shall depend on the nature, size and complexity of the recipient's grant- or subgrant-supported activities.

(4) *Relation to Federal audit.* These audits may affect the frequency and scope of Federal audit. However, nothing in this section is intended to limit the right of the Federal Government to conduct an audit of a grant- or subgrant-supported activity.

(5) *Audit resolution.* The recipient shall follow a systematic method to assure timely and appropriate resolution of audit findings and recommendations.

(6) *Copies of audit reports.* A copy of each audit report, and a description of its resolution, shall be furnished to the appropriate regional office of the HEW Audit Agency.

Subpart I—Financial Reporting Requirements

§ 74.70 Scope and applicability of subpart.

(a) This subpart prescribes requirements and forms for grantees to report financial information to HEW, and to request grant payments when a letter of credit is not used.

(b) This subpart need not be applied by grantees in dealing with their subgrantees. However, grantees are encouraged not to impose on subgrantees more burdensome requirements than HEW imposes on grantees.

§ 74.71 Definitions.

As used in this subpart or in the forms identified by this subpart:

"Accrued expenditures" are the charges by grantee during a given period requiring the provision of funds for: (a) Goods and other tangible property received; (b) services performed by employees, contractors, subgrantees, and other payees; and (c) amounts "becoming owed" for which no current services or performance is required, such as annuities, insurance claims, and other benefit payments.

"Accrued income" is the sum of (a) earnings during a given period from services performed by the grantee and from goods and other tangible property delivered to purchasers, and (b) amounts becoming owed to the grantee for which no current services or performance is required by the grantee.

"Federal funds authorized" means the total amount of Federal funds obligated by the Federal Government and authorized for use by the grantee.

"In-kind contributions" means "third-party in-kind contributions" as defined in subpart G of this part.

"Obligations" are the amounts of orders placed, contracts and subgrants awarded, services received, and similar transactions during a given period, which will require payment during the same or a future period.

"Outlays" are charges made to the grant project or program. Outlays may be reported on a cash or accrual basis.

"Program income" has the same meaning it has in subpart F of this part.

"Unobligated balance" is the portion of the Federal funds authorized which has not been obligated by the grantee and is determined by deducting the grantee's cumulative obligations from the cumulative Federal funds authorized.

"Unliquidated obligations," for reports prepared on a cash basis, are the amount of obligations incurred by the grantee that has not been paid. For reports prepared on an accrued expenditure basis, they are the amount of obligations incurred by the grantee for which an outlay has not been recorded.

§ 74.72 General.

(a) Except as provided in paragraphs (d) and (e) of this section, grantees shall use only the forms specified in §§ 74.73 through 74.76, and such supplementary or other forms as may from time to time be authorized by OGP, for:

(1) Submitting grant financial reports to granting agencies, or

(2) Requesting advances or reimbursements when letters of credit are not used.

(b) Grantees shall follow all applicable standard instructions issued by OMB for use in connection with the forms specified in §§ 74.73 through 74.76. Granting agencies may issue substantive supplementary instructions only with the approval of OGP. Granting agencies may shade out or instruct the grantee to disregard any line item that the granting agency finds unnecessary for its decision making purposes.

(c) Grantees will not be required to submit more than the original and two copies of forms required under this subpart.

(d) Granting agencies may provide computer outputs to grantees to expedite or contribute to the accuracy of reporting. Granting agencies may accept the required information from grantees in machine usable format or computer printouts instead of prescribed formats.

(e) When a granting agency has determined that a grantee's accounting system does not meet the standards for financial management systems contained in subpart H of this part, it may require financial reports with more frequency or more detail (or both), upon written notice to the grantee (without regard to § 74.7), until such time as the standards are met.

(f) HEW may waive any report required by this subpart if not needed.

(g) Granting agencies may extend the due date for any financial report upon receiving a justified request from the grantee.

§ 74.73 Financial Status Report.

(a) *Form.* Grantees shall use Standard Form 269, Financial Status Report, to report the Status of funds for all nonconstruction grants.

(b) *Accounting basis.* Each grantee shall report program outlays and program income on the same accounting basis, i.e., cash or accrued expenditure (accrual), which it uses in its accounting system.

(c) *Frequency.* The granting agency may prescribe the frequency of the report for each project or program. However, the report shall not be required more frequently than quarterly except as provided in §§ 74.7 and 74.72(e). If the granting agency does not specify the frequency of the report, it shall be submitted annually. A final report shall be required upon expiration or termination of grant support.

(d) *Due date.* When reports are required on a quarterly or semiannual basis, they shall be due 30 days after the reporting period. When required on an annual basis, they shall be due 90 days after the grant year. Final reports shall be due 90 days after the expiration or termination of grant support.

§ 74.74 Federal Cash Transactions Report.

(a) *Form.* (1) For grants paid by letters of credit (or Treasury check advances) through any HEW payment office except the Departmental Federal Assistance Financing System (DFAFS), the grantee shall submit to the payment office Standard Form 272, Federal Cash Transactions Report, and when necessary, its continuation sheet, Standard Form 272a. For grants paid by DFAFS, the grantee shall submit DFAFS Report 27, Recipient Report of Expenditures, to DFAFS.

(2) These reports will be used by the HEW payment office to monitor cash advanced to grantees and to obtain disbursement or outlay information for each grant from grantees. The format of the report may be adapted as

appropriate when reporting is to be accomplished with the assistance of automatic data processing equipment: *Provided*, That the information to be submitted is not changed in substance.

(b) *Forecasts of Federal cash requirements.* Forecasts of Federal cash requirements may be required in the "Remarks" section of the report.

(c) *Cash in hands of secondary recipients.* When considered necessary and feasible by the responsible HEW payment office, grantees may be required to report the amount of cash subadvances in excess of three days' needs in the hands of their subgrantees or contractors and to provide short narrative explanations of actions taken by the grantee to reduce the excess balances.

(d) *Frequency and due date.* Grantees shall submit the report no later than 15 working days following the end of each quarter. However, where a letter of credit authorizes advances at an annualized rate of one million dollars or more, the HEW payment office may require the report to be submitted within 15 working days following the end of each month.

§ 74.75 Request for advance or reimbursement.

(a)(1) *Advance payments.* Requests for Treasury check advance payments shall be submitted on Standard Form 270, Request for Advance or Reimbursement. (This form is not used for drawdowns under a letter of credit or when Treasury check advance payments are made to the grantee automatically on a predetermined basis.)

(2) *Reimbursements.* Requests for reimbursement under non-construction grants shall also be submitted on Standard Form 270. (For reimbursement requests under construction grants, see § 74.76(a).)

(b) The frequency for submitting payment requests is treated in § 74.96.

§ 74.76 Outlay report and request for reimbursement for construction programs.

(a) *Construction grants paid by reimbursement method.* (1) Requests for reimbursement under construction grants shall be submitted on Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. Granting agencies may, however, prescribe the Request for Advance or Reimbursement form specified in § 74.75 instead of this form.

(2) The frequency for submitting reimbursement requests is treated in § 74.96.

(b) *Construction grants paid by letter of credit or Treasury check advance.* (1) When a construction grant is paid by letter of credit or Treasury check advances, the grantee shall report its outlays to the granting agency using Standard Form 271, Outlay Report and Request for Reimbursement for Construction Programs. The granting agency will provide any necessary special instruction. However, frequency and due date shall be governed by § 74.73(c) and (d).

(2) When a construction grant is paid by Treasury check advances based on periodic requests from the grantee, the advances shall be requested on the form specified in § 74.75.

(3) The granting agency may substitute the Financial Status Report specified in § 74.73 for the Outlay Report and Request for Reimbursement.

(c) *Accounting basis.* The accounting basis for the Outlay Report and Request for Reimbursement for Construction Programs shall be governed by § 74.73(b).

Subpart J—Monitoring and Reporting of Program Performance

§ 74.80 Scope of subpart.

This subpart sets forth the procedures for monitoring and reporting program performance of recipients. These procedures are designed to place reliance on recipients to manage the day-to-day operations of their grant- and subgrant-supported activities.

§ 74.81 Monitoring by recipients.

Recipients shall monitor the performance of grant- and subgrant-supported activities. They shall review each program, function, or activity to assure that adequate progress is being made towards achieving the goals of the grant or subgrant.

§ 74.82 Performance reports under nonconstruction grants.

(a) Where the granting agency determines that performance information sufficient to meet its programmatic needs will be available from subsequent applications, the granting agency will require the grantee to submit a performance report only upon expiration or termination of grant support. This report will be due on the same date as the final financial Status Report unless waived by the granting agency. Note that the "Application for Federal Assistance (Nonconstruction Programs)" prescribed by subpart N of this part, when used to request continued support, provides information substantially equivalent to a performance report.

(b) Except as provided in paragraph (a) of this section, grantees shall submit annual performance reports unless the granting agency requires quarterly or semiannual reports. Annual reports shall be due 90 days after the grant year; quarterly or semiannual reports shall be due 30 days after the reporting period. A final performance report shall be due 90 days after the expiration or termination of grant support. Granting agencies may extend the due date for any performance report upon receiving a justified request from the grantee. In addition, granting agencies may waive the requirement for any performance report which is not needed.

(c) The content of performance reports shall conform to any instructions issued by the granting agency, including, to the extent appropriate to the particular grant, a brief presentation of the following for each program, function, or activity involved:

(1) A comparison of actual accomplishments to the goals established for the period. Where the output of the project or program can be readily expressed in numbers, a computation of the cost per unit of output may be required if that information will be useful.

(2) The reasons for slippage if established goals were not met.

(3) Other pertinent information including, when appropriate, analysis and explanation of unexpectedly high overall or unit costs.

(d) Grantees will not be required to submit more than the original and two copies of performance reports.

(e) Grantees shall adhere to the standards in paragraphs (a) through (d) of this section in prescribing performance reporting requirements for subgrantees.

§ 74.83 Performance reports under construction grants.

In general, awarding parties rely heavily on on-site technical inspection and certified percentage-of-completion data to keep themselves informed as to progress under construction grants and subgrants. Formal performance reports to supplement those sources of information shall be required only if considered necessary by the awarding party, and in no case more frequently than quarterly.

§ 74.84 Significant developments between scheduled reporting dates.

Between the scheduled performance reporting dates, events may occur which have significant impact upon the grant- or subgrant-supported activity. In such cases, the recipient shall inform the

awarding party as soon as the following types of conditions become known:

(a) Problems, delays, or adverse conditions which will materially impair the ability to attain the objective of the award. This disclosure shall be accompanied by a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

(b) Favorable developments which enable meeting time schedules and goals sooner or at less cost than anticipated or producing more beneficial results than originally projected.

§ 74.85 Site visits.

Site visits may be made as necessary by representatives of HEW to:

(a) Review program accomplishments and management control systems.

(b) Provide such technical assistance as may be required.

Subpart K—Grant and Subgrant Payment Requirements

§ 74.90 Scope of subpart.

This subpart prescribes the basic standard and the methods under which HEW will make grant payments to grantees, and grantees will make subgrant payments to their subgrantees.

§ 74.91 Definitions.

As used in this subpart:

"Advance by Treasury check" is a payment made by a Treasury check to a grantee, upon its periodic request or through the use of predetermined payment schedules, before payments are made by the grantee.

"Letter of credit" is an instrument certified by an authorized official which authorizes a recipient to draw funds needed for immediate disbursement in accordance with Treasury Circular No. 1075.

"Percentage of completion method" refers to a system under which payments are made for construction work according to the percentage of completion of the work, rather than to the grantee's rate of disbursements.

§ 74.92 Basic standard.

Methods and procedures for making payments to recipients shall minimize the time elapsing between the transfer of funds and the recipient's disbursements.

§ 74.93 Payment methods under nonconstruction grants.

(a) Letters of credit will be used to pay HEW grantees when all of the following conditions exist:

(1) There is or will be a continuing relationship between the grantee and the HEW payment office for at least a year and the total amount of advances to be received from the HEW payment office is $120,000 or more per year,

(2) The grantee has maintained, or demonstrated to HEW the willingness and ability to maintain, procedures that minimize the time elapsing between the transfer of funds from the Treasury and their disbursement by the grantee, and

(3) The grantee's financial management system meets the standards for fund control and accountability in Subpart H of this part.

(b) Advances by Treasury check will be used, in accordance with Treasury Circular No. 1075, when the grantee does not meet the requirements in paragraph (a)(1) of this section but does meet the requirements in paragraphs (a)(2) and (3) of this section.

(c) Reimbursement by Treasury check will be preferred method when the requirements of either paragraph (a)(2) or paragraph (a)(3) of this section are not met. This method may also be used when the major portion of the program is accomplished through private market financing or Federal loans, and the Federal grant assistance constitutes a minor portion of the program.

§ 74.94 Payment methods under construction grants.

(a) Reimbursement by Treasury check shall be the preferred method when the grantee does not meet the requirements specified in § 74.93(a) (2) or (3), and may be used for any HEW construction grant unless HEW has entered into an agreement with the grantee to use a letter of credit for all HEW grants, including construction grants.

(b) When the reimbursement by Treasury check method is not used, § 74.93 (a) and (b) shall apply to the construction grant. Implementing procedures under § 74.93 (a) and (b) will be insofar as possible the same for construction grants as for nonconstruction grants awarded to the same grantee.

(c) HEW will not use the percentage of completion method to pay its construction grants. The grantee may use that method to pay its construction contractor, but if it does, HEW's payments to the grantee will nevertheless be based on the grantee's actual rate of disbursements.

§ 74.95 Withholding of payments.

(a) Unless otherwise required by Federal statute, payments for proper charges incurred by grantees will not be withheld unless (1) the grantee has failed to comply with Federal reporting requirements or (2) the grant is suspended pursuant to § 74.114 or (3) the grantee owes money to the United States and collection of the debt by withholding grant payments will not impair the accomplishment of the objectives of any grant program sponsored by the United States.

(b) Cash withheld for failure to comply with reporting requirements but without suspension of the grant will be released to the grantee upon subsequent compliance. When a grant is suspended, payment adjustments will be made in accordance with § 74.114. When a debt is to be collected, HEW may withhold payments or require appropriate accounting adjustments to recorded grant cash balances for which the grantee is accountable to the Federal Government, in order to liquidate the indebtedness.

§ 74.96 Requesting advances or reimbursements.

(a) If advances are made by Treasury check and the advances are not prescheduled, the grantee shall submit its requests for payment monthly. Less frequent requests are not permitted because they would result in advances covering excessive periods of time.

(b) If payments are made through reimbursement by Treasury check, the grantee may submit its requests for reimbursement monthly and may submit them more often if authorized. The grantee will be paid as promptly as possible, ordinarily within 30 days after receipt of a proper request for reimbursement.

(c) The forms for requesting advances or reimbursements are identified in subpart I of this part.

§ 74.97 Payments to subgrantees.

Grantees shall observe the requirements of this subpart in making (or withholding) payments to subgrantees, with the following exceptions:

(a) Advance payment by check may be used instead of letter of credit;

(b) The forms specified in subpart I of this part for requesting advances and reimbursements are not required to be used by subgrantees; and

(c) The reimbursement by check method may be used to pay any construction subgrant, whether or not HEW has agreed to use a letter of credit for all direct HEW grants to that same recipient.

Subpart L—Programmatic Changes and Budget Revisions

§ 74.100 Scope and applicability of this subpart.

(a) *Scope.* This subpart deals with prior approval requirements for post-award programmatic changes and budget revisions by recipients.

(b) *Exemption of mandatory grants.* Sections 74.103 through 74.106 do not apply to programmatic changes or budget revisions made by grantees under State plan or other grants which the granting agency is required by law to award if the applicant meets all applicable requirements for entitlement. (These are generally called "mandatory" or "formula" grants.)

(c) *Exemption of certain subgrants.* Sections 74.103 through 74.106 do not apply to subgrants from States to their local governments under a mandatory or formula grant, if the local government is not required to apply for the subgrant on a project basis. Generally, such exempt subgrants will occur under a State plan which provides for local administration of a State-wide program under State supervision.

§ 74.101 Relationship to cost principles.

The cost principles in Appendices C, D, E, and F to this part contain requirements for prior approval of certain types of costs (see § 74.176). Except when waived, those requirements apply to all grants and subgrants even if §§ 74.103 through 74.106 do not.

§ 74.102 Prior approval procedures.

(a) *For grants.* When requesting a prior approval required by this subpart, grantees shall address their requests to the responsible grants officer of the granting agency. Approvals shall not be valid unless they are in writing and signed by either the grants officer, the head of the granting agency, or the head of the granting agency's regional office.

(b) *For subgrants.* Grantees shall be responsible for reviewing requests from their subgrantees for the approvals required by this subpart and for giving or denying the approval. A grantee shall not approve any action which is inconsistent with the purpose or terms of the Federal grant. If an action by a subgrantee will result in a change in the overall grant project or budget requiring granting agency approval, the grantee shall obtain that approval before giving its approval to the subgrantee. Approvals shall not be valid unless they are in writing and signed by an authorized official of the grantee.

(c) *Timing.* Within 30 days from the date of receipt of a request for approval, the approval authority shall review the request and notify the recipient of its decision. If the request for approval is still under consideration at the end of 30 days, the approval authority shall inform the recipient in writing as to when to expect the decision.

§ 74.103 Programmatic changes.

(a) *Scope.* This section contains requirements for prior approval of departures, other than budget revisions, from approved project plans. In addition to the requirements in this section, awarding parties may require prior approval for other kinds of programmatic changes to an approved grant or subgrant project.

(b) *Changes to project scope or objectives.* The recipient shall obtain prior approval for any change to the scope or objectives of the approved project. (For construction projects, any material change in approved space utilization or functional layout shall be considered a change in scope.)

(c) *Changes in key people.* The recipient of a grant or subgrant for research (or any other kind of grant or subgrant if the terms of the award make this rule applicable) shall obtain prior approval:

(1) To continue the project during any continuous period of more than 3 months without the active direction of an approved project director or principal investigator; or

(2) To replace the project director or principal investigator (or any other persons named and expressly identified as key project people in the notice of grant or subgrant award) or to permit any such people to devote substantially less effort to the project than was anticipated when the grant or subgrant was awarded.

(d) *Other programmatic changes.* The following shall require prior approval except to the extent explicitly included in the project plan as approved by the awarding party at the time of award:

(1) Providing financial assistance to a third party by subgranting or any other means.

(2) Tranferring to a third party, by contracting or any other means, the actual performance of the substantive programmatic work. The term "substantive programmatic work" means activities which are central to carrying out the purpose of the project, and not merely incidental. Transfer of substantive programmatic work does not include purchase of supplies, materials, or equipment; acquisition of general or incidental support services; obtaining advice; or transfer of activities whose cost is treated as an indirect cost.

(3) Providing medical care to individuals under research grants.

§ 74.104 Budgets generally.

(a) *Definitions.* In this subpart:

(1) "Budget" means the recipient's financial plan for carrying out the project or program.

(2) "Approved budget" means a budget (including any revised budget) which has been approved by the awarding party.

(b) *Research project budgets.* For research projects, approved budgets shall not include the recipient's share of project costs.

(c) *Non-research project budgets.* For non-research projects which involve cost sharing or matching, approved budgets shall ordinarily consist of a single set of figures covering total project cost (the sum of the awarding party's share and the recipient's share). However, the awarding party may specify that the recipient's share not be included in the approved budget. In no case, however, shall the approved budget be in the form of a separate set of figures for each share.

(d) *Subdivision by programmatic segments.* Some grants and subgrants encompass two or more programmatic segments (such as discrete programs, projects, functions, or types of activities). In these cases, the awarding party may require that the approved budget be subdivided to show the anticipated cost of each programmatic segment.

§ 74.105 Budget revisions—nonconstruction projects.

(a) Except as provided in paragraph (b) of this section, the recipient of a grant or subgrant having an approved budget shall obtain prior approval for any budget revision which will:

(1) Involve transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or

(2) Involve transfer of amounts previously budgeted for student support (tuition waivers, stipends, and other payments to or for trainees), or

(3) Result in a need for the award of additional funds, e.g., an increase in the base upon which indirect costs are calculated which will increase allocable indirect costs and result in a claim for a supplementary award.

(b) Any or all of the prior approval requirements in paragraph (a) of this section may be waived by the awarding party.

(c) Except as provided in §§ 74.107 and 74.176, other budget changes under

nonconstruction grants do not require approval.

§ 74.106 Budget revisions—construction projects.

Unless provided otherwise by the terms of the grant or subgrant, revisions to construction project budgets do not require approval.

§ 74.107 Construction and nonconstruction work under the same grant or subgrant.

When a grant or subgrant provides support for both construction and nonconstruction work, the awarding party may require prior approval before any fund or budget transfers between the two types of work.

§ 74.108 Authorized funds exceeding needs.

The recipient shall notify the awarding party promptly whenever the amount of grant or subgrant authorized funds is expected to exceed needs by more than $5,000 or 5 percent of the grant or subgrant, whichever is greater. This notification will not be required under continuing grants or subgrants if the application for the next period's funding will include an estimate of what the unobligated balance of authorized funds will be at the end of the current period.

Subpart M—Grant and Subgrant Closeout, Suspension, and Termination

§ 74.110 Definitions.

"Grant closeout" means the process by which a granting agency determines that all applicable administrative actions and all required work of the grant have been completed by the grantee and the granting agency.

"Suspension" of a grant means temporary withdrawal of the grantee's authority to obligate grant funds pending corrective action by the grantee or a decision to terminate the grant.

"Termination" of a grant means permanent withdrawal of the grantee's authority to obligate previously awarded grant funds before that authority would otherwise expire. It also means the voluntary relinquishment of that authority by the grantee. "Termination" does not include:

(a) Withdrawal of funds awarded on the basis of the grantee's underestimate of the unobligated balance in a prior period;

(b) Refusal by the granting agency to extend a grant or award additional funds (such as refusal to make a competing or noncompeting continuation, renewal, extension, or supplemental award);

(c) Withdrawal of the unobligated balance as of the expiration of a grant;

(d) Annulment, i.e., voiding, of a grant upon determination that the award was obtained fraudulently, or was otherwise illegal or invalid from inception.

§ 74.111 Closeout.

(a) Each grant shall be closed out as promptly as is feasible after expiration or termination.

(b) In closing out HEW grants, the following shall be observed:

(1) Upon request, HEW shall promptly pay the grantee for any allowable reimbursable costs not covered by previous payments.

(2) The grantee shall immediately refund or otherwise dispose of, in accordance with instructions from HEW, any unobligated balance of cash advanced to the grantee.

(3) The grantee shall submit, within 90 days of the date of expiration or termination, all financial, performance, and other reports required by the terms of the grant. HEW may extend the due date for any report upon receiving a justified request from the grantee, and may waive any report which is not needed.

(4) The granting agency shall make a settlement for any upward or downward adjustment of the Federal share of costs, to the extent called for by the terms of the grant.

(c)(1) The closeout of a grant does not affect the retention period for, or Federal rights of access to, grant records. See subpart D of this part.

(2) If a grant is closed out without audit, the granting agency retains the right to disallow and recover an appropriate amount after fully considering any recommended disallowances resulting from an audit which may be conducted later.

(3) The closeout of a grant does not affect the grantee's responsibilities with respect to property under subpart O of this part, or with respect to any program income for which the grantee is still accountable under subpart F of this part.

§ 74.112 Amounts payable to the Federal Government.

For each grant, the following sums shall constitute a debt or debts owed by the grantee to the Federal Government, and shall, if not paid upon demand, be recovered from the grantee or its successor or assignees by set-off or other action as provided by law:

(a) Any grant funds paid to the grantee by the Federal Government in excess of the amount to which the grantee is finally determined to be entitled under the terms of the grant;

(b) Any interest or other investment income earned on advances of grant funds which is due the Federal Government pursuant to § 74.47;

(c) Any royalties or other special classes of program income which, under the terms of the grant, are required to be remitted to the Federal Government (see subpart F of this part);

(d) Any amounts due the Federal Government under subpart O of this part; and

(e) Any other amounts finally determined to be due the Federal Government under the terms of the grant.

§ 74.113 Violation of terms.

(a) When a grantee has materially failed to comply with the terms of a grant, the granting agency may suspend the grant, in accordance with § 74.114, terminate the grant for cause, as provided in § 74.115, or take such other remedies as may be legally available and appropriate in the circumstances.

(b) If a project or program is supported over two or more funding periods, a grant may be suspended or terminated in the current period for failure to submit a report still due from a prior period.

§ 74.114 Suspension.

(a) When a grantee has materially failed to comply with the terms of a grant, the granting agency may, upon reasonable notice to the grantee, suspend the grant in whole or in part. The notice of suspension will state the reasons for the suspension, any corrective action required of the grantee, and the effective date. The suspension may be made effective at once if a delayed effective date would be unreasonable considering the granting agency's responsibilities to protect the Federal Government's interest. Suspensions shall remain in effect until the grantee has taken corrective action satisfactory to the granting agency, or given evidence satisfactory to the granting agency that such corrective action will be taken, or until the granting agency terminates the grant.

(b) New obligations incurred by the grantee during the suspension period will not be allowed unless the granting agency expressly authorizes them in the notice of suspension or an amendment to it. Necessary and otherwise allowable costs which the grantee could not reasonably avoid during the suspension period will be allowed if they result from obligations properly incurred by the grantee before the

effective date of the suspension and not in anticipation of suspension or termination. At the discretion of the granting agency, third-party in-kind contributions applicable to the suspension period may be allowed in satisfaction of cost sharing or matching requirements.

(c) Appropriate adjustments to payments under the suspended grant will be made either by withholding subsequent payments or by not allowing the grantee credit for disbursements made in payment of unauthorized obligations incurred during the suspension period.

§ 74.115 Termination.

(a) *Termination for cause.* The granting agency may terminate any grant in whole, or in part, at any time before the date of expiration, whenever it determines that the grantee has materially failed to comply with the terms of the grant. The granting agency shall promptly notify the grantee in writing of the determination and the reasons for the termination, together with the effective date.

(b) *Termination on other grounds.* Except as provided in paragraph (a) of this section, grants may be terminated in whole or in part only as follows:

(1) By the granting agency with the consent of the grantee, in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial terminations, the portion to be terminated, or

(2) By the grantee, upon written notification to the granting agency, setting forth the reasons for such termination, the effective date, and in the case of partial terminations, the portion to be terminated. However, if, in the case of a partial termination, the granting agency determines that the remaining portion of the grant will not accomplish the purposes for which the grant was made, the granting agency may terminate the grant in its entirety under either paragraph (a) or paragraph (b)(1) of this section.

(c) *Termination settlements.* When a grant is terminated, the grantee shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. The granting agency shall allow full credit to the grantee for the Federal share of the noncancellable obligations properly incurred by the grantee prior to termination.

§ 74.116 Applicability to subgrants.

Grantees shall adhere to the same standards regarding closeout, suspension, and termination of subgrants as are prescribed in this subpart for granting agencies.

Subpart N—Forms for Applying for Grants

§ 74.120 Scope of subpart.

(a) This subpart prescribes forms and instructions to be used by governmental organizations (except hospitals and institutions of higher education operated by a government) in applying to HEW for grants. This subpart is not applicable, however, to mandatory or formula grant programs which do not require applicants to apply to HEW for funds on a project basis.

(b) This subpart permits granting agencies to prescribe the form of applications by nongovernmental organizations (including hospitals and institutions of higher education operated by a government), but prescribes the use of a standard facesheet for certain of these applications.

(c) This subpart applies only to applications for grants, and is not required to be applied by grantees in dealing with applicants for subgrants. However, grantees are encouraged not to adopt more detailed or burdensome application requirements for subgrants.

§ 74.121 Authorized forms and instructions for governmental organizations.

(a) In applying to HEW for grants, governments shall use only the forms specified in §§ 74.122 through 74.126, and such supplementary or other forms as may from time to time be prescribed by the granting agency with the approval of OGP.

(b) Governments will not be required to submit more than the original and two copies of their applications.

(c) Governments shall follow all applicable standard instructions promulgated by OMB for use in connection with the forms specified in §§ 74.122 through 74.126. Granting agencies may specify and describe the programs, functions, or activities that will be used to plan, budget, and evaluate the work under a grant. Other supplementary instructions may be issued only with the approval of OGP. For any form, the granting agency may shade out or instruct the applicant to disregard any line item that is not needed.

(d) When a government applies for additional funding (such as a continuation or supplemental award) or amends a previously submitted application, only the facesheet and any other affected pages need be submitted. Previously submitted pages whose information is still current need not be resubmitted.

§ 74.122 Preapplications for Federal assistance for governmental organizations.

(a) When a preapplication is submitted by a government, the preapplication for Federal assistance form prescribed by OMB Circular A–102 shall be used. The purposes of preapplications shall be to:

(1) Establish communication between the applicant and the granting agency;

(2) Determine the applicant's eligibility;

(3) Determine how well the project can compete with similar applications from others in order to discourage proposals which have little or no chance for Federal funding before applicants incur significant expenditures for preparing an application.

(b) Preapplication shall be mandatory when the potential applicant is a government and the proposed project (1) is for construction, land acquisition, or land development, and (2) would require more than $100,000 of Federal funding. The granting agency may require preapplications regardless of the type of project and regardless of the estimated amount of Federal funding. In addition, any government may submit a preapplication even when not required by the granting agency.

§ 74.123 Notice of preapplication review action for governmental organizations.

The notice of preapplication review action form prescribed by attachment M of OMB Circular No. A–102 will be used by granting agencies to inform governmental applicants of the results of the review of the preapplications submitted to them. The granting agency will send a notice to the applicant ordinarily within 45 days of the receipt of the preapplication form. If the review cannot be made within 45 days, the applicant will be informed by letter as to when the review will be completed.

§ 74.124 Application for Federal assistance (nonconstruction programs) for governmental organizations.

The applicant for Federal assistance (nonconstruction programs) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any grant to which this subpart is applicable except where a form specified in § 74.125 or § 74.126 is to be used.

§ 74.125 Application for Federal assistance (for construction programs) for governmental organizations.

The applicant for Federal assistance (for construction programs) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any grant whose purpose is soley or primarily construction, land acquisition, or land development.

§ 74.126 Application for Federal assistance (short form) for governmental organizations.

The applicant for Federal assistance (short form) form prescribed by attachment M of OMB Circular No. A–102 shall be used by governments in applying for any single-purpose one-time grant of less than $10,000 not requiring clearinghouse review, an environmental impact statement, or the relocation of persons, businesses, or farms. Granting agencies may, at their discretion, authorize or prescribe this form for applications for larger amounts.

§ 74.127 Authorized forms and instructions for nongovernmental organizations.

Nongovernmental organizations shall use application forms and instructions prescribed by the granting agency, except that the facesheet of such applications shall be standard form 424 for grants under programs covered by attachment A, part I, of OMB Circular No. A–95.

Subpart O—Property

General

§ 74.130 Scope and applicability of this subpart.

(a) Except as explained in paragraphs (c), (d), and (e) of this section this subpart applies to real property, equipment, and supplies acquired with grant support. To be considered acquired with grant support, some or all of the property's acquisition cost must be a direct cost under the grant, a subgrant, or a cost-type contract and must be either borne by grant funds or counted toward satisfying a grant cost-sharing or matching requirement.

(b) This subpart also deals with inventions, patents, and copyrights arising out of activities assisted by a grant or subgrant.

(c) This subpart does not apply to—

(1) Property for which only depreciation or use allowances are charged;

(2) Property donated entirely as a third-party in-kind contribution (as defined in § 74.51); or

(3) Equipment or supplies acquired primarily for sale or rental rather than for use.

(d) Equipment or supplies acquired by a contractor under a grant or subgrant shall be subject to this subpart only if, by terms of the contract, title vests in the grantee or subgrantee.

(e) For research grants that are subject to an institutional cost-sharing agreement (see § 74.50(b)), real property, equipment, and supplies shall be subject to this subpart only if at least some part of the acquisition cost is borne as a direct cost by Federal grant funds.

§ 74.131 Prohibition against additional requirements.

Recipients may follow their own property management policies and procedures: *Provided,* They observe the requirements of this subpart. Awarding parties may not impose on recipients property requirements (including property reporting requirements) not authorize by this subpart, unless specifically required by Federal statutes or Executive Orders.

§ 74.132 Definitions.

As used in this subpart:

"Acquisition" of property includes purchase, construction, or fabrication of property, but does not include rental of property or alterations and renovations of real property.

"Acquisition cost" of an item of purchased equipment means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the equipment usable for the purpose for which it was acquired. Other charges such as the cost of installation, transportation, taxes, duty or protective in-transit insurance shall be included in or excluded from the unit acquisition cost in accordance with the regular accounting practices of the organization purchasing the equipment. If the item is acquired by trading in another item and paying an additional amount, "acquisition cost" means the amount received for trade-in plus the additional outlay.

"Amount received for trade-in" of an item of equipment traded in for replacement equipment means the amount that would have been paid for the replacement equipment without a trade-in minus the amount paid with the trade-in. The term refers to the actual difference, not necessarily the trade-in value shown on an invoice.

"Equipment" means tangible personal property having a useful life of more than one year and an acquisition cost of $300 or more per unit except that organizations subject to Cost Accounting Standards Board (CASB) regulations may use the CASB standard of $500 or more per unit and useful life of two years. An organization may use its own definition of equipment: *Provided,* That such definition would at least include all tangible personal property as defined herein.

"Personal property" means property of any kind except real property. It may be tangible—having physical existence, or intangible—having no physical existence, such as patents, inventions, and copyrights.

"Real property" means land, including land improvements, structures and appurtenances thereto, but excluding movable machinery and equipment.

"Replacement equipment" means property acquired to take the place of other equipment. To qualify as replacement equipment, it must serve the same function as the equipment replaced and must be of the same nature or character, although not necessarily the same model, grade, or quality.

"Supplies" means all tangible personal property other than equipment.

§ 74.133 Title to real property, equipment, and supplies.

Subject to the obligations and conditions set forth in this subpart, title to real property, equipment, and supplies acquired under a grant or subgrant shall vest, upon acquisition, in the grantee or subgrantee respectively.

Real Property

§ 74.134 Real property.

Except as otherwise provided by federal statutes, real property to which this subpart applies shall be subject to the following requirements, in addition to any other requirements imposed by the terms of the grant:

(a) *Use.* The property shall be used for the originally authorized purpose as long as needed for that purpose. When no longer so needed, approval of the granting agency may be requested to use the property for other purposes. Use for other purposes shall be limited to:

(1) Projects or programs supported by other Federal grants or assistance agreements.

(2) Activities not supported by other Federal grants or assistance agreements but having, nevertheless, purposes consistent with those of the legislation under which the original grant was made.

(b) *Transfer of title.* Approval may be requested from the granting agency to transfer title to an eligible third party for continued use for authorized purposes in accordance with paragraph (a) of this

section. If approval is permissable under Federal statutes and is given, the terms of the transfer shall provide that the transferee shall assume all the rights and obligations of the transferor set forth in this subpart or in other terms of the grant or subgrant.

(c) *Disposition.* When the real property is no longer to be used as provided in paragraphs (a) and (b) of this section, the disposition instructions of the granting agency shall be followed. Those instructions will provide for one of the following alternatives:

(1) The property shall be sold and the Federal Government shall be paid an amount computed by multiplying the Federal share of the property (see § 74.142) times the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). Proper sales procedures shall be used that provide for competition to the extent practicable and result in the highest possible return.

(2) The recipient shall have the option either of selling the property in accordance with paragraph (c)(1) of this section or of retaining title. If title is retained, the Federal Government shall be paid an amount computed by multiplying the market value of the property by the Federal share of the property.

(3) The recipient shall transfer the title to either the Federal Government or an eligible non-Federal party named by the granting agency. The grantee shall be entitled to be paid an amount computed by multiplying the market value of the property by the non-Federal share of the property. If the property belonged to a subgrantee, see § 74.143 for subgrantee's share.

Equipment and Supplies

§ 74.135 Exemptions for equipment and supplies subject to certain statutes.

(a) Some Federal statutes, in certain circumstances, permit title to equipment or supplies acquired with grant funds to vest in the recipient without further obligation to the Federal Government or on such terms and conditions as deemed appropriate. An example of such a statute is the Federal Grant and Cooperative Agreement Act of 1977, Pub. L. 95–224, which provides this authority for equipment and supplies purchased with the funds of grants (and Federal contracts and cooperative agreements) for the conduct of basic or applied scientific research at nonprofit institutions of higher education or at nonprofit organizations whose primary purpose is the conduct of scientific research.

(b) If equipment is subject to a statute of the kind described in paragraph (a) of this section, it shall be exempt from the requirements in the remaining sections of this subpart. However, an item of such equipment having a unit acquisition cost of $1,000 or more shall be subject to § 74.136, concerning rights to require transfer, and, while subject to such a right, to the rules on replacement in § 74.138.

(c) If supplies are subject to a statute of the kind described in paragraph (a) of this section, they shall be exempt from all provisions of the remainder of this subpart which would otherwise apply.

§ 74.136 Rights to require transfer of equipment.

(a) *HEW right.* For items of equipment having a unit acquisition cost of $1,000 or more, the granting agency shall have the right to require transfer of the equipment (including title) to the Federal Government or to an eligible non-Federal party named by the granting agency. This right will normally be exercised by HEW granting agencies only if the project or program for which the equipment was acquired is transferred from one grantee to another. The right shall be subject to the following conditions:

(1) In order for the granting agency to exercise the right, a specific notice that it is exercising the right or considering doing so must be issued no later than the 120th day after the end of HEW grant support for the project or program for which the equipment was acquired. Furthermore:

(i) If the equipment is eligible for the exemptions in § 74.135 and ceases to be needed for the project or program for which it was acquired while the project or program is still being performed by the recipient, the notice must have been received by the grantee while the equipment was still needed for that project or program.

(ii) If the equipment is not eligible for those exemptions, the notice must have been received by the grantee before other permissible disposition of the equipment took place in accordance with § 74.139.

(2) If the right is exercised, the grantee shall be entitled to be paid any reasonable, resulting shipping or storage costs incurred, plus an amount computed by multiplying the market value of the equipment by the non-Federal share of the equipment. (See §§ 74.142 and 74.143.)

(b) *Right of parties awarding subgrants.* When a grantee awards a subgrant, it may reserve for itself a right similar to that in paragraph (a) of this section for items of equipment having a unit acquisition cost of $1,000 or more which are acquired under that subgrant. Without the approval of the granting agency, the right may be exercised only if the project or program for which the equipment was acquired is transferred to another subgrantee and only for the purpose of transferring the equipment to the new subgrantee for continued use in the project or program.

(c) *Equipment lists.* If at any time an awarding party is considering exercising its right to require transfer of equipment, it may require the recipient to furnish it a listing of all items of equipment that are subject to the right. This will enable the awarding party to determine which items, if any, should be transferred.

§ 74.137 Use of equipment.

(a) *Basic rule.* Equipment which has not been transferred under § 74.136 shall be used by the recipient in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds. When no longer needed for the original project or program, the recipient shall use the equipment, if needed, in other projects or programs currently or previously sponsored by the Federal Government, in the following order of priority:

(1) Projects or programs currently or previously sponsored by the same granting agency.

(2) Projects or programs currently or previously sponsored by other Federal agencies.

(b) *Shared use.* If equipment is being used less than full time in the project or program for which it was originally acquired, the recipient shall make it available for use in other projects or programs currently or previously sponsored by the Federal Government: *Provided,* Such other use will not interfere with the work on the original project or program. First preference for such other use shall be given to other projects or programs sponsored by the same granting agency.

(c) *Use by other recipients.* When the recipient can no longer use the equipment as required by paragraph (a) of this section, it may voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal Government which the recipient is supporting through subgrants or through non-Federal grants. If the recipient is a subgrantee, it may also voluntarily make the equipment available for use on projects or programs currently or previously sponsored by the Federal

Government which are being conducted or supported by the grantee.

(d) *Other uses.* Unless the granting agency provides otherwise, while equipment is being used as described in the preceding paragraphs of this section, it may also be used part time for other purposes. However, use as described in those paragraphs shall be given priority over other uses.

§ 74.138 Replacement of equipment.

(a) Equipment may be exchanged for replacement equipment if needed. The replacement may take place either through trade-in or through sale and application of the proceeds to the acquisition cost of the replacement equipment. In either case, the transaction must be one which a prudent person would make in like circumstances.

(b) If an additional outlay to acquire the replacement equipment is charged as a direct cost to either Federal funds or required cost-sharing or matching under a Federal award, the replacement equipment shall be subject to whatever property requirements or exemptions are applicable to that award. If the award is a grant from HEW, the full acquisition cost of the replacement equipment shall determine which provisions of this subpart apply.

(c) For any replacement not covered by paragraph (b) of this section, the provisions of this subpart applicable to the equipment replaced shall carry over to the replacement equipment. However, none of the provisions of this subpart shall carry over if (1) the Federal share of the equipment replaced was 10 percent or less or (2) the product of that share times the amount received for trade-in or sale is $100 or less.

§ 74.139 Disposition of equipment.

When original or replacement equipment is no longer to be used in projects or programs currently or previously sponsored by the Federal Government, disposition of the equipment shall be made as follows:

(a) *Equipment with a unit acquisition cost of less than $1,000 and equipment with no further use value.* The equipment may be retained, sold, or otherwise disposed of, with no further obligation to the Federal Government.

(b) *All other equipment.* (1) The equipment may be retained or sold, and the Federal Government shall have a right to an amount calculated by multiplying the current market value or the proceeds from sale by the Federal share of the equipment (see § 74.142). If part of the Federal share in the equipment came from an award under which the exemptions in § 74.135 were applicable, the amount due shall be reduced pro rata. In any case, if the equipment is sold, $100 or 10 percent of the total sales proceeds, whichever is greater, may be deducted and retained from the amount otherwise due for selling and handling expenses.

(2) If the grantee's project or program for which or under which the equipment was acquired is still receiving grant support from the same Federal program and if the granting agency approves, the net amount due may be used for allowable costs of that project or program. Otherwise, the net amount must be remitted to the granting agency by check.

§ 74.140 Equipment management requirements.

Procedures for managing equipment (including replacement equipment) until transfer, replacement, or disposition takes place shall, as a minimum, meet the following requirements:

(a) Property records shall be maintained accurately. (Retention and access requirements for these records are explained in subpart D of this part.) For each item of equipment, the records shall include:

(1) A description of the equipment, including manufacturer's model number, if any.

(2) An identification number, such as the manufacturer's serial number.

(3) Identification of the grant under which the recipient acquired the equipment.

(4) The information needed to calculate the Federal share of the equipment. (See § 74.142.)

(5) Acquisition date and unit acquisition cost.

(6) Location, use, and condition of the equipment and the date the information was reported.

(7) All pertinent information on the ultimate transfer, replacement, or disposition of the equipment.

(b) A physical inventory of equipment shall be taken and the results reconciled with the property records at least once every 2 years to verify the existence, current utilization, and continued need for the equipment. A statistical sampling basis is acceptable. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the differences.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(e) Where equipment is to be sold and the Federal Government is to have a right to part or all of the proceeds, selling procedures shall be established which will provide for competition to the extent practicable and result in the highest possible return.

§ 74.141 Supplies.

(a) If supplies exceeding $1,000 in total aggregate market value are left over upon termination or expiration of the grant or subgrant for which they were acquired and the supplies are not needed for any project or program currently or previously sponsored by the Federal Government, the grant shall be credited by an amount computed by multiplying the Federal share of the supplies times the current market value or, if the supplies are sold, the proceeds from sale. If the supplies are sold, 10 percent of the proceeds may be deducted and retained from the credit, for selling and handling expenses.

(b) For possible exemptions from this section, see § 74.135.

Federal Share of Real Property, Equipment, and Supplies

§ 74.142 Federal share of property.

Several sections of this subpart require a determination of the Federal (or non-Federal) share of real property, equipment, or supplies. In making such a determination, the following principles shall be observed:

(a) *General.* (1) Except as explained in the succeeding paragraphs of this section, the Federal share of the property shall be the same percentage as the Federal share of the acquiring party's total costs under the grant during the grant or subgrant year (or other funding period) to which the acquisition cost of the property was charged. For this purpose, "costs under the grant" means allowable costs which are either borne by the grant or counted towards satisfying a cost-sharing or matching requirement of the grant. Only costs are to be counted—not the value of third-party in-kind contributions. Moreover, if the property was acquired by a grantee that awarded subgrants, costs incurred by its subgrantees shall be included only to the extent borne by the subgrants. (For example, if a subgrantee incurred $200,000 of project costs, of which $150,000 was borne by the subgrant, only the $150,000 shall be included in the grantee's costs.)

(2) If the property is acquired by a subgrantee, the Federal share of the subgrantee's costs under the grant and hence of the property shall be calculated by multiplying the Federal share of the grantee's costs by the latter's share of the subgrantee's costs. For example, if the Federal share of a grantee's costs is 50 percent and the subgrant bears only 50 percent of a subgrantee's costs, then the Federal share of that subgrantee's costs (and of the property acquired by that subgrantee) is 25 percent.

(b) *Property acquired only partly under a grant.* (1) Sometimes only a part of the acquisition cost of an item of property is borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement. The remainder might, for example, represent voluntary cost sharing or matching, or it might be charged to a different activity. Occasionally, the amount paid for the property is only a part of its value, and the remainder is donated as an in-kind contribution by the party that provided the property.

(2) To calculate the Federal share of such property, first determine the Federal share of the acquiring party's total costs under the grant, as explained in the paragraph (a) of this section. Then multiply that share by the percentage of the property's acquisition cost (or its market value, if the item was partly donated) which was borne as a direct cost by the grant or counted as a direct cost towards a cost-sharing or matching requirement.

(c) *Replacement equipment.* The Federal share of replacement equipment shall be calculated as follows:

(1) *Step 1.* Determine the Federal share (percentage) of the equipment replaced.

(2) *Step 2.* Determine the percentage of the replacement equipment's cost that was covered by the amount received for trade-in or the sales proceeds from the equipment replaced.

(3) *Step 3.* Multiply the step 1 percentage by the step 2 percentage.

(4) *Step 4.* If an additional outlay for the replacement equipment was charged as a direct cost either to HEW grant funds or to required cost-sharing or matching funds, calculate the Federal share attributable to that additional outlay as explained in paragraph (b)(2) of this section. Add that additional percentage to the step 3 percentage.

(d) *Institutional cost-sharing agreements.* If a grant is subject to an institutional cost-sharing agreement (see § 74.130(e)), the Federal share of property acquired under the grant shall be calculated as though there were no cost-sharing requirement applicable to the grant (that is, as if all the grantee's cost sharing were voluntary).

§ 74.143 Subgrantee's share of market value or sales proceeds.

Where this subpart requires a sharing of the market value or sales proceeds of property acquired under a subgrant, the non-Federal share shall be proportionally divided between the grantee and the subgrantee. The subgrantee shall be entitled to the amount it would have received or retained if the award to it had been made directly by the Federal Government. The remainder of the non-Federal share shall belong to the grantee.

Intangible Personal Property

§ 74.144 Inventions and patents.

HEW's regulations on inventions and patents arising out of activities assisted by a grant are set forth in parts 6 and 8 of this title.

§ 74.145 Copyrights.

(a) *Works under grants.* Unless otherwise provided by the terms of the grant, when copyrightable material is developed in the course of or under a grant, the grantee is free to copyright the material or permit others to do so.

(b) *Works under subgrants.* Unless otherwise provided by the terms of the grant or subgrant, when copyrightable material is developed in the course of or under a subgrant, the subgrantee is free to copyright the material or permit others to do so.

(c) *HEW rights.* If any copyrightable material is developed in the course of or under a HEW grant or subgrant, HEW shall have a royalty-free, nonexclusive, and irrevocable right to reproduce, publish, or otherwise use, and to authorize others to use, the work for Federal Government purposes. A grantee awarding a subgrant may reserve a similar right for itself with respect to copyrightable material developed under that subgrant.

(d) *Exemption of student-developed works.* HEW awards training grants and other kinds of grants under which individuals are provided stipends or other financial assistance for the primary purpose of aiding them to further their education or training. Except as provided by the terms of the grant, copyrightable material developed by an individual or group of individuals in the course of education or training pursued with such assistance shall not be subject to the HEW right described in paragraph (c) of this section, unless the development of the material also receives other forms of support under the same or another HEW grant (such as a research grant).

Subpart P—Procurement Standards

§ 74.160 Scope of subpart; terminology.

(a) This subpart contains standards for use by recipients in establishing procedures for the procurement of supplies, equipment, construction, and other services whose cost is borne in whole or in part as a direct cost by Federal grant funds.

(b) No additional procurement standards or requirements shall be imposed by awarding parties upon recipients unless specifically required by Federal statutes or Executive Orders.

(c) As used in this subpart:

(1) "Formal advertising" refers to that procurement method which involves adequate purchase description, sealed bids, and public opening of bids.

(2) "Negotiation" refers to any method of procurement other than formal advertising.

§ 74.161 General.

(a) Recipients may use their own procurement policies: *Provided,* That procurements subject to this subpart are made in accordance with the standards in this subpart.

(b) The standards in this subpart do not relieve the recipient of the contractual responsibilities arising under its contracts. The recipient is the responsible authority, without recourse to HEW, regarding issues arising out of its procurements. This includes but is not limited to: Disputes, claims, protests of award, source evaluation, or other matters of a contractual nature. Matters concerning violation of law are to be referred to such local, State, or Federal authority as may have proper jurisdiction.

§ 74.162 Code of conduct.

(a) The recipient shall maintain a code or standards of conduct that shall govern the performance of its officers, employees or agents engaged in the awarding and administration of contracts that are subject to this subpart. The code or standards shall provide for disciplinary actions to be applied for violations of the code or standards by the recipient's officers, employees, or agents. For governmental recipients, such disciplinary actions are required only to the extent otherwise permissible under the Government's laws, rules, or regulations. To the extent permissible under its laws, rules, or regulations, the governmental recipient shall also provide for actions to be taken

against contractors or their agents who wrongfully take part in a violation of the code or standards of conduct.

(b) The recipient's officers, employees or agents shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or potential contractors. This is not intended to preclude bona-fide institutional fund-raising activities.

(c) No employee, officer, or agent of a nongovernmental recipient shall participate in the selection, award, or administration of a contract subject to this subpart where, to his or her knowledge, any of the following has a financial interest in that contract:

(i) The employee, officer, or agent;

(ii) Any member of his or her immediate family;

(iii) His or her partner;

(iv) An organization in which any of the above is an officer, director, or employee;

(v) A person or organization with whom any of the above individuals is negotiating or has any arrangement concerning prospective employment.

§ 74.163 Free competition.

(a) All procurement transactions shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition.

(b) The recipient should be alert to organizational conflicts of interest or noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In particular, a contractor that develops or drafts specifications, requirements, a statement of work, an invitation for bids or a request for proposals for a particular procurement by a nongovernmental recipient should be excluded from competing for that procurement except when, upon request of the recipient, the granting agency waives this requirement for a particular procurement.

(c) Solicitations shall clearly set forth all requirements that the bidder/offerer must fulfill in order for his bid/offer to be evaluated. Awards shall be made to the responsible bidder/offeror whose bid/offer is responsive to the solicitation and is most advantageous to the recipient, price and other factors considered. Factors such as discounts, transportation costs, and taxes may be considered in determining the lowest bid. Any and all bids/offers may be rejected when it is in the recipient's interest to do so, and, in the case of governmental recipients, such rejections are in accordance with the government's applicable law, rules, or regulations.

§ 74.164 Procedural requirements.

The recipient shall establish procurement procedures which provide for, as a minimum, the following:

(a) Proposed procurement actions shall follow a procedure to assure that unnecessary or duplicative items are not purchased. Where appropriate, an analysis shall be made of lease and purchase alternatives to determine which would be the most economical, practical procurement.

(b) Solicitations for goods and services shall be based upon a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features which unduly restrict competition. "Brand name or equal" description may be used as a means to define the performance or other salient requirements of a procurement, and when so used the specific features of the named brand which must be met by bidders/offerors should be clearly specified.

(c) Where applicable, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)) shall be observed.

(d) Positive efforts shall be made by procuring parties to utilize small business and minority-owned business sources of supplies and services. Such efforts should allow these sources the maximum feasible opportunity to compete for contracts subject to this subpart. [1]

(e) The type of procuring instruments used—e.g., fixed-price contracts, cost reimbursable contracts, purchase orders, incentive contracts—shall be determined by the recipient but must be appropriate for the particular procurement and for promoting the best interest of the grant project or program involved. The "cost-plus-a-percentage-of-cost" method of contracting shall not be used.

(f) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources.

(g) The terms of the grant may require that the following be submitted for prior approval of the granting agency if the aggregate expenditure is expected to exceed $5,000: (1) Any proposed sole source contract and (2) any contract which a nongovernmental recipient proposes to award after seeking competition but receiving only one bid or proposal.

(h) Nongovernmental recipients should make some form of price or cost analysis in connection with every negotiated procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost proposed by the offeror to determine reasonableness, allocability and allowability.

(i) Procurement records and files for purchases in excess of $10,000 shall include the following:

(1) Basis for contractor selection;

(2) Justification for lack of competition when competitive bids or offers are not obtained;

(3) Basis for award cost or price.

(j) A system for contract administration shall be maintained to ensure contractor conformance with terms, conditions and specifications of the contract, and to ensure adequate and timely followup of all purchases.

§ 74.165 Requirement for governments to use formal advertising.

(a) Except as provided in paragraph (b) of this section, in making procurements that are subject to this subpart, governmental recipients shall use formal advertising.

(b) Procurements may be negotiated if it is not practicable or feasible to use formal advertising. Generally, such procurements may be negotiated if one or more of the following conditions prevail:

(1) The public exigency will not permit the delay incident to advertising.

(2) The material or service to be procured is available from only one person or firm.

(3) The aggregate amount involved does not exceed $10,000.

(4) The contract is for personal or professional services, or for any service to be rendered by a university, college, or other educational institution.

(5) The material or services are to be procured and used outside the limits of the United States and its possessions.

[1] Advice and assistance regarding the use of small or minority businesses may be obtained from the following Federal organizations:

1. The Small Business Administration and its field offices.

2. The Office of Minority Business Enterprise, Department of Commerce.

3. The Office of Facilities Engineering, HEW and its regional offices [for assistance in identifying minority-owned firms interested in performing construction, alteration, or renovation work].

4. The Office for Civil Rights, HEW.

5. The Office of Grants and Procurement, HEW.

(6) No acceptable bids have been received after formal advertising.

(7) The purchases are for highly perishable materials or medical supplies, for material or services where the prices are established by law, for technical items or equipment requiring standardization and interchangeability of parts with existing equipment, for experimental, developmental or research work, for supplies purchased for authorized resale, or for technical or specialized supplies requiring substantial intitial investment for manufacture.

(8) Formal advertising is otherwise not practicable or feasible, and negotiation is authorized by applicable law, rules, or regulations.

(c) Notwithstanding the existence of circumstances justifying negotiation, competition shall be obtained to the maximum extent practicable.

(d) For every negotiated procurement in excess of $10,000 by a governmental recipient, written justification for the use of negotiation in lieu of formal advertising shall be included in the government's procurement records and files, in addition to the information required by § 74.164(i). The justification may be on a class basis, i.e., covering a group of related or similar contracts, or it may be on an individual contract basis.

§ 74.166 Contract provisions.

(a) *Scope.* This section contains requirements relating to provisions that must be included in contracts that are subject to this part. The requirements shall also apply to subcontracts of any tier under such contracts, and the term "contracts" in this section shall be construed as including subcontracts.

(b) *General.* All contracts shall contain sufficient provisions to define a sound and complete agreement.

(c) *Administrative remedies for violations.* Contracts in excess of $10,000 shall contain contractual provisions or conditions that will allow for administrative, contractual or legal remedies in instances in which contractors violate or breach contract terms, and provide for such remedial actions as appropriate.

(d) *Termination provisions.* Contracts in excess of $10,000 shall contain suitable provisions for termination by the party awarding the contract, including the manner by which termination will be effected and the basis for settlement. These contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(e) *E.O. 11246.* Where applicable, construction contracts in excess of $10,000 shall contain a provision requiring compliance with Executive Order 11246, entitled "Equal Employment Opportunity," as amended by Executive Order 11375, and as supplemented in Department of Labor regulations (41 CFR Part 60).

(f) *Copeland Act.* Contracts in excess of $2,000 for construction or repair shall include a provision for compliance with the Copeland "Anti-Kick-Back Act" (18 U.S.C. 874) as supplemented in Department of Labor regulation (29 CFR Part 3). All suspected or reported violations shall be reported to the granting agency by the grantee.

(g) *Davis-Bacon Act.* When required by the Federal legislation governing the grant program, all construction contracts in excess of $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) as supplemented by Department of Labor regulations (29 CFR Part 5). All suspected or reported violations shall be reported to the granting agency by the grantee.

(h) *Contract Work Hours and Safety Standards Act.* All contracts subject to the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 et seq.) shall include a provision requiring the contractor to comply with the applicable sections of the act and the Department of Labor's supplementing regulations (29 CFR Parts 5 and 1926).

(i) *Inventions and patents.* Contracts which may give rise to inventions subject to parts 6 and 8 of this title shall include a provision requiring compliance with those parts.

(j) *Access to Records.* Contracts that are subject to Subpart D of this part shall include a provision reflecting § 74.24(c) on rights of access to the contractor's records.

(k) *Clean Air and Water Acts.* Contracts in excess of $100,000 shall contain provisions requiring compliance with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act as amended (42 U.S.C. 1857 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported in writing to the appropriate regional office of the Environmental Protection Agency, and a copy of the report shall be submitted to the granting agency. (See 40 CFR Part 15 for relevant regulations of the Environmental Protection Agency.)

Subpart Q—Cost Principles

§ 74.170 Scope of subpart.

This subpart identifies the principles to be used in determining costs applicable to grants, subgrants, and cost-type contracts under grants and subgrants.

§ 74.171 Governments.

The principles to be used in determining the allowable costs of activities conducted or administered by governments are in appendix C to this part.

§ 74.172 Institutions of higher education.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by institutions of higher education (other than for-profit institutions) are in part I of appendix D to this part.

(b) *Training and other educational services.* The principles for determining the allowable costs of training and other educational services provided by institutions of higher education (other than for-profit institutions) are in part II of appendix D to this part.

(c) *Other activities.* Appendix D to this part shall be used as a guide for determining the allowable costs of other activities conducted by institutions of higher education (other than for-profit institutions).

§ 74.173 Hospitals.

(a) *Research and development.* The principles for determining the allowable costs of research and development work performed by hospitals are in Appendix E to this part.

(b) *Other activities.* Appendix E to this part shall be used as a guide for determining the allowable costs of other activities conducted by hospitals.

§ 74.174 Other nonprofit organizations.

(a) *Nonconstruction awards.* Under nonconstruction awards, the principles for determining the allowable costs of activities conducted by nonprofit organizations other than institutions of higher education, hospitals, and governmental organizations are in Appendix F to this part.

(b) *Construction awards.* Appendix F to this part shall be used as a guide for determining the allowable costs of work under construction awards to nonprofit organizations (other than institutions of higher education, hospitals and governmental organizations).

§ 74.175 Subgrants and cost-type contracts.

(a) The cost principles applicable to a subgrantee or cost-type contractor under an HEW grant will not necessarily be the same as those applicable to the grantee. For example, where a State government awards a subgrant or cost-type contract to an institution of higher education, Appendix D to this part would apply to the costs incurred by the institution of higher education, even though Appendix C would apply to the costs incurred by the State.

(b) The principles to be used in determining the allowable costs of work performed by for-profit organizations (other than hospitals) under cost-type contracts awarded to them under HEW grants are in 41 CFR Subpart 1–15.2.

§ 74.176 Costs allowable with approval.

Each set of cost principles identifies certain costs that, in order to be allowable, must be approved by the granting agency. Other costs do not require approval. The following procedures govern approval of these costs.

(a) When costs are treated as indirect costs (or are allocated pursuant to a government-wide cost allocation plan), acceptance of the costs as part of the indirect cost rate or cost allocation plan shall constitute approval.

(b)(1) When the costs are treated as direct costs, they must be approved in advance by the awarding party.

(2) If the costs are specified in the budget, approval of the budget shall constitute approval of the costs.

(3) If the costs are not specified in the budget, or there is no approved budget, the recipient shall obtain specific prior approval in writing from the awarding party. For this purpose the prior approval procedures of § 74.102 shall be followed, except that for formula or mandatory grants, the granting agency's written approval may be signed by any authorized official of the granting agency.

(c) The awarding party may waive or conditionally waive the requirement for its approval of the costs. Such a waiver shall apply only to the requirement for approval. If, upon audit or otherwise, it is determined that the costs do not meet other requirements or tests for allowability specified by the applicable cost principles, such as reasonableness and necessity, the costs may be disallowed.

(d) In the case of subgrants and cost-type contracts, no approval shall be given which is inconsistent with the purpose or the terms of the Federal grant.

Appendix A [Reserved]

Appendix B [Reserved]

Appendix C—Principles for Determining Costs Applicable to Grants and Contracts With State and Local Governments

Part I—General

A. Purpose and Scope

1. *Objectives.* This appendix sets forth principles for determining the allowable costs of programs administered by State and local governments under grants from and contracts with the Federal Government. The principles are for the purpose of cost determination and are not intended to identify the circumstances or dictate the extent of Federal and State or local participation in the financing of a particular grant. They are designed to provide that federally assisted programs bear their fair share of costs recognized under these principles, except where restricted or prohibited by law. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The application of these principles is based on the fundamental premises that:

a. State and local governments are responsible for the efficient and effective administration of grant and contract programs through the application of sound management practices.

b. The grantee or contractor assumes the responsibility for seeing that federally assisted program funds have been expended and accounted for consistent with underlying agreements and program objectives.

c. Each grantee or contractor organization, in recognition of its own unique combination of staff facilities and experience, will have the primary responsibility for employing whatever form of organization and management techniques may be necessary to assure proper and efficient administration.

3. *Application.* These principles will be applied in determining costs incurred by State and local governments under Federal grants and cost reimbursement type contracts (including subgrants and subcontracts) except those with (a) publicly financed educational institutions subject to Appendix D to this part and (b) publicly owned hospitals and other providers of medical care subject to requirements of Appendix E to this part.

B. Definitions

1. *Approval or authorization of the grantor Federal agency* means documentation evidencing consent prior to incurring specific cost.

2. *Cost allocation plan* means the documentation identifying, accumulating, and distributing allowable costs under grants and contracts together with the allocation methods used.

3. *Cost,* as used herein, means cost as determined on a cash, accrual, or other basis acceptable to the Federal grantor agency as a discharge of the grantee's accountability for Federal funds.

4. *Cost objective* means a pool, center, or area established for the accumulation of cost. Such areas include organizational units, functions, objects or items of expense, as well as ultimate cost objectives including specific grants, projects, contracts, and other activities.

5. *Federal agency* means the Department of Health, Education, and Welfare.

6. Grant means an agreement between the Federal Government and a State or local government whereby the Federal Government provides funds or aid in kind to carry out specified programs, services, or activities. The principles and policies stated in this appendix as applicable to grants in general also apply to any federally sponsored cost reimbursement type of agreement performed by a State or local government, including contracts, subcontracts and subgrants.

7. *Grant program* means those activities and operations of the grantee which are necessary to carry out the purposes of the grant, including any portion of the program financed by the grantee.

8. *Grantee* means the department or agency of State or local government which is responsible for administration of the grant.

9. *Local unit* means any political subdivision of government below the State level.

10. *Other State or local agencies* means departments or agencies of the State or local unit which provide goods, facilities, and services to a grantee.

11. *Services,* as used herein, means goods and facilities, as well as services.

12. *Supporting services* means auxiliary functions necessary to sustain the direct effort involved in administering a grant program or an activity providing service to the grant program. These services may be centralized in the grantee department or in some other agency, and include procurement, payroll, personnel functions, maintenance and operation of space, data processing, accounting budgeting, auditing, mail and messenger service, and the like.

C. Basic Guidelines

1. *Factors affecting allowability of costs.* To be allowable under a grant program, costs must meet the following general criteria:

a. Be necessary and reasonable for proper and efficient administration of the grant program, be allocable thereto under these principles, and, except as specifically provided herein, not be a general expense required to carry out the overall responsibilities of State or local governments.

b. Be authorized or not prohibited under State or local laws or regulations.

c. Conform to any limitations or exclusions set forth in these principles, Federal laws, or other governing limitations as to types or amounts of cost items.

d. Be consistent with policies, regulations, and procedures that apply uniformly to both federally assisted and other activities of the unit of government of which the grantee is a part.

e. Be accorded consistent treatment through application of generally accepted accounting principles appropriate to the circumstances.

f. Not be allocable to or included as a cost of any other federally financed program in either the current or a prior period.

g. Be net of all applicable credits.

2. *Allocable costs.* a. A cost is allocable to a particular cost objective to the extent of benefits received by such objective.

b. Any cost allocable to a particular grant or cost objective under the principles provided for in this appendix may not be shifted to other Federal grant programs to overcome fund deficiencies, avoid restrictions imposed by law or grant agreements, or for other reasons.

c. Where an allocation of joint cost will ultimately result in charges to a grant program, an allocation plan will be required as prescribed in section J.

3. *Applicable credits.* a. Applicable credits refer to those receipts or reduction of expenditure-type transactions which offset or reduce expense items allocable to grants as direct or indirect costs. Examples of such transactions are: purchase discounts; rebates or allowances; recoveries or indemnities on losses; sale of publications, equipment, and scrap; income from personal or incidental services; and adjustments of overpayments or erroneous charges.

b. Applicable credits may also arise when Federal funds are received or are available from sources other than the grant program involved to finance operations or capital items of the grantee. This includes costs arising from the use or depreciation of items donated or financed by the Federal Government to fulfill matching requirements under another grant program. These types of credits should likewise be used to reduce related expenditures in determining the rates or amounts applicable to a given grant.

D. Composition of Cost

1. *Total cost.* The total cost of a grant program is comprised of the allowable direct cost incident to its performance, plus its allocable portion of allowable indirect costs, less applicable credits.

2. *Classification of costs.* There is no universal rule for classifying certain costs as either direct or indirect under every accounting system. A cost may be direct with respect to some specific service or function, but indirect with respect to the grant or other ultimate cost objective. It is essential therefore that each item of cost be treated consistently either as a direct or an indirect cost. Specific guides for determining direct and indirect costs allocable under grant programs are provided in the sections which follow.

E. Direct Costs

1. *General.* 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.

2. *Application.* Typical direct costs chargeable to grant programs are:

a. Compensation of employees for the time and effort devoted specifically to the execution of grant programs.

b. Cost of materials acquired, consumed, or expended specifically for the purpose of the grant.

c. Equipment and other approved capital expenditures.

d. Other items of expense incurred specifically to carry out the grant agreement.

e. Services furnished specifically for the grant program by other agencies, provided such charges are consistent with criteria outlined in Section G of these principles.

F. Indirect Costs

1. *General.* Indirect costs are those (a) incurred for a common or joint purpose benefiting more than one cost objective, and (b) 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 grantee department, as well as those incurred by other departments in supplying goods, services, and facilities, to the grantee department. To facilitate equitable distribution of indirect expenses to the cost objectives served, it may be necessary to establish a number of pools of indirect cost within a grantee department or in other agencies providing services to a grantee department. Indirect cost pools should be distributed to benefiting cost objectives on bases which will produce an equitable result in consideration or relative benefits derived.

2. *Grantee departmental indirect costs.* Al grantee departmental indirect costs, including the various levels of supervision, are eligible for allocation to grant programs provided they meet the conditions set forth in this Appendix. In lieu of determining the actual amount of grantee departmental indirect cost allocable to a grant program, the following methods may be used:

a. *Predetermined fixed rates for indirect costs.* A predetermined fixed rate for computing indirect costs applicable to a grant may be negotiated annually in situations where the cost experience and other pertinent facts available are deemed sufficient to enable the contracting parties to reach an informed judgment (1) as to the probable level of indirect costs in the grantee department during the period to be covered by the negotiated rate, and (2) that the amount allowable under the predetermined rate would not exceed actual indirect cost.

b. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate under circumstances where the benefits derived from a grantee department's indirect services cannot be readily determined as in the case of small, self-contained or isolated activity. When this method is used, a determination should be made that the amount negotiated will be approximately the same as the actual indirect cost that may be incurred. Such amounts negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses of the grantee department before allocation to remaining activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

3. *Limitation on indirect costs.* a. Federal grants may be subject to laws that limit the amount of indirect cost that may be allowed. Agencies that sponsor grants of this type will establish procedures which will assure that the amount actually allowed for indirect costs under each such grant does not exceed the maximum allowable under the statutory limitation or the amount otherwise allowable under this Appendix, whichever is the smaller.

b. When the amount allowable under a statutory limitation is less than the amount otherwise allocable as indirect costs under this Appendix, the amount not recoverable as indirect costs under a grant may not be shifted to another federally sponsored grant program or contract.

G. Cost Incurred by Agencies Other Than the Grantee

1. *General.* The cost of service provided by other agencies only may include allowable direct costs of the service plus a pro rata share of allowable supporting costs (section B.12.) and supervision directly required in performing the service, but not supervision of a general nature such as that provided by the head of a department and his staff assistants not directly involved in operations. However, supervision by the head of a department or agency whose sole function is providing the service furnished would be an eligible cost. Supporting costs include those furnished by other units of the supplying department or by other agencies.

2. *Alternative methods of determining indirect cost.* In lieu of determining actual indirect cost related to a particular service furnished by another agency, either of the following alternative methods may be used provided only one method is used for a specific service during the fiscal year involved.

a. *Standard indirect rate.* An amount equal to 10 percent of direct labor cost in providing the service performed by another State agency (excluding overtime, shift, or holiday premiums and fringe benefits) may be allowed in lieu of actual allowable indirect cost for that service.

b. *Predetermined fixed rate.* A predetermined fixed rate for indirect cost of the unit or activity providing service may be negotiated as set forth in section F.2.a.

H. Cost Incurred by Grantee Department for Others

1. *General.* The principles provided in section G. will also be used in determining the cost of services provided by the grantee department to another agency.

I. [Reserved]

J. Cost Allocation Plan

1. *General.* A plan for allocation of costs will be required to support the distribution of any joint costs related to the grant program. All costs included in the plan will be supported by formal accounting records which will substantiate the propriety of eventual charges.

2. *Requirements.* The allocation plan of the grantee department should cover all joint costs of the department as well as costs to be allocated under plans of other agencies or organizational unit which are to be included in the costs of federally sponsored programs. The cost allocation plans of all the agencies rendering services to the grantee department, to the extent feasible, should be presented in a single document. The allocation plan should contain, but not necessarily be limited to, the following:

a. The nature and extent of services provided and their relevance to the federally sponsored programs.

b. The items of expense to be included.

c. The methods to be used in distributing cost.

3. *Instructions for preparation of cost allocation plans.* The Department of Health, Education, and Welfare, in consultation with the other Federal agencies concerned, will be responsible for developing and issuing the instructions for use by State and local government grantees in preparation of cost allocation plans. This responsibility applies to both central support services at the State and local government level as well as indirect cost proposals of individual grantee departments.

4. *Negotiation and approval of indirect cost proposals for States.* a. The Department of Health, Education, and Welfare, in collaboration with the other Federal agencies concerned, will be responsible for negotiation, approval and audit of cost allocation plans, which will be submitted to it by the States. These plans will cover central support service costs of the State.

b. At the grantee department level in a State, a single Federal agency will have responsibility similar to that set forth in a. above for the negotiation, approval and audit of the indirect cost proposal. Cognizant Federal agencies have been designated for this purpose. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. Questions concerning the cost allocation plans approved under a. and b. above should be directed to the agency responsible for such approvals.

5. *Negotiation and approval of indirect cost proposals for local governments.* a. Cost allocation plans will be retained at the local government level for audit by a designated Federal agency except in those cases where that agency requests that cost allocation plans be submitted to it for negotiation and approval.

b. A list of cognizant Federal agencies assigned responsibility for negotiation, approval and audit of central support service cost allocation plans at the local government level is being developed. Changes which may be required from time to time in agency assignments will be arranged by the Department of Health, Education, and Welfare in collaboration with the other interested agencies, and submitted to the Office of Management and Budget for final approval. A current list of agency assignments will be maintained by the Department of Health, Education, and Welfare.

c. At the grantee department level of local governments, the Federal agency with the predominant interest in the work of the grantee department will be responsible for necessary negotiation, approval and audit of the indirect cost proposal.

6. *Resolution of problems.* To the extent that problems are encountered among the Federal agencies in connection with 4. and 5. above, the Office of Management and Budget will lend assistance as required.

Part II—Standards for Selected Items of Cost

A. Purpose and Applicability

1. *Objective.* This part provides standards for determining the allowability of selected items of cost.

2. *Application.* These standards will apply irrespective of whether a particular item of cost is treated as direct or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable, rather determination of allowability in each case should be based on the treatment of standards provided for similar or related items of cost. The allowability of the selected items of cost is subject to the general policies and principles stated in Part I of this appendix.

B. Allowable Costs

1. *Accounting.* The cost of establishing and maintaining accounting and other information systems required for the management of grant programs is allowable. This includes cost incurred by central service agencies for these purposes. The cost of maintaining central accounting records required for overall State or local government purposes, such as appropriation and fund accounts by the Treasurer, Comptroller, or similar officials, is considered to be a general expense of government and is not allowable.

2. *Advertising.* Advertising media includes newspapers, magazines, radio, and television programs, direct mail, trade papers, and the like. The advertising costs allowable are those which are solely for:

a. Recruitment of personnel required for the grant program.

b. Solicitation of bids for the procurement of goods and services required.

c. Disposal of scrap or surplus materials acquired in the performance of the grant agreement.

d. Other purposes specifically provided for in the grant agreement.

3. *Advisory councils.* Costs incurred by State advisory councils or committees established pursuant to Federal requirements to carry out grant programs are allowable. The cost of like organizations is allowable when provided for in the grant agreement.

4. *Audit service.* The cost of audits necessary for the administration and management of functions related to grant programs is allowable.

5. *Bonding.* Costs of premiums on bonds covering employees who handle grantee agency funds are allowable.

6. *Budgeting.* Costs incurred for the development, preparation, presentation, and execution of budgets are allowable. Costs for services of a central budget office are generally not allowable since these are costs of general government. However, where employees of the central budget office actively participate in the grantee agency's budget process, the cost of identifiable services is allowable.

7. *Building lease management.* The administrative cost for lease management which includes review of lease proposals, maintenance of a list of available property for lease, and related activities is allowable.

8. *Central stores.* The cost of maintaining and operating a central stores organization for supplies, equipment, and materials used either directly or indirectly for grant programs is allowable.

9. *Communications.* Communication costs incurred for telephone calls or service, telegraph, teletype service, wide area telephone service (WATS), centrex, telpak (tie lines), postage, messenger service and similar expenses are allowable.

10. *Compensation for personal services*—a. *General.* Compensation for personal services includes all remuneration, paid currently or accrued, for services rendered during the period of performance under the grant agreement, including but not necessarily limited to wages, salaries, and supplementary compensation and benefits (section B.13.). The costs of such compensation are allowable to the extent that total compensation for individual employees: (1) is reasonable for the services rendered, (2) follows an appointment made in accordance with State or local government laws and rules and which meets Federal merit system or other requirements, where applicable, and (3) is determined and supported as provided in b. below. Compensation for employees engaged in federally assisted activities will be considered reasonable to the extent that it is consistent with that paid for similar work in other activities of the State or local government. In cases where the kinds of employees required for the federally assisted activities are not found in the other activities of the State or local government, compensation will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor market in which the employing government competes for the kind of employees involved. Compensation surveys providing data representative of the labor market involved will be an acceptable basis for evaluating reasonableness.

b. *Payroll and distribution* of time. Amounts charged to grant programs for personal services, regardless of whether treated as direct or indirect costs, will be based on payrolls documented and approved in accordance with generally accepted practice of the State or local agency. Payrolls must be supported by time and attendance or equivalent records for individual employees. Salaries and wages of employees chargeable to more than one grant program or other cost

objective will be supported by appropriate time distribution records. The method used should produce an equitable distribution of time and effort.

11. *Depreciation and use allowances.* a. Grantees may be compensated for the use of buildings, capital improvements, and equipment through use allowances or depreciation. Use allowances are the means of providing compensation in lieu of depreciation or other equivalent costs. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. The computation of depreciation or use allowance will be based on acquisition cost. Where actual cost records have not been maintained, a reasonable estimate of the original acquisition cost may be used in the computation. The computation will exclude the cost or any portion of the cost of buildings and equipment donated or borne directly or indirectly by the Federal Government through charges to Federal grant programs or otherwise, irrespective of where title was originally vested or where it presently resides. In addition, the computation will also exclude the cost of land. Depreciation or a use allowance on idle or excess facilities is not allowable, except when specifically authorized by the grantor Federal agency.

c. Where the depreciation method is followed, adequate property records must be maintained, and any generally accepted method of computing depreciation may be used. However, the method of computing depreciation must be consistently applied for any specific asset or class of assets for all affected federally sponsored programs and must result in equitable charges considering the extent of the use of the assets for the benefit of such programs.

d. In lieu of depreciation, a use allowance for buildings and improvements may be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment (excluding items properly capitalized as building cost) will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment.

e. No depreciation or use charge may be allowed on any assets that would be considered as fully depreciated: *provided, however,* That reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

12. *Disbursing service.* The cost of disbursing grant program funds by the Treasurer or other designated officer is allowable. Disbursing services cover the processing of checks or warrants, from preparation to redemption, including the necessary records of accountability and reconciliation of such records with related cash accounts.

13. *Employee fringe benefits.* Costs identified under a. and b. below are allowable to the extent that total compensation for employees is reasonable as defined in section B.10.

a. Employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, court leave, military leave, and the like, if they are: (1) provided pursuant to an approved leave system, and (2) the cost thereof is equitably allocated to all related activities, including grant programs.

b. Employee benefits in the form of employers' contribution or expenses for social security, employees' life and health insurance plans, unemployment insurance coverage, workmen's compensation insurance, pension plans, severance pay, and the like, provided such benefits are granted under approved plans and are distributed equitably to grant programs and to other activities.

14. *Employee morale, health, and welfare costs.* The costs of health of first-aid clinics and/or infirmaries, recreational facilities, employees' counseling services, employee information publications, and any related expenses incurred in accordance with general State or local policy are allowable. Income generated from any of these activities will be offset against expenses.

15. *Exhibits.* Costs of exhibits relating specifically to the grant programs are allowable.

16. *Legal expenses.* The cost of legal expenses required in the administration of grant programs is allowable. Legal services furnished by the chief legal officer of a State or local government or his staff solely for the purpose of discharging his general responsibilities as legal officer are unallowable. Legal expenses for the prosecution of claims against the Federal Government are unallowable.

17. *Maintenance and repair.* Costs incurred for necessary maintenance, repair, or upkeep of property which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are allowable.

18. *Materials and supplies.* The cost of materials and supplies necessary to carry out the grant programs is allowable. Purchases made specifically for the grant program should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the grantee. Withdrawals from general stores or stockrooms should be charged at cost under any recognized method of pricing consistently applied. Incoming transportation charges are a proper part of material cost.

19. *Memberships, subscriptions and professional activities*—a. *Memberships.* The cost of membership in civic, business, technical and professional organizations is allowable provided: (1) the benefit from the membership is related to the grant program, (2) the expenditure is for agency membership, (3) the cos of the membership is reasonably related to the value of the services or benefits received, and (4) the expenditure is not for membership in an organization which devotes a substantial part of its activities to influencing legislation.

b. *Reference material.* The cost of books and subscriptions to civic, business, professional, and technical periodicals is allowable when related to the grant program.

c. *Meetings and conferences.* Costs are allowable when the primary purpose of the meeting is the dissemination of technical information relating to the grant program and they are consistent with regular practices followed for other activities of the grantee.

20. *Motor pools.* The costs of a service organization which provides automobiles to user grantee agencies at a mileage or fixed rate and/or provides vehicle maintenance, inspection and repair services are allowable.

21. *Payroll preparation.* The cost of preparing payrolls and maintaining necessary related wage records is allowable.

22. *Personnel administration.* Costs for the recruitment, examination, certification, classification, training, establishment of pay standards, and related activities for grant programs, are allowable.

23. *Printing and reproduction.* Costs for printing and reproduction services necessary for grant administration, including but not limited to forms, reports, manuals, and informational literature, are allowable. Publication costs of reports or other media relating to grant program accomplishments or results are allowable when provided for in the grant agreement.

24. *Procurement service.* The cost of procurement service, including solicitation of bids, preparation and award of contracts, and all phases of contract administration in providing goods, facilities and services for grant programs, is allowable.

25. *Taxes.* In general, taxes or payments in lieu of taxes which the grantee agency is legally required to pay are allowable.

26. *Training and education.* The cost of in-service training, customarily provided for employee development which directly or indirectly benefits grant programs, is allowable. Out-of-service training involving extended periods of time is allowable only when specifically authorized by the grantor agency.

27. *Transportation.* Costs incurred for freight, cartage, express, postage, and other transportation costs relating either to goods purchased, delivered, or moved from one location to another, are allowable.

28. *Travel.* Travel costs are allowable for expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business incident to a grant program. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip, and results in charges consistent with those normally allowed in like circumstances in nonfederally sponsored activities. The difference in cost between first-class air accommodations and less-than-first-class air accommodations is unallowable except when less-than-first-class

air accommodations are not reasonably available.

c. Costs Allowable With Approval of Grantor Agency

1. *Automatic data processing.* The cost of data processing services to grant programs is allowable. This cost may include rental of equipment or depreciation on grantee-owned equipment. The acquisition of equipment, whether by outright purchase, rental-purchase agreement or other method of purchase, is allowable only upon specific prior approval of the grantor Federal agency as provided under the selected item for capital expenditures.

2. *Building space and related facilities.* The cost of space in privately or publicly owned buildings used for the benefit of the grant program is allowable subject to the conditions stated below. The total cost of space, whether in a privately or publicly owned building, may not exceed the rental cost of comparable space and facilities in a privately owned building in the same locality. The cost of space procured for grant program usage may not be charged to the program for periods of nonoccupancy, without authorization of the grantor Federal agency.

a. *Rental cost.* The rental cost of space in a privately owned building is allowable.

b. *Maintenance and operation.* The costs of utilities, insurance, security, janitorial services, elevator service, upkeep of grounds, normal repairs, and alterations and the like, are allowable to the extent they are not otherwise included in rental or other charges for space.

c. *Rearrangements and alterations.* Cost incurred for rearrangement and alteration of facilities required specifically for the grant program or those that materially increase the value or useful life of the facilities (section C.3.) are allowable when specifically approved by the grantor agency.

d. *Depreciation and use allowances on publicly owned buildings.* These costs are allowable as provided in section B.11.

e. *Occupancy of space under rental-purchase or a lease with option-to-purchase agreement.* The cost of space procured under such arragngements is allowable when specifically approved by the Federal grantor agency.

3. *Capital expenditures.* The cost of facilities, equipment, other capital assets, and repairs which materially increase the value or useful life of capital assets is allowable when such procurement is specifically approved by the Federal grantor agency. When assets acquired with Federal grant funds are (a) sold, (b) no longer available for use in a federally sponsored program, or (c) used for purposes not authorized by the grantor agency, the Federal grantor agency's equity in the asset will be refunded in the same proportion as Federal participation in its cost. In case any assets are traded on new items, only the net cost of the newly acquired assets is allowable.

4. *Insurance and indemnification.* a. Cost of insurance required, or approved and maintained pursuant to the grant agreement, is allowable.

b. Cost of other insurance in connection with the general conduct of activities is allowable subject to the following limitations:

(1) Types and extent and cost of coverage will be in accordance with general State or local government policy and sound business practice.

(2) Costs of insurance or of contributions to any reserve covering the risk of loss of, or damage to, Federal Government property are unallowable except to the extent that the grantor agency has specifically required or approved such costs.

c. Contributions to a reserve for a self-insurance program approved by the Federal grantor agency are allowable to the extent that the type of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant agreement. However, costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice, and minor losses not covered by insurance, such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations, are allowable.

e. *Indemnification* includes securing the grantee against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the grantee only to the extent expressly provided for in the grant agreement, except as provided in d above.

5. *Management studies.* The cost of management studies to improve the effectiveness and efficiency of grant management for ongoing programs is allowable except that the cost of studies performed by agencies other than the grantee department or outside consultants is allowable only when authorized by the Federal grantor agency.

6. *Preagreement costs.* Costs incurred prior to the effective date of the grant or contract, whether or not they would have been allowable thereunder if incurred after such date, are allowable when specifically provided for in the grant agreement.

7. *Professional services.* Cost of professional services rendered by individuals or organizations not a part of the grantee department is allowable subject to such prior authorization as may be required by the Federal grantor agency.

8. *Proposal costs.* Costs of preparing proposals on potential Federal Government grant agreements are allowable when specifically provided for in the grant agreement.

D. Unallowable Costs

1. *Bad debts.* Any losses arising from uncollectible accounts and other claims, and related costs, are unallowable.

2. *Contingencies.* Contributions to a contingency reserve or any similar provision for unforeseen events are unallowable.

3. *Contributions and donations.* Unallowable.

4. *Entertainment.* Costs of amusements, social activities, and incidental costs relating thereto, such as meals, beverages, lodgings, rentals, transportation, and gratuities, are unallowable.

5. *Fines and penalties.* Costs resulting from violations of, or failure to comply with, Federal, State, and local laws and regulations are unallowable.

6. *Governor's expenses.* The salaries and expenses of the office of the Governor of a State or the chief executive of a political subdivision are considered a cost of general State or local government and are unallowable.

7. *Interest and other financial costs.* Interest on borrowings (however represented), bond discounts, cost of financing and refinancing operations, and legal and professional fees paid in connection therewith, are unallowable except when authorized by Federal legislation.

8. *Legislative expenses.* Salaries and other expenses of the State legislature or similar local governmental bodies such as county supervisors, city councils, school boards, etc., whether incurred for purposes of legislation or executive direction, are unallowable.

9. *Underrecovery of costs under grant agreements.* Any excess of cost over the Federal contribution under one grant agreement is unallowable under other grant agreements.

Appendix D

Part I—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Educational Institutions

A. Purpose and Scope

1. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by educational institutions under grants from and contracts with the Federal Government. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. No provision for profit or other increment above cost is intended.

2. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of universities and of the Federal Government as to their scope, implementation, and interpretation. It is recognized that—

a. The arrangements for agency and institutional participation in the financing of a research and development project are properly subject to negotiation between the agency and the institution concerned in accordance with such Government-wide criteria as may be applicable.

b. Each college and university, possessing its own unique combination of staff, facilities,

and experience, should be encouraged to conduct research in a manner consonant with its own academic philosophies and institutional objectives.

c. Each institution, in the fulfillment of its obligations, should employ sound management practices.

d. The application of the principles established herein should require no significant changes in the generally accepted accounting practices of colleges and universities and standards herein provided on a consistent basis. Where wide variations exist in the treatment of a given cost item among institutions, the reasonableness and equitableness of such treatments will be fully considered during the rate negotiations and audit.

3. *Application.* The Department of Health, Education, and Welfare, will apply these principles and related policy guides in determining the costs incurred for such work under any type of research and development agreement. These principles should also be used as a guide in the pricing of fixed-price contracts or lump sum agreements.

B. Definition of Terms

1. *Organized research* means all research activities of an institution that are separately budgeted and accounted for.

2. *Departmental research* means research activities that are not separately budgeted and accounted for. Such research work, which includes all research activities not encompassed under the term "organized research," is regarded for purposes of this document as a part of the instructional activities of the institution.

3. *Research agreement* means any valid arrangement to perform federally sponsored research, including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts for research.

4. *Other institutional activities* means all organized activities of an institution not directly related to the instruction and research functions, such as residence halls, dining halls, student hospitals, student unions, intercollegiate athletics, bookstores, faculty housing, student apartments, guest houses, chapels, theaters, public museums, and other similar activities or auxiliary enterprises. Also included under this definition is any other category of cost treated as "unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect costs (as defined in section E.1.) are properly allocable.

5. *Apportionment* means the process by which the indirect costs of the institution are assigned as between (a) instruction and research, and (b) other institutional activities.

6. *Allocation* means the process by which the indirect costs apportioned to instruction and research are assigned as between (a) organized research, and (b) instruction, including departmental research.

7. *Stipulated salary support* is a fixed or a stated dollar amount of the salary of professorial or other professional staff involved in the conduct of research which a Government agency agrees in advance to reimburse an educational institution as a part of sponsored research costs.

8. *Federal agency* or sponsoring agency means the Department of Health, Education and Welfare.

C. Basic Considerations

1. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance, plus the allocable portion of the allowable indirect costs of the institution, less applicable credits as described in section C.5.

2. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are: (a) they must be reasonable; (b) they must be allocable to research agreements under the standards and methods provided herein; (c) they must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances; and (d) they must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

3. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor, reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

(a) whether or not the cost is of a type generally recognized as necessary for the operation of the institution or the performance of the research agreement; (b) the restraints or requirements imposed by such factors as arm's-length bargaining, Federal and State laws and regulations, and research agreement terms and conditions; (c) whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the institution, its employees, its students, the Government, and the public at large; and (d) the extent to which the actions taken with respect to the incurrence of the cost are consistent with established institutional policies and practices applicable to the work of the institution generally, including Government research.

4. *Allocable costs.* a. A cost is allocable to a particular cost objective (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost objective in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the institution in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the institution and, in the light of the standards provided in this appendix is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items is specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

b. Any costs allocable to a particular research agreement under the standards provided in this appendix may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

5. *Applicable credits.* a. The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges.

b. In some instances, the amounts received from the Federal Government to finance institutional activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the institution in determining the rates or amounts to be charged to Government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by Federal funds. (See sections F.6., J.10.b., and J.37. for areas of potential application in the matter of direct Federal financing.)

6. *Costs incurred by State and local governments.* Costs incurred or paid by State or local governments in behalf of educational institutions for certain personnel benefit programs such as pension plans, FICA, and any other costs specifically disbursed in behalf of and in direct benefit to the institutions, are allowable costs of such institutions whether or not these costs are recorded in the accounting records of such institutions, subject to the following:

a. Such costs meet the requirements of sections C.1. through C.5.

b. Such costs are properly supported by cost allocation plans in accordance with Appendix C to this part.

c. Such costs are not otherwise borne directly or indirectly by the Federal Government.

D. Direct Costs

1. *General.* Direct costs are those costs which can be identified specifically with a particular research project, an instructional activity or any other institutional activity or which can be directly assigned to such activities relatively easily with a high degree of accuracy.

2. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical transactions chargeable to a research agreement as direct costs are the compensation of employees for performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently treated by the educational institution as direct rather than indirect costs; the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, including extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only actual costs and conforming to generally accepted cost accounting practices consistently followed by the institution.

E. Indirect Costs

1. *General.* Indirect costs are those that have been incurred for common or joint objectives and therefore cannot be identified specifically with a particular research project, an instructional activity or any other institutional activity. At educational institutions such costs normally are classified under the following functional categories: general administration and general expenses; research administration expenses; operation and maintenance expenses; library expenses: and departmental administration expenses.

2. *Criteria for distribution—a. Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

b. *Need for cost groupings.* The overall objective of the allocation and apportionment process is to distribute the indirect costs described in section F to organized research, instruction, and other activities in reasonable proportions consistent with the nature and extent of the use of the institution's resources by research personnel, academic staff, students, and other personnel or organizations. In order to achieve this objective, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in section E.1. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost objectives to which distribution is appropriate. Cost groupings should be established considering the general guides provided in c. below. Each such pool or cost grouping should then be distributed individually to the appertaining cost objectives, using the distribution base or method most appropriate in the light of the guides set out in d. below.

c. *General considerations on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at an institution is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

(1) Where certain items or categories of expense relate solely to one of the three major divisions of the institution (instruction, organized research or other institutional activities) or to any two but not the third, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in b. above and d. below.

(2) Where any types of expense ordinarily treated as general administration and general expenses or departmental administration expenses are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must, through separate cost groupings, be excluded from the indirect costs allocable to those research agreements and included in the direct cost of other activities for cost allocation purposes.

(3) Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other activities at the institution or within the department.

(4) Where organized activities (including identifiable segments of organized research as well as the activities cited in section B.4.) provide their own purchasing, personnel administration, building maintenance or similar service, the distribution of general administration and general expenses or operation and maintenance expenses to such activities should be accomplished through cost groupings which include only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

(5) Where the institution elects to treat as indirect charges the cost of the pension plan and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to appertaining cost objectives, including organized research.

(6) The number of separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

d. *Selection of distribution method.* (1) Actual conditions must be taken into account in selecting the method or base to be used in distributing to applicable cost objectives the expenses assembled under each of the individual cost groupings established as indicated under b. above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to appertaining cost objectives should be made through use of a selected base which will produce results that are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (a) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, man-hours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (b) it is common to the appertaining cost objectives during the base period.

(2) Results of cost analysis studies may be used when they result in more accurate and equitable distribution of costs. Such cost analysis studies may take into consideration weighting factors, population, or space occupied if they produce equitable results. Cost analysis studies, however, should (a) be appropriately documented in sufficient detail for subsequent review by the cognizant Federal agency, (b) distribute the indirect costs to the appertaining cost objectives in accord with the relative benefits derived, (c) be conducted to fairly reflect the true conditions of the activity and to cover representative transactions for a reasonable period of time, (d) be performed specifically at the institution at which the results are to be used, and (e) be updated periodically and used consistently. Any assumptions made in the study will be sufficiently supported. The use of cost analysis studies and periodic changes in the method of cost distribution must be fully justified.

(3) The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to appertaining cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. *Administration of limitations on allowances for research costs.* Research agreements may be subject to statutory or administrative policies that limit the allowance of research costs. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise reimbursable under this Appendix, the amount not recoverable under that research agreement may not be charged to other research agreements.

F. Identification and Assignment of Indirect Costs

1. *General administration and general expenses.* a. The expenses under this heading are those that have been incurred for the general executive and administrative offices of educational institutions and other expenses of a general character which do not relate solely to any major division of the institution; i.e., solely to (1) instruction, (2) organized research, or (3) other institutional activities. The general administration and general expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category may be apportioned and allocated on the basis of total expenditures exclusive of capital expenditures in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the institution; otherwise the distribution of general administration and general expenses should be made through use of selected bases applied to separate cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

2. *Research administration expenses.* a. The expenses under this heading are those that have been incurred by a separate organization or identifiable administrative unit established solely to administer the research activity, including such functions as contract administration, security, purchasing, personnel administration, and editing and publishing of research reports. They include the salaries and expenses of the head of such research organization, his assistants, and their immediate secretarial staff together with the salaries and expenses of personnel engaged in supporting activities maintained by the research organization, such as stock rooms, stenographic pools, and the like. The salaries of members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to research administration is supported as required by section J.7. The research administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be allocated to organized research and, where necessary, to departmental research or to any other benefiting activities on any basis reflecting the proportion fairly applicable to each. (See section E.2.d.)

3. *Operation and maintenance expenses.* a. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, operation, maintenance, preservation, and protection of the institution's physical plant. They include expenses normally incurred for such items as janitorial and utility services; repairs and ordinary or normal alterations of buildings, furniture and equipment; and care of grounds and maintenance and operation of buildings and other plant facilities. The operation and maintenance expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, and charges representing use allowance and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The expenses included in this category should be apportioned and allocated to applicable cost objectives in a manner consistent with the guides provided in section E.2. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows: (1) where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records; (2) where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost objectives normally will suffice as a means for effecting distribution of the amounts of operation and maintenance expenses involved; or (3) where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including students.

4. *Library expenses.* a. The expenses under this heading are those that have been incurred for the operation of the library, including the costs of books and library materials purchased for the library, less any items of library income that qualify as applicable credits under section C.5. The library expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing the allowances and/or depreciation applicable to the buildings and equipment utilized in the performance of the functions represented thereunder. Costs incurred in the purchases of rare books (museum-type books) with no research value should not be allocated to Government-sponsored research.

b. The expenses included in this category should be allocated on the basis of population including students and other users. Where the results of the distribution made on this basis are deemed to be inequitable to the Government or the institution, the distribution should then be made on a selective basis in accordance with the guides set out in section E.2. Such selective distribution should be made through use of reasonable methods which give adequate recognition to the utilization of the library attributable to faculty, research personnel, students and others. The method used will be based on data developed periodically on the respective institution's experience for representative periods.

5. *Departmental administration expenses.* a. The expenses under this heading are those that have been incurred in academic deans' offices, academic departments and organized research units such as institutes, study centers and research centers for administrative and supporting services which benefit common or joint departmental activities or objectives. They include the salaries, and expenses of deans or heads, or associate deans or heads, of colleges, schools, departments, divisions, or organized research units, and their administrative staffs together with the salaries and expenses of personnel engaged in supporting activities maintained by the department, such as stockrooms, stenographic pools, and the like, provided such supporting services cannot be directly identified with a specific research project, with an instructional activity or with any other institutional activity. The salaries of other members of the professional staff whose appointments or assignments involve the performance of such administrative work may also be included to the extent that the portion so charged to departmental administration expenses is supported as required by section J.7. The departmental administration expense category should also include the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the costs of the operation and maintenance of the physical plant, and charges representing use allowances and/or depreciation applicable to the buildings and equipment utilized in performing the functions represented thereunder.

b. The distribution of departmental administration expenses should be made through use of selected bases applied to cost groupings established within this category of expenses in accordance with the guides set out in section E.2.d.

6. *Setoff for indirect expenses otherwise provided for by the Government.* a. The items to be accumulated under this heading are the reimbursements and other receipts from the Federal Government which are used by the institution to support directly, in whole or in part, any of the administrative or service (indirect) activities described in the foregoing (sections F.1. through F.5.). They include any amounts thus applied to such activities which may have been received pursuant to an institutional base grant or any similar contractual arrangement with the Federal Government other than a research agreement as herein defined (section B.3).

b. The sum of the items in this group shall be treated as a credit to the total indirect cost pool before it is apportioned to organized research and to other activities. Such setoff shall be made prior to the determination of the indirect cost rate or rates as provided in section G.

G. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.* a. Subject to b. below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should then be distributed to individual research agreements benefiting therefrom on a single rate basis.

b. In some instances a single rate basis for use across the board on all Government research at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of Government research at the institution. For this purpose, a particular segment of Government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of Government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have obtained under a. above, and (2) the volume of research work to which such rate would apply is material in relation to other Government research at the institution.

2. *The distribution base.* Indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section G.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages of all research agreements identified with such pool. For the purpose of establishing an indirect cost rate, direct salaries and wages may include that portion contributed to the research by the institution for cost sharing or other purposes. Bases other than salaries and wages may be used provided it can be demonstrated that they produce more equitable results.

3. *Negotiated lump sum for indirect costs.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained, off-campus, or primarily subcontracted research activities where the benefits derived from an institution's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to total indirect expenses before apportionment to instruction, organized research, and other institutional activities. The base on which such remaining expenses are allocated should be approximately adjusted.

4. *Predetermined fixed rates for indirect costs.* Public Law 87–638 (76 Stat. 437) authorizes the use of predetermined fixed rates in determining the indirect costs applicable under research agreements with educational institutions. The stated objectives of the law are to simplify the administration of cost-type research and development contracts (including grants) with educational institutions, to facilitate the preparation of their budgets, and to permit more expeditious closeout of such contracts when the work is completed. In view of the potential advantages offered by this procedure, consideration should be given to the negotiation of predetermined fixed rates for indirect costs in those situations where the cost experience and other pertinent facts available are deemed sufficient to enable the parties involved to reach an informed judgment as to the probable level of indirect costs during the ensuing accounting period.

5. *Negotiated fixed rates and carryforward provisions.* When a fixed rate is negotiated in advance for a fiscal year (or other time period), the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation. When the rate is negotiated before the carryforward adjustment is determined due to the delay in audit, the carryforward may be applied to the next subsequent rate negotiation. When such adjustments are to be made, each fixed rate negotiated in advance for a given period will be computed by applying the expected indirect costs allocable to Government research for the forecast period plus or minus the carryforward adjustment (over- or under-recovery) from the prior period, to the forecast distribution base. Unrecovered amounts under lump-sum agreements or cost-sharing provisions of prior years shall not be carried forward for consideration in the new rate negotiation. There must, however, be an advance understanding in each case between the institution and the cognizant Federal agency as to whether these differences will be considered in the rate negotiation rather than making the determination after the differences are known. Further, institutions electing to use this carryforward provision may not subsequently change without prior approval of the cognizant Federal agency. In the event that an institution returns to a postdetermined rate, any over- or under-recovery during the period in which negotiated fixed rates and carryforward provisions were followed will be included in the subsequent postdetermined rates. Where multiple rates are used, the same procedure will be applicable for determining each rate. This procedure also applies to rates established for grants and contracts for training and other educational services, but does not apply to cost-type research agreements covering work performed in wholly or partially Government-owned facilities.

H. Simplified Method for Small Institutions

1. *General.* a. Where the total direct cost of all federally supported work under research and educational service agreements at an institution does not exceed $1 million in a fiscal year (excluding direct payments by the institution to participants under educational service agreements for stipends, support, and similar costs requiring little, if any, indirect cost support), the use of the abbreviated procedure described in 2., below, may be used in determining allowable indirect costs. Under this abbreviated procedure, the institution's most recent annual financial report and immediately available supporting information, with salaries and wages segregated from other costs, will be utilized as a basis for determining the indirect cost rate applicable both to federally supported research and educational service agreements.

b. The rigid formula approach provided under this abbreviated procedure should not be used where it produces results which appear inequitable to the Government or the institution. In any such case, indirect costs should be determined through use of the regular procedure.

2. *Abbreviated procedure.* a. Establish the total amount of salaries and wages paid to all employees of the institution.

b. Establish an indirect cost pool consisting of the expenditures (exclusive of capital items and other costs specifically identified as unallowable) which customarily are classified under the following titles or their equivalents:

(1) General administration and general expenses (exclusive of costs of student administration and services, student aid, student activities, and scholarships).

(2) Operation and maintenance of physical plant.

(3) Library.

(4) Department administration expenses, which will be computed as 20 percent of the salaries and expenses of deans and heads of departments.

In those cases where expenditures classified under 2.b.(1) and 2.b.(2) have previously been allocated to other institutional activities, they may be included in the indirect cost pool. The total amount of salaries and wages included in the indirect cost pool must be separately identified.

c. Establish a salary and wage distribution base, determined by deducting from the total of salaries and wages as established under 2.a. the amount of salaries and wages included under 2.b.

d. Establish the indirect cost rate, determined by dividing the amount in the indirect cost pool 2.b. by the amount of the distribution base 2.c.

e. Apply the indirect cost rate established to direct salaries and wages for individual agreements to determine the amount of indirect costs allocable to such agreements.

I. [Reserved]

J. General Standards for Selected Items of Cost

Sections J.1. through J.46. provide standards to be applied in establishing the allowability of certain items involved in determining cost.

These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern.

1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for: (a) The recruitment of personnel required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs, as set forth in J.32; (b) the procurement of scarce items for the performance of the research agreement; or (c) the disposal of scrap or surplus materials acquired in the performance of the research agreement. Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in sections D and E are observed.

2. *Bad debts.* Any losses, whether actual or estimated arising from uncollectible accounts and other claims, related collections costs, and related legal costs, are unallowable.

3. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the research agreement. Government funds shall not be used for the acquisition of land, or any interest therein, except with the specific prior approval of the sponsoring agency.

4. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant pro- tection costs, first-aid training and supplies, firefighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth in section J.10. Costs of local civil defense projects not on the institution's premises are unallowable.

5. *Commencement and convocation costs.* Costs incurred for commencements and convocations apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

6. *Communication costs.* Costs incurred for telephone services, local and long-distance telephone calls, telegrams, radiograms, postage and the like, are allowable.

7. *Compensation for personal services*—a. *General.* Compensation for personal services covers all remuneration paid currently or accured to the institution for services of employees rendered during the period of performance under Government research agreements. Such remuneration includes salaries, wages, staff benefits (see section J.39.), and pension plan costs (see section J.23.). The costs of such remuneration are allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on Government research agreements and for other work allocable as indirect costs to organized research are determined and supported as hereinafter provided.

b. *Payroll distribution.* Amounts charged to organized research for personal services, except stipulated salary support, regardless of whether treated as direct costs or allocated as indirect costs, will be based on institutional payrolls which have been approved and documented in accordance with generally accepted institutional practices. Support for direct and indirect allocations of personal service costs to (1) instruction, (2) organized research, and (3) indirect activities as defined in section E.1., or (4) other institutional activities as defined in section B.4., will be provided as described in c., d., e., and f., below.

c. *Stipulated salary support.* As an alternative to payroll distribution, stipulated salary support amounts may be provided in the research agreement for professorial staff, any part of whose compensation is chargeable to Government-sponsored research. Stipulated salary support may also be provided for any other professionals who are engaged part time in sponsored research and part time in other work. The stipulated salary support for an individual will be determined by the Government and the educational institution during the proposal and award process on the basis of considered judgment as to the monetary value of the contribution which the individual is expected to make to the research project. This judgment will take into account any cost sharing by the institution and such other factors as the extent of the investigator's planned participation in the project and his ability to perform as planned in the light of his other commitments. It will be necessary for those who review research proposals to obtain information on the total academic year salary of the faculty members involved; the other research projects or proposals for which salary is allocated; and any other duties they may have such as teaching assignments, administrative assignments, number of graduate students for which they are responsible, or other institutional activities. Stipulated amounts for an individual must not per se result in increasing his official salary from the institution.

d. *Direct charges for personal services under payroll distribution.* The direct cost charged to organized research for the personal services of professorial and professional staff, exclusive of those whose salaries are stipulated in the research agreement, will be based on institutional payroll systems. Such institutional payroll systems must be supported by either: (1) an adequate appointment and workload distribution system accompanied by monthly reviews performed by responsible officials and a reporting of any significant changes in workload distribution of each professor or professional staff member, or (2) a monthly after-the-fact certification system which will require the individual investigators, deans, departmental chairmen or supervisors having first-hand knowledge of the services performed on each research agreement to report the distribution of effort. Reported changes will be incorporated during the accounting period into the payroll distribution system and into the accounting records. Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

e. *Direct charges for personal services under stipulated salaries.* The amounts stipulated for salary support will be treated as direct costs. The stipulated salary for the academic year will be prorated equally over the duration of the grant or contract period during the academic year, unless other arrangements have been made in the grant or contract instrument. No time or effort reporting will be required to support these amounts. Special provision for summer salaries, or for a particular "off period" if other than summer, will be required. The research agreements will state that any research covered by summer salary support must be carried out during the summer, not during the academic year, and at locations approved in advance in writing by the granting agency. The certification required in section K will attest to this requirement as well as all others in a given research agreement. Stipulated salary support remains fixed during the funding period of the grant or contract and will be costed at the rate described above unless there is a significant change in performance. For example, a significant change in performance would exist if the faculty member (1) was ill for an extended period, (2) took sabbatical leave to devote effort to duties unrelated to his research, or (3) was required to increase substantially his teaching assignments, administrative duties, or responsibility for more research projects. In the latter event, it will be the responsibility of the educational institution to reduce the charges to the research agreement proportionately or seek an appropriate amendment. In the case of those covered by stipulated salary support, the auditors are no longer required to review the precise accuracy of time or effort devoted to research projects. Rather, their reviews should include steps to determine on a sample basis that an institution is not reimbursed for more than 100 percent of each

faculty member's salary and that the portion of each faculty member's salary charged to Government-sponsored research is reasonable in view of his university workload and other commitments. The stipulated salary method may also be agreed upon for that portion of a professional's salary that represents cost sharing by the institution.

f. *Indirect personal services costs.* Allowable indirect personal services costs will be supported by the educational institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government officials.

g. *General guidance for charging personal services.* Budget estimates on a monthly, quarterly, semester, or yearly basis do not qualify as support for charges to federally sponsored research projects and should not be used unless confirmed after the fact. Charges to research agreements may include reasonable amounts for activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues and graduate students with respect to related research, and attending appropriate scientific meetings and conferences. In no case should charges be made to federally sponsored research projects for lecturing or preparing for formal courses listed in the catalog and offered for degree credit, or for committee or administrative work related to university business.

h. *Nonuniversity professional activities.* A university must not alter or waive university-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra university compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where univesity-wide policies do not adequately define the permissible extent of consultantship or other nonuniversity activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) university activities, and (2) nonuniversity professional activities. If the sponsoring agency should consider the extent of nonuniversity professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case-by-case basis.

i. *Salary rates for academic year.* Charges for work performed on Government research by faculty members during the academic year will be based on the individual faculty member's regular compensation for the continuous period which, under the practice of the institution concerned, constitutes the basis of his salary. Charges for work performed on research agreements during all or any portion of such period would be allowable at the base salary rate. In no event will the charge to research agreements, irrespective of the basis of computation, exceed the proportionate share of the base salary for that period, and any extra compensation above the base salary for work on Government research during such period would be unallowable. This principle applies to all members of the faculty at an institution. Since intrauniversity consulting is assumed to be undertaken as a university obligation requiring no compensation in addition to full-time base salary, the principle also applies to those who function as consultants or otherwise contribute to a research agreement conducted by another faculty member of the same institution. However, in unusual cases where consultation is across departmental lines or involves a separate or remote operation, and the work performed by the consultant is in addition to his regular departmental load, any charges for such work representing extra compensation above the base salary are allowable provided such consulting arrangement is specifically provided for in the research agreement or approved in writing by the sponsoring agency.

j. *Salary rates for periods outside the academic year.* Charges for work performed by faculty members on Government research during the summer months or other periods not included in the base salary period will be determined for each faculty member at a monthly rate not in excess of that which would be applicable under his base salary and will be limited to charges made in accordance with other subsections of J.7.

k. *Salary rates for part-time faculty.* Charges for work performed on Government research by a faculty member having only part-time appointment for teaching will be determined at a rate not in excess of that for which he is regularly paid for his part-time teaching assignments. Example: An institution pays $5,000 to a faculty member for half-time teaching during the academic year. He devoted one-half of his remaining time (25 percent of his total available time) to Government research. Thus his additional compensation, chargeable by the institution to Government research agreements, would be one-half of $5,000 or $2,500.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provision made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Deans of faculty and graduate schools.* The salaries and expenses of deans of faculty and graduate schools, or their equivalents, and their staffs, are allowable.

10. *Depreciation and use allowances.* a. Institutions may be compensated for the use of buildings, capital improvements, and usable equipment on hand through use allowances or depreciation. Use allowances are the means of providing such compensation when depreciation or other equivalent costs are not considered. However, a combination of the two methods may not be used in connection with a single class of fixed assets.

b. Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides and, secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved. Amortization methods once used should not be changed for a given building or equipment unless approved in advance by the cognizant Federal agency.

c. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable and needed equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable and needed equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

d. Where the depreciation method is followed, adequate property record must be maintained and periodic inventory (a statistical sampling basis is acceptable) must be taken to insure that properties for which depreciation is charged do exist and are needed. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and replacement policies followed for the individual items or classes of

assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Where an institution elects to go to a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that, under d. above, would be viewed as fully depreciated provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

11. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid clinics and/or infirmaries, recreational activities, employees' counseling services, and other expenses incurred in accordance with the institution's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee-performance, are allowable. Such costs will be equitably apportioned to all activities of the institution. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

12. *Entertainment costs.* Costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable.

13. *Equipment and other facilities.* The costs of permanent equipment or other facilities are allowable where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement. Total expenditures for permanent equipment may not exceed 125 percent of the amount allotted for the permanent equipment category by the sponsoring agency (through an approved budget or other document) except with approval. The term "permanent equipment" shall mean an item of property which has an acquisition cost of $200 or more and has an expected service life of one year or more.

a. *General purpose equipment.* Approval must be obtained to acquire with Government funds any general purpose permanent equipment, i.e., any items which are usable for activities of the institution other than research, such as office equipment and furnishings, air conditioning, reproduction, or printing equipment, motor vehicles, etc., or any automatic data processing equipment.

b. *Research equipment.* Approval must be obtained to acquire with Government funds any item of permanent research equipment costing $1,000 or more.

14. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement or instructions in writing from the contracting officer.

15. *Insurance and indemnification.* a. Costs of insurance required or approved, and maintained, pursuant to the research agreement, are allowable.

b. Costs of other insurance maintained by the institution in connection with the general conduct of its activities, are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to Government-owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under existing deductible clauses for insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance, such as spoilage, breakage, and disappearance of small hand tools, which occur in the ordinary course of operations, are allowable.

e. Indemnification includes securing the institution against liabilities to third persons and other losses not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided for in the research agreement, except as provided in d. above.

16. *Interest, fund raising, and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are not allowable under Government research agreements.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable under Government research agreements.

d. Costs related to the physical custody and control of monies and securities are allowable.

17. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employees' publications, and other related activities, are allowable.

18. *Losses on other research agreements or contracts.* Any excess of costs over income under any other research agreement or contract of any nature is unallowable. This includes, but is not limited to, the institution's contributed portion by reason of cost-sharing agreements or any under-recoveries through negotiation of flat amounts for indirect costs.

19. *Maintenance and repair costs.* Costs incurred for necessary maintenance, repair, or upkeep of property (including Government property unless otherwise provided for) which neither add to the permanent value of the property nor appreciably prolong its intended life but keep it in an efficient operating condition, are allowable.

20. *Material costs.* Costs incurred for purchased materials, supplies, and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores' withdrawals conforming to sound accounting practices consistently followed by the institution. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained, or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where Government-donated or furnished material is used in performing the research agreement, such material will be used without charge.

21. *Memberships, subscriptions, and professional activity costs.* a. Costs of the institution's membership in civic, business, technical, and professional organizations are allowable.

b. Costs of the institution's subscriptions to civic, business, professional, and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

22. *Patent costs.* Cost of preparing disclosures, reports, and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures, are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also section J.33.)

23. *Pension plan costs.* Costs of the institution's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the institution.

24. *Plant security costs.* Necessary expenses incurred to comply with Government security requirements, including wages, uniforms, and equipment of personnel engaged in plant protection, are allowable.

25. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

26. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the institution are allowable subject to b. and c. below, when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of Government research agreements; (2) the impact of Government research agreements on the institution's total activity; (3) the nature and scope of managerial services expected of the institution's own organizations; and (4) whether the proportion of Government work to the institution's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government research agreements.

c. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with organization and reorganization or the prosecution of claims against the Government, are unallowable. Costs of legal, accounting and consulting services, and related costs, incurred in connection with patent infringement litigation, are unallowable unless otherwise provided for in the research agreement.

27. *Profits and losses on disposition of plant, equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall not be considered in computing research agreement costs.

28. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential Government and nongovernment research agreements or projects, including the development of engineering data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the Government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the method used, the results obtained may be accepted only if found to be reasonable and equitable.

29. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

30. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when such work has been approved in advance by the sponsoring agency concerned.

31. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of Government research agreement work, fair wear and tear excepted, are allowable.

32. *Recruiting costs.* a. Subject to b., c., and d. below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and rel*BAD MAG TAPE**ERR01*ocation costs incurred incident to recruitment of new employees, are allowable to the extent that such costs are incurred pursuant to a well-managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help-wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect), are unallowable.

c. Costs of help-wanted advertising, special emoluments, fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution, are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution will be required to refund or credit such relocation costs to the Government.

33. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the costs of acquiring a patent or invention or rights thereto, necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder, are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

34. *Sabbatical leave costs.* Costs of leave of absence to employees for performance of graduate work or sabbatical study, travel, or research, are allowable provided the institution has a uniform policy on sabbatical leave for persons engaged in instruction and persons engaged in research. Such costs will be allocated on an equitable basis among all appertaining activities of the instiutution. Where sabbatical leave is included in fringe benefits for which a cost is determined for assessment as a direct charge, the aggregate amount of such assessments applicable to all work of the institution during the base period must be reasonable in relation to the institution's actual experience under its sabbatical leave policy.

35. *Scholarships and student aid costs.* Costs of scholarships, fellowships and other forms of student aid apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, any tuition remissions to such students for work performed are allocable to such research agreements provided consistent treatment is accorded such costs. (See section J.39.)

36. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by an institution to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer-employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment.

b. Severance payments that are due to normal, recurring turnover and which otherwise meet the conditions of a. above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Govermnment recognizes its obligation to participate, to the extent of its fair share, in any specific payment.

37. *Specialized service facilities operated by institution.* a. The costs, including amortization by generally accepted accounting practice, of institutional services involving the use of highly complex and specialized facilities such as electronic

computers, including the cost of adapting computers for use, wind tunnels, and reactors are allowable provided the charges therefor meet the conditions of b. or c. below, and otherwise take into account any items of income or Federal financing that qualify as applicable credits under section C.5.

b. The costs of such institutional services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities on the basis of a schedule of rates that (1) is designed to recover only aggregate costs of providing such services over a long term agreed upon in advance by the cognizant Federal agency on an individual basis, and (2) is applied on a nondiscriminatory basis as between organized research and other work of the institution, including usage by the institution for internal purposes. Commercial or accommodation sales of computer services will be charged at not less than the above rates; however, if the rates charged for these services are greater, the total amount of charges above the scheduled rates when significant may be considered in revising the schedule of rates. Further, within the constraints of this paragraph, it is not necessary that the rates charged for services be equal to the cost of providing those services during any one fiscal year.

c. In the absence of an acceptable arrangement for direct costing as provided in b. above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with the cognizant Federal agency in order to assure equitable distribtution of the indirect costs.

38. *Special services costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services, are unallowable.

39. *Staff benefits.* a. Staff benefits in the form of regular compensation paid to employees during periods of authorized absences from the job, such as for annual leave, sick leave, military leave, and the like, are allowable provided such costs are absorbed by all institutional activities, including organized research, in proportion to the relative amount of time or effort actually devoted to each. (See section J.34. for treatment of sabbatical leave.)

b. Staff benefits in the form of employer contributions or expenses for social security, employee insurance, workmen's compensation insurance, the pension plan (see section J.23.), tuition or remission of tuition for individual employees or their families (see section J.35.), and the like, are allowable provided such benefits are granted in accordance with established institutional policies, and provided such contributions and other expenses, whether treated as indirect costs or as an increment of direct labor costs, are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

40. *Student activity costs.* Costs incurred for intramural activities, student publications, student clubs, and other student activities, apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs.

41. *Student services costs.* Costs of the deans of students, administration of student affairs, registrar, placement offices, student advisers, student health and infirmary services, and such other activities as are identifiable with student services apply only to instruction and therefore are not allocable to research agreements, either as direct costs or indirect costs. However, in the case of students actually engaged in work under research agreements, a proportion of student services costs measured by the relationship between hours of work by students on such research work and total student hours including all research time may be allowed as a part of research administration expenses.

42. *Taxes.* a. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable, except for: (1) taxes from which exemptions are available to the institution directly or which are available to the institution based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, and (2) special assessments on land which represent capital improvements.

b. Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as research agreement costs, will be credited or paid to the Government in the manner directed by the Government provided any interest actually aid or credited to an institution incident to a refund of tax, interest and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest, and penalties.

43. *Transportation costs.* Costs incurred for freight, express, cartage, postage, and other transportation services relating either to goods purchased, in process, or delivered, are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the materials received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

44. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the institution. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two, provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to c., d., e., and f. below, when they are directly attributable to specific work under a research agreement or are incurred in the normal course of administration of the institution or a department or research program thereof.

c. The difference in cost between first-class air accommodations and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would:

(1) Require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

e. Foreign travel costs are allowable only when the travel has received specific prior approval. Each separate foreign trip must be specifically approved. For purposes of this provision, foreign travel is defined as "any travel outside of Canada and the United States and its territories and possessions."

f. Expenditures for domestic travel may not exceed $500, or 125 percent of the amount allotted for such travel by the sponsoring agency, whichever is greater, except with approval.

45. *Termination costs applicable to research agreements.* a. Termination of research agreements generally gives rise to the incurrence of costs or to the need for special treatment of costs, which would not have arisen had the agreement not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of this Appendix in the case of termination.

b. The cost of common items of material reasonably usable on the institution's other work will not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the institution's plans and orders for current and scheduled work. Contemporaneous purchases of common items by the institution will be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allowable to the terminated portion of the agreement should be limited to the extent that the quantities of such items on hand, in

transit, and on order are in excess of the reasonable quantitative requirements of other work.

c. If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this Appendix, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided: (1) such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer or equivalent; and (3) the loss of useful value as to any one terminated agreement is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the agreement bears to the entire terminated agreement and other Government agreements for which the special tooling, special machinery, or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated agreement, less the residual value of such leases, if: (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the agreement and such further period as may be reasonable; and (2) the institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the agreement, and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers or equivalent of settlement claims and supporting data with respect to the terminated portion of the agreement, and the termination and settlement of subagreements; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the agreement.

g. Claims under subagreements, including the allocable portion of claims which are common to the agreement and to other work of the institution, are generally allowable.

K. Certification of Charges

To assure that expenditures for research grants and contracts are proper and in accordance with the research agreement documents and approved project budgets, the annual and/or final fiscal reports or vouchers requesting payment under research agreements will include a certification, signed by an authorized official of the univesity, which reads essentially as follows: "I certify that all expenditures reported (or payments requested) are for appropriate purposes and in accordance with the agreements set forth in the application and award documents."

Part II—Principles for Determining Costs Applicable to Training and Other Educational Services Under Grants and Contracts With Educational Institutions

A. *Purpose.* This part extends the scope of Part I to cover the determination of costs incurred by educational institutions under Federal grants and contracts for training and other educational services.

B. *Application.* The Department of Health, Education, and Welfare will use Parts I and II of this Appendix as a basis for determining allowable costs under grants and cost reimbursement type contracts with educational institutions for work performed under federally supported education service agreements.

C. *Terminology.* The following definitions are to be used in determining the indirect cost of federally sponsored training and other educational services under this Part II:

1. *Educational service agreement* means any grant or contract under which Federal financing is provided on a cost reimbursement basis for all or an agreed portion of the costs incurred for training or other educational services. Typical of the work covered by educational service agreements are summer institutes, special training programs for selected participants, professional or technical services to cooperating countries, the development and introduction of new or expanded courses, and similar instructional oriented undertakings, including special research training programs, that are separately budgeted and accounted for by the institution.

The term does not extend to: (a) grants or contracts for organized research, (b) arrangements under which the Federal financing is exclusively in the form of scholarships, fellowships, traineeships, or other fixed amounts such as a cost of education allowance or the normal published tuition rates and fees of an institution, or (c) construction, facility and exclusively general resource or institutional-type grants.

2. *Instruction* means all of the academic work other than organized research carried on by an institution, including the teaching of graduate and undergraduate courses, departmental research (see section B.2. of Part I) and all special training or other instructional-oriented projects sponsored by the Federal Government or others under educational service agreements.

D. *Student administration and services.* In addition to the five major functional categories of indirect costs described in section F of Part I, there is established an additional category under the title "Student administration and services" to embrace the following:

1. The expenses in this category are those that have been incurred for the administration of student affairs and for services to students, including expenses of such activities as deans of students, admissions, registrar, counseling and placement services, student advisers, student health and infirmary services, catalogs, and commencements and convocations. The salaries of members of the academic staff whose academic appointments or assignments involve the performance of such administrative or service work may also be included to the extent that the portion so charged is supported pursuant to section J.2. of Part I. The student administration and services category also includes the staff benefit and pension plan costs applicable to the salaries and wages included therein, an appropriate share of the cost of the operation and maintenance of the physical plant, and charges representing use allowance or depreciation applicable to the buildings and equipment utilized in the performance of the functions included in this category.

2. The expenses in this category are generally applicable in their entirety to the instruction activity. They should be allocated to applicable cost objectives within the instruction activity, including educational service agreements, when such agreements reasonably benefit from these expenses. Such expenses should be allocated on the basis of population served (computed on the basis of full-time equivalents including students, faculty, and others as appropriate) or other methods which will result in an equitable distribution to cost objectives in relation to the benefits received and be consistent with guides provided in section E.2. of Part I.

E. *Direct costs of educational service agreements.* Direct costs of work performed under educational service agreements will be determined consistent with the principles set forth in section D of Part I.

F. *Indirect costs of the instruction activity.* The indirect costs of the instruction activity as a whole should include its allocated share of administrative and supportive costs determined in accordance with the principles set forth in section D above and in section F of Part I. Such costs may include other items of indirect cost incurred solely for the instruction activity and not included in the general allocation of the various categories of indirect expenses. Costs incurred for the institutions by State and local governments are allowable as provided for in section C.6. of Part I.

G. *Indirect costs applicable to educational service agreements.* The individual items of indirect costs applicable to the instruction activity as a whole should be assigned to: (1) educational service agreements, and (2) all other instructional work through use of appropriate cost groupings, selected distribution bases, and other reasonable methods as outlined in section E.2. of Part I. A single indirect pool may be used for all educational service agreements provided this results in a reasonably equitable distribution of costs among agreements in relation to indirect support services provided. However, when the level of indirect support significantly varies for work performed either on campus or off campus under a particular agreement or group of agreements, separate cost pools should be established consistent

with the principles set forth in section G.1.b. of Part I. Where direct charges are provided for under educational service agreements for such things as commencement fees, student fees, and tuition, the related indirect costs, through separate cost groupings, should be excluded from the indirect costs allocable to the service agreements.

H. *Indirect cost rates for educational service agreements.* An indirect cost rate should be determined for the educational service agreement pool or pools, as established under section G above. The rate in each case should be stated as the percentage which the amount of the particular educational service agreement pool is of the total direct salaries and wages of all educational service agreements identified with such pool. Indirect costs should be distributed to individual agreements by applying the rate or rates established to direct salaries and wages for each agreement. When a fixed rate is negotiated in advance of a fiscal year, the over- or under-recovery for that year may be included as an adjustment to the indirect cost for the next rate negotiation as in sections G.4. and G.5. of Part I.

I. *General standards for selected items of cost.* The standards for selected items of cost as set forth in sections J.1. through J.46. of Part I applicable to research agreements will also be applied to educational service agreements with the following modifications:

1. *Commencement and convocation costs (J.5.).* Expenses incurred for convocations and commencements apply to the instruction activity as a whole. Such expenses are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

2. *Compensation for personal services (J.7.).* Charges to educational service agreements for personal services will normally be determined and supported consistent with the provisions of section J.7. of Part I. However, the provision for stipulated salary support will not be used for educational service agreements. Also, charges may include compensation in excess of the base salary of a faculty member for the conduct of courses outside the normal duties of such member provided that: (a) extra charges are determined at a rate not greater than the basic salary rate of the member; (b) salary payments for such work follow practices consistently applied within the institution; and (c) specific authorization for such charges is included in the educational service agreement.

3. *Scholarships and student aid costs (J.35.).* Expenses incurred for scholarships and student aid are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

4. *Student activity costs (J.40.).* Expenses incurred for student activities are unallowable as either direct costs or indirect costs of educational service agreements, unless specifically authorized in the educational service agreement or approved in writing by the sponsoring agency.

5. *Student services costs (J.41.).* Expenses incurred for student services are unallowable as direct costs of educational service agreements unless specifically authorized in the agreement or approved in writing by the sponsoring agency. For eligibility of allocation as indirect costs, see section D.

Appendix E—Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts With Hospitals

I. Purpose and Scope

A. *Objectives.* This appendix provides principles for determining the costs applicable to research and development work performed by hospitals under grants and contracts with the Department of Health, Education, and Welfare. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of hospital participation in the financing of a particular research or development project. The principles are designed to provide recognition of the full allocated costs of such research work under generally accepted accounting principles. These principles will be applicable to both proprietary and non-profit hospitals. No provision for profit or other increment above cost is provided for in these principles. However, this is not to be interpreted as precluding a negotiated fee between contracting parties when a fee is appropriate.

B. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of hospitals and of the Department of Health, Education, and Welfare as to their scope, applicability and interpretation. It is recognized that:

1. The arrangements for hospital participation in the financing of a research and development project are properly subject to negotiation between the agency and the hospital concerned in accordance with such Government-wide criteria as may be applicable.

2. Each hospital, possessing its own unique combination of staff, facilities and experience, should be encouraged to conduct research in a manner consonant with its own institutional philosophies and objectives.

3. Each hospital in the fulfillment of its contractual obligations should be expected to employ sound management practices.

4. The application of the principles established herein shall be in conformance with the generally accepted accounting practices of hospitals.

5. Hospitals receive reimbursements from the Federal Government for differing types of services under various programs such as support of Research and Development (including discrete clinical centers) Health Services Projects, Medicare, etc. It is essential that consistent procedures for determining reimbursable costs for similar services be employed without regard to program differences. Therefore, both the direct and indirect costs of research programs must be identified as a cost center(s) for the cost finding and step-down requirements of the Medicare program, or in its absence the Medicaid program.

C. *Application.* All operating agencies within the Department of Health, Education, and Welfare that sponsor research and development work in hospitals will apply these principles and related policy guides in determining the costs incurred for such work under grants and cost-reimbursement type contracts and subcontracts. These principles will also be used as a guide in the pricing of fixed-price contracts and subcontracts.

II. Definitions of Terms

A. "Organized research" means all research activities of a hospital that may be identified whether the support for such research is from a federal, non-federal or internal source.

B. "Departmental research" means research activities that are not separately budgeted and accounted for. Such work, which includes all research activities not encompassed under the term organized research, is regarded for purposes of this document as a part of the patient care activities of the hospital.

C. "Research agreement" means any valid arrangement to perform federally-sponsored research or development including grants, cost-reimbursement type contracts, cost-reimbursement type subcontracts, and fixed-price contracts and subcontracts.

D. "Instruction and training" means the formal or informal programs of educating and training technical and professional health services personnel, primarily medical and nursing training. This activity, if separately budgeted or identifiable with specific costs, should be considered as a cost objective for purposes of indirect cost allocations and the development of patient care costs.

E. "Other hospital activities" means all organized activities of a hospital not immediately related to the patient care, research, and instructional and training functions which produce identifiable revenue from the performance of these activities. If a non-related activity does not produce identifiable revenue, it may be necessary to allocate this expense using an appropriate basis. In such a case, the activity may be included as an allocable cost (See para. III D below.) Also included under this definition is any category of cost treated as "Unallowable," provided such category of cost identifies a function or activity to which a portion of the institution's indirect cost (as defined in para. V. A.) are properly allocable.

F. "Patient care" means those departments or cost centers which render routine or ancillary services to in-patients and/or out-patients. As used in para. IX B.23, it means the cost of these services applicable to patients involved in research programs.

G. "Allocation" means the process by which the indirect costs are assigned as between:

1. Organized research,
2. Patient care including departmental research,
3. Instruction and training, and
4. Other hospital activities.

H. "Cost center" means an identifiable department or area (including research) within the hospital which has been assigned an account number in the hospital accounting system for the purpose of accumulating expense by department or area.

I. "Cost finding" is the process of recasting the data derived from the accounts ordinarily kept by a hospital to ascertain costs of the various types of services rendered. It is the determination of direct costs by specific identification and the proration of indirect costs by allocation.

J. "Step down" is a cost finding method that recognizes that services rendered by certain nonrevenue-producing departments or centers are utilized by certain other nonrevenue producing centers as well as by the revenue-producing centers. All costs of nonrevenue-producing centers are allocated to all centers which they serve, regardless of whether or not these centers produce revenue. Following the apportionment of the cost of the nonrevenue-producing center, that center will be considered closed and no further costs are apportioned to that center.

K. "Scatter bed" is a bed assigned to a research patient based on availability. Research patients occupying these beds are not physically segregated from nonresearch patients occupying beds. Scatter beds are geographically dispersed among all the beds available for use in the hospital. There are no special features attendant to a scatter bed that distinguishes it from others that could just as well have been occupied.

L. "Discrete bed" is a bed or beds that have been set aside for occupancy by research patients and are physically segregated from other hospital beds in an environment that permits an easily ascertainable allocation of costs associated with the space they occupy and the services they generate.

III. Basic Considerations

A. *Composition of total costs.* The cost of a research agreement is comprised of the allowable direct costs incident to its performance plus the allocable portion of the allowable indirect costs of the hospital less applicable credits. (See para. III–E.)

B. *Factors affecting allowability of costs.* The tests of allowability of costs under these principles are:

1. They must be reasonable.

2. They must be assigned to research agreements under the standards and methods provided herein.

3. They must be accorded consistent treatment through application of those generally accepted accounting principles appropriate to the circumstances (See para. I–E.5.) and

4. They must conform to any limitations or exclusions set forth in these principles or in the research agreement as to types or amounts of cost items.

C. *Reasonable costs.* A cost may be considered reasonable if the nature of the goods or services acquired or applied, and the amount involved therefor reflect the action that a prudent person would have taken under the circumstances prevailing at the time the decision to incur the cost was made. Major considerations involved in the determination of the reasonableness of a cost are:

1. Whether or not the cost is of a type generally recognized as necessary for the operation of the hospital or the performance of the research agreement,

2. The restraints or requirements imposed by such factors as arm's length bargaining, federal and state laws and regulations, and research agreement terms and conditions,

3. Whether or not the individuals concerned acted with due prudence in the circumstances, considering their responsibilities to the hospital, its patients, its employees, its students, the Government, and the public at large, and

4. The extent to which the actions taken with respect to the incurrence of the cost are consistent with established hospital policies and practices applicable to the work of the hospital generally, including Government research.

D. *Allocable costs.* 1. A cost is allocable to a particular cost center (i.e., a specific function, project, research agreement, department, or the like) if the goods or services involved are chargeable or assignable to such cost center in accordance with relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a research agreement if it is incurred solely to advance the work under the research agreement; or it benefits both the research agreement and other work of the hospital in proportions that can be approximated through use of reasonable methods; or it is necessary to the overall operation of the hospital and, in light of the standards provided in this chapter, is deemed to be assignable in part to organized research. Where the purchase of equipment or other capital items are specifically authorized under a research agreement, the amounts thus authorized for such purchases are allocable to the research agreement regardless of the use that may subsequently be made of the equipment or other capital items involved.

2. Any costs allocable to a particular research agreement under the standards provided in these principles may not be shifted to other research agreements in order to meet deficiencies caused by overruns or other fund considerations, to avoid restrictions imposed by law or by terms of the research agreement, or for other reasons of convenience.

E. *Applicable credits.* 1. The term applicable credits refers to those receipts or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to research agreements as direct or indirect costs as outlined in para. V-A. Typical examples of such transactions are: purchase discounts, rebates, or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; tuition; adjustments of overpayments or erroneous charges; and services rendered to patients admitted to federally funded clinical research centers, primarily for care though also participating in research protocols.

2. In some instances, the amounts received from the Federal Government to finance hospital activities or service operations should be treated as applicable credits. Specifically, the concept of netting such credit items against related expenditures should be applied by the hospital in determining the rates or amounts to be charged to government research for services rendered whenever the facilities or other resources used in providing such services have been financed directly, in whole or in part, by federal funds. Thus, where such items are provided for or benefit a particular hospital activity, i.e., patient care, research, instruction and training, or other, they should be treated as an offset to the indirect costs apportioned to that activity. Where the benefits are common to all hospital activities they should be treated as a credit to the total indirect cost pool before allocation to the various cost objectives.

IV. Direct Costs

A. *General.* Direct costs are those that can be identified specifically with a particular cost center. For this purpose, the term cost center refers not only to the ultimate centers against which costs are finally lodged such as research agreements, but also to other established cost centers such as the individual accounts for recording particular objects or items of expense, and the separate account groupings designed to record the expenses incurred by individual organizational units, functions, projects and the like. In general, the administrative functions and service activities described in para. VI are identifiable as separate cost centers, and the expenses associated with such centers become eligible in due course for distribution as indirect costs of research agreements and other ultimate cost centers.

B. *Application to research agreements.* Identifiable benefit to the research work rather than the nature of the goods and services involved is the determining factor in distinguishing direct from indirect costs of research agreements. Typical of transactions chargeable to a research agreement as direct costs are the compensation of employees for the time or effort devoted to the performance of work under the research agreement, including related staff benefit and pension plan costs to the extent that such items are consistently accorded to all employees and treated by the hospital as direct rather than indirect costs (see para. V. B4b); the costs of materials consumed or expended in the performance of such work; and other items of expense incurred for the research agreement, such as extraordinary utility consumption. The cost of materials supplied from stock or services rendered by specialized facilities or other institutional service operations may be included as direct costs of research agreements provided such items are consistently treated by the institution as direct rather than indirect costs and are charged under a recognized method of costing or pricing designed to recover only the actual direct and indirect costs of such material or service and conforming to generally accepted cost accounting practices consistently followed by the institution.

V. Indirect Costs

A. *General.* Indirect costs are those that have been incurred for common or joint objectives, and thus are not readily subject to treatment as direct costs of research agreements or other ultimate or revenue producing cost centers. In hospitals such costs normally are classified but not necessarily restricted to the following functional categories: Depreciation; Administrative and General (including fringe benefits if not charged directly); Operation of Plant; Maintenance of Plant; Laundry and Linen Service; Housekeeping; Dietary; Maintenance of Personnel; and Medical Records and Library.

B. *Criteria for distribution.*—1. *Base period.* A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the hospital, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

2. *Need for cost groupings.* The overall objective of the allocation process is to distribute the indirect costs described in para. VI to organized research, patient care, instruction and training, and other hospital activities in reasonable proportions consistent with the nature and extent of the use of the hospital's resources by research personnel, medical staff, patients, students, and other personnel or organizations. In order to achieve this objective with reasonable precision, it may be necessary to provide for selective distribution by establishing separate groupings of cost within one or more of the functional categories of indirect costs referred to in para. V-A. In general, the cost groupings established within a functional category should constitute, in each case, a pool of those items of expense that are considered to be of like character in terms of their relative contribution to (or degree of remoteness from) the particular cost centers to which distribution is appropriate. Each such pool or cost grouping should then be distributed individually to the related cost centers, using the distribution base or method most appropriate in the light of the guides set out in B3 below. While this paragraph places primary emphasis on a step-down method of indirect cost computation, para. VIII provides an alternate method which may be used under certain conditions.

3. *Selection of distribution method.* Actual conditions must be taken into account in selecting the method or base to be used in distributing to related cost centers the expenses assembled under each of the individual cost groups established as indicated under B2 above. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Care should be given, however, to eliminate similar or duplicative costs from any other distribution made to this area. Where the expenses under a cost grouping are more general in nature, the distribution to related cost centers should be made through use of a selected base which will produce results which are equitable to both the Government and the hospital. In general, any cost element or cost-related factor associated with the hospital's work is potentially adaptable for use as a distribution base provided:

a. It can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and

b. It is common to the related cost centers during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to related cost centers in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

4. *General consideration on cost groupings.* The extent to which separate cost groupings and selective distribution would be appropriate at a hospital is a matter of judgment to be determined on a case-by-case basis. Typical situations which may warrant the establishment of two or more separate cost groups (based on account classification or analysis) within a functional category include but are not limited to the following:

a. Where certain items or categories of expense relate solely to one of the major divisions of the hospital (patient care, sponsored research, instruction and training, or other hospital activities) or to any two but not all, such expenses should be set aside as a separate cost grouping for direct assignment or selective distribution in accordance with the guides provided in B2 and B3 above.

b. Where any types of expense ordinary treated as indirect cost as outlined in para. V-A are charged to research agreements as direct costs, the similar type expenses applicable to other activities of the institution must through separate cost grouping be excluded from the indirect costs allocable to research agreements.

c. Where it is determined that certain expenses are for the support of a service unit or facility whose output is susceptible of measurement on a workload or other quantitative basis, such expenses should be set aside as a separate cost grouping for distribution on such basis to organized research and other hospital activities.

d. Where organized activities (including identifiable segments of organized research as well as the activities cited in para. II-E) provide their own purchasing, personnel administration, building maintenance, or housekeeping or similar service, the distribution of such elements of indirect cost to such activities should be accomplished through cost grouping which includes only that portion of central indirect costs (such as for overall management) which are properly allocable to such activities.

e. Where the hospital elects to treat as indirect charges the costs of pension plans and other staff benefits, such costs should be set aside as a separate cost grouping for selective distribution to related cost centers, including organized research.

f. Where the hospital is affiliated with a medical school or some other institution which performs organized research on the hospital's premises, every effort should be made to establish separate cost groupings in the Administrative and General or other applicable category which will reasonably reflect the use of services and facilities by such research. (See also para. VII-A.3)

5. *Materiality.* Where it is determined that the use of separate cost groupings and selective distribution are necessary to produce equitable results, the number of such separate cost groupings within a functional category should be held within practical limits, after taking into consideration the materiality of the amounts involved and the degree of precision attainable through less selective methods of distribution.

C. *Administration of limitations on allowances for indirect costs.* 1. Research grants may be subject to laws and/or administrative regulations that limit the allowance for indirect costs under each such grant to a stated percentage of the direct costs allowed. Agencies that sponsor such grants will establish procedures which will assure that:

a. the terms and amount authorized in each case conform with the provisions of paragraphs III, V and IX of these principles as they apply to matters involving the consistent treatment and allowability of individual items of cost; and

b. the amount actually allowed for indirect costs under each such research grant does not exceed the maximum allowable under the limitation or the amount otherwise allowable under these principles, whichever is the smaller.

2. Where the actual allowance for indirect costs on any research grant must be restricted to the smaller of the two alternative amounts referred to in C1 above, such alternative amounts should be determined in accordance with the following guides:

a. The maximum allowable under the limitation should be established by applying the stated percentage to a direct cost base which shall include all items of expenditure authorized by the sponsoring agency for inclusion as part of the total cost for the direct benefit of the work under the grant; and

b. The amount otherwise allowable under these principles should be established by applying the current institutional indirect cost rate to those elements of direct cost which were included in the base on which the rate was computed.

3. When the maximum amount allowable under a statutory limitation or the terms of a research agreement is less than the amount otherwise allocable as indirect costs under these principles, the amount not recoverable as indirect costs under the research agreement involved may not be shifted to other research agreements.

VI. Identification and Assignment of Indirect Costs

A. *Depreciation or use charge.* 1. The expenses under this heading should include depreciation (as defined in para. IX–B.9a) on buildings, fixed equipment, and movable equipment, except to the extent purchased through federal funds. Where adequate records for the recording of depreciation are not available, a use charge may be substituted for depreciation (See para. IX–B.)

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides set forth in para. V–B, on a basis that gives primary emphasis to (a) space utilization with respect to depreciation on buildings and fixed equipment; and (b) specific identification of assets and their use with respect to movable equipment as it relates to patient care, organized research, instruction and training, and other hospital activities. Where such records are not sufficient for the purpose of the foregoing, reasonable estimates will suffice as a means for effecting distribution of the amounts involved.

B. *Administration and general expenses.* 1. The expenses under this heading are those that have been incurred for the administrative offices of the hospital including accounting, personnel, purchasing, information centers, telephone expense, and the like which do not relate solely to any major division of the institution, i.e., solely to patient care, organized research, instruction and training, or other hospital activities.

2. The expenses included in this category may be allocated on the basis of total expenditures exclusive of capital expenditures, or salaries and wages in situations where the results of the distribution made on this basis are deemed to be equitable both to the Government and the hospital; otherwise the distribution of Administration and General expenses should be made through use of selected bases, applied to separate cost groupings established within this category of expenses in accordance with the guides set out in para. V–B.

C. *Operation of plant.* 1. The expenses under this heading are those that have been incurred by a central service organization or at the departmental level for the administration, supervision, and provision of utilities (exclusive of telephone expense) and protective services to the physical plant. They include expenses incurred for such items as power plant operations, general utility costs, elevator operations, protection services, and general parking lots.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V–B, on a basis that gives primary emphasis to space utilization. The allocations should be developed as follows:

a. Where actual space and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various costs centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume or space basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

D. *Maintenance of plant.* 1. The expenses under this heading should include:

a. All salaries and wages pertaining to ordinary repair and maintenance work performed by employees on the payroll of the hospital;

b. All supplies and parts used in the ordinary repairing and maintaining of buildings and general equipment; and

c. Amounts paid to outside concerns for the ordinary repairing and maintaining of buildings and general equipment.

2. The expenses included in this category should be allocated to applicable cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to space utilization. The allocations and apportionments should be developed as follows:

a. Where actual space and related cost records are available and can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts involved; or

c. Where it can be demonstrated that an area or volume of space basis of allocation is impractical or inequitable, other basis may be used provided consideration is given to the use of facilities by research personnel and others, including patients.

E. *Laundry and linen.* 1. The expenses under this heading should include:

a. Salaries and wages of laundry department employees, seamstresses, clean linen handlers, linen delivery men, etc.;

b. Supplies used in connection with the laundry operation and all linens purchased; and

c. Amounts paid to outside concerns for purchased laundry and/or linen service.

2. The expense included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to actual pounds of linen used. The allocations should be developed as follows:

a. Where actual poundage and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where it can be demonstrated that a poundage basis of allocation is impractical or inequitable other bases may be used provided consideration is given to the use of linen by research personnel and others, including patients.

F. *Housekeeping.* 1. The expenses under this heading should include:

a. All salaries and wages of the department head, foreman, maids, porters, janitors, wall washers, and other housekeeping employees;

b. All supplies used in carrying out the housekeeping functions; and

c. Amounts paid to outside concerns for purchased services such as window washing, insect extermination, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to space actually serviced by the housekeeping department. The allocations and apportionments should be developed as follows:

a. Where actual space serviced and related cost records are available or can readily be developed and maintained without significant change in the accounting practices, the amount distributed should be based on such records;

b. Where the space serviced and related cost records maintained are not sufficient for purposes of the foregoing, a reasonable estimate of the proportion of total space assigned to the various cost centers normally will suffice as a means for effecting distribution of the amounts of housekeeping expenses involved; or

c. Where it can be demonstrated that the space serviced basis of allocation is impractical or inequitable, other bases may be used provided consideration is given to the use of housekeeping services by research personnel and others, including patients.

G. *Dietary.* 1. These expenses, as used herein, shall mean only the subsidy provided by the hospital to its employees including research personnel through its cafeteria operation. The hospital must be able to demonstrate through the use of proper cost accounting techniques that the cafeteria operates at a loss to the benefit of employees.

2. The reasonable operating loss of a subsidized cafeteria operation should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to number of employees.

H. *Maintenance (housing) of personnel.* 1. The expenses under this heading should include:

a. The salaries and wages of matrons, clerks, and other employees engaged in work in nurses' residences and other employees' quarters;

b. All supplies used in connection with the operation of such dormitories; and

c. Payments to outside agencies for the rental of houses, apartments, or rooms used by hospital personnel.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to employee utilization of housing facilities. The allocation should be developed as follows:

a. Appropriate credit should be given for all payments received from employees or

otherwise to reduce the expense to be allocated;

b. A net cost per housed employee may then be computed; and

c. Allocation should be made on a departmental basis based on the number of housed employees in each respective department.

I. *Medical records and library.* 1. The expenses under this heading should include:

a. The salaries and wages of the records librarian, medical librarian, clerks, stenographers, etc.; and

b. All supplies such as medical record forms, chart covers, filing supplies, stationery, medical library books, periodicals, etc.

2. The expenses included in this category should be allocated to related cost centers in a manner consistent with the guides provided in para. V–B. on a basis that gives primary emphasis to a special time survey of medical records personnel. If this appears to be impractical or inequitable, other bases may be used provided consideration is given to the use of these facilities by research personnel and others, including patients.

VII. Determination and Application of Indirect Cost Rate or Rates

A. *Indirect cost pools.* 1. Subject to (2) below, indirect costs allocated to organized research should be treated as a common pool, and the costs in such common pool should be distributed to individual research agreements benefiting therefrom on a single rate basis.

2. In some instances a single rate basis for use on all government research at a hospital may not be appropriate since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of government research at the institution. For this purpose, a particular segment of government research may be that performed under a single research agreement or it may consist of research under a group of research agreements performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of government research is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. An example of this differential may be in the development of a separate indirect cost pool for a clinical research center grant. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that:

a. Such indirect cost rate differs significantly from that which would have obtained under (1) above; and

b. The volume of research work to which such rate would apply is material in relation to other government research at the institution.

3. It is a common practice for grants or contracts awarded to other institutions, typically University Schools of Medicine, to be performed on hospital premises. In these cases the hospital should develop a separate indirect cost pool applicable to the work under such grants or contracts. This pool should be developed by a selective distribution of only those indirect cost categories which benefit the work performed by the other institution, within the practical limits dictated by available data and the materiality of the amounts involved. Hospital costs determined to be allocable to grants or contracts awarded to another institution may not be recovered as a cost of grants or contracts awarded directly to the hospital.

B. *The distribution base.* Preferably, indirect costs allocated to organized research should be distributed to applicable research agreements on the basis of direct salaries and wages. However, where the use of salaries and wages results in an inequitable allocation of costs to the research agreements, total direct costs or a variation thereof, may be used in lieu of salaries and wages. Regardless of the base used, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to para. VII–A. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the total direct salaries and wages (or other base selected) for all research agreements identified with such a pool.

C. *Negotiated lump sum for overhead.* A negotiated fixed amount in lieu of indirect costs may be appropriate for self-contained or off-campus research activities where the benefits derived from a hospital's indirect services cannot be readily determined. Such amount negotiated in lieu of indirect costs will be treated as an offset to the appropriate indirect cost pool after allocation to patient care, organized research, instruction and training, and other hospital activities. The base on which such remaining expenses are allocated should be appropriately adjusted.

D. *Predetermined overhead rates.* The utilization of predetermined fixed overhead rates may offer potential advantages in the administration of research agreements by facilitating the preparation of research budgets and permitting more expeditious close out of the agreements when the work is completed. Therefore, to the extent allowed by law, consideration may be given to the negotiation of predetermined fixed rates in those situations where the cost experience and other pertinent factors available are deemed sufficient to enable the Government and the hospital to reach a reasonable conclusion as to the probable level of the indirect cost rate for the ensuing accounting period.

VIII. Simplified Method for Small Institutions

A. *General.* 1. Where the total direct cost of all government-sponsored research and development work at a hospital in a year is minimal, the use of the abbreviated procedure described in para. VIII–B below may be acceptable in the determination of allowable indirect costs. This method may also be used to initially determine a provisional indirect cost rate for hospitals that have not previously established a rate. Under this abbreviated procedure, data taken directly from the institution's most recent annual financial report and immediately available supporting information will be utilized as a basis for determining the indirect cost rate applicable to research agreements at the institution.

2. The rigid formula approach provided under the abbreviated procedure has limitations which may preclude its use at some hospitals either because the minimum data required for this purpose are not readily available or because the application of the abbreviated procedure to the available data produces results which appear inequitable to the Government or the hospital. In any such case, indirect costs should be determined through use of the regular procedure rather than the abbreviated procedure.

3. In certain instances where the total direct cost of all government-sponsored research and development work at the hospital is more than minimal, the abbreviated procedure may be used if prior permission is obtained. This alternative will be granted only in those cases where it can be demonstrated that the step-down technique cannot be followed.

B. *Abbreviated procedure.* 1. Total expenditures as taken from the most recent annual financial report will be adjusted by eliminating from further consideration expenditures for capital items as defined in para. IX–B.4 and unallowable costs as defined under various headings in para. IX and para. III–E.

2. Total expenditures as adjusted under the foregoing will then be distributed among (a) expenditures applicable to administrative and general overhead functions, (b) expenditures applicable to all other overhead functions, and (c) expenditures for all other purposes. The first group shall include amounts associated with the functional categories, Administration and General, and Dietary, as defined in para. VI. The second group shall include Depreciation, Operation of Plant, Maintenance of Plant, and Housekeeping. The third group—expenditures for all other purposes—shall include the amounts applicable to all other activities, namely, patient care, organized research, instruction and training, and other hospital activities as defined under para. II–E. For the purposes of this section, the functional categories of Laundry and Linen, Maintenance of Personnel, and Medical Records and Library as defined in para. VI shall be considered as expenditures for all other purposes.

3. The expenditures distributed to the first two groups in para. VIII–B.2 should then be adjusted by those receipts or negative expenditure types of transactions which tend to reduce expense items allocable to research agreements as indirect costs. Examples of such receipts or negative expenditures are itemized in para. III–E.1.

4. In applying the procedures in para. VIII–B.1 and B.2, the cost of unallowable activities such as Gift Shop, Investment Property Management, Fund Raising, and Public Relations, when they benefit from the hospital's indirect cost services, should be treated as expenditures for all other purposes. Such activities are presumed to benefit from the hospital's indirect cost services when they include salaries of personnel working in the hospital. When they do not include such salaries, they should be eliminated from the indirect cost rate computation.

5. The indirect cost rate will then be computed in two stages. The first stage requires the computation of an Administrative and General rate component. This is done by applying a ratio of research direct costs over total direct costs to the Administrative and General pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base. The second stage requires the computation of an All other Indirect Cost rate component. This is done by applying a ratio of research direct space over total direct space to All Other Indirect Cost pool developed under para. VIII–B.2 and B.3 above. The resultant amount—that which is allocable to research—is divided by the direct research cost base.

The total of the two rate components will be the institution's indirect cost rate. For the purposes of this section, the research direct cost or space and total direct cost or space will be that cost or space identified with the functional categories classified under Expenditures for all other purposes under para. VIII–B.2.

IX. General Standards for Selected Items of Cost

A. *General.* This section provides standards to be applied in establishing the allowability of certain items involved in determining cost. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather, determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of discrepancy between the provisions of a specific research agreement and the applicable standards provided, the provisions of the research agreement should govern. However, in some cases advance understandings should be reached on particular cost items in order that the full costs of research be supported. The extent of allowability of the selected items of cost covered in this section has been stated to apply broadly to many accounting systems in varying environmental situations. Thus, as to any given research agreement, the reasonableness and allocability of certain items of costs may be difficult to determine, particularly in connection with hospitals which have medical school or other affiliations. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that prospective recipients of federal funds particularly those whose work is predominantly or substantially with the Government, seek agreement with the Government in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such agreement may also be initiated by the Government. Any such agreement should be incorporated in the research agreement itself. However, the absence of such an advance agreement on any element of cost will not in itself serve to make that element either allowable or unallowable. Examples of costs on which advance agreements may be particularly important are:

1. Facilities costs, such as;
   a. Depreciation
   b. Rental
   c. Use charges for fully depreciated assets
   d. Idle facilities and idle capacity
   e. Plant reconversion
   f. Extraordinary or deferred maintenance and repair
   g. Acquisition of automatic data processing equipment.
2. Preaward costs
3. Non-hospital professional activities
4. Self-insurance
5. Support services charged directly (computer services, printing and duplicating services, etc.)
6. Employee compensation, travel, and other personnel costs, including;
   a. Compensation for personal service, including wages and salaries, bonuses and incentives, premium payments, pay for time not worked, and supplementary compensation and benefits, such as pension and retirement, group insurance, severance pay plans, and other forms of compensation
   b. Morale, health, welfare, and food service and dormitory costs
   c. Training and education costs
   d. Relocation costs, including special or mass personnel movement

B. *Selected items.*—1. *Advertising costs.* The term advertising costs means the costs of advertising media and corollary administrative costs. Advertising media include magazines, newspapers, radio and television programs, direct mail, exhibits, and the like. The only advertising costs allowable are those which are solely for;

a. The recruitment of persons required for the performance by the institution of obligations arising under the research agreement, when considered in conjunction with all other recruitment costs as set forth in para IX–B.34

b. The procurement of scarce items for the performance of the research agreement; or

c. The disposal of scrap or surplus materials acquired in the performance of the research agreement.

Costs of this nature, if incurred for more than one research agreement or for both research agreement work and other work of the institution, are allowable to the extent that the principles in paragraph IV and V are observed.

2. *Bad debts.* Losses arising from uncollectible accounts and other claims and related collection and legal costs are unallowable except that a bad debt may be included as a direct cost of the research agreement to the extent that it is caused by a research patient and approved by the awarding agency. This inclusion is only intended to cover the situation of the patient admitted for research purposes who subsequently or in conjunction with the research receives clinical care for which a charge is made to the patient. If, after exhausting all means of collecting these charges, a bad debt results, it may be considered an appropriate charge to the research agreement.

3. *Bonding costs.* a. Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the hospital. They arise also in instances where the hospital requires similar assurance.

Included are such types as bid, performance, payment, advance payment, infringement, and fidelity bonds.

b. Costs of bonding required pursuant to the terms of the research agreement are allowable.

c. Costs of bonding required by the hospital in the general conduct of its business are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

4. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment should be capitalized and are unallowable except as provided for in the research agreement.

5. *Civil defense costs.* Civil defense costs are those incurred in planning for, and the protection of life and property against the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire-fighting training, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when distributed to all activities of the institution. Capital expenditures for civil defense purposes will not be allowed, but a use allowance or depreciation may be permitted in accordance with provisions set forth elsewhere. Costs of local civil defense projects not on the institution's premises are unallowable.

6. *Communication costs.* Costs incurred for telephone services, local and long distance telephone calls, telegrams, radiograms, postage, and the like are allowable.

7. *Compensation for personal services.*—a. *General.* Compensation for personal services covers all remuneration paid currently or accrued to employees of the hospital for services rendered during the period of performance under government research agreements. Such remuneration includes salaries, wages, staff benefits (see para. IX–B.10), and pension plan costs (see para. IX–B.25). The costs of such remuneration are

allowable to the extent that the total compensation to individual employees is reasonable for the services rendered and conforms to the established policy of the institution consistently applied, and provided that the charges for work performed directly on government research agreements and for other work allocable as indirect costs to sponsored research are determined and supported as hereinafter provided. For non-profit, non-proprietary institutions, where federally supported programs constitute less than a preponderance of the activity at the institution the primary test of reasonableness will be to require that the institution's compensation policies be applied consistently both to federally-sponsored and non-sponsored activities alike. However, where special circumstances so dictate a contractual clause may be utilized which calls for application of the test of comparability in determining the reasonableness of compensation.

b. *Payroll distribution.* Amounts charged to organized research for personal services, regardless of whether treated as direct costs or allocated as indirect costs, will be based on hospital payrolls which have been approved and documented in accordance with generally accepted hospital practices. In order to develop necessary direct and indirect allocations of cost, supplementary data on time or effort as provided in (c) below, normally need be required only for individuals whose compensation is properly chargeable to two or more research agreements or to two or more of the following broad functional categories: (1) patient care; (2) organized research; (3) instruction and training; (4) indirect activities as defined in para. V–A; or (5) other hospital activities as defined in para. II–E.

c. *Reporting time or effort.* Charges for salaries and wages of individuals other than members of the professional staff will be supported by daily time and attendance and payroll distribution records. For members of the professional staff, current and reasonable estimates of the percentage distribution of their total effort may be used as support in the absence of actual time records. The term professional staff for purposes of this section includes physicians, research associates, and other personnel performing work at responsible levels of activities. These personnel normally fulfill duties, the competent performance of which usually requires persons possessing degrees from accredited institutions of higher learning and/or state licensure. In order to qualify as current and reasonable, estimates must be made no later than one month (though not necessarily a calendar month) after the month in which the services were performed.

d. *Preparation of estimates of effort.* Where required under (c) above, estimates of effort spent by a member of the professional staff on each research agreement should be prepared by the individual who performed the services or by a responsible individual such as a department head or supervisor having first-hand knowledge of the services performed on each research agreement. Estimates must show the allocation of effort between organized research and all other hospital activities in terms of the percentage of total effort devoted to each of the broad functional categories referred to in (b) above. The estimate of effort spent on a research agreement may include a reasonable amount of time spent in activities contributing and intimately related to work under the agreement, such as preparing and delivering special lectures about specific aspects of the ongoing research, writing research reports and articles, participating in appropriate research seminars, consulting with colleagues with respect to related research, and attending appropriate scientific meetings and conferences. The term "all other hospital activities" would include departmental research, administration, committee work, and public services undertaken on behalf of the hospital.

e. *Application of budget estimates.* Estimates determined before the performance of services, such as budget estimates on a monthly, quarterly, or yearly basis do not qualify as estimates of effort spent.

f. *Non-hospital professional activities.* A hospital must not alter or waive hospital-wide policies and practices dealing with the permissible extent of professional services over and above those traditionally performed without extra hospital compensation, unless such arrangements are specifically authorized by the sponsoring agency. Where hospital-wide policies do not adequately define the permissible extent of consultantships or other non-hospital activities undertaken for extra pay, the Government may require that the effort of professional staff working under research agreements be allocated as between (1) hospital activities, and (2) non-hospital professional activities. If the sponsoring agency should consider the extent of non-hospital professional effort excessive, appropriate arrangements governing compensation will be negotiated on a case by case basis.

g. *Salary rates for part-time appointments.* Charges for work performed on government research by staff members having only part-time appointments will be determined at a rate not in excess of that for which he is regularly paid for his part-time staff assignment.

8. *Contingency provisions.* Contributions to a contingency reserve or any similar provisions made for events the occurrence of which cannot be foretold with certainty as to time, intensity, or with an assurance of their happening, are unallowable.

9. *Depreciation and use allowances.* a. Hospitals may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular hospital's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

b. Due consideration will be given to government-furnished research facilities utilized by the institution when computing use allowances and/or depreciation if the government-furnished research facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of accounts, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to organized research is developed from the amount thus amortized for the base period involved.

c. Normal depreciation on a hospital's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of research cost provided that the amount thereof is computed:

1. Upon the property cost basis used by the hospital for Federal Income Tax purposes (See section 167 of the Internal Revenue Code of 1954); or

2. In the case of non-profit or tax exempt organizations, upon a property cost basis which could have been used by the hospital for Federal Income Tax purposes, had such hospital been subject to the payment of income tax; and in either case

3. By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

i. The straight line method;

ii. The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

iii. The sum of the years-digits method; and

iv. Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

d. Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular research area, and the renewal and

replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

e. Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes.

f. Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated; provided, however, that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

g. Hospitals which choose a depreciation allowance for assets purchased prior to 1966 based on a percentage of operating costs in lieu of normal depreciation for purposes of reimbursement under Public Law 89–97 (Medicare) shall utilize that method for determining depreciation applicable to organized research.

The operating costs to be used are the lower of the hospital's 1965 operating costs or the hospital's current year's allowable costs. The percent to be applied is 5 percent starting with the year 1966–67, with such percentage being uniformity reduced by one-half percent each succeeding year. The allowance based on operating costs is in addition to regular depreciation on assets acquired after 1965. However, the combined amount of such allowance on pre-1966 assets and the allowance for actual depreciation on assets acquired after 1965 may not exceed 6 percent of the hospital's allowable cost for the current year. After total depreciation has been computed, allocation methods are used to determine the share attributable to organized research.

For purposes of this section, "Operating Costs" means the total costs incurred by the hospital in operating the institution, and includes patient care, research, and other activities. "Allowable Costs" means operating costs less unallowable costs as defined in these principles; by the application of allocation methods to the total amount of such allowable costs, the share attributable to Federally-sponsored research is determined.

A hospital which elects to use this procedure under Public Law 89–97 and subsequently changes to an actual depreciation basis on pre-1966 assets in accordance with the option afforded under the Medicare program shall simultaneously change to an actual depreciation basis for organized research.

Where the hospital desires to change to actual depreciation but either has no historical cost records or has incomplete records, the determination of historical cost could be made through appropriate means involving expert consultation with the determination being subject to review and approval by the Department of Health, Education, and Welfare.

h. Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding two percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding six and two-thirds percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding ten percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding six and two-thirds percent of such estimate.

i. Depreciation and/or use charges should usually be allocated to research and other activities as an indirect cost.

10. *Employee morale, health, and welfare costs and credits.* The costs of house publications, health or first-aid benefits, recreational activities, employees' counseling services, and other expenses incurred in accordance wtih the hospital's established practice or custom for the improvement of working conditions, employer-employee relations, employee morale, and employee performance, are allowable. Such costs will be equitably apportioned to all activities of the hospital. Income generated from any of these activities will be credited to the cost thereof unless such income has been irrevocably set over to employee welfare organizations.

11. *Entertainment costs.* Except as pertains to 10 above, costs incurred for amusement, social activities, entertainment, and any items relating thereto, such as meals, lodging, rentals, transportation, and gratuities are unallowable.

12. *Equipment and other facilities.* The cost of equipment or other facilities are allowable on a direct charge basis where such purchases are approved by the sponsoring agency concerned or provided for by the terms of the research agreement.

13. *Fines and penalties.* Costs resulting from violations of, or failure of the institution to comply with federal, state and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the research agreement, or instructions in writing from the awarding agency.

14. *Insurance and indemnification.* a. Costs of insurance required or approved and maintained pursuant to the research agreement are allowable.

b. Costs of other insurance maintained by the hospital in connection with the general conduct of its activities are allowable subject to the following limitations: (1) types and extent and cost of coverage must be in accordance with sound institutional practice; (2) costs of insurance or of any contributions to any reserve covering the risk of loss of or damage to government owned property are unallowable except to the extent that the Government has specifically required or approved such costs; and (3) costs of insurance on the lives of officers or trustees are unallowable except where such insurance is part of an employee plan which is not unduly restricted.

c. Contributions to a reserve for an approved self-insurance program are allowable to the extent that the types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks. Such contributions are subject to prior approval of the Government.

d. Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the research agreement, except that costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound management practice as well as minor losses not covered by insurance such as spoilage, breakage and disappearance of small hand tools which occur in the ordinary course of operations are allowable.

15. *Interest, fund raising and investment management costs.* a. Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

b. Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions are not allowable.

c. Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are not allowable.

d. Costs related to the physical custody and control of monies and securities are allowable.

16. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the hospital and its employees, including costs of labor management committees, employees' publications, and other related activities are allowable.

17. *Losses on research agreements or contracts.* Any excess of costs over income under any agreement or contract of any nature is unallowable. This includes, but is not limited to, the hospital's contributed portion by reason of cost-sharing agreements, under-recoveries through negotiation of flat

amounts for overhead, or legal or administrative limitations.

18. *Maintenance and repair costs.* a. Costs necessary for the upkeep of property (including government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows:

1. Normal maintenance and repair costs are allowable;

2. Extraordinary maintenance and repair costs are allowable, provided they are allocated to the periods to which applicable for purposes of determining research costs.

b. Expenditures for plant and equipment, including rehabilitation thereof, which according to generally accepted accounting principles as applied under the hospital's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

19. *Material costs.* Costs incurred for purchased materials, supplies and fabricated parts directly or indirectly related to the research agreement, are allowable. Purchases made specifically for the research agreement should be charged thereto at their actual prices after deducting all cash discounts, trade discounts, rebates, and allowances received by the institution. Withdrawals from general stores or stockrooms should be charged at their cost under any recognized method of pricing stores withdrawals conforming to sound accounting practices consistently followed by the hospital. Incoming transportation charges are a proper part of material cost. Direct material cost should include only the materials and supplies actually used for the performance of the research agreement, and due credit should be given for any excess materials retained or returned to vendors. Due credit should be given for all proceeds or value received for any scrap resulting from work under the research agreement. Where government donated or furnished material is used in performing the research agreement, such material will be used without charge.

20. *Memberships, subscriptions and professional activity costs.* a. Costs of the hospital's membership in civic, business, technical and professional organizations are allowable.

b. Costs of the hospital's subscriptions to civic, business, professional and technical periodicals are allowable.

c. Costs of meetings and conferences, when the primary purpose is the dissemination of technical information, are allowable. This includes costs of meals, transportation, rental of facilities, and other items incidental to such meetings or conferences.

21. *Organization costs.* Expenditures such as incorporation fees, attorneys' fees, accountants' fees, brokers' fees, fees to promoters and organizers in connection with (a) organization or reorganization of a hospital, or (b) raising capital, are unallowable.

22. *Other business expenses.* Included in this item are such recurring expenses as registry and transfer charges resulting from changes in ownership of securities issued by the hospital, cost of shareholders meetings preparation and publication of reports to shareholders, preparation and submission of required reports and forms to taxing and other regulatory bodies, and incidental costs of directors and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

23. *Patient care.* The cost of routine and ancillary or special services to research patients is an allowable direct cost of research agreements.

a. Routine services shall include the costs of the regular room, dietary and nursing services, minor medical and surgical supplies and the use of equipment and facilities for which a separate charge is not customarily made.

b. Ancillary or special services are the services for which charges are customarily made in addition to routine services, such as operating rooms, anesthesia, laboratory, BMR-EKG, etc.

c. Patient care, whether expressed as a rate or an amount, shall be computed in a manner consistent with the procedures used to determine reimbursable costs under Public Law 89-97 (Medicare Program) as defined under the "Principles Of Reimbursement For Provider Costs" published by the Social Security Administration of the Department of Health, Education, and Welfare. The allowability of specific categories of cost shall be in accordance with those principles rather than the principles for research contained herein. In the absence of participation in the Medicare program by a hospital, all references to the Medicare program in these principles shall be construed as meaning the Medicaid program.

i. Once costs have been recognized as allowable, the indirect costs or general service center's cost shall be allocated (stepped-down) to special service centers, and all patient and nonpatient costs centers based upon actual services received or benefiting these centers.

ii. After allocation, routine and ancillary costs shall be apportioned to scatter-bed research patients on the same basis as is used to apportion costs to Medicare patients, i.e. using either the departmental method or the combination method, as those methods are defined by the Social Security Administration; except that final settlement shall be on a grant-by-grant basis. However, to the extent that the Social Security Administration has recognized any other method of cost apportionment, that method generally shall also be recognized as applicable to the determination of research patient care costs.

iii. A cost center must be established on Medicare reimbursement forms for each discrete-bed unit grant award received by a hospital. Routine costs should be stepped-down to this line item(s) in the normal course of stepping-down costs under Medicare/Medicaid requirements. However, in stepping-down routine costs, consideration must be given to preventing a step-down of those costs to discrete-bed unit line items that have already been paid for directly by the grant, such as bedside nursing costs. Ancillary costs allocable to research discrete-bed units shall be determined and proposed in accordance with Section 23.c.ii.

d. Where federally sponsored research programs provide specifically for the direct reimbursement of nursing, dietary, and other services, appropriate adjustment must be made to patient care costs to preclude duplication and/or misallocation of costs.

24. *Patent costs.* Costs of preparing disclosures, reports and other documents required by the research agreement and of searching the art to the extent necessary to make such invention disclosures are allowable. In accordance with the clauses of the research agreement relating to patents, costs of preparing documents and any other patent costs, in connection with the filing of a patent application where title is conveyed to the Government, are allowable. (See also para. IX-B.36.)

25. *Pension plan costs.* Costs of the hospital's pension plan which are incurred in accordance with the established policies of the institution are allowable, provided such policies meet the test of reasonableness and the methods of cost allocation are not discriminatory, and provided appropriate adjustments are made for credits or gains arising out of normal and abnormal employee turnover or any other contingencies that can result in forfeitures by employees which inure to the benefit of the hospital.

26. *Plan security costs.* Necessary expenses incurred to comply with government security requirements including wages, uniforms and equipment of personnel engaged in plant protection are allowable.

27. *Preresearch agreement costs.* Costs incurred prior to the effective date of the research agreement, whether or not they would have been allowable thereunder if incurred after such date, are unallowable unless specifically set forth and identified in the research agreement.

28. *Professional services costs.* a. Costs of professional services rendered by the members of a particular profession who are not employees of the hospital are allowable subject to (b) and (c) below when reasonable in relation to the services rendered and when not contingent upon recovery of the costs from the Government. Retainer fees to be allowable must be reasonably supported by evidence of services rendered.

b. Factors to be considered in determining the allowability of costs in a particular case include (1) the past pattern of such costs, particularly in the years prior to the award of government research agreements on the institution's total activity; (2) the nature and scope of managerial services expected of the institution's own organizations; and (3) whether the proportion of government work to the hospital's total activity is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under government research agreements.

c. Costs of legal, accounting and consulting services, and related costs incurred in connection with organization and reorganization or the prosecution of claims against the Government are unallowable. Costs of legal, accounting and consulting

services, and related costs incurred in connection with patent infringement litigation are unallowable unless otherwise provided for in the research agreement.

29. *Profits and losses on disposition of plant equipment, or other assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sales or exchange of either short- or long-term investments, shall be excluded in computing research agreement costs.

30. *Proposal costs.* Proposal costs are the costs of preparing bids or proposals on potential government and non-government research agreements or projects, including the development of technical data and cost data necessary to support the institution's bids or proposals. Proposal costs of the current accounting period of both successful and unsuccessful bids and proposals normally should be treated as indirect costs and allocated currently to all activities of the institution, and no proposal costs of past accounting periods will be allocable in the current period to the government research agreement. However, the institution's established practices may be to treat proposal costs by some other recognized method. Regardless of the methods used, the results obtained may be accepted only if found to be reasonable and equitable.

31. *Public information services costs.* Costs of news releases pertaining to specific research or scientific accomplishment are unallowable unless specifically authorized by the sponsoring agency.

32. *Rearrangement and alteration costs* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special rearrangement and alteration costs incurred specifically for a project are allowable only as a direct charge when such work has been approved in advance by the sponsoring agency concerned.

33. *Reconversion costs.* Costs incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to commencement of government research agreement work, fair wear and tear excepted are allowable.

34. *Recruiting costs.* a. Subject to (b), (c), and (d) below, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of "help wanted" advertising, operating costs of an employment office necessary to secure and maintain an adequate staff, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, travel costs of applicants for interviews for prospective employment, and relocation costs incurred incident to recruitment of new employees are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where an institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

b. In publications, costs of help wanted advertising that includes color, includes advertising material for other than recruitment purposes, or is excessive in size (taking into consideration recruitment purposes for which intended and normal institutional practices in this respect) are unallowable.

c. Costs of help wanted advertising, special emoluments; fringe benefits, and salary allowances incurred to attract professional personnel from other institutions that do not meet the test of reasonableness or do not conform with the established practices of the institution are unallowable.

d. Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost, and the newly hired employee resigns for reasons within his control within twelve months after hire, the institution will be required to refund or credit such relocations costs as were charged to the Government.

35. *Rental costs (including sale and lease back of facilities).* a. Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations comparison of rental costs with the amount which the hospital would have received had it owned the facilities.

b. Charges in the nature of rent between organizations having a legal or other affiliation or arrangement such as hospitals medical schools, foundations, etc., are allowable to the extent such charges do not exceed the normal costs of ownership such as depreciation, taxes, insurance, and maintenance, provided that no part of such costs shall duplicate any other allowed costs.

c. Unless otherwise specifically provided in the agreement, rental costs specified in sale and lease-back agreements incurred by hospitals through selling plant facilities to investment organizations such as insurance companies or to private investors, and concurrently leasing back the same facilities are allowable only to the extent that such rentals do not exceed the amount which the hospital would have received had it retained legal title to the facilities.

36. *Royalties and other costs for use of patents.* Royalties on a patent or amortization of the cost of acquiring a patent or invention or rights thereto necessary for the proper performance of the research agreement and applicable to tasks or processes thereunder are allowable unless the Government has a license or the right to free use of the patent, the patent has been adjudicated to be invalid or has been administratively determined to be invalid, the patent is considered to be unenforceable, or the patent has expired.

37. *Severance pay.* a. Severance pay is compensation in addition to regular salaries and wages which is paid by a hospital to employees whose services are being terminated. Costs of severance pay are allowable only to the extent that such payments are required by law, by employer employee agreement, by established policy that constitutes in effect an implied agreement on the institution's part, or by circumstances of the particular employment

b. Severance payments that are due to normal, recurring turnover, and which otherwise meet the conditions of (a) above may be allowed provided the actual costs of such severance payments are regarded as expenses applicable to the current fiscal year and are equitably distributed among the institution's activities during that period.

c. Severance payments that are due to abnormal or mass terminations are of such conjectural nature that allowability must be determined on a case-by-case basis. However, the Government recognizes its obligation to participate to the extent of its fair share in any specific payment.

38. *Specialized service facilities operated by a hospital.* a. The costs of institutional services involving the use of highly complex and specialized facilities such as electronic computers and reactors are allowable provided the charges therefor meet the conditions of (b) or (c) below, and otherwise take into account any items of income or federal financing that qualify as applicable credits under para. III–E.

b. The costs of such hospital services normally will be charged directly to applicable research agreements based on actual usage or occupancy of the facilities at rates that (1) are designed to recover only actual costs of providing such services, and (2) are applied on a nondiscriminatory basis as between organized research and other work of the hospital including commercial or accommodation sales and usage by the hospital for internal purposes. This would include use of such facilities as radiology, laboratories, maintenance men used for a special purpose, medical art, photography etc.

c. In the absence of an acceptable arrangement for direct costing as provided in (b) above, the costs incurred for such institutional services may be assigned to research agreements as indirect costs, provided the methods used achieve substantially the same results. Such arrangements should be worked out in coordination with all government users of the facilities in order to assure equitable distribution of the indirect costs.

39. *Special administrative costs.* Costs incurred for general public relations activities, catalogs, alumni activities, and similar services are unallowable.

40. *Staff and/or employee benefits.* a. Staff and/or employee benefits in the form of regular compensation paid to employees during periods of authorized absences from the job such as for annual leave, sick leave military leave and the like are allowable provided such costs are absorbed by all hospital activities including organized research in proportion to the relative amount of time or effort actually devoted to each.

b. Staff benefits in the form of employer contributions or expenses for Social Security taxes, employee insurance, Workmen's Compensation insurance, the Pension Plan (see para. IX–B.25), hospital costs or

remission of hospital charges to the extent of costs for individual employees or their families, and the like are allowable provided such benefits are granted in accordance with established hospital policies, and provided such contributions and other expenses whether treated as indirect costs or an increment of direct labor costs are distributed to particular research agreements and other activities in a manner consistent with the pattern of benefits accruing to the individuals or groups of employees whose salaries and wages are chargeable to such research agreements and other activities.

41. *Taxes.* a. In general, taxes which the hospital is required to pay and which are paid or accrued in accordance with generally accepted accounting principles, and payments made to local governments in lieu of taxes which are commensurate with the local government services received are allowable except for (1) taxes from which exemptions are available to the hospital directly or which are available to the hospital based on an exemption afforded the Government and in the latter case when the sponsoring agency makes available the necessary exemption certificates, (2) special assessments on land which represent capital improvements, and (3) Federal Income Taxes.

b. Any refund of taxes, interest, or penalties, and any payment to the hospital of interest thereon attributable to taxes, interest or penalties, which were allowed as research agreement costs will be credited or paid to the Government in the manner directed by the Government provided any interest actually paid or credited to a hospital incident to a refund of tax, interest, and penalty will be paid or credited to the Government only to the extent that such interest accrued over the period during which the hospital had been reimbursed by the Government for the taxes, interest, and penalties.

42. *Transportation costs.* Costs incurred for inbound freight, express, cartage, postage and other transportation services relating either to goods purchased, in process, or delivered are allowable. When such costs can readily be identified with the items involved, they may be charged directly as transportation costs or added to the cost of such items. Where identification with the material received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the research agreement, should be treated as a direct cost.

43. *Travel costs.* a. Travel costs are the expenses for transportation, lodging, subsistence, and related items incurred by employees who are in travel status on official business of the hospital. Such costs may be charged on an actual basis, on a per diem or mileage basis in lieu of actual costs incurred, or on a combination of the two provided the method used is applied to an entire trip and not to selected days of the trip, and results in charges consistent with those normally allowed by the institution in its regular operations.

b. Travel costs are allowable subject to (c) and (d) below when they are directly attributable to specific work under a research agreement or when they are incurred in the normal course of administration of the hospital or a department or research program thereof.

c. The difference in cost between first class air accommodations and less than first class air accommodations is unallowable except when less than first class air accommodations are not reasonably available to meet necessary mission requirements such as where less than first class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

d. Costs of personnel movements of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency or its authorized representative.

44. *Termination costs applicable to contracts.* a. Contract terminations generally give rise to the incurrence of costs or to the need for special treatment of costs which would not have arisen had the contract not been terminated. Items peculiar to termination are set forth below. They are to be used in conjunction with all other provisions of these principles in the case of contract termination.

b. The cost of common items of material reasonably usable on the hospital's other work will not be allowable unless the hospital submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, consideration should be given to the hospital's plans for current scheduled work or activities including other research agreements. Contemporaneous purchases of common items by the hospital will be regarded as evidence that such items are reasonably usable on the hospital's other work. Any acceptance of common items as allowable to the terminated portion of the contract should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirement of other work.

c. If in a particular case, despite all reasonable efforts by the hospital, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in these principles, except that any such costs continuing after termination due to the negligent or willful failure of the hospital to discontinue such costs will be considered unacceptable.

d. Loss of useful value of special tooling and special machinery and equipment is generally allowable, provided (1) such special tooling, machinery or equipment is not reasonably capable of use in the other work of the hospital; (2) the interest of the Government is protected by transfer of title or by other means deemed appropriate by the contracting officer; and (3) the loss of useful value as to any one terminated contract is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the contract bears to the entire terminated contract and other government contracts for which the special tooling, special machinery or equipment was acquired.

e. Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated contract, less the residual value of such leases, if (1) the amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the contract and such further period as may be reasonable; and (2) the hospital makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease. There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the contract and of reasonable restoration required by the provisions of the lease.

f. Settlement expenses including the following are generally allowable: (1) accounting, legal, clerical, and similar costs reasonably necessary for the preparation and presentation to contracting officers of settlement claims and supporting data with respect to the terminated portion of the contract and the termination and settlement of subcontracts; and (2) reasonable costs for the storage, transportation, protection, and disposition of property provided by the Government or acquired or produced by the institution for the contract.

g. Subcontractor claims including the allocable portion of claims which are common to the contract and to other work of the contractor are generally allowable.

45. *Voluntary services.* The value of voluntary services provided by sisters or other members of religious orders is allowable provided that amounts do not exceed that paid other employees for similar work. Such amounts must be identifiable in the records of the hospital as a legal obligation of the hospital. This may be reflected by an agreement between the religious order and the hospital supported by evidence of payments to the order.

Appendix F—Principles for Determining Costs Applicable to Grants and Contracts With Nonprofit Institutions

A. Purpose and Scope

1. *Objectives.* This Appendix provides principles for determining the costs applicable to grants and contracts awarded by the Department of Health, Education, and Welfare and performed by nonprofit organizations other than educational institutions, hospitals and State and local Government organizations. These principles are confined to the subject of cost determination and make no attempt to identify the circumstances or dictate the extent of agency and institutional participation in the financing of a particular project. The principles are designed to

provide recognition of the full allocated costs of work under generally accepted accounting principles. No provision for profit or other increment above cost is provided for in these principles.

2. *Definition of Nonprofit Institution.* (a) A nonprofit institution for purposes of this document is any corporation, foundation, trust, association, cooperative or other organization other than (i) educational institutions, (ii) hospitals and (iii) State and local Governmental agencies, bureaus or departments, which is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest, which is not organized primarily for profit and which uses all income exceeding costs to maintain, improve and/or expand its operations.

The charter or other legally binding authority for the existence of the institution must provide that no part of the net earnings, properties or other assets of the institution, on dissolution or otherwise, shall inure to the benefits of any private person or individual including any member, employee, officer, director or trustee of the institution, and that, on liquidation or dissolution all properties and assets remaining after providing for all debts and obligations shall be distributed and paid over to such other fund, foundation or other organization formed and operated as a nonprofit institution, as defined herein, as the board of directors or trustees may determine. Institutions which have received tax exemptions as nonprofit institutions from the U.S. Internal Revenue Service shall be considered to have met the criteria of this definition.

(b) For purposes of this document, the terms nonprofit and not-for-profit as they are descriptively applied to institutions shall be considered synonymous provided the requirements of 2(a) are met.

3. *Policy guides.* The successful application of these principles requires development of mutual understanding between representatives of nonprofit institutions and of the Federal Government as to their scope, applicability, and interpretation. It is recognized that the arrangements for agency and institutional participation in the financing of a project are properly subject to negotiation between the agency and the institution concerned in accordance with such governmentwide criteria as may be applicable, that each institution should be expected to employ sound management practice in the fulfillment of its obligation, and that each grantee or contractor organization in recognition of its own unique combination of staff, facilities and experience should be responsible for employing whatever form of organization and management techniques as may be necessary to assure proper efficient administration.

4. *Application.* These principles shall be applied in determining cost incurred in the performance of all grants and cost-reimbursement type contracts awarded by the Department of Health, Education, and Welfare. The principles shall also apply to cost-reimbursement type contracts performed under DHEW grants and cost-reimbursement type subcontracts and shall be used as a guide in the pricing of fixed price contracts and subcontracts. The principles do not apply to construction grants or contracts.

B. Basic Considerations

1. *Composition of total cost.* The total cost of a contract or grant is the sum of the allowable direct and indirect costs allocable to the grant/contract less any applicable credits. In ascertaining what constitutes costs, any generally accepted accounting method of determining or estimating costs that is equitable under the circumstances may be used.

2. *Factors affecting allowability of costs.* Factors to be considered in determining the allowability of individual items of cost include (a) reasonableness, (b) allocability, (c) application of those generally accepted accounting principles and practices appropriate to the particular circumstances, and (d) any limitations or exclusions set forth in this document or otherwise included in the grant/contract as to types or amounts of cost items.

3. *Definition of reasonableness.* A cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. The question of the reasonableness of specific costs must be scrutinized with particular care in connection with institutions or separate divisions thereof which may not be subject to effective competitive restraints. What is reasonable depends upon a variety of considerations and circumstances involving both the nature and amount of the cost in question. In determining the reasonableness of a given cost, consideration shall be given to:

(a) Whether the cost is of a type generally recognized as ordinary and necessary for the operation of the institution or the performance of the grant/contract.

(b) The restraints or requirements imposed by such factors as generally accepted sound business practices, arms length bargaining, Federal and State laws and regulations, and grant/contract terms and specifications;

(c) The action that a prudent businessman would take in the circumstances, considering his responsibilities to the public at large, the Government, his employees, his clients, shareholders or members and the fulfillment of the purposes for which the institution was organized; and

(d) Significant deviations from the established practices of the institution which may unjustifiably increase the grant/contract costs.

4. *Definition of allocability.* A cost is allocable if it is assignable or chargeable to a particular cost objective, such as a grant/contract, project, product, service, process, or other major activity, in accordance with the relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government grant/contract if it:

(a) Is incurred specifically for the grant/contract;

(b) Benefits both the grant/contract and other work and can be distributed to them in reasonable proportion to the benefits received; or

(c) Is necessary to the overall operation of the institution, although a direct relationship to any particular cost objective cannot be shown.

Where an organization utilizes the Standards of Accounting and Financial Reporting for Voluntary Health and Welfare Organizations (or comparable generally accepted accounting standards peculiar to its particular organizational structure or activity) to allocate costs to non-HEW supported activities it must also use such standards to allocate costs to HEW grants/contracts.

5. *Applicable credits.* The term applicable credits refers to those receipt or negative expenditure types of transactions which operate to offset or reduce expense items that are allocable to grants or contracts as direct or indirect costs. Typical examples of such transactions are: purchase discounts, rebates or allowances; recoveries or indemnities on losses; sales of scrap or incidental services; and adjustments of overpayments or erroneous charges. The applicable portion of any income, rebate, allowance, and other credit relating to any allowable cost, received by or accruing to the grantee/contractor shall be credited to the Government either as a cost reduction or by cash refund, as appropriate.

C. Direct Costs

1. A direct cost is any cost which can be identified specifically with a particular cost objective. Direct costs are not limited to items which are incorporated in the end product as material or labor. Costs identified specifically with the grant/contract are direct costs of the grant/contract and may be charged directly thereto. Costs identified specifically with other work of the institution are direct costs of that work and are not to be charged to the grant/contract either directly or indirectly. Items charged as direct cost to Government-supported projects must be charged in a uniform manner to all other work of the institution in order to preclude an overcharge to the Government as a result of the Government's participation in the indirect cost pool. Conversely, where the institution's established accounting system provides for the treatment of certain items of cost as direct costs of the institution, then the same items must be considered direct costs to Government-supported projects and may not be included in the indirect cost pool.

2. Certain types of cost, or costs associated with certain activities are not reimbursable as a charge to a DHEW grant/contract. These unallowable costs or activities are identified in section G. Even though a particular activity or cost is designated as unallowable for purposes of computing costs charged to Government work, it nonetheless must be treated as a direct cost or activity if a portion of the institution's indirect cost (as defined in section D) is properly allocable to it. The amount of indirect cost allocated must be in accordance with the principles set forth in section D–2. In general, an unallowable institutional activity shall be treated as a direct function when it (1) includes salaries of personnel, (2) occupies space, and (3) is serviced by an indirect cost grouping(s). Thus the costs associated with the following types

of activities when normal or necessary to an institution's primary mission shall be treated as direct costs:

(a) Maintenance of membership rolls, subscriptions, publications and related functions.

(b) Providing services and information to members, legislative or administrative bodies or the public.

(c) Promotion, lobbying, and other forms of public relations.

(d) Meetings and conferences except those held to conduct the general administration of the institution.

(e) Fund raising.

(f) Maintenance, protection, and investment of special funds not used in operation of institutions.

(g) Administration of group benefits on behalf of members or clients including life and hospital insurance, annuity or retirement plans, financial aid, etc.

(h) Other activities performed primarily as a service to a membership, clients, or the public.

3. This definition shall be applied to all items of cost of significant amount unless the institution demonstrates that the application of any different current practice achieves substantially the same results. Direct cost items of minor amount may be distributed as indirect costs as provided in section D.

Dd. Indirect Costs

1. An indirect cost is one which, because of its incurrence for common or joint objectives, is not readily subject to treatment as a direct cost. Minor direct cost items may be considered to be indirect costs for reasons of practicality. After direct costs have been determined and charged directly to the grant/contract or other work as appropriate, indirect costs are those remaining to be allocated to the several classes of work. The overall objective of the allocation process is to distribute the indirect costs of the institution to its various major activities or cost objectives in reasonable proportions with the benefits provided to those activities or cost objective. Because of the diverse natures and purposes of organizations falling within the definition of a non-profit organization, it is impractical to specifically identify those functions which constitute major activities for purposes of identifying and distributing indirect costs. Such identification will be dependent upon an institution's purpose-in-being, the services it renders to the public, its clients and/or members, the amount of effort devoted to fund raising activities, public relations, and membership activities, etc. (See section C–2.)

2. Indirect costs shall be accumulated by logical cost groupings with due consideration of the reasons for incurring the costs. Each grouping should be determined so as to permit distribution of the grouping on the basis of the benefits accruing to the several cost objectives. Sub-grouping may be required where there is no single equitable distribution base for all the elements of cost comprising a group. Actual conditions must be taken into account in selecting the method or base to be used in distributing the expenses assembled under each of the individual cost groupings established to applicable cost objectives. Where a distribution can be made by assignment of a cost grouping directly to the area benefited, the distribution should be made in that manner. Where the expenses under a cost grouping are more general in nature, the distribution to the cost objectives should be made through use of a selected base which will produce results which are equitable to both the Government and the institution. In general, any cost element or cost-related factor associated with the institution's work is potentially adaptable for use as a distribution base provided (1) it can readily be expressed in terms of dollars or other quantitative measure (total direct expenditures, direct salaries, manhours applied, square feet utilized, hours of usage, number of documents processed, population served, and the like); and (2) it is common to the cost objectives during the base period. The essential consideration in selection of the distribution base in each instance is that it be the one best suited for assigning the pool of costs to the cost objectives in accord with the relative benefits derived; the traceable cause and effect relationship; or logic and reason, where neither benefit nor cause and effect relationship is determinable.

3. The number and composition of the groupings should be governed by practical considerations and should be such as not to complicate unduly the allocation where substantially the same results are achieved through less precise methods.

4. A base period for distribution of indirect costs is the period during which such costs are incurred and accumulated for distribution to work performed within that period. The base period normally should coincide with the fiscal year established by the institution, but in any event the base period should be so selected as to avoid inequities in the distribution of costs.

E. Determination and Application of Indirect Cost Rate or Rates

1. *Indirect cost pools.* (a) Subject to (b) below, indirect costs allocable to an institution's direct functions should be treated as a common pool, and the costs in such common pool should then be distributed to the individual projects benefiting therefrom by use of a single rate.

(b) In some instances a single rate for use across the board on all activities at an institution may not be appropriate, since it would not take into account those different environmental factors which may affect substantially the indirect costs applicable to a particular segment of work at the institution. For this purpose, a particular segment of work may be that performed under a single grant/contract or it may consist of work under a group of grants/contracts performed in a common environment. The environmental factors are not limited to the physical location of the work. Other important factors are the level of the administrative support required, the nature of the facilities or other resources employed, the scientific disciplines or technical skills involved, the organizational arrangements used, or any combination thereof. Where a particular segment of work is performed within an environment which appears to generate a significantly different level of indirect costs, provision should be made for a separate indirect cost pool applicable to such work. The separate indirect cost pool should be developed during the course of the regular distribution process, and the separate indirect cost rate resulting therefrom should be utilized provided it is determined that (1) such indirect cost rate differs significantly from that which would have been obtained under (a) above, and (2) the volume of work to which such rate would apply is material in relation to other activity at the institution.

2. *The distribution base.* Indirect costs should be distributed to each applicable project on the basis of direct salaries and wages, total direct costs or other basis which results in an equitable distribution. For this purpose, an indirect cost rate should be determined for each of the separate indirect cost pools developed pursuant to section E.1. The rate in each case should be stated as the percentage which the amount of the particular indirect cost pool is of the base selected.

F. Application of Principles and Procedures

1. Costs shall be allowed to the extent that they are reasonable (see B.3) allocable (see B.4) and determined to be allowable in view of the other factors set forth in paragraph B.2. and section G. These criteria apply to all of the selected items of cost which follow notwithstanding that particular guidance is provided in connection with certain specific items for emphasis or clarity.

2. Costs of all subcontracts under a grant or cost-reimbursement type contract are subject to those Federal cost regulations and policies appropriate to the subcontract involved. Thus if the subcontract is for supplies or services with a nonprofit institution other than an educational institution, hospital or State and local governmental unit this document would apply; if the subcontract is for supplies or services with a commercial organization, Federal Procurement Regulation Part 1.15.2 would apply; if the subcontract is with an educational institution, Appendix D to this Part (Federal Procurement Regulation Part 1.15.3) would apply; if the subcontract is with a hospital, the Department of Health, Education, and Welfare's Cost Principles for Hospitals would apply (see Appendix E to this Part).

3. Selected items of cost are treated in Section G. However, section G does not cover every element of cost and every situation that might arise in a particular case. Failure to treat any item of cost in Section G is not intended to imply that it is either allowable or unallowable. With respect to all items, whether or not specifically covered, determination of allowability shall be based on the principles and standards set forth in this document and, where appropriate, the treatment of similar or related selected items.

G. General Standards for Selected Items of Cost

Sections G–1 through G–46 provide standards to be applied in establishing the

allowability of certain items involved in determining costs. These standards should apply irrespective of whether a particular item of cost is properly treated as direct cost or indirect cost. Failure to mention a particular item of cost in the standards is not intended to imply that it is either allowable or unallowable; rather determination as to allowability in each case should be based on the treatment or standards provided for similar or related items of cost. In case of a discrepancy between the provisions of a specific grant/contract and the applicable standards provided, the provisions of the grant/contract shall govern. Under any given grant/contract the reasonableness and allocability of certain items of costs may be difficult to determine. This is particularly true in connection with nonprofit institutions which are so diverse in nature and not subject to effective competitive restraints. In order to avoid possible subsequent disallowance or dispute based on unreasonableness or nonallocability, it is important that institutions entering into grants or contracts with the Government seek agreement in advance of the incurrence of special or unusual costs in categories where reasonableness or allocability are difficult to determine. Such action may also be initiated by the Government. Examples of costs on which advance agreements may be particularly important are:

1. Compensation for personal services;
2. Consultant fees;
3. Deferred maintenance costs;
4. Excess facility costs;
5. Materiel, services, and supplies sold between organizations or divisions under common control;
6. Preaward costs;
7. Publication and public information costs;
8. Royalties;
9. Training and educational costs;
10. Travel costs, as related to special or mass personnel movement, and to the class of air-travel accommodations allowable;
11. Use charge for fully depreciated assets;
12. Depreciation or use charge on assets donated to the institution by third parties.

1. *Advertising costs.* (a) Advertising costs mean the costs of advertising media and corollary administrative costs. Advertising media include magazine, newspapers, radio, and television programs, direct mail, trade papers, outdoor advertising, dealer cards, and window displays, conventions, exhibits, free goods, and samples, and the like.

(b) The only advertising costs allowable are those which are solely for (1) the recruitment of personnel required for the performance by the institution of obligations arising under the grant/contract, when considered in conjunction with all other recruitment costs, as set forth in G.36; (2) the procurement of scarce items for the performance of the grant/contract or (3) the disposal of scrap or surplus materials acquired in the performance of the project. Costs of this nature, if incurred for more than one Government award or for both Government work and other work of the institution, are allowable to the extent that the principles in paragraphs B–3, B–4, and section D are observed.

2. *Bad debts.* Bad debts, including losses (whether actual or estimated) arising from uncollectible customers' accounts and other claims, related costs, and related legal costs, are unallowable.

3. *Bidding or proposal costs.* Bidding or proposal costs are the immediate costs of preparing bids or proposals on potential Government and non-Government contracts or projects or applications for financial assistance under Federal grant and contract programs, including development of scientific, engineering and cost data necessary to support the institution's bids, proposals or applications. Bidding costs of the current accounting period are allowable as part of the indirect cost pool. Costs of past accounting periods are unallowable. Bidding costs do not include any of those costs described in section G–16 and G–30.

4. *Bonding costs.* (a) Bonding costs arise when the Government requires assurance against financial loss to itself or others by reason of the act or default of the grantee/contractor. They arise also in instances where the grantee/contractor requires similar assurance. Included are such bonds as bid, performance, payment, advance payment, infringement, and fidelity bonds.

(b) Costs of bonding required pursuant to the terms of the grant/contract are allowable.

(c) Costs of bonding required by the grantee/contractor in the general conduct of its operations are allowable to the extent that such bonding is in accordance with sound business practice and the rates and premiums are reasonable under the circumstances.

5. *Civil defense costs.* (a) Civil defense costs are those incurred in planning for, and the protection of life and property against, the possible effects of enemy attack. Reasonable costs of civil defense measures (including costs in excess of normal plant protection costs, first-aid training and supplies, fire fighting training and equipment, posting of additional exit notices and directions, and other approved civil defense measures) undertaken on the institution's premises pursuant to suggestions or requirements of civil defense authorities are allowable when allocated to all work of the institution.

(b) Costs of capital assets under (a) above are allowable through depreciation or use charges in accordance with G–10.

(c) Contributions to local civil defense funds and projects are unallowable.

6. *Compensation for personal services—*
(a) *Definition.* Compensation for personal services includes all remuneration paid currently or accrued in whatever form and whether paid immediately or deferred for services rendered by employees of the institution during the period of grant/contract performance. It includes, but is not limited to salary, wages, directors' and executive committee members' fees, bonuses, incentive awards, employee insurance, fringe benefits, and contributions to pension, annuity, and management employee incentive compensation plans.

(b) *Allowability.* Except as otherwise specifically provided in this subsection, the costs of compensation for personal services are to be treated as allowable to the extent that:

(1) Compensation is paid in accordance with policy, programs, and procedures that effectively relate individual compensation to the individual's contribution to the performance of grant or contract work, result in internally consistent treatment of employees in like situations, and effectively relate compensation paid within the organization to that paid for similar services outside the organization;

(2) Total compensation of individual employees is reasonable for the services rendered; and

(3) Costs are not in excess of those costs which are allowable by the Internal Revenue Code and regulations thereunder.

(c) *Reasonableness.* (1) When the institution is predominantly engaged in activities other than those sponsored by the Federal Government, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is consistent with that paid for similar work in the institution's other activities;

(2) When the institution is predominantly engaged in federally sponsored activities, and in cases where the kind of employees required for the federally sponsored activities are not found in the institution's other activities, compensation for employees on federally sponsored work will be considered reasonable to the extent that it is comparable to that paid for similar work in the labor markets in which the institution competes for the kind of employees involved.

(d) *Review and approval of compensation of individual employees.* In determining the reasonableness of compensation, the compensation of each individual employee normally need not be subject to review and approval. Reviews and approvals of individuals need be made only in those cases in which a general review reveals amounts or types of compensation which appear unreasonable or otherwise out of line.

(e) *Special considerations in determining allowability.* Certain conditions require special consideration and possible limitation as to allowability for grant and contract cost purposes where amounts appear excessive. Among such conditions are the following:

(1) Compensation to share holders, members, trustees, directors, associates, officers or members of the immediate families thereof, or to persons who are contractually committed to acquire a substantial financial interest in the enterprise. Determination should be made that such compensation is reasonable for the actual personal services rendered rather than a distribution of earnings in excess of costs.

(2) Any change in an institution's compensation policy resulting in a substantial increase in the institution's level of compensation, particularly when it was concurrent with an increase in the ratio of Government awards to other business, or any change in the treatment of allowability of specific types of compensation due to changes in Government policy.

(3) The institution's activities are such that its compensation levels are not subject to the restraints normally occurring in the conduct of competitive business.

(f) Notwithstanding any other provisions of this subsection, costs of compensation are not allowable to the extent that they result from provisions of labor-management agreements that, as applied to work in the performance of Government grants or contracts are determined to be unreasonable either because they are unwarranted by the character and circumstances of the work or because they are discriminatory against the Government. The application of the provisions of a labor-management agreement designed to apply to a given set of circumstances and conditions of employment (for example, work involving extremely hazardous activities or work not requiring recurrent use of overtime) is unwarranted when applied to a Government grant or contract involving significantly different circumstances and conditions of employment, (for example, work involving less hazardous activities or work continually requiring use of overtime). It is discriminatory against the Government if its results in individual personnel compensation (in whatever form or name) in excess of that being paid for similar non-Government work under comparable circumstances. Disallowance of costs will not be made under this subparagraph unless:

(1) The institution has been permitted an opportunity to justify the costs; and

(2) Due consideration has been given to whether there are unusual conditions pertaining to the Government work which impose burdens, hardships, or hazards on the institution's employees, for which compensation that might otherwise appear unreasonable is required to attract and hold necessary personnel.

(g)(1) In addition to the general requirements set forth in (a) through (f) of this subsection, certain forms of compensation are subject to further requirements as specified in (2) through (9) below.

(2) *Salaries and wages.* Salaries and wages for current services include gross compensation paid to employees in the form of cash, products, or services, and are allowable. However, see G.25 as it relates to compensation for overtime.

(3) *Incentive compensation.* Incentive compensation to employees based on cost reduction, or efficient performance, suggestion awards, safety awards, etc. are allowable to the extent that the overall compensation is determined to be reasonable and such costs are paid or accrued pursuant to an agreement entered into in good faith between the institution and the employees before the services were rendered, or pursuant to an established plan followed by the institution to consistently as to imply, in effect, an agreement to make such payment. Awards, and incentive compensation when deferred are allowable to the extent provided in (4) below.

(4) *Deferred compensation.* (a) As used herein, deferred compensation includes all remuneration, in whatever form, for which the employee is not paid until after the lapse of a stated period of years or the occurrence of other events as provided in the plans, except that it does not include normal end of accounting period accruals for regular salaries and wages. It includes (i) contributions to pension and annuity plans, (ii) contributions to disability, withdrawal, insurance, survivorship, and similar benefit plans, and (iii) other deferred compensation.

(b) Deferred compensation is allowable to the extent that (i) except for past service pension and retirement costs, it is for services rendered during the grant/contract period; (ii) it is, together with all other compensation paid to the employee, reasonable in amount; (iii) it is paid pursuant to an agreement entered into in good faith between the institution and its employees before the services are rendered, or pursuant to an established plan followed by the institution so consistently as to imply, in effect, an agreement to make such payments; (iv) the benefits of the plan are vested in the employees or their designated beneficiaries and no part of the deferred compensation reverts to the employer institution; (v) in the case of past service pension costs, it is amortized over a period of ten years or more; and (vi) for a plan which is subject to approval by the Internal Revenue Service, it falls within the criteria and standards of the Internal Revenue Code and the regulations of the Internal Revenue Service.

(c) In determining the cost of deferred compensation allowable under the grant or contract, appropriate adjustments shall be made for credits or gains, including those arising out of both normal and abnormal employee turnover, or any other contingencies that can result in a forfeiture by employees of such deferred compensation. Adjustments shall be made only for forfeitures which directly or indirectly inure to the benefit of the institution; forfeitures which inure to the benefits of other employees covered by a deferred compensation plan with no reduction in the institution's costs will not normally give rise to an adjustment in grant/contract costs. Adjustments for normal employee turnover shall be based on the institution's experience and on foreseeable prospects, and shall be reflected in the amount of cost currently allowable. Such adjustments will be unnecessary to the extent that the institution can demonstrate that its contributions take into account normal forfeitures. Adjustments for possible future abnormal forfeitures shall be effected according to the following rules:

(i) Abnormal forfeitures that are foreseeable and which can be currently evaluated with reasonable accuracy, by actuarial or other sound computation shall be reflected by an adjustment of current costs otherwise allowable; and

(ii) Abnormal forfeitures, not within (i) above, may be made the subject of agreement between the Government and the institution either as to an equitable adjustment or a method of determining such adjustment.

(d) In determining whether deferred compensation is for services rendered during the agreement period or is for future services, consideration shall be given to conditions imposed upon eventual payment, such as requirements of continued employment, consultation after retirement, and covenants not to compete.

(5) *Fringe benefits.* Fringe benefits are allowances and services provided by the institution to its employees as compensation in addition to regular wages and salaries. Costs of fringe benefits, such as pay for vacations, holidays, sick leave, military leave, employee insurance, and supplemental unemployment benefit plans are allowable to the extent required by law, employer-employee agreement, or an established policy of the institution.

(6) Severance pay. See G.40.

(7) Training and education expenses. See G.44.

(8) *Location allowances.* (a) "Location allowances," sometimes called "supplemental pay" or "incentive pay," are compensation in addition to normal wages or salaries and are paid by institutions to especially compensate or induce employees to undertake or continue work at locations which may be isolated or in an unfavorable environment. Location allowances include extra wage or salary payments in the form of station allowances, extended per diem, or mileage payments for daily commuting; they also include such benefits as institution-furnished housing. Payment of location allowances shall be allowed as costs under grants and cost-reimbursement type contracts, or recognized in pricing fixed-price type contracts, only with prior approval in writing from the awarding agency and only where and so long as the isolation or unfavorable environment of the site makes such payments necessary to the accomplishment of the work without unacceptable delays. Whether the site is so isolated, or its environment is so unfavorable, as to require location allowances is to be determined in the light of (a) its location and climate; (b) the availability and adequacy of housing within reasonable commuting distance; and (c) the availability and adequacy of educational, recreational, medical, and hospital facilities. The extent to which compensation includes location allowances is to be determined by comparing it with (a) the institution's normal compensation policy, including pay scales at its principal operating locations; (b) pay scales of other organizations and concerns operating at or near the site; and (c) compensation paid by other concerns within the same field for similar services elsewhere.

(b) Locations for which location allowances are paid shall be reviewed at least once a year to determine whether such allowances should continue to be allowed.

(9) *Support of salaries and wages.* (a) Direct charges for professionals must be supported by either:

(i) An adequate appointment and workload distribution system, accompanied by monthly reviews performed by responsible change in workload distribution of each professional (i.e., an exception reporting system) or

(ii) A monthly after-the-fact certification system which will require persons in supervisory positions having firsthand knowledge of the services performed to report the distribution of effort (i.e., a positive reporting system). Such reports must account for the *total* salaried effort of the persons covered. Consequently, a system which provides for the reporting only of effort

applicable to federally sponsored activities is not acceptable.

(b) Direct charges for salaries and wages of nonprofessionals will be supported by time and attendance and payroll distribution records.

(c) Allowable indirect personal services costs will be supported by the institution's accounting system maintained in accordance with generally accepted institutional practices. Where a comprehensive accounting system does not exist, the institution should make periodic surveys no less frequently than annually to support the indirect personal services costs for inclusion in the overhead pool. Such supporting documentation must be retained for subsequent review by Government representatives.

7. *Capital expenditures.* The costs of equipment, buildings, and repairs which materially increase the value or useful life of buildings or equipment, are unallowable except as provided for in the grant/contract.

8. *Contingencies.* (a) A contingency is a possible future event or condition arising from presently known or unknown causes, the outcome of which is indeterminable at the present time.

(b) In historical costing, contingencies are not normally present since such costing deals with costs which have been incurred and recorded on the institution's books. Accordingly, contingencies are generally unallowable for historical costing purposes. However, in some cases, as for example, terminations, a contingency factor may be recognized which is applicable to a past period to give recognition to minor unsettled factors in the interest of expeditious settlement.

(c) In connection with estimates of future costs, contingencies fall into two categories:

(1) Those which may arise from presently known and existing conditions, the effects of which are foreseeable within reasonable limits of accuracy; e.g., pension funds, sick leave, and vacation accruals, etc. In such situations where they exist, contingencies of this category are to be included in the estimates of future cost so as to provide the best estimate of performance costs; and

(2) Those which may arise from presently known or unknown conditions, the effect of which cannot be measured so precisely as to provide equitable results to the institution and to the Government; e.g., results of pending litigation, and other general business risks. Contingencies of this category are to be excluded from cost estimates under the several items of cost, but should be disclosed separately, including the basis upon which the contingency is computed in order to facilitate the negotiation of appropriate contractual coverage (see, for example, G-17, G-21, and G-40).

9. *Contributions and donations.* (a) Contributions and donations by the grantee/contractor are unallowable.

(b) The value of donated services or goods provided by individual volunteers or members of volunteer organizations is not an allowable cost; however, the fair market value of donated services or goods utilized in the performance of a direct cost activity as defined in C.1 and C.2 shall be considered in the determination of the indirect cost rate(s) and, accordingly, shall be allocated a proportionate share of indirect cost.

10. *Depreciation and use allowances.* (a) Institutions may be compensated for the use of buildings, capital improvements and usable equipment on hand through depreciation or use allowances. Depreciation is a charge to current operations which distributes the cost of a tangible capital asset, less estimated residual value, over the estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life has reference to the prospective period of economic usefulness in the particular institution's operations as distinguished from physical life. Use allowances are the means of allowing compensation when depreciation or other equivalent costs are not considered.

(b) Depreciation or a use allowance on assets donated by third parties is allowable. However, any limitations on the amount of depreciation which would have applied to the donor as a result of restrictions contained in this Section shall also apply to the recipient organization.

(c) Due consideration will be given to Government-furnished facilities utilized by the institution when computing use allowances and/or depreciation if the Government-furnished facilities are material in amount. Computation of the use allowance and/or depreciation will exclude both the cost or any portion of the cost of grounds, buildings and equipment borne by or donated by the Federal Government, irrespective of where title was originally vested or where it presently resides, and secondly, the cost of grounds. Capital expenditures for land improvements (paved areas, fences, streets, sidewalks, utility conduits, and similar improvements not already included in the cost of buildings) are allowable provided the systematic amortization of such capital expenditures has been provided in the institution's books of account, based on reasonable determinations of the probable useful lives of the individual items involved, and the share allocated to the grant or contract is developed from the amount thus amortized for the base period involved.

(d) Normal depreciation on an institution's plant, equipment, and other capital facilities, except as excluded by (d) below, is an allowable element of cost provided that the amount thereof is computed:

(1) Upon a property cost basis which could have been used by the institution for Federal Income Tax purposes, had such institution been subject to the payment of income tax; and

(2) By the consistent application to the assets concerned of any generally accepted accounting method, and subject to the limitations of the Internal Revenue Code of 1954 as amended, including—

(i) The straight line method;

(ii) The declining balance method, using a rate not exceeding twice the rate which would have been used had the annual allowance been computed under the method described in (i) above;

(iii) The sum-of-the-years-digits method; and

(iv) Any other consistent method productive of an annual allowance which, when added to all allowances for the period commencing with the use of the property and including the current year, does not during the first two-thirds of the useful life of the property exceed the total of such allowances which would have been used had such allowances been computed under the method described in (ii) above.

(v) Where the depreciation method is followed, adequate property records must be maintained. The period of useful service (service life) established in each case for usable capital assets must be determined on a realistic basis which takes into consideration such factors as type of construction, nature of the equipment used, technological developments in the particular area, and the renewal and replacement policies followed for the individual items or classes of assets involved. Where the depreciation method is introduced for application to assets acquired in prior years, the annual charges therefrom must not exceed the amounts that would have resulted had the depreciation method been in effect from the date of acquisition of such assets.

(vi) Depreciation on idle or excess facilities shall not be allowed except on such facilities as are reasonably necessary for standby purposes. (See G. 13.)

(vii) Where an institution elects to go on a depreciation basis for a particular class of assets, no depreciation, rental or use charge may be allowed on any such assets that would be viewed as fully depreciated. *Provided, however,* that reasonable use charges may be negotiated for any such assets if warranted after taking into consideration the cost of the facility or item involved, the estimated useful life remaining at time of negotiation, the actual replacement policy followed in the light of service lives used for calculating depreciation, the effect of any increased maintenance charges or decreased efficiency due to age, and any other factors pertinent to the utilization of the facility or item for the purpose contemplated.

(viii) Where the use allowance method is followed, the use allowance for buildings and improvements will be computed at an annual rate not exceeding 2 percent of acquisition cost. The use allowance for equipment will be computed at an annual rate not exceeding 6⅔ percent of acquisition cost of usable equipment in those cases where the institution maintains current records with respect to such equipment on hand. Where the institution's records reflect only the cost (actual or estimated) of the original complement of equipment, the use allowance will be computed at an annual rate not exceeding 10 percent of such cost. Original complement for this purpose means the complement of equipment initially placed in buildings to perform the functions currently being performed in such buildings; however, where a permanent change in the function of a building takes place, a redetermination of the original complement of equipment may be made at that time to establish a new original complement. In those cases where no

equipment records are maintained, the institution will justify a reasonable estimate of the acquisition cost of usable equipment which may be used to compute the use allowance at an annual rate not exceeding 6⅔ percent of such estimate.

(ix) Depreciation and/or use charges should usually be allocated to all activities as an indirect cost.

11. *Employee morale, health, welfare costs, and credits.* (a) Employee morale, health, and welfare activities are those services or benefits provided by the institution to its employees to improve working conditions, employer-employee relations, employee morale, and employee performance. Such activities include house publications, health or first-aid clinics, recreation, employee counseling services and, for the purpose of this paragraph, food and dormitory services. Food and dormitory services include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the institution's employees at or near its facilities.

(b) Except as limited by (c) below, the aggregate of costs incurred on account of all activities mentioned in (a) above, less income generated by all such activities is allowable to the extent that the net amount is reasonable.

(c) Losses from the operation of food and dormitory services may be included as cost incurred under (b) above, only if the institution's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to accomplishment of the above objective, are not allowable, except that a loss may be allowed to the extent the institution can demonstrate that unusual circumstances exist (e.g., (1) where the institution must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available or (ii) where it is necessary to operate a facility at a lower volume than the facility could economically support) such that, even with efficient management, operation of the services on a break-even basis would require charging inordinately high prices or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas.

(d) In those situations where the institution has an arrangement authorizing an employee association to provide or operate a service such as vending machines in the institution's plant, and retain the profits derived therefrom, such profits shall be treated in the same manner as if the institution were providing the service (but see (e)).

(e) Contributions by the institution to an employee organization, including funds set over from vending machine receipts or similar sources, may be included as cost incurred under (b) above only to the extent that the institution demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if incurred by the institution directly.

12. *Entertainment costs.* Costs of amusement, diversion, social activities, ceremonials, and incidental costs relating thereto, such as meals, lodging, rentals, transportation, and gratuities, are unallowable (but see G-11 and G-43).

13. *Excess facility costs.* (a) As used in this paragraph, the words and phrases defined in this subparagraph (a) shall have the meanings set forth below.

(1) Facilities means plant or any portion thereof (inclusive of land integral to the operation); equipment indivdually or collectively; or any other tangible capital asset, wherever located, and whether owned or leased by the institution.

(2) Idle Facilities means completely unused facilities that are excess to the institution's current needs.

(3) Idle Capacity means the unused capacity of partially used facilities. It is the difference between that which a facility could achieve under 100 percent operating time on a one shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materiels, and other normal delays, and the extent to which the facility was actually used to meet demands during the accounting period. (A multiple shift basis may be used if it can be shown that this amount of usage could normally be expected for the type of facility involved.)

(4) Costs of idle facilities or idle capacity are costs such as maintenance, repair, housing, rent, and other related costs, e.g., property taxes, insurance, and depreciation.

(b) The costs of idle facilities are unallowable except to the extent that:

(i) They are necessary to meet fluctuations in workload; or

(ii) Although not necessary to meet fluctuations in workload, they were necessary when acquired and are now idle because of changes in program requirements, grantee/ contractor efforts to produce more economically, reorganization, termination, or other causes which could not have been reasonably foreseen.

Under the exception stated in (ii) of this subparagraph (b), costs of idle facilities are allowable for a reasonable period of time, ordinarily not to exceed 1 year, depending upon the initiative taken to use, lease, or dispose of such facilities (but see G.42(b) and (e)).

(c) The costs of idle capacity are normal costs of doing business and are a factor in the normal fluctuations of usage or overhead rates from period to period. Such costs are allowable, provided the capacity is reasonably anticipated to be necessary or was originally reasonable and is not subject to reduction or elimination by subletting, renting, or sale, in accordance with sound business, economics, or security practices. Widespread idle capacity throughout an entire plant or among a group of assets having substantially the same function may be idle facilities.

14. *Fines and penalties.* Costs of fines and penalties resulting from violations of, or failure of the institution to comply with, Federal, State, and local laws and regulations are unallowable except when incurred as a result of compliance with specific provisions of the grant or contract instructions in writing from the awarding agency.

15. *Fringe benefits.* (See G.–6–(g)–(5.)

16. *Independent research and development.* (a) An institution's independent research and development (I.R. & D.) is that research and development which is not sponsored by the Government or a non-Government organization or agency under a grant/ contract or other arrangement.

(b) Basic research, for the purpose of this document, is that type of research which is directed toward increase of knowledge within a particular discipline. In such research, the primary aim of the investigator is a fuller knowledge or understanding of the subject under study, rather than any practical application thereof. Applied research, for the purpose of this document consists of that type of effort which (1) is normally derived from the results of basic research, but may not be severable from the related basic research, (2) attempts to determine and expand the potentialities of new scientific discoveries or improvements in technology, materiels, processes, methods, devices, and techniques, and (3) attempts to "advance the state of the art." Applied research, does not include any such efforts when their principal aim is the design, development, or test of specific articles or services to be offered for sale, which are within the definition of the term development as defined in (c) below. Census research, for the purpose of this document, is that type of activity devoted to the compilation and interpretation of statistical and other analytical information acquired through survey (e.g., interview, circularization of questionnaires), observations or from books, treatises, articles or other sources relative to specifically defined activities, occurrences or conditions for the purpose of accomplishing some scientific end.

(c) "Development" is the systematic use of scientific knowledge which is directed toward the production of, or improvements in, useful products to meet specific performance requirements, but exclusive of manufacturing and production engineering.

(d) Independent research and development will be treated in a manner consistent with the treatment of sponsored research and development. Accordingly, an institution's I.R. & D. shall be allocated in proportionate share of indirect costs on the same basis that indirect costs are allocated to sponsored research and development.

(e) The cost of an institution's I.R. & D. including its proportionate share of indirect costs, is unallowable.

17. *Insurance and indemnification.* (a) Insurance includes insurance which the institution is required to carry, or which is approved, under the terms of the grant or contract and any other insurance which the institution maintains in connection with the general conduct of its business.

(1) Costs of insurance required or approved, and maintained, pursuant to the grant or contract are allowable.

(2) Costs of other insurance maintained by the institution in connection with the general conduct of its business are allowable subject to the following limitations:

(a) Types and extent of coverage shall be in accordance with sound business practice and the rates and premiums shall be reasonable under the circumstances;

(b) Costs allowed for business interruption or other similar insurance shall be limited to exclude coverage of profit;

(c) Costs of insurance or of any provision for a reserve covering the risk of loss of or damage to Government property are allowable only to the extent that the institution is liable for such loss or damage and such insurance or reserve does not cover loss or damage which results from willful misconduct or lack of good faith on the part of any of the institution's trustees, directors or officers, or other equivalent representatives, who have supervision or direction of (i) all or substantially all of the institution's business, or (ii) all or substantially all of the institution's operations at any one separate location in which the grant or contract is being performed, or who are specifically identified as the project director in the project or otherwise primarily responsible for the direction and/or execution of the project supported by the grant or contract.

(d) Provisions for a reserve under an approved self-insurance program are allowable to the extent that types of coverage, extent of coverage, and the rates and premiums would have been allowed had insurance been purchased to cover the risks; and

(e) Costs of insurance on the lives of trustees, officers, or other employees holding positions of similar responsibilities are allowable only to the extent that the insurance represents additional compensation. (See G–6).

(3) Actual losses which could have been covered by permissible insurance (through an approved self-insurance program or otherwise) are unallowable unless expressly provided for in the grant or contract, except:

(a) Costs incurred because of losses not covered under nominal deductible insurance coverage provided in keeping with sound business practice, are allowable; and

(b) Minor losses not covered by insurance, such as spoilage, breakage, and disappearance of supplies, which occur in the ordinary course of doing business, are allowable.

(c) Indemnification includes securing the institution against liabilities to third persons and any other loss or damage not compensated by insurance or otherwise. The Government is obligated to indemnify the institution only to the extent expressly provided in (a)(3) above.

18. *Interest and other financial costs.* (a) Costs incurred for interest on borrowed capital or temporary use of endowment funds, however represented, are unallowable.

(b) Costs of organized fund raising, including financial campaigns, endowment drives, solicitation of gifts and bequests, and similar expenses incurred solely to raise capital or obtain contributions, are unallowable.

(c) Costs of investment counsel and staff and similar expenses incurred solely to enhance income from investments are unallowable.

(d) Where substantial effort or time is devoted to fund raising and investment activities as described in (b) and (c) in relation to other functions of an institution, such activities shall be considered as a major activity of the institution and shall be allocated its share of indirect costs in accordance with section D. (See also C–2.)

19. *Labor relations costs.* Costs incurred in maintaining satisfactory relations between the institution and its employees, including costs of labor management committees, employee publications, and other related activities, are allowable.

20. *Losses on other grants or contracts.* Any excess of costs over income on any grant or contract is unallowable as a cost of any other grant or contract.

21. *Maintenance and repair costs.* (a) Costs necessary for the upkeep of property (including Government property unless otherwise provided for), which neither add to the permanent value of the property nor appreciably prolong its intended life, but keep it in an efficient operating condition, are to be treated as follows (but see G–10):

(1) Normal maintenance and repair costs are allowable:

(2) Extraordinary maintenance and repair costs are allowable provided such are allocated to the periods to which applicable for purposes of determining grant or contract costs.

(b) Expenditures for plant and equipment, including rehabilitation thereof, which, according to generally accepted accounting principles as applied under the institution's established policy, should be capitalized and subjected to depreciation, are allowable only on a depreciation basis.

22. *Materiels costs.* (a) The cost of consumable supplies, serum, drugs, fabricated parts, and other materiels necessary to carry out the objectives of a grant or contract, whether purchased outside or manufactured by the institution are allowable subject to the provisions (b) through (e) below. The cost may include such collateral items as inbound transportation and intransit insurance.

In computing these costs consideration will be given to reasonable overruns, spoilage, or defective work if consistent with the nature of the project being performed and the recognized practice of the industry.

(b) Costs of materiel shall be suitably adjusted for applicable portions of income and other credits, including available trade and cash discounts, refunds, rebates, allowances, and credits for scrap and salvage and materiel returned to vendors. Such income and other credits shall either be credited directly to the cost of the materiel involved or be allocated (as credits) to indirect costs. However, where the institution can demonstrate that failure to take cash discounts was due to reasonable circumstances, such lost discounts need not be so credited.

(c) Reasonable adjustments arising from differences between periodic physical inventories and book inventories may be included in arriving at costs, provided such adjustments relate to the period of performance of the grant or contract.

(d) When the materiels are purchased specifically for and identifiable solely with performance under a grant or contract, the actual purchase cost thereof should be charged to that grant or contract. If materiel is issued from stores, any generally recognized method of pricing such materiel is acceptable if that method is consistently applied and the results are equitable. When estimates of materiel costs to be incurred in the future are required, either current market price or anticipated acquisition cost may be used, but the basis of pricing must be disclosed.

(e) Allowance for all materiels, supplies and services which are sold or transferred between any division, subsidiary or affiliate of the institution under a common control shall be on the basis of cost incurred in accordance with these principles, except that when it is the established practice of the transferring organization to price interorganization transfers of materiels, supplies and services at other than cost for non-Government work of the institution or any division, subsidiary or affiliate of the institution under a common control, allowance may be at a price when:

(1) It is or is based on an "established catalog or market price of commercial items sold in substantial quantities to the general public;" or

(2) It is the result of "adequate price competition" and is the price at which an award was made to the affiliated organization after obtaining quotations on an equal basis from such organization and one or more outside sources which normally produce the item or its equivalent in significant quantity.

Provided, that in either case:

(1) The price is not in excess of the transferor's current sales price to his most favored customer (including any division, subsidiary, or affiliate of the institution under a common control) for a like quantity under comparable conditions, and

(2) The price is not determined to be unreasonable by the awarding agency.

The price determined in accordance with (1) above should be adjusted, when appropriate, to reflect the quantities being procured and may be adjusted upward or downward to reflect the actual cost of any modifications necessary because of grant or contract requirements.

23. *Organization costs.* Expenditures, such as incorporation fees, attorney's fees, accountant's fees, broker's fees, fees to promoters and organizers, in connection with (a) organization or reorganization of a business, or (b) raising capital, are unallowable unless specified otherwise in the grant or contract.

24. *Other business expenses.* Included in this item are such recurring expenses as preparation and publication of reports to members and trustees; preparation and submission of required reports and forms to

taxing and other regulatory bodies; and incidental costs of director and committee meetings. The above and similar costs are allowable when allocated on an equitable basis.

25. *Overtime, extra-pay shift and multishift premiums.* Premiums for overtime, extra-pay shifts, and multishift work are allowable only to the extent approved by the awarding agency except:

(a) When necessary to cope with emergencies, such as those resulting from accidents, natural disasters, breakdowns of production equipment, or occasional production bottlenecks of a sporadic nature;

(b) When by indirect labor employees such as those performing duties in connection with administration, protection, transportation, maintenance, standby plant protection, operation of utilities, or accounting;

(c) In the performance of tests, laboratory procedures, or other similar operations which are continuous in nature and cannot reasonably be interrupted or otherwise completed; or

(d) When lower overall cost to the Government will result.

Overtime premiums and shift premiums may be considered proper for approval when determined in writing by the awarding agency that approval:

(a) Is necessary to meet delivery or performance schedules, and such schedules are determined to be extended to the maximum consistent with essential program objectives;

(b) Is necessary to make up for delays which are beyond the control and without the fault or negligence of the institution;

(c) Is necessary to eliminate foreseeable bottlenecks of an extended nature which cannot be eliminated in any other way.

Approvals should ordinarily be prospective, but may be retroactive where justified by the circumstances. Such approvals may be for an individual grant or contract project, or program, or for a division, department, or branch, as most practicable.

Overtime for which overtime premiums would be at Government expense should not be approved under an award where the institution is already obligated, without the right to additional compensation, to meet the required delivery date.

Where overtime premiums or shift premiums are being paid at Government expense in connection with the performance of Government grant or contract the continued need therefor should be subject to periodic review by the awarding agency.

26. *Patent and copyright costs.* Costs of preparing disclosures, reports, and other documents required by the grant/contract and of searching the art to the extent necessary to make such disclosures, are allowable. In accordance with the conditions of the grant or contract relating to patents or copyrights, costs of preparing documents and any other costs, in connection with the filing of a patent application or copyright where title is conveyed to the Government, are allowable. However, similar costs incurred in connection with patents or copyrights where title is not conveyed to the Government are unallowable. (See G–39.)

27. *Pension plans.* (See G–6(g)–(4).)

28. *Plant protection costs.* Costs of items such as (a) wages, uniforms, and equipment of personnel engaged in plant protection, (b) depreciation on plant protection capital assets, and (c) necessary expenses to comply with security requirements are allowable.

29. *Plant reconversion costs.* Plant reconversion costs are those incurred in the restoration or rehabilitation of the institution's facilities to approximately the same condition existing immediately prior to the commencement of the grant or contract work, fair wear and tear excepted. Reconversion costs are unallowable except for the cost of removing Government property and the restoration or rehabilitation costs caused by such removal. However, in special circumstances where equity so dictates, additional costs may be allowed to the extent agreed upon in writing before the costs are incurred. Whenever such costs are given consideration, care should be exercised to avoid duplication through allowance as contingencies, as additional profit or fee, or in other grants or contracts.

30. *Preaward costs.* Preaward costs are those incurred prior to the effective date of the grant or contract directly pursuant to the negotiation and in anticipation of the award of the grant or contract where such incurrence is necessary to comply with the proposed delivery schedule or period of performance. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the award and only with the prior written approval of the awarding agency.

31. *Professional service cost—legal, accounting, scientific and other.* (a) Costs of professional services rendered by members of a particular profession who are not employees of the institution are allowable, subject to (b), (c) and (d) below, when reasonable in relation to the services rendered. (But see G–23.)

(b) Factors to be considered in determining the allowability of costs in a particular case include:

(1) The nature and scope of the service rendered in relation to the service required;

(2) The necessity of contracting for the service considering the institution's capability in the particular area;

(3) The past pattern of such costs, particularly in years prior to the award of Government work;

(4) The impact of Government work on the institution's business (i.e., what new problems have arisen);

(5) Whether the proportion of Government work to the institution's total business is such as to influence the institution in favor of incurring the cost, particularly where the services rendered are not of a continuing nature and have little relationship to work under Government grants/contracts;

(6) Whether the service can be performed more economically by employment rather than by contracting;

(7) The qualifications of the individual or concern rendering the service and the customary fees charged, especially on nongovernment grants/contracts;

(8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation; termination provisions).

(c) Retainer fees to be allowable must be reasonably supported by evidence of bona fide services available or rendered.

(d) Costs of legal, accounting, and consulting service, and related costs, incurred in connection with organization and reorganization, defense of anti-trust suits, and the prosecution of claims against the Government, are unallowable. Costs of legal, accounting, and consulting services, and related costs, incurred in connection with patent or copyright infringement litigation, are unallowable unless otherwise provided for in the grant or contract.

32. *Profits and losses on disposition of plant equipment, or other capital assets.* Profits or losses of any nature arising from the sale or exchange of plant, equipment, or other capital assets, including sale or exchange of either short- or long-term investments, shall be excluded in computing grant or contract costs.

33. *Public information services costs.* Public information services costs include the costs associated with promotions, public relations, pamphlets, news releases, and other forms of information services. Such costs are normally incurred to:

(a) Inform or instruct individuals, groups or the general public about health or social problems;

(b) Interest individuals or groups in participating in a service program of the institution;

(c) Provide stewardship reports to State and local Government agencies, benefactor foundations and associations, etc.;

(d) Appeal for funds;

(e) Disseminate the results of sponsored and non-sponsored research or other activity to the scientific community.

To the extent that the costs incurred for any of these purposes are identifiable with a particular cost objective they should be charged to the objective to which they relate.

If these costs are not identifiable with a particular cost objective, they should be allocated as indirect costs to all major activities of the institution except that costs related to fund-raising appeals are unallowable as costs of grants and contracts.

Public information service costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

34. *Publication and printing costs.* Publication costs include the costs of printing (including the processes of composition, platemaking, press work, binding and the end products produced by such processes), distribution, promotion, mailing and general handling.

Publication costs are unallowable as a direct cost of grants and contracts unless formally approved by the awarding agency.

35. *Rearrangement and alteration costs.* Costs incurred for ordinary or normal rearrangement and alteration of facilities are allowable. Special arrangement and alteration costs incurred specifically for the project are allowable when written approval

has been given in advance by the awarding agency.

36. *Recruitment costs.* (a) Subject to (b), (c), and (d) of this G–36, and provided that the size of the staff recruited and maintained is in keeping with workload requirements, costs of help-wanted advertising, operating costs of an employment office necessary to secure and maintain an adequate labor force, costs of operating an aptitude and educational testing program, travel costs of employees while engaged in recruiting personnel, and travel costs of applicants for interviews for prospective employement are allowable to the extent that such costs are incurred pursuant to a well managed recruitment program. Where the institution uses employment agencies, costs not in excess of standard commercial rates for such services are allowable.

(b) In publications, costs of help-wanted advertising that (1) includes color, (2) includes advertising materiel for other than recruitment purposes, or (3) is excessive in size (taking into consideration recruitment purposes for which intended and normal business practices in this respect) are unallowable.

(c) Costs of (1) help-wanted advertising and (2) excessive salaries, fringe benefits, and special emoluments that have been offered to prospective employees, designed to attract personnel from another institution performing as grantee or contractor to the Government, or in excess of the standard practices in comparable institutions, are unallowable.

(d) Where relocation costs incurred incident to recruitment of a new employee have been allowed either as an allocable direct or indirect cost and the newly hired employee resigns for reasons within his control within 12 months after hire, the institution shall be required to refund or credit such relocation costs to the Government.

37. *Relocation costs.* (a) Relocation costs, for the purpose of this document, are costs incident to the permanent change of duty assignment (for an indefinite period, or for a stated period of no less than 12 months) of an existing employee or upon recruitment of a new employee. These costs may include, but are not limited to cost of (i) transportation of the employee, members of his immediate family and his household and personal effects to the new location; (ii) finding a new home, such as advance trips by employees and spouses to locate living quarters and temporary lodging during the transition period; (iii) closing costs (i.e., brokerage fees, legal fees, appraisal fees, etc.), incident to the disposition of housing; (iv) other necessary and reasonable expenses normally incident to relocation, such as cost of cancelling an unexpired lease, disconnecting or reinstalling household appliances, and purchase of insurance against damages to personal property; (v) loss on sale of home; and (vi) acquisition of a home in a new location (i.e., brokerage fees, legal fees, appraisal fees, etc.).

(b) Subject to (c) below, relocation costs of the type covered in (a) (i), (ii), (iii), and (iv) above are allowable, provided (i) the move is for the benefit of the employer; (ii) reimbursement is in accordance with an established policy or practice consistently followed by the employer, and such policy or practice is designed to motivate employees to relocate promptly and economically; (iii) the costs are not otherwise unallowable under the provisions of G–36 or any other paragraph of this document and (iv) amounts to be reimbursed shall not exceed the employee's actual (or reasonably estimated) expenses.

(c) Costs otherwise allowable under (b) above are subject to the following additional provisions: (i) the transition period for incurrance of costs of the type covered in (a) (ii) above shall be kept to the minimum number of days necessary under the circumstances, but shall not, in any event, exceed a cumulative total of 30 days including advance trip time; and (ii) allowance for cost of the type covered in (a)(iii) above shall not exceed 8 percent of the sales price of the property sold. Costs of the type covered in (a) (iii) and (iv) above are allowable only in connection with the relocation of existing employees, and are not allowable for newly recruited employees.

(d) Costs of the type covered in (a) (v) and (vi) above are not allowable.

38. *Rental costs (including sale and leaseback of facilities).* (a) Rental costs of land, building, and equipment and other personal property are allowable if the rates are reasonable in light of such factors as rental costs of comparable facilities and market conditions in the area, the type, life expectancy, condition, and value of the facilities leased, options available, and other provisions of the rental agreement. Application of these factors, in situations where rentals are extensively used, may involve among other considerations, comparison of rental costs with the amount which the institution would have received had it owned the facilities.

(b) Charges in the nature of rent between plants, divisions, or organizations under common control are allowable to the extent such charges do not exceed the normal costs of ownership, such as depreciation, taxes, insurance, and maintenance: Provided, That no part of such costs shall duplicate any other allowed costs.

(c) Unless otherwise specifically provided in the grant or contract, rental costs specified in sale and leaseback agreements, incurred by institutions through selling plant facilities to investment organizations, such as insurance companies, associate institutions, or to private investors, and concurrently leasing back the same facilities, are allowable only to the extent that such rentals do not exceed the amount which the grantee/contractor would have received had it retained legal title to the facilities.

(d) Rentals for land, building and equipment and other personal property owned by affiliated organizations including corporations or by stockholders, members, directors, trustees, officers or other key personnel of the institution or their families either directly or through corporations, trusts or other similar arrangements in which they hold a more than token interest are allowable only to the extent that such rentals do not exceed the amount the institution would have received had legal title to the facilities been vested in it.

(e) The allowability of rental costs under unexpired leases in connection with terminations is treated in G–42(e).

39. *Royalties and other costs for use of patents and copyrights.* (a) Royalties on a patent or copyright or amortization of the cost of acquiring by purchase a copyright, patent or rights thereto, necessary for the proper performance of the grant or contract applicable to grant products or processes, are allowable unless:

(1) The Government has a license or the right to free use of the patent;

(2) The patent or copyright has been adjudicated to be invalid, or has been administratively determined to be invalid;

(3) The patent or copyright is considered to be unenforceable; or

(4) The patent or copyright is expired.

(b) Special care should be exercised in determining reasonableness where the royalties may have been arrived at as a result of less than arm's-length bargaining; e.g.:

(1) Royalties paid to persons, including corporations, affiliated with the institution;

(2) Royalties paid to unaffiliated parties, including corporations, under an agreement entered into in contemplation that a Government grant or contract would be awarded; or

(3) Royalties paid under an agreement entered into after the award of the grant or contract.

(c) In any case involving a patent or copyright formerly owned by the institution, the amount of royalty allowed should not exceed the cost which would have been allowed had the institution retained title thereto.

40. *Severance pay.* (a) Severance pay, also commonly referred to as dismissal wages, is a payment in addition to regular salaries and wages, by institutions to workers whose employment is being terminated. Costs of severance pay are allowable only to the extent that, in each case, it is required by (1) law, (2) employer-employee agreement, (3) established policy that constitutes, in effect, an implied agreement on the institution's part, or (4) circumstance of the particular employment.

(b) Costs of severance payments are divided into two categories as follows:

(1) Actual normal turnover severance payments shall be allocated to all work performed in the institution's facilities; or, where the institution provides for accrual of pay for normal severances, such method will be acceptable if the amount of the accrual is reasonable in light of payments actually made for normal severances over a representative past period, and if amounts accrued are allocated to all work performed in the institution's facilities; and

(2) Abnormal or mass severance pay is of such a conjectural nature that measurement of costs by means of an accrual will not achieve equity to both parties. Thus, accruals for this purpose are not allowable. However, the Government recognizes its obligation to participate, to the extent of its fair share, in any specific payment. Thus, allowability will

be considered on a case-by-case basis in the event of occurrence.

41. *Taxes.* (a) Taxes are certain charges levied by Federal, State, or local governments. They do not include fines and penalties except as otherwise provided herein. In general, taxes which the institution is required to pay and which are paid or accrued in accordance with generally accepted accounting principles are allowable, except for:

(1) Federal income taxes and similar levies against income of the institution derived from activities unrelated to the project supported by the grant or contract;

(2) Taxes in connection with financing, refinancing, or refunding operations (see G–18);

(3) Taxes from which exemptions are available to the institution directly or available to the institution based on an exemption afforded the Government except when the awarding agency determines that the administrative burden incident to obtaining the exemption outweighs the corresponding benefits accruing to the Government;

(4) Special assessments on land which represent capital improvements; and

(5) Taxes on any category of property which is used solely in connection with work other than on Government grants or contracts. (Taxes on property used solely in connection with either non-Government or Government work should be considered directly applicable to the respective category of work unless the amounts involved are insignificant or comparable results would otherwise be obtained.)

(b) Taxes otherwise allowable under paragraph (a) of this section, but upon which a claim of illegality or erroneous assessment exists, are allowable provided the institution, prior to payment of such taxes:

(1) Promptly requests instructions from the awarding agency concerning such taxes, and

(2) Takes all action directed by the awarding agency arising out of subparagraph (1) of this paragraph or an independent decision of the Government as to the existence of a claim of illegality or erroneous assessment, including cooperation with and for the benefit of the Government to (i) determine the legality of such assessment, or (ii) secure a refund of such taxes. Reasonable costs of any such action undertaken by the institution at the direction or with the concurrence of the awarding agency are allowable. Interest and penalties incurred by an institution by reason of the nonpayment of any tax at the direction of the awarding agency or by reason of the failure of the awarding agency to issue timely direction after prompt request therefor, are also allowable.

(c) Any refund of taxes, interest, or penalties, and any payment to the institution of interest thereon, attributable to taxes, interest, or penalties which were allowed as project costs, shall be credited or paid to the Government in the manner directed by the Government, provided any interest actually paid or credited to an institution incident to a refund of tax, interest or penalty shall be paid or credited to the Government only to the extent that such interest accrued over the period during which the institution had been reimbursed by the Government for the taxes, interest or penalties.

42. *Termination costs.* Grants and contracts terminations generally give rise to the incurrence of costs, or the need for special treatment of costs, which would not have arisen had the project not been terminated. Cost principles covering these items are set forth below. They are to be used in conjunction with the remainder of this document in termination situations.

(a) *Common items.* The cost of items reasonably usable on the institution's other work shall not be allowable unless the institution submits evidence that it could not retain such items at cost without sustaining a loss. In deciding whether such items are reasonably usable on other work of the institution, the awarding agency should consider the institution's plans and orders for current and scheduled production. Contemporaneous purchases of common items by the institution shall be regarded as evidence that such items are reasonably usable on the institution's other work. Any acceptance of common items as allocable to the terminated portion of the project should be limited to the extent that the quantities of such items on hand, in transit, and on order are in excess of the reasonable quantitative requirements of other work.

(b) *Costs continuing after termination.* If in a particular case, despite all reasonable efforts by the institution, certain costs cannot be discontinued immediately after the effective date of termination, such costs are generally allowable within the limitations set forth in this document, except that any such costs continuing after termination due to the negligent or willful failure of the institution to discontinue such costs shall be considered unallowable.

(c) *Initial costs.* Initial costs, including starting load and preparatory costs, are allowable, subject to the following:

(1) Starting load costs are costs of a nonrecurring nature arising in the early stages of operation, investigation or production and not fully absorbed because of the termination. Such costs may include the cost of labor and materiel, and related indirect cost attributable to such factors as:

(a) Excessive spoilage resulting from inexperienced labor;

(b) Idle time and subnormal production occasioned by testing and changing methods of processing;

(c) Employee training; and

(d) Unfamiliarity or lack of experience with the product, materiels, manufacturing processes, and techniques.

(2) Preparatory costs are costs incurred in preparing to perform the terminated project including costs of initial plant rearrangement and alterations, management and personnel organization, production planning and similar activities, but excluding special machinery and equipment and starting load costs.

(3) If initial costs are claimed and have not been segregated on the institution's books, segregation for settlement purposes shall be made from cost reports and schedules which reflect the high unit cost incurred during the early stages of the project.

(4) When the settlement proposal is on the inventory basis, initial costs should normally be allocated on the basis of total end items called for by the project immediately prior to termination; however, if the project includes end items of a diverse nature, some other equitable basis may be used, such as machine or labor hours.

(5) When initial costs are included in the settlement proposal as a direct charge, such costs shall not also be included in overhead.

(6) Initial costs attributable to only one project shall not be allocated to other projects.

(d) *Loss of useful value.* Loss of useful value of special tooling and special machinery and equipment is generally allowable if:

(1) Such special tooling, machinery, or equipment is not reasonably capable of use in the other work of the institution;

(2) The interest of the Government is protected by transfer of title or by other means deemed appropriate by the awarding agency; and

(3) The loss of useful value as to any one terminated project is limited to that portion of the acquisition cost which bears the same ratio to the total acquisition cost as the terminated portion of the project bears to the entire terminated project and other Government projects for which the special tooling and special machinery and equipment were acquired.

(e) *Rental costs.* Rental costs under unexpired leases are generally allowable where clearly shown to have been reasonably necessary for the performance of the terminated project less the residual value of such leases, if:

(1) The amount of such rental claimed does not exceed the reasonable use value of the property leased for the period of the project and such further period as may be reasonable; and

(2) The institution makes all reasonable efforts to terminate, assign, settle, or otherwise reduce the cost of such lease.

There also may be included the cost of alterations of such leased property, provided such alterations were necessary for the performance of the project, and of reasonable restoration required by the provisions of the lease.

(f) *Settlement expenses.* Settlement expenses including the following are generally allowable:

(1) Accounting, legal, clerical, and similar costs reasonably necessary for—

(a) The preparation and presentation to awarding agency of settlement claims and supporting data with respect to the terminated portion of the project, and

(b) The termination and settlement of subcontracts; and

(2) Reasonable costs for the storage, transportation, protection, and disposition of property acquired or produced for the project.

(g) Subcontractor claims. Subcontractor claims, including the allocable portion of claims which are common to the project and to other work of the institution are generally allowable.

43. *Trade, Business, Technical, and Professional Activity Costs*—(a) *Membership.* This category includes costs of memberships in trade, business, technical, and professional organizations. Such costs are allowable.

(b) Subscriptions. This item includes cost of subscriptions to trade, business, professional, or technical periodicals. Such costs are allowable.

(c) Meetings and conferences. This item includes costs of meals, transportation, rental of facilities for meetings, and costs incidental thereto, when the primary purpose of the incurrence of such costs is the dissemination of technical information or stimulation of production. Such costs are allowable.

44. *Training and educational costs.* (a) The costs of training courses taken by a bona fide employee to acquire basic skills which he should bring to the job or to qualify a person for duties other than those related to an institution's goals are unallowable.

(b) Costs of on-the-job training and part-time education, at an undergraduate or post-graduate college level, related to the job requirements of bona fide employees, identified in (1) through (5) below, are allowable.

(1) Training materiels;

(2) Textbooks;

(3) Fees charged by the educational institution;

(4) Tuition charged by the educational institution, or in lieu of tuition, instructors' salaries and the related share of indirect cost of the educational institution to the extent that the sum thereof is not in excess of the tuition which would have been paid to the participating educational institution; and

(5) Straight-time compensation of each employee for time spent attending classes during working hours not in excess of 156 hours per year where circumstances do not permit the operation of classes or attendance at classes after regular working hours.

(c) Costs of tuition, fees, training materiels and textbooks (but not subsistence, salary, or any other emoluments) in connection with full time scientific and medical education at a post-graduate (but not undergraduate) college level related to the job requirements of bona fide employees for a total period not to exceed 1 school year for each employee so trained, are allowable when approved in writing by the awarding agency.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, or fellowships, are considered contributions and are unallowable.

45. *Transportation costs.* Transportation costs include freight, express, cartage, and postage charges relating either to goods purchased, in process, or delivered. These costs are allowable. When such costs can readily be identified with the items involved, they may be directly costed as transportation costs or added to the cost of such items (see G–22).

Where identification with the materiels received cannot readily be made, inbound transportation costs may be charged to the appropriate indirect cost accounts if the institution follows a consistent, equitable procedure in this respect. Outbound freight, if reimbursable under the terms of the grant or contract, shall be treated as a direct cost.

46. *Travel costs.* (a) Travel costs include costs of transportation, lodging, subsistence, and incidental expenses, incurred by institution personnel in a travel status while on official business.

(b) Travel costs may be based upon actual costs incurred, or on a per diem or mileage basis in lieu of actual costs, or on a combination of the two, provided the method used does not result in an unreasonable charge. The difference in cost between first-class and less than first-class air accommodations is unallowable except when less than first-class air accommodations are not reasonably available to meet necessary mission requirements, such as where less than first-class accommodations would (1) require circuitous routing, (2) require travel during unreasonable hours, (3) greatly increase the duration of the flight, (4) result in additional costs which would offset the transportation savings, or (5) offer accommodations which are not reasonably adequate for the medical needs of the traveler.

(c) Travel costs incurred in the normal course of overall administration of the business are allowable and shall be treated as indirect costs.

(d) Travel costs directly attributable to specific grant or contract performance are allowable and may be charged to the grant or contract in accordance with the principle of direct costing (see section C).

(e) Costs of personnel movement of a special or mass nature are allowable only when authorized or approved in writing by the sponsoring agency.

[FR Doc. 79–13552 Filed 5–3–79; 8:45 am]

BILLING CODE 4110–02–M

Reader Aids

Federal Register

Vol. 44, No. 88

Friday, May 4, 1979

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders (GPO)
202-275-3054	Subscription problems (GPO)
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202-523-5022	Washington, D.C.
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202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266	Public Law Numbers and Dates, Slip Laws, U.S.
-5282	Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects

FEDERAL REGISTER PAGES AND DATES, MAY

25393-25620.....1
25621-25832.....2
25833-26056.....3
26057-26730.....4

CFR PARTS AFFECTED DURING MAY

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

1 CFR
Ch. I.....25393

3 CFR
Proclamations:
4659.....25619

5 CFR
213.....25393, 25394
334.....25394
890.....25395

6 CFR
705.....25800
706.....25800

7 CFR
2.....26057
295.....25396
416.....25397
729.....25404
907.....25833
908.....25833
910.....26057
913.....25409
918.....25403
1207.....25621
1701.....25409
Proposed Rules:
53.....25614
271.....26089
272.....26089
301.....26089
650.....25786
915.....25460
929.....25846
944.....25460
979.....25846, 25848
991.....25463
1207.....26113
1260.....25464
1701.....25465
3100.....25606

9 CFR
73.....25410
78.....27058
82.....25410
94.....27058
113.....25411
381.....27059

10 CFR
51.....26060
205.....25412
210.....25412
211.....25621, 26060
212.....25828
320.....25592
Proposed Rules:
211.....26113, 26115

12 CFR
205.....25850
308.....25412
Proposed Rules:
204.....25465
725.....26115

14 CFR
39.....25834
71.....25834, 25835
73.....25834
75.....25834
97.....25835
221.....25627
311.....25627
1203.....26066
Proposed Rules:
71.....25865, 25866
121.....25867, 25869
123.....25869
207.....26121
208.....26121
212.....26121
214.....26121
380.....26121
381.....26121

16 CFR
13.....25630, 25631
Proposed Rules:
13.....25465, 25653
443.....26127

17 CFR
1.....25431
17.....25431
200.....26067
Proposed Rules:
211.....26702
229.....26702
240.....25470, 26688, 26692, 26702
249.....26702

18 CFR
35.....26067
154.....26067
271.....26068
273.....26068

20 CFR
654.....26071

21 CFR
444.....26071
Proposed Rules:
145.....25471
882.....25471, 26127

22 CFR

22 25631
51 25631

Proposed Rules:

220 26726
221 26726
222 26726

23 CFR

650 25434

24 CFR

235 25837
240 26073
882 26660
1914 25631
1915 ..... 25633, 25636
1917 ..... 25436-25446, 25637-25646

Proposed Rules:

1917 25871-25882

28 CFR

0 25837
2 26540-26550

29 CFR

Proposed Rules:

524 26127
525 26127
1420 26128

32 CFR

716 25647

33 CFR

Proposed Rules:

110 25883

36 CFR

7 26073

Proposed Rules:

219 26554

38 CFR

2 25648
21 25648
36 25839

39 CFR

3001 26074

40 CFR

52 25840
65 ..... 25446, 25448, 25450, 25649, 25842, 25843
180 ..... 25452, 25844

Proposed Rules:

6 25475
52 ..... 25471, 25472
65 25473
86 25883
122 25475
123 25475
124 25475
125 25475
162 25475

41 CFR

Ch. 1 25845
Ch. 3 25454

42 CFR

Proposed Rules:

Ch. I 25476
51 25476
66 25886
405 25476

43 CFR

Proposed Rules:

3400 25653
3500 26130

44 CFR

Ch. I 25797

45 CFR

146a 25820
205 26075
206 26075
233 26075

Proposed Rules:

100 26298
100a 26298
100b 26298
100c 26298
100d 26298

46 CFR

31 25986
34 25986
40 25986
54 25986
56 25986
98 25986
154 25986
154a 25986
531 25651
536 25651

47 CFR

Proposed Rules:

94 25886

49 CFR

393 ..... 25455, 25456
630 26050
1033 26084-26087
1245 25457
1246 25457

Proposed Rules:

Ch. X 25476, 25653
171 25886
172 25886
173 25886
176 25886
178 25886
830 25889
1100 25653
1206 26131
1207 26131

50 CFR

33 25458

Proposed Rules:

Ch. IV 25891
23 25480
602 25891
611 26131
651 25484

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

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 FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
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.)**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

INTERIOR DEPARTMENT

Land Management Bureau—

20390 4–4–79 / Utilization of geothermal resources—power plant siting

List of Public Laws

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws.**

Last Listing Apr. 24, 1979

PRINCIPLES OF REGULATIONS WRITING SEMINAR—JUNE 1979

WHAT: The aim of the seminar is to improve the quality of Federal regulations by teaching how to design and draft clear regulations.

The Principles of Regulations Writing Seminar covers the following concepts:

1. Drafting conventions, preferred usage, the rule of consistency.
2. How to arrange and organize your regulation.
3. What you can do to make regulations easier to read and easier to use.

WHO: Any Federal employee who drafts documents or who reviews documents for substance that are published in the **Federal Register.**

WHEN: June 13, 1979. If there are more people registered than the June 13 seminar can accommodate, there will be a seminar held June 20, 1979 for those persons.

WHERE: Office of the Federal Register, 1100 L Street, N.W., Washington, D.C., Room 9407.

COST: $75 for each person.

HOW: Each person registers by sending a training authorization form 170 or the training authorization form your office uses to: Special Projects Unit, Office of the Federal Register, NARS, Washington, D.C. 20480.

FOR MORE INFORMATION: Phone the Special Projects Unit, (202) 523–4534.

Public Papers of the Presidents of the United States

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1977 (Book I)	$16.00	1977 (Book II)	$15.25

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

Vol. 44—No. 88
5-4-79
BOOK 2:
PAGES
26401-26730

federal register

Book 2 of 2 Books
Friday, May 4, 1979

Part III—Labor/ESA:
Minimum Wages for Federal and Federally Assisted Construction

Part IV—Justice:
Paroling, Recommitting, and Supervising Federal Prisoners

Part V—USDA/FS:
Land and Resource Management Planning

Part VI—HUD:
Low-Income Housing, Moderate Rehabilitation Program

Part VII—SEC:
Restricted Off-Board Trading

Part VIII—SEC:
Internal Accounting Control Management Statement in Annual Reports

Part IX—DOE/ERA:
Motor Gasoline Allocation, Base Period and Adjustments

Part X—State Department:
Service Personnel System

federal register

Friday
May 4, 1979

Part III

Department of Labor

Employment Standards Administration

Minimum Wages For Federal And Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for 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, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

New General Wage Determination Decisions

Alabama.—AL79–1079.

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:	
FL79–1019	Feb. 2, 1979
Louisiana:	
LA79–4001; LA79–4002	Jan. 5, 1979
Maryland:	
MD78–3046	May 19, 1978
New Jersey:	
NJ78–3047	June 16, 1978
North Carolina:	
NC75–1078	Sept. 5, 1975
Oregon:	
OR79–5103	Feb. 23, 1979
Texas:	
TX78–4114	Oct. 20, 1978
TX79–4003; TX79–4004; TX79–4011	Jan. 5, 1979
TX79–4031; TX79–4038; TX79–4048	Mar. 16, 1979
Washington:	
WA78–5133	Dec. 29, 1978

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

Alabama:	
AL78–1067(AL79–1080)	Aug. 18, 1978
Illinois:	
IL78–2092(IL79–2027); IL78–2093(IL79–2028); IL78–2106(IL79–2029); IL78–2109(IL79–2031); IL78–2111(IL79–2032); IL78–2112(IL79–2033)	Oct. 20, 1978
IL78–2165(IL79–2030)	Dec. 8, 1978
Maine:	
ME78–2158(ME79–2042)	Nov. 17, 1978
Michigan:	
MI78–2072(MI79–2012); MI78–2073 (MI79–2013); MI78–2074(MI79–2014); MI78–2075(MI79–2015); MI78–2076 (MI79–2016); MI78–2077(MI79–2017); MI78–2078(MI79–2019)	Sept. 29, 1978
MI79–2009(MI79–2045)	Mar 23, 1979
MI78–2001(MI79–2018)	Feb. 3, 1978
Minnesota:	
MN78–2062(MN79–2026)	July 14, 1978
MN78–2095(MN79–2021); MN78–2097 (MN79–2023); MN78–2099(MN79–2025)	Sept. 29, 1978
MN78–2150(MN79–2022); MN78–2151 (MN79–2024)	Oct. 27, 1978
Ohio:	
OH78–2157(OH79–2043)	Nov. 24, 1978
Pennsylvania:	
PA78–3053(PA79–3009)	Aug. 11, 1978
Rhode Island:	
RI78–3050, RI78–3051, RI78–3052 (RI79–2039)	July 21, 1978
South Dakota:	
SD78–5102(SD79–5122)	June 9, 1978
SD78–5126(SD79–5121)	Sept. 8, 1978
Texas:	
TX78–4115(TX79–4051)	Dec. 1, 1978

Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C. this 27th day of April 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

NEW DECISION

STATE: Alabama

COUNTIES: Calhoun, Cherokee, Cleburne, De Kalb, Etowah

DECISION NO: AL79-1079

DATE: Date of Publication

DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air conditioning & heating mechanic	3.75				
Bricklayers	7.00				
Carpenters	6.15				
Drywall finisher	6.00				
Drywall hanger	6.00				
Concrete finisher	4.50				
Electricians	10.45				
Insulator	4.65				
Laborers	3.08				
Painters, brush	6.00				
Plumbers and pipefitters	7.95	.40	.35		
Roofers	8.00				
Sheet metal workers	4.35				
Soft floor layers	6.25				
Welders - Rate for craft					
POWER EQUIPMENT OPERATORS:					
Bulldozer	5.00				

MODIFICATIONS P. 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
DECISION #FL79-1019 - Mod. #3 (44 FR 6852 - February 2, 1979) Duval County, Florida					
Add:					
Plumbers & Pipefitters	$11.75	.55	.55		.08
DECISION #LA79-4001 - Mod. #5 (44 FR 1634 - January 5, 1979) Statewide Louisiana					
Change:					
Asbestos workers - Zone 1	$12.32	.525	.90		.04
Zone 2	11.13	.50	.76		.03
Bricklayers & stonemasons:					
Zone 3	11.85	.53	.67		.05
Zone 4	11.30	.50	.35		.035
Zone 6	10.60	.40	.45		
Zone 8	11.25		.25		
Zone 9	11.50				
Carpenters (Bldg. Construction):					
Zone 2:					
Carpenters, piledrivermen & soft floor layers	10.75	.60	.33		.07
Millwrights	12.35				.07
Zone 3 - Carpenters	10.50	.60	.45		
Millwrights	11.75	.60	.45		
Piledrivermen	10.80	.60	.45		
Zone 4:					
Carpenters & piledrivermen	11.30	.50	.60		.05
Zone 5:					
Carpenters & soft floor layers	10.82	.60	.45		.04
Millwrights	11.21	.60	.45		.04
Piledrivermen	10.92	.60	.45		.04
Zone 6:					
Carpenters & soft floor layers	10.655	.60	.45		.04
Millwrights	11.21	.60	.45		.04
Piledrivermen	10.92	.60	.45		.04
Zone 8:					
Carpenters & soft floor layers	10.15	.45	.40		.04
Millwrights	10.90	.45	.40		.04
Piledrivermen	10.40	.45	.40		.04
Cement masons (Bldg. Construction):					
Zone 1	10.41				
Zone 3	9.35	.50	.75		.05
Zone 4	10.745	.45	.40		.04
Zone 6	7.50				
Zone 7	9.65	.35			
Zone 8	9.97		.25		
Cement masons (Highway Construction):					
Zone 7:					
On concrete lined ditches	9.35	.50	.75		.05
Zone 8:					
On concrete lined ditches	9.35	.50	.75		.05

DECISION #LA79-4001 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians:					
Zone 3 - Electricians	$14.00	.35	3%+.40		1/10%
Cable splicers	14.25	.35	3%+.40		1/10%
Ironworkers (Bldg. Construction):					
Zone 1	11.36	.63	.35		.04
Zone 3	11.40	.45	.90		.06
Zone 4	11.45	.45	1.15		.06
Zone 6	11.35	.45	.65		.05
Laborers (Bldg. Construction):					
Zone 2 - Group 1	6.67	.25	.20		.05
Group 2	6.87	.25	.20		.05
Zone 3 - Group 1	8.20	.25	.20		.05
Group 2	8.30	.25	.20		.05
Group 3	8.35	.25	.20		.05
Group 4	9.16	.25	.20		.05
Group 5	8.72	.25	.20		.05
Group 6	8.56	.25	.20		.05
Group 7	8.25	.25	.20		.05
Group 8	8.45	.25	.20		.05
Zone 6 - Group 1	8.15	.25	.27		.05
Group 2	8.25	.25	.27		.05
Group 3	8.40	.25	.27		.05
Group 4	8.31	.25	.27		.05
Group 5	8.41	.25	.27		.05
Zone 7 - Group 1	7.825	.25	.27		.05
Group 2	7.975	.25	.27		.05
Group 3	8.025	.25	.27		.05
Zone 8 - Group 1	6.21	.25	.20		.05
Group 2	6.41	.25	.20		.05
Group 3	6.46	.25	.20		.05
Group 4	6.51	.25	.20		.05
Group 5	6.86	.25	.20		.05
Zone 9 - Group 1	6.85	.25	.20		.05
Group 2	6.95	.25	.20		.05
Group 3	7.00	.25	.20		.05
Group 4	7.05	.25	.20		.05
Zone 10 - Group 1	6.60	.25	.20		.05
Group 2	6.70	.25	.20		.05
Group 3	6.85	.25	.20		.05
Lathers - Zone 1	10.08	.20	.30		.05
Zone 2	10.23	.20	.30		.05
Zone 3	10.48	.20	.30		.05
Zone 4	10.83	.20	.30		.05
Zone 5	11.17				.01
Zone 8	11.65				

DECISION #LA79-4001 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Line construction:					
Zone 3:					
Linemen, equipment ops.	$14.00	.35	3%+.40		1/10%
Cable splicers	14.25	.35	3%+.40		1/10%
Groundmen	12.00	.35	3%+.40		1/10%
Marble, tile & terrazzo workers & finishers:					
Zone 1:					
Marble setters	11.30	.50	.35		.035
Tile & terrazzo workers	11.30	.50	.35		.035
Zone 2:					
Marble & terrazzo workers	11.85	.53	.67		.05
Zone 3 - Marble setters	11.50				
Zone 4:					
Marble, tile & terrazzo worker	10.22		.25		
Zone 5:					
Marble, tile & terrazzo worker	9.45	.30			
Painters:					
Zone 2 - Group 1	9.85		.25		.05
Group 2	10.92		.25		.05
Plasterers - Zone 4	10.98				.01
Zone 6	7.50				.01
Zone 8	11.25		.25		
Plumbers & pipefitters-Zone 4	11.46	.55	.80	1.00	.09
Power Equipment Ops. (Bldg. Construction):					
Zone 1 - Group 1	7.94	.65	.73		.05
Group 2	8.30	.65	.73		.05
Group 3	8.63	.65	.73		.05
Group 4	8.72	.65	.73		.05
Group 5	9.04	.65	.73		.05
Group 6	10.52	.65	.73		.05
Zone 5 - Group 1	8.18	.65	.85		.05
Group 2	7.86	.65	.85		.05
Group 3	7.65	.65	.85		.05
Group 4	8.46	.65	.85		.05
Group 5	10.85	.65	.85		.05
Group 6	8.87	.65	.85		.05
Group 7	9.55	.65	.85		.05

MODIFICATIONS P. 4

DECISION #LA79-4001 (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 6 - Group 1	$ 8.33	.65	.85		.05
Group 2	7.69	.65	.85		.05
Group 3	7.46	.65	.85		.05
Group 4	8.01	.65	.85		.05
Group 5	8.80	.65	.85		.05
Group 6	10.06	.65	.85		.05
Group 7	11.26	.65	.85		.05
Group 8	11.51	.65	.85		.05
Group 9	11.76	.65	.85		.05
Group 10	12.01	.65	.85		.05
Zone 7 - Group 1	10.73	.65	.85		.05
Group 2	10.98	.65	.85		.05
Group 3	7.80	.65	.85		.05
Group 4	8.19	.65	.85		.05
Group 5	9.05	.65	.85		.05
Group 6	10.48	.65	.85		.05
Roofers:					
Zone 1 - Roofers	10.78		.20		
Zone 2 - Roofers	8.26	.70	.75	.28	.70
Truck drivers (Bldg. Construction):					
Zone 1 - Group 1	9.31				
Group 2	9.79				
Group 3	10.02				
Group 4	9.81				
Group 5	9.91				
Group 6	9.83				
Group 7	10.25				
Zone 2 - Group 1	7.20				
Group 2	7.45				
Group 3	8.00				
Group 4	7.85			¢	
Group 5	8.30				
Group 6	8.40				
Group 7	8.70				
Group 8	8.85				
Zone 3 - Group 1	7.47				
Group 2	7.55				
Group 3	7.80				
Group 4	7.95				
Group 5	8.10				
Group 6	8.30				
Group 7	8.65				
Zone 5 - Group 1	$ 8.39	.45			
Group 2	9.00	.45			
Group 3	9.05	.45			
Group 4	9.31	.45			

MODIFICATIONS P. 5

DECISION #LA79-4002 - Mod. #4 (44 FR 1650 - January 5, 1979) Bossier, Caddo & Calcasieu Parishes, Louisiana	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos workers:					
Bossier & Caddo Parishes	$11.13	.50	.76		.03
Calcasieu Parish	12.32	.525	.90		.04
Bricklayers & stonemasons:					
Bossier & Caddo Parishes	10.60	.40	.45		
Calcasieu Parish	11.85	.53	.67		.05
Carpenters:					
Bossier & Caddo Parishes:					
Carpenters	10.15	.45	.40		.04
Millwrights	10.90	.45	.40		.04
Piledrivermen	10.40	.45	.40		.04
Calcasieu Parish:					
Carpenters & piledrivermen	10.75	.60	.33		.07
Millwrights	12.35				.07
Cement masons:					
Bossier & Caddo Parishes	9.65	.35			
Calcasieu Parish	9.45				
Electricians:					
Calcasieu Parish:					
Other work - Electricians	14.00	.35	3%+.40		1/10%
Cable splicers	14.25	.35	3%+.40		1/10%
Ironworkers:					
Bossier & Caddo Parishes	11.40	.45	.90	¢	.06
Calcasieu Parish	11.35	.45	.65		.05
Laborers:					
Bossier & Caddo Parishes:					
Group 1	6.85	.25	.20		.05
Group 2	6.95	.25	.20		.05
Group 3	7.00	.25	.20		.05
Group 4	7.05	.25	.20		.05
Calcasieu Parish - Group 1	8.20	.25	.20		.05
Group 2	8.30	.25	.20		.05
Group 3	8.35	.25	.20		.05
Group 4	8.45	.25	.20		.05
Group 5	9.16	.25	.20		.05
Group 6	8.72	.25	.20		.05
Group 7	8.56	.25	.20		.05
Group 8	8.25	.25	.20		.05
Lathers:					
Bossier & Caddo Parishes	11.65				
Marble setters:					
Bossier & Caddo Parishes	9.40	.30			

DECISION #LA79-4002 (CONT'D)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers & pipefitters:					
Bossier & Caddo Parishes	$11.46	.55	.80	1.00	.09
Roofers:					
Calcasieu Parish - Roofers	10.78		.20		
Soft floor layers:					
Bossier & Caddo Parishes	10.15	.45	.40		.04
Calcasieu Parish	10.75	.60	.33		.07
Terrazzo workers:					
Bossier & Caddo Parishes	9.45	.30			
Calcasieu Parish	11.85	.53	.67		.05
Tile setters:					
Bossier & Caddo Parishes	9.45	.30			
Truck drivers:					
Bossier & Caddo Parishes:					
Group 1	7.47				
Group 2	7.55				
Group 3	7.80				
Group 4	7.95				
Group 5	8.10				
Group 6	8.30				
Calcasieu Parish - Group 1	9.31				
Group 2	9.79				
Group 3	10.02				
Group 4	9.81				
Group 5	9.91				
Group 6	9.83				
Group 7	10.25				
Power Equipment Operators:					
Calcasieu Parish - Group 1	8.18	.65	.85		.05
Group 2	7.86	.65	.85		.05
Group 3	7.65	.65	.85		.05
Group 4	8.46	.65	.85		.05
Group 5	10.85	.65	.85		.05
Group 6	8.87	.65	.85		.05
Group 7	9.55	.65	.85		.05

DECISION #MD78-3046 - Mod. #4
(42 FR 21813 - May 19, 1978)
Baltimore City, Maryland

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Bricklayers	10.88	.70	.50		.07
Electricians	11.10	.80	3%+1.10		½%
Ironworkers:					
Structural & Reinforcing	10.49	.90	1.91		.06
Fence erectors	10.14	.90	1.91		.06
Line Construction:					
Linemen, Cable Splicers, Digging & Equipment Operators	12.40	.60	3%		
Winch trucks & trucks with pole or steel handling	8.27	.60	3%		
Truck without winch	7.71	.60	3%		
Groundmen	5.95	.60	3%		
Power Equipment Operators:					
Highway Construction					
Group I	10.02	.95	1.00	a	.12
Group II	9.52	.95	1.00	a	.12
Group III	8.95	.95	1.00	a	.12
Group IV	7.87	.95	1.00	a	.12
Group V					
a	10.42	.95	1.00	a	.12
b	10.62	.95	1.00	a	.12
c	10.82	.95	1.00	a	.12
d	11.02	.95	1.00	a	.12
e	11.27	.95	1.00	a	.12
Truck Drivers:					
Pick-ups	7.66	1.05	.75	a+b	
Dumps	7.88	1.05	.75	a+b	
Drop frame, gooseneck, and trailer drivers	8.07	1.05	.75	a+b	
Euclid & Dumpsters	8.19	1.05	.75	a+b	
Add:					
Piledrivermen	9.80	.75	.69		.07

DECISION #NJ78-3047 - Mod. #6
(43 FR 26235 - June 16, 1978)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean & Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers:					
Zone 1	12.67	.90	1.05		
Zone 2	12.10	.90	1.05		.025
Bricklayers, Stonemasons, Marble Masons, Cement Masons, Plasterers, Tile Layers, and Terrazzo Workers:					
Zone 1:					
Bricklayers, Stonemasons, Marble Masons, & Plasterers	11.70	.75	1.00		.04
Cement Masons, Tile Layers, & Terrazzo Workers	11.65	.75	1.00		.04
Zone 5	12.445		.655		.02
Carpenters, Millwrights, and Insulators:					
Zone 1	12.13	8%	7%		.3%
Zone 5 - Ocean County:					
Carpenters & Insulators	12.13	8%	7%		½%
Millwrights	12.38	8%	7%		½%
Zone 6 - Monmouth County:					
Carpenters & Insulators	12.13	8%	7%		½%
Millwrights	12.38	8%	7%		½%
Electricians & Cable Splicers:					
Zone 5	12.23	7%	3%+.60		.02
Laborers, Building Construction					
Zone 1:					
Laborers, masons & plasterers tenders, and concrete workers	8.50	.60	.75		.07
Tool operators (except small hand tools) including operation of motorized buggies	8.75	.60	.75		.07
Gunnite men and gun nozzle operators for gunnite and asbestos sandblasting	8.90	.60	.75		.07
Zone 2					
Construction Laborers	8.45	.55	.85		.07
Brick tenders, mortar tenders, scaffold builders (brick), hod carriers (brick), & power tool operators	8.55	.55	.85		.07
Motorized buggy operators, burners, nozzlemen (gunnite work)	8.675	.55	.85		.07
Jackhammer operators, barko tamper operators, & concrete vibrator operators (over 27 pounds)	8.80	.55	.85		.07
Plasterers' & lathers' tenders	8.95	.55	.85		.07
Zone 3					
Laborers	9.05	.40	.65		.07
Hod carriers, mason tenders, operators of jackhammers, tampers, and electric hammers	9.30	.40	.65		.07
Laborers, Heavy & Highway Construction:					
Zone 1:					
Group 1	9.35	1.00	1.00	a	.10
Group 2	9.05	1.00	1.00	a	.10
Group 3	9.00	1.00	1.00	a	.10
Group 4	8.85	1.00	1.00	a	.10
Group 5	8.75	1.00	1.00	a	.10
Group 6	8.50	1.00	1.00	a	.10
Group 7	8.45	1.00	1.00	a	.10
Group 8	8.35	1.00	1.00	a	.10
Zone 2					
Group 1	9.85	1.00	1.00	a	.10
Group 2	9.70	1.00	1.00	a	.10
Group 3	9.45	1.00	1.00	a	.10
Group 4	9.40	1.00	1.00	a	.10
Group 5	9.30	1.00	1.00	a	.10
Group 6	9.20	1.00	1.00	a	.10
Group 7	8.95	1.00	1.00	a	.10
Group 8	8.80	1.00	1.00	a	.10
Group 9	8.75	1.00	1.00	a	.10
Laborers, Free Air Tunnel Jobs					
Group 1	10.22	1.00	1.00	a	.10
Group 2	9.82	1.00	1.00	a	.10
Group 3	9.66	1.00	1.00	a	.10
Group 4	9.15	1.00	1.00	a	.10
Line Construction:					
Zone 1					
Linemen, Cable Splicers, & Equipment Operators	12.30	7%	3%+1.87		3/4%
Groundmen	10.35	7%	3%+1.87		3/4%
Truck Drivers:					
Zone 1:					
Group 1	8.55	v	w	j+k	
Group 2	8.65	v	w	j+k	
Group 3	8.80	v	w	j+k	
Group 4	8.95	v	w	j+k	

DECISION #NJ78-3047 - Mod. #6 (Cont'd)

FOOTNOTES:

v. Employer contributes $6.30 per day per employee to Health and Welfare funds.

w. Employer contributes $4.00 per day per employee to Pension funds.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #NC75-1078 - Mod. #3 (40 FR 41367 - September 5, 1975) Statewide, North Carolina					
Omit:					
Power Equipment Operators:					
Rollers	$2.78				
Tractor	2.78				
Change:					
Truck Drivers	2.90				
DECISION NO. OR79-5103 - Mod. #3 (44 FR 10951-February 23, 1979) Statewide, Oregon					
Change:					
Line Construction:					
(Change Fringe Benefits ONLY)					
Groups 1 to 3		.45	3%+1.10	.10	1/2%
Groups 4 to 6		.45	3%+ .70	.10	1/2%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX78-4114 - Mod. #7 (43 FR 49208 - October 20, 1978) Lubbock County, Texas					
Change:					
Bricklayers & stonemasons	$10.27		.30		.03
DECISION #TX79-4003 - Mod. #4 (44 FR 1671 - January 5, 1979) Brazos County, Texas					
Change:					
Ironworkers	11.86	.55	1.45		.10
DECISION #TX79-4004 - Mod. #4 (44 FR 1673 - January 5, 1979) El Paso County, Texas					
Change:					
Ironworkers	9.30	.55	1.40		.15
DECISION #TX79-4011 - Mod. #4 (44 FR 1683 - January 5, 1979) Galveston & Harris Cos., Texas					
Change:					
Carpenters:					
Carpenters & piledrivermen	11.60	1.00	.85		.07
Millwrights	11.985	1.00	.85		.07
Ironworkers	11.86	.55	1.45		.10
DECISION #TX79-4031 - Mod. #3 (44 FR 16324 - March 16, 1979) Bexar County, Texas					
Change Modification #1 in the FR of 4/20/79 on page 23733 to read Modification #2					

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #TX79-4038 - Mod. #3 (44 FR 16328 - March 16, 1979) Travis County, Texas					
Change:					
Plumbers & pipefitters	$11.55	.45	.40		.05
DECISION #TX79-4048 - Mod. #1 (44 FR 16330 - March 16, 1979) Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
Change:					
Bricklayers & stonemasons	11.05		.40		
Carpenters:					
Zone 1 - Carpenters	10.65		.40		.01
Millwrights	11.00		.40		.01
Laborers - Group 1	5.92	.63	.32		
Group 2	6.07	.63	.32		
DECISION NO. WA78-5133 - Mod. #4 (43 FR 61199-December 29, 1978) Statewide, Washington					
Change:					
Line Construction:					
(Change Fringe Benefits ONLY)					
Groups 1 to 3		.45	3%+1.10	.10	1/2%
Groups 4 to 6		.45	3%+ .70	.10	1/2%

STATE: Alabama
DECISION NO.: AL79-1080
Supersedes Decision NO.: AL78-1067 dated August 18, 1978 in 43-FR-36838
DESCRIPTION OF WORK: Heavy Construction Projects

COUNTIES: *See below
DATE: Date of Publication

*Counties: Calhoun, Etowah, Green, Jefferson, Pickens, St. Clair, Shelby, Sumter, Talladega, Tuscaloosa and Walker

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	9.50				
Carpenters:					
Green, Pickens, Sumter and Tuscaloosa Counties	8.30				.06
Jefferson, Shelby, Walker and that portion of St. Clair and Talladega County West of Highway 231 from the Blount County line South to Interstate 20. Also that portion of St. Clair and Talladega Counties South of Interstate 20 and West of U.S. Alternate 231 South, not including the City of Talladega and that portion of Talladega County South, of the City of Talladega and West and South of the Talladega National Forest	8.65	.50	.35		.07
Calhoun, Etowah and Remainder of St. Clair and Talladega Counties	7.28	.50	.35		.06
Electricians	11.45	.55	3%+.40		½ of 1%
Ironworkers	8.50	.60	.815		.04
Laborers:					
Air tool operator	6.20	.30	.35		.05
Asphalt lute man	6.20	.30	.35		.05
Asphalt raker	6.20	.30	.35		.05
Batch truck dumper	6.05	.30	.35		.05
Caisson hole men (10'dia.)	6.80	.30	.35		.05
Chain saw operator	6.20	.30	.35		.05
Concrete saw operator	6.20	.30	.35		.05
Dry cement handlers (bulk or bag)	6.20	.30	.35		.05
Hand blade operator	6.05	.30	.35		.05
General laborer	6.05	.30	.35		.05
Mortar mixers	6.15	.30	.35		.05
Muckers	6.15	.30	.35		.05
Pipelayers	6.15	.30	.35		.05
Powdermen & blasters	6.88	.30	.35		.05

AL79-1080 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers (Cont'd):					
Side rail setters	6.20	.30	.35		.05
Vibrator operator	6.20	.30	.35		.05
Wagon drill operator	6.45	.30	.35		.05
Oxagon operator	7.55	.30	.35		.05
Tunnel work (free air)					
Chuck tender	6.60	.30	.35		.05
Head miner	7.05	.30	.35		.05
Pneumatic concrete gun operator & nozzlemen	6.75	.30	.35		.05
Tunnel laborer	6.45	.30	.35		.05
Tunnel miner	6.85	.30	.35		.05
Plumbers and Pipefitters	9.45	.30	.30		.05
Truck drivers	5.75	.20	.45		.05
Welders - Rate for craft.					

AL79-1080 - (Cont'd)

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	9.76	.40	.30		.10
CLASS B	9.17	.40	.30		.10
CLASS C	8.72	.40	.30		.10
CLASS D	8.06	.40	.30		.10

CLASS A: Asphalt plant, asphalt spreader, backhoe, boat operator, (inboard), boom tractor, bulldozer, cableways, cherry picker, compressors-2, or more within 200 ft. radius, concrete plants-stationary, mixer operator, concrete pump, conveyor-2 or more up to 4, core driller-crane-derrick-dragline-deck hoist on construction barges, crane-hydro, dinky locomotive, distributors-bituminous surface, dredge operator, farm tractor with attachments (30 HP or more-which are an intergral part of tractor), fork lift, front end loader, gradall, headhouse operator, heavy duty, mechanic, hoist-2 drums or more, ice plant in connection with concrete, mixers-5 bags or over, motor graders, pile driver, push tractor, quarry master and rock crusher, rollers-asphalt, scraper, scrapers in tandem (operator to receive 25¢ per hour for each additional scraper), shovels, trenching machines and all similar equipment.

CLASS B: Crawler.tractor, hoist-1 drum, pumps-2 or more 4 inch & over, under 5 within 200 ft, radius, rollers (other than asphalt), winch truck, well points and other equipment used for dewatering.

CLASS C: Air compressor, blade graders-pull type, farm tractor with attachments finishing machine-screed mounted self-propelled, mixers-under 5 bags.

CLASS D: Outboard boats, air compressor-125 and under, conveyor-one (1) tended by oiler, pumps-under 4 inch-3 or under, welding machines-3 or under, oiler in board boats, deck hand.

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: Adams, Brown & Pike
DECISION NUMBER: IL79-2027 DATE: Date of Publication
Supersedes Decision No.: IL78-2092, dated October 20, 1978 in 43 FR 49154
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.63	.80	.97		
BOILERMAKERS	11.45	.95	1.20		.03
BRICKLAYERS:					
Bricklayers, Stonemasons, Marble Setters, Terrazzo Workers, Tile Setters, Pointers, Caulkers & Cleaners	11.65		.20		
CARPENTERS:					
Adams County:					
Carpenters & Soft Floor Layers	10.50	.65	.35		.02
Millwrights & Piledrivermen	10.75	.65	.35		.02
Brown County & Pike County:					
Carpenters & Soft Floor Layers	10.90	.55	.25		.02
Millwrights	11.15	.55	.25		.02
Piledrivermen	11.40	.55	.25		.02
CEMENT MASONS	9.85		1.00		
ELECTRICIANS:					
Electricians	11.15	.50	3%+.75		1%
ELEVATOR CONSTRUCTORS:					
Constructors	11.34	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	10.39	.45	.50		
IRONWORKERS:					
Brown County, Pike County & the S. E. corners of Adams County	12.25	.55	1.05		.08
Remainder of Adams County	12.40	.55	.90		.06
LATHERS:					
Brown & Pike Counties	13.15				
PAINTERS:					
Adams County:					
Brush	8.80				
Sand & Water Blasting; Spray & Steamcleaning	8.80				
Pike County:					
Commercial	11.05	.55	.35		
Industrial	11.30	.55	.35		

DECISION NO. IL79-2027

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS	10.20		1.00		.01
PLUMBERS & STEAMFITTERS:					
Adams & Brown Counties	12.05	.35	.40		.05
Pike County	12.43	.35	.88		.07
ROOFERS	9.90	.50		.50	
SHEET METAL WORKERS:					
Adams & Pike Counties	10.78	.55	.55		.12
Brown County	12.93	.75+c	.78		.07
SPRINKLER FITTERS	12.10	.75	1.05		.08
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thansgiving; G-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

b. 7 paid Holiday: A through G

C. 3% of Gross to SASMI

DECISION NO. IL79-2027

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Adams County:					
Unskilled	10.38	.45	.36		.035
Semi-skilled	10.58	.45	.36		.035
Skilled	10.73	.45	.36		.035
Brown and Pike Counties:					
Unskilled	10.44	.30	.45		.035
Semi-skilled	10.64	.30	.45		.035
Skilled	10.79	.30	.45		.035

CLASSIFICATIONS

UNSKILLED: All sewer workers plus depth pay, Asphalt Plant Laborers, Bankmen on Floating Plant, Batch Dumpers, Carpenters, Tenders, Cleaning Lumber, Cofferdam workers plus depth pay, Deck Hand, Dredge Hand and Shore Laborers, Dispatchers; Driving of stakes, Stringlines for all machinery, Fencing Laborers, Firemen or Salamander Tenders, Fireproofing Laborers, Fire Shop Laborers; Flagman,Form Handlers, Gravel Box men, Dumpmen and Spotters, Janitors, Laborers with De-watering systems, Landscapers, Laying of Sod, Material Checkers, Material Handlers, Pit Men, Plaster Installers, Planting of Trees, Removal of Trees, Rip Rap Men, Rod and Chairmen, Scaffold workers, Tool Cribmen, Track Laborers, Unloading explosives, Unlaoding and carrying Lath, Unloading and carrying or re-bars, Wrecking, Dismantling Building, Wallmen and Housemovers, Wrecking Laborers, Wreter or Scale Tickets.

SEMI-SKILLED: Asphalt Workers with machine, Asphalt Raker, and Layers, Cement Handlers, Cement Silica, Clay, Fly Ash, Lime and Plasters, Hander (Bulk or Bag) Chain Saw, Chloride Handlers, Concrete Workers (wet); Grade Checker, Handling or material treated with oil, creosote, asphalt and/or any foreign material harmful to skin or clothing, Kettle and Tar Men, Mason Tenders, Mortar Mixer Operators,Motorized Buggies or Motorized Union used for wet concrete to handling of building materials, On concrete paving, placing, cutting and typing or Reinforcing, Signal man on Crane Tank cleaning helpers in free air, Vibrator Operators

SKILLED: Air Tamping Hammerman, Caisson workers plus depth, Concrete Burning Machine Operator, Concrete Saw Operator, Corming Machine Operator, Gunnite Nozzlemen, Jackhammer and drill Operators, Laborers handling masterplante or similar materials, Laborers Tending Masons will hot material or where foreign materials are used, Laser Beam Operaotr, Layout Man/or Tile Layer Leadman on sewer work Luteman, Multiple Concrete Duct - Leadman, Plasterer Tenders, Ready Mix Scalemen, Portable or temploary plant, Screenman on Asphalt Paver, Steel Form Setters - street and highway, Welders, Cutters, Burners, and Torchmen

DECISION NO. IL79-2027

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
CLASS I	12.40	.70	.80		.05
CLASS II	10.85	.70	.80		.05
CLASS III	9.50	.70	.80		.05

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. 7 similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, elevating graders engineers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredge, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledirvers, pipe wrapping & painting machines, push dozers, or push cats, roch crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot roller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheeel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant enfineers, bul cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generator*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATION OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS, WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

DECISION NO. IL79-2027

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
GROUP I	10.80	.65	a20.00		
GROUP II	11.20	.65	a20.00		
GROUP III	11.40	.65	a20.00		

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II - 2 or 3 axle trucks hauling more than 9 tons, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Forklifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III - 2,3, or 4 axle trucks hauling 16 tons or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES:

a. Per week Per eemployee

40-000 04 3 65

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: Champaign & Vermillion
DECISION NUMBER: IL79-2028 DATE: Date of Publication
Supersedes Decision No. IL78-2093, dated October 20, 1978 in 43 FR 49157
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	12.15	.50	1.20		.01
BOILERMAKERS	11.45	.95	1.00		.03
BRICKALYERS:					
Champaign County:					
Bricklayers; Stonemasons	12.45	.45	.50		.05
Marble, Tile, Terrazzo Workers	13.30		.50		
Vermillion County:					
Bricklayers; Stonemasons	12.45	.45	.50		.05
Marble, Terrazzo Workers; Tile Setters	13.30		.50		
CARPENTERS:					
Champaign County:					
Carpenters & Soft Floor Layers	12.315	.45	1.10		.13
Millwrights & Piledrivermen	12.815	.45	1.10		.13
Vermillion County:					
North of Rossville					
Carpenters; Soft Floor Layers; Millwrights & Piledrivermen	11.88	.65	.80		.01
Remainder of County					
Carpenters & Soft Floor Layers	12.415	.75	.80		.05
Millwrights & Piledrivermen	12.915	.75	.80		.05
CEMENT MASONS & PLASTERERS:					
Champaign County:					
Cement Masons	12.325	.45	.25		.025
Plasterers	12.515	.45			.025
Vermillion County:					
Cement Masons & Plasterers	12.40		1.00		
ELECTRICIANS:					
Champaign County	12.45	.50	3%+.40		.3%
Vermillion County	12.27	.50	3%+.50		.25%
ELEVATOR CONSTRUCTORS:					
Constructors	11.34	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS:					
Champaign County	10.39	.45	.50		
IRONWORKERS	12.15	.65	1.00		.08
LATHERS	11.99	.45	.50		.01

40-000 04 3 66

DECISION NO. IL79-2028

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Champaign County:					
Brush	12.32	.65	.40		.04
Open and Erected Steel	13.32	.65	.40		.04
Vermillion County:					
Brush	11.80				
Spray	12.80				
PLUMBERS AND STEAMFITTERS:					
Champaign County	12.65	.35	1.15		.12
Vermillion County	11.52	.35	1.05		.25
ROOFERS:					
Champaign County:					
Roofers	12.39	.70	.45		.03
Vermillion County	11.55				
SHEET METAL WORKERS	11.94	60+c	.67		
SPRINKLER FITTERS	12.10	.75	1.05		.08
Welders: receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:
a. 7 paid Holidays: A through G

b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

c. 3% of Gross to SASMI

DECISION NO. IL78-2028

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Champaign County:					
Unskilled	11.50	.30	.30		.035
Semi-skilled	11.70	.30	.30		.035
Skilled	11.85	.30	.30		.035
Vermillion County:					
Unskilled	11.05	.45	.60		.035
Semi-skilled	11.25	.45	.60		.035
Skilled	11.40	.45	.60		.035

UNSKILLED - All sewer workers plus depth pay, Asphalt plant laborers, Bankmen on floating plant, Barch dumpers, Carpenters tenders, Cleaning lumber, Cofferdam workers plus depth pay, Deck hand, Dredge hand and shore laborer, Dispatchers, Driving of stakes, Stringlines for all machinery, Fencing laborers, Firemen or Salamander tenders; fireproofing laborers, Fire shop laborers; Flagmen; Form handlers, Gravel box men, Dumpmen and Spotters; Janitors, Laborers with de-watering systems; Landscapers, Laying of sod, Material checkers, Material handlers, Pit men, Plaster installers, Planting of trees, Removal of trees, Rip rap men, Rod and chairmen, Scaffold workers, Tool cribmen, Tractor laborers, Unloading explosives, Unloading and carrying Lath, Unloading and carrying re-bars, wrecking, dismanteling building, Wallmen and housemovers, Wrecking laborers, Writer or scale tickets

SEMI-SMILLED - Asphalt workers with machine, asphalt raker and layers, Cement handlers, cement silica, clay, Fly ash, line and plasters handler (bulk or bag) Chain saw; Chloride handlers, concrete workers (wet); Grade checker; Handling of materials treated with oil, creosote, asphalt and/or any foreign material harmful to skin to clothing; Kettle and Tar men; Mason tenders; Mortar mixer operators; Motorized buggies or motrized unit used for wet concrete or handling of building materials, on concrete paving, placing, cutting and typing or reinforcing, Signal men on crane tank cleaning, Tunnel helpers in free air, Vibrator operators

SKILLED - Air tamping hammerman, Caisson workers plus depth, Concrete burning machine operator, Concrete saw operator, corming machine operator, Gunnite nozzle men, Jackhammer and drill operators, Laborers handling masterplate or similar materials, Laborers tending masons with hot material or where foreign material are used, Laser beam operator, Layout man and/or tile Plasterer tenders, ready mix scalemen, portable or temporary plant, Screenman or asphalt pavers, Steel form setters - street and highway, Welders, cutters, burners and torchmen

DECISION NO. IL79-2028

ILL-1-PEO-1-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	12.40	.55	.75		.08
CLASS II	12.30	.55	.75		.08
CLASS III	12.10	.55	.75		.08
CLASS IV	8.00	.55	.75		.08

CLASS I - Master Mechanic

CLASS II - Utility Operator

CLASS III - Power cranes, Draglines, Electric overhead cranes, Shovels, Gradall, Mechanics, Repair and Maintenance of all equipment, Tractor highlift shovel, Forklifts, Tournamixer, 2 drums machine or 2 cage hoist, Cableways, Tower machines, Motor Patrol, Boom tractor, Boom or winch truck, Truck Crane, Tournapull, Tractor operating scoops, Bulldozer, Push Tractor, Finishing machine on asphalt, Large rollers & rollers on asphalt Gravel Macadam & brick surface,Koss carrier or similar machine, Asphalt Plant Engineer or Pug Mill, Two (2) air compressors, Hetherington paver operator, farm tractor with ½ yard bucket and/or backhoe attachment, Trench machine cutting over 24" Dredging equipment, Central mix plant engineer concrete spreader, Air compressors 200 cu. ft. or over, Standard or Dinkey locomotives, Scoopmobiles, Euclid loader, Soil cement machine, Mixers 14S capacity or less, trench Machine cutting 24" & under, backfiller, Elevating machine, Power Blade, asphalt Engineer, Well drilling machines, Plant Machine, Pipe cleaning machine, Pipe wrapping machine, Pipe bending machine, Apsco paver, Boring machine, w/0 winch, Head equipment, Greasers, Barger Green Loaders, Formless paver, farm tractor with less than half-yard bucket and other attachments except backhow, Well point System

CLASS IV - Power Sub-Grader, Bull Float, Form grader, finishing machine, Pavement breaker, Rock Crushers, One drum machine, air compressor less than 20 cu. ft. capacity, concrete pumps, Gunnite machine, Air Tuggers, Truck crane drivers, House Elevator when used for temporary heat, Small rollers on earth, Engine tenders, Fireman on pain pots, Fireman, Wagon Drill Flexa-plane, Conveyor, 2 to 4 Water Pumps, Siphon & Pulsometer, Switchman, Fireman on Asphalt plants, Distributor operator on trucks, Tampers, Power Broom, Post Hole Digger, Self propelled concrete saw, Striping machine (Moter driven), Form tamper, seaman tiller, bulk cement Plant Equipment Greaser

DECISION NO. IL79-2028

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.80	.65	a20.00		
GROUP II	11.20	.65	a20.00		
GROUP III	11.40	.65	a20.00		

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including pulled by separat-units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tolls, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity.

GROUP II - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydraulic trucks, or over 6,00 lb. capacity; winch trucks; 4-axle combination units; ticket writer

GROUP III - 2, 3 or 4 axle truck hauling 16 ton or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOONOTES:

a. Per Week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Fulton, Hancock McDonough & Schuyler

DECISION NUMBER: IL79-2029

DATE: Date of Publication

Supersedes Decision No.: IL78-2106, dated October 20, 1978 in 43 FR 49167

DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Fulton & Schuyler Counties	12.63	.80	.97		
Hancock & McDonough Counties	11.55	.40	.60		.10
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS:					
Schuyler County:					
Bricklayers, Stonemasons, Plasterers, Marble-Tile-Terrazzo Workers, Cement Blocklayers, Pointers-Caulkers-Cleaners	11.50	.50	.52		.02
Marble & Tile Setters' Finishers	11.40				
Fulton County:					
Bricklayers, Stonemasons, Cement Blocklayers, Cleaners-Pointers & Caulkers	11.70	.70	1.00		.01
Marble-tile-Terrazzo Workers	11.45	.70	1.00		.01
Marble & Tile Setters' Finishers	11.85	.60	.25		
Hancock & McDonough Counties:					
Bricklayers, Stonemasons, Cement Block Layers, Marble-Tile & Terrazzo Workers	12.90				
Marble & Tile Setters' Finishers	11.85	.60	.25		
CARPENTERS:					
Schuyler County:					
Carpenters & Soft Floor Layers	10.90	.55	.25		.02
Millwrights	11.15	.55	.25		.02
Piledrivermen	11.40	.55	.25		.02
Fulton County:					
Carpenters & Soft Floor Layers Millwrights Co. & Eastern 1/3 of Hancock Co.	12.61	.40	.75		.05
Carpenters & Soft Floor Layers	12.61	.40	.75		.05
Millwrights & Piledrivermen	13.11	.40	.50		.05
Remainder of Hancock County:					
Carpenters & Soft Floor Layers	11.55	.75	.90		.04
Millwrights & Piledrivermen	12.25		.90		.04

DECISION NO. IL79-2029

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS & PLASTERERS:					
Hancock, McDonough & Schuyler Counties					
Cement Masons	12.95				
Hancock & McDonough Counties					
Plasterers	12.70				
Fulton County					
Cement Masons	12.16	.80	.90		.05
Plasterers	11.20	.80	.90		.03
ELECTRICIANS:					
Hancock & Schuyler Cos., Twps. of Lamoine, Bethel, Industry & Eldorado in McDonough County	11.15	.50	3%+.75		.1%
Twps. of Cass, Deerfield, Ellisville, Harris, Lee, Union, Young & Hickory in Fulton Co., & the Northern 2/3 of McDonough County	12.06	.50	3%+.75		3/4%
Remainder of Fulton County	12.32	.50	3%+.75		1%
IRONWORKERS:					
Hancock & McDonough Cos., the Western ½ of Schuyler County	11.50	.55	.90		.06
Eastern ½ of Schuyler Co.	12.25	.55	1.05		.08
The Southern Tip of Fulton Co., incl. Marbletown, Astoria, Summum, & Remainder of Fulton Co.	11.75	.55	1.05		.08
LABORERS:					
Hancock & McDonough Counties					
Unskilled	10.07	.45	.60		.035
Semi-Skilled	10.27	.45	.60		.035
Skilled	10.47	.45	.60		.035
Schuyler County					
Unskilled	10.44	.30	.45		.035
Semi-Skilled	10.64	.30	.45		.035
Skilled	11.40	.30	.45		.035
Fulton County					
Projects Under $375,000					
Unskilled	11.00	.60	.60		.035
Semi-Skilled	11.20	.60	.60		.035
Skilled	11.40	.60	.60		.035

DECISION NO. IL79-2029

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appt. Tr.
LABORERS (CONT'D)					
Projects in Excess of $375,000					
Unskilled	$ 11.40	.60	.60		.035
Semi-Skilled	11.60	.60	.60		.035
Skilled	11.80	.60	.60		.035
PAINTERS:					
Fulton & Schuyler Cos.					
Brush	11.30	.55	.30		.03
Structural Steel & Spray	11.95	.55	.30		.03
Hancock & McDonough Cos.					
Brush	10.75				
Structural Steel & Spray	11.25				
PLUMBERS & STEAMFITTERS:					
Fulton & McDonough Counties	12.32	.35	.35	4%	
Hancock & Schuyler Counties	12.05	.35	.40		.05
ROOFERS:					
Schuyler County					
Composition	12.93	.70			
Slate-Tile & Precast Slab	12.93	.70			
Fulton Co., & Eastern ½ of McDonough Co., excluding Macomb					
Slate-Tile-Comopsition-Damp & Waterproof	12.85	.70	.40		.025
Hancock Co., & Western ½ of McDonough including Macomb					
Slate-Tile-Damp & Waterproof	11.10				
SHEET METAL WORKERS:					
Fulton & McDonough Counties	12.68	.65	.99		.10
Hancock County	10.78	.55	.55		.12
Schuyler County	12.93	3%+.75	.78		
SPRINKLER FITTERS	12.93	.75	1.05		.08
Welders - Receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE:
3% of Gross earnings to SASMI

DECISION NO IL79-2029

ILL-5-PEO-1-2-3

SCHUYLER COUNTY

POWER EQUIPMENT OPERATORS:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	App. Tr.
CLASS I	$ 12.40	.70	.80		.05
CLASS II	10.85	.70	.80		.05
CLASS III	9.50	.70	.80		.05

POWER EQUIPMENT OPERATORS:

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt pavers, Asphalt rollers on bituminous concrete, athey loaders, backfillers, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders eingeers on dredge, gravel processing machines, high list or fork lists, hoist w/two drums or two or more loadlines locomotives (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operators power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozers, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot foller (self propelled) shovels, skimmer scoops, test holedrilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type fork lists or high lifts, track jacks & temper, tractor, sideboom, trenching machine, ditching machine, tunnelluggers, wheel type end loaders, winch cat, scoops, all or tournapull.

CLASS II - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic, hoist w/1 drum & 1 load line, mud jacks, post holediggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine, vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressors, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic helpers, mechanical heaters*, oilers, power from graders, power sub-graders, pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size of type) truck crane oiler & driver 1 (man), water pumps*, welding machines (one 300 amp. or over*)* welding machines*

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS, WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTERIES OR WITHIN 300 FT.

DECISION NO. IL79-2029

ILL-6-PEO-1

POWER EQUIPMENT OPERATORS REMAINDER OF COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	13.08	.45	.80		.05
GROUP 2	12.88	.45	.80		.05
GROUP 3	12.505	.45	.80		.05
GROUP 4	12.23	.45	.80		.05
GROUP 5	11.62	.45	.80		.05

POWER EQUIPMENT OPERATORS:

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity) require oiler, mechanics, central concrete mixing plant operator, road pavers (27E-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, koehring scoopers, draglines, backhoe, hopties-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes, caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine, pumpcrete-belt-wqueeze cretes-screw-type pumps and gysum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit earth movers, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boon, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine euclid loader, forklifts, formless finishing machine, jeeps w/ditching machine, or other attachments, tuneluger, rock crushers, automatic cement gravel batching plants, mobile drills (soil testing and similar types), (require oilers), flaherty spreader or similar types (require oilers), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, statting engineer on pipeline, C.M.I. and similar types (require oiler) Straw blower, hydro seeder and F.W.D. and similar types

DECISION NO. IL79-2029

POWER EQUIPMENT OPERATORS (Con.'d)

Group 3: Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barber greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

Group 4: Air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air without attachments, curb machines, truck crane oilers, and truck type hoptoe oilers

Group 5: Herman Nelson heater, Dravo, Warner, Silent glo, and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spreed, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (standard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO. IL79-2029

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.80	.65	a20.00		
GROUP II	11.20	.65	a20.00		
GROUP III	11.40	.65	a20.00		

TRUCK DRIVERS

GROUP I - Drivers on 2 axle truck hauling less than 9 tons, air compressor and welding machine including those pulled by separate units truck driver helpers, warehousemen, mechanics helpers, greasers & tiremen, pick-up trucks when hauling materials, tolls, or men to and from and on the jobs site; Fork lifts up to 6,000lbs., capacity.

GROUP II - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used tranportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4 axle combination units; ticket writers

GROUP III - 2,3 or 4 axle truck hauling 16 ton or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatcher

FOOTNOTES

a. Per week Per Employee

40-000 04 3 77

STATE: Illinois COUNTIES: Ford & Iroquois
DECISION NUMBER: IL79-2030 DATE: Date of Publication
Supersedes Decision No. IL78-2165, dated December 8, 1978 in 43 FR 57786
DESCRIPTION OF WORK: Building Construction, (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.01	.91	.99		.05
BOILERMAKERS:					
Ford & Iroquois Counties	11.45	.95	1.00		.03
BRICKLAYERS, STONEMASONS, MARBLE SETTERS, TERRAZZO WORKERS, TILE SETTERS, POINTERS, CAULKERS & CLEANERS:					
South of Roberts in Ford County					
Bricklayers & Stonemasons	12.45	.45	.50		.05
Marble-Tile & Terrazzo Workers	13.30		.50		
Remainder of Ford County:					
Bricklayers & Stonemasons	11.70	.80	.75		
Marble Setters	11.45	.70	1.00		.01
Iroquois County:					
Bricklayers & Stonemasons	11.70	.80	.75		
Marble-Tile & Terrazzo Workers	11.45	.70	1.00		.01
CARPENTERS:					
Ford County:					
Carpenters & Soft Floor Layers	12.315	.45	1.10		.13
Millwrights & Piledrivermen	12.815	.45	1.10		.13
Iroquois County:					
Carpenters, Millwrights, Soft Floor Layers & Piledrivermen	11.88	.65	.80		.01
CEMENT MASONS:					
Ford County	12.575	.45	.25		.025
Iroquois County	11.70	.80	.75		
ELECTRICIANS:					
Twps. of Fountain Creek, Love Joy & Praitie Green in Iroquois County	12.27	.50	3%+.50		.25%
Area S. of Roberts Twps in Ford County, Twps of Artesia, Pigeon Grove & Loda in Iroquois Counties	12.42	.88	3%+.70		.2 of 1%
GLAZIERS:					
Piper City & North thereof in Ford County	9.65			.65	
Remainder of Ford County	12.33	.55	.60		.01

40-000 04 3 78

DECISION NO. IL79-2030

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Ford County	12.15	.65	1.00		.08
Iroquois County	12.50	.75	.75		.05
LATHERS:					
Ford County	11.99	.45	.50		.01
PAINTERS:					
Ford County:					
Brush & Roller	11.20	.55		.06	.06
Paperhanging	11.45	.55			.06
Structural Steel	11.70	.55			.06
Iroquois County:					
Brush and Roller	10.85	.55	.50		
Spray	12.35	.55	.50		
PLASTERERS:					
Ford County	12.515	.45			.025
Iroquois County	11.50	.80	.75		
PLUMBERS & STEAMFITTERS:					
Ford County	12.65	.35	1.15		.12
Iroquois County	12.68	.35	1.00		.08
ROOFERS:					
Ford County	12.39	.70	.45		.03
Iroquois County	11.55				
SHEET METAL WORKERS:					
Ford County	11.94	3%+.60	.67		.16
Iroquois County	12.97	.70	.89		.08
SPRINKLER FITTERS	12.10	.75	1.05		.08
TRUCK DRIVERS:					
Remainder of Iroquois County & Northern ½ of Ford Co.					
2-3 Axle Trucks	10.65	b29.00	b33.00		
4 Axle Trucks	10.80	b29.00	b33.00		
5 Axle Trucks	11.00	b29.00	b33.00		
6 Axle Trucks	11.20	b29.00	b33.00		

FOOTNOTE:
3% of Gross Earnings to SASMI

DECISION NO. IL79-2030

Welders - receive rate prescribed for craft performing operation to which welding is incidental.

PAID HOLIDAY: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving Day; G-Christmas Day

FOOTNOTES:

a. 6 paid holidays: A through G

b. Per week - Per Employee

DECISION NO. IL79-2030

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Unskilled	11.20	.40	.42		.035
Semi-skilled	11.40	.40	.42		.035
Skilled	11.60	.40	.42		.035

UNSKILLED - Common Laborer; carpenter tenders; tool crihmen firemen or salamander tenders; flagmen; gravel box men; dumpmen & spotters; form handlers; material patchers; landscapers; unloading; explosives; laying of sod; planting of trees; asphalt plant laborers; wrecking laborers; writer of scale tickets; fire shop laborers; fireproofing laborers; janitors; wrecking-dismantiling buildings; wallmen & housemovers; driving of stakes; stringlines for all machinery

SEMI-SKILLED - Handling of materials treated with oil, creosote, asphalt or any foreign material, track laborers; cement handlers; chloride workers (wet); tunnel helpers in free air; bathe dumpers; mason & plasterer tenders 7 material wheelers kettlemen & tarmen; tank cleaners; plastic installers; scaffold workers; motorized buggies or motorized unit used for wet concrete or handling of building materials laborers w/dewatering systems; all sewer workers plus depth; rod & chainmen with land surveyors; vibrator operators; motor mixer operator; cement silica; clay; fly ash; line & Plasters handlers (bulk or bag); cofferdam workers plus depth; (one concrete paving) placing, cutting & trying or reinforcing; deck hand; dredge hand & shore laborers; bankmen on floating plant; asphalt workers w/machine; asphalt rakers; grade checker

SKILLED - Dynamite man or blasters; caisson workers plus depth; gunnite; nozzle men leadman on sewer work; welder; cutters; burners; torchmen; chain saw operators; jackhammer & drill operators; layout man; steel form setters (street & highway); air tamping hammermanl signal man on crane, concrete saw operator; screenman on asphalt pavers; laborers tending masons w/hot materials are used; multiple concrete duct-leadmen; curb asphalt machine operator; ready-mix scalemen; pottable or temporary plant; laborers handling masterplate or similar materials; laser beam operator; coring machine operator

DECISION NO. IL79-2030

ILL-1-PEO-1-2-3

POWER EQUIPMENT OPERATORS: FORD & IROQUOIS COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	12.40	.55	.75		.08
CLASS II	12.30	.55	.75		.08
CLASS III	12.10	.55	.75		.08
CLASS IV	8.00	.55	.75		.08

CLASS I - Master Mechanic

CLASS II - Utility Operator

CLASS III - Power cranes, Draglines, Electric overhead cranes, Shovels, Gradall, Mechanics, Repair and Maintenance of all equipment, Tractor highlift shovel, Forklifts, Tournamixer, 2 drums machine or 2 cage hoist, Cableways, Tower machine, Motor Patrol, Boom tractor, Boom or winch truck, Truck Crane, Tournapull, Tractor operating scoops, Bulldozer, Push Tractor, Finishing machine on Asphalt, Large rollers & rollers on asphalt, Gravel Macadam & Brick surface, Ross carrier or similar machine, Asphalt Plant Engineer or Pug Mill, Two (2) air compressors, Hetherington paver operator, Farm tractor with ½ yard bucket and/or backhoe attachment, Trench machines cutting over 24," Dredging equipment, Central mix plant engineer, concrete spreader, Air compressors 200 cu. ft. or over, Standard or Dinkey locomotives, Scoopmobiles, Euclid loader, soil cement machine, Mixers 14S capacity or less, Trench Machine cutting 24" & under, Backfiller, Elevating machine, Power Blade, Asphalt Plant Engineer, Well drilling Machines, Paint Machine, Pipe Cleaning Machine, Pipe wrapping machine, Pipe Bending Machine Apsco paver, Boring Machine, w/o winch, Head equipment, Greasers, Barber Green Loaders, Formless paver, Farm Tractor with less than half-yard bucket other attachments except backhoe, Well Point System

CLASS IV - Power Sub-Grader, Bull Float, Form Grader, Finishing Machine, Pavement breaker, Rock Crushers, One drum machine, air compressor less than 20 cu. ft. capacity, Concrete pump, Gunnite machine, Air Tuffers, Truck crane drivers, House Elevators when used for temporary heat, Small rollers on earth, Engine tenders, Fireman on pain pots, Fireman, Wagon Drill, Fexaplane, Conveyor, 2 to 4 Water Pumps, Siphon & Pulsometer, Switchman, Fireman on Asphalt plants, Distributor operator on trucks, Tampers, Power Broom, Post Hole Digger, Self Propelled Concrete Saw, Striping Machine (Motor Driven), Form Tamper, Seaman Tiller, Bulk Cement Plant Equipment Greaser

DECISION NO. IL79-2030 ILL-82-TD-1-2-3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS - S.E. CORNER OF IROQUOIS CO., & S. ½ OF FORD CO.					
GROUP I	10.80	.65	a20.00		
GROUP II	11.20	.65	a20.00		
GROUP III	11.40	.65	a20.00		

TRUCK DRIVERS

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanics helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II - 2 or 3 axle trucks hauling more than 9 tons, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes: Forklifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III - 2,3 or 4 axle trucks hauling 16 tons or more, drivers on oil distributors, water pulls, mechanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: Illinois COUNTIES: Bureau, LaSalle, Livingston, Marshall, Putnam and Woodford

DECISION NUMBER: IL79-2031 DATE: Date of Publication

Supersedes Decision No. IL78-2109, dated October 20, 1978 in 43 FR 49175

DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.01	.91	.99		.05
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS AND STONEMASONS:					
LaSalle County:					
Peru & Vicinity	11.70	.65	1.00		
Streator & Vicinity	11.75	.70	.50		
Ottawa & Vicinity	11.80	.75	1.00		
Woodford & Marshall Counties	11.70	.70	1.00		.01
Livingston County	11.55	.85	.50		
Bureau & Putnam Counties	12.25	.70	.40		
CARPENTERS:					
LaSalle, Marshall, Bureau Cos. The Northern half of Putnam County and Northwestern corner of Livingston County					
Carpenters; Piledrivermen and Soft Floor Layers	11.68	.75	.70		.03
Millwrights	11.93	.75	.70		.03
Remainder of Livingston County					
Carpenters; Soft Floor Layers	11.76	.40	.75		.05
Millwrights and Piledrivermen	12.26	.40	.75		.05
Woodford County					
Carpenters and Soft Floor Layers	11.76	.40	.75		.05
Millwrights & Piledrivermen	12.26	.40	.75		.05
CEMENT MASONS:					
LaSalle, Bureau, Putnam Cos. and the Northern part of Livingston County	11.85		1.00		
Southern part of Livingston County and that portion East of Roanoke in Woodford Co.	12.63	.75			
Marshall County & the Remainder of Woodford County	12.16	.80	.90		.05
ELECTRICIANS:					
Northern half and Central Southern part of LaSalle Co. Walnut; Ohio, LaMoille, Clarion, Bureau, Dover, Verlin and Westville, Townships in Bureau County	13.93	.80	3%+.70		.2 of 1%

DECISION NO. IL79-2031

ELECTRICIANS: (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Vicinity of LaSalle - S. W. part of County; Remainder of Putnam County; Arispe, Concord, Fairfield, Gold, Greenville, Hall, Indianatown, Leepertown, Macon, Manilus, Milo, Mineral, Neponset, Princeton, Sibley, Wheatland, and Waynet Townships, in Bureau County	12.30	.50	3%+.30		.25%
Area West of Bell Plain and Roberts Townships in Marhsall County; Area West to but not including Linn, Kansas, Palestone, Roanoke, Cazenovia and Metamora Townships in Woodford County	12.32	.50	3%+.75		1%
Livingston County; Vicinity of Streator - S. E. part of County; Magnolia Township in Putnam County; Area East of Cazenovia and Metamora Townships, including Linn, Clayton, Minak, Roanoke, Green & Panola Townships in Woodford County; Remainder of Marshall County	12.45	.50	3%+.40		.3%
El Paso, Kansas and Palstine Townships S. E. corner of Woodford County	11.95	.50	3%+.55		.002
IRONWORKES:					
LaSalle, Bureau, Putnam and the Remainder of Marshall County	13.19	.65	.375		.02
Woodford County; and the S. W. corner of Marshall County	12.825	.65	.925		
Livingston County	12.825	.65	.925		
LATHERS:					
S. W. half of Marshall County	11.92	.40	.40		.01

DECISION NO. IL79-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Livingston County:					
Brush	9.00				
Structural Steel	9.50				
Vicinity of Ottawa, Streator and Marseilles in LaSalle Co.,					
Brush	9.75	.55	.30		
Spray	10.75	.55	.30		
Putnam County and the Vicinity of LaSalle, Mendota, Oglesby, Utica and Peru in LaSalle Co.					
Brush	9.75	.55	.30		
Spray and Taping	10.75	.55	.30		
Woodford and Marshall Counties:					
Brush	11.30	.55	.30		.03
Sprau	11.95	.55	.30		.03
Bureau County:					
Brush and Roller	10.62	.55	.85		.18
Spray	11.12	.55	.85		.18
PLASTERERS:					
Vicinity of LaSalle and Peru in LaSalle County	11.70	.65	1.00		
Vicinity of Ottawa, Earlville, Seneca and Marseilles - LaSalle County	11.80	.75	1.00		
Vicinity of Streator; LaSalle County and Norhtern part of Livingston County	11.75	.70	.50		
Portion East of Roanoke in Woodford County & the Southern part of Livingston County	13.05				
Marshall county & the Remainder of Woodford County	11.20	.80	.90		.03
Putnam and Bureau Counties	12.25	.70	.40		
PLUMBERS AND STEAMFITTERS:					
LaSalle, Putnam and Bureau Cos. and North of Pontiac in Livingston County	12.78	.55	.60		.09
City of Pontiac and South thereof Livingston County	13.30	.75	1.20		.15
Illinois State Prison (Pontiac) in Livingston County	12.68	.35	1.00		.08

DECISION NO. IL79-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
LaSalle, Bureau, Putnam, Livingston and N. E. half of Marshall county	11.38	.40	.60		
Woodford County and S. E. half of Marshall County	12.85	.70	.50		.025
SHEET METAL WORKERS:					
Woodford County	12.68	.65	.99		.10
LaSalle, Bureau, Marshall, Putnam and Southern part of Livingston County	11.39	.65+b	.99		.06
Northern portion of Livingston County	12.97	.70	.89		.08
SPRINKLER FITTERS	12.10	.75	1.05		.08
TRUCK DRIVERS:					
Remainder of Woodford and Livingston Counties					
2-3 Axle Trucks	10.65	a29.00	a33.00		
4 Axle Trucks	10.80	a29.00	a33.00		
5 Axle Trucks	11.00	a29.00	a33.00		
6 Axle Trucks	11.20	a29.00	a33.00		
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE:

a. Per week per employee
b. 3% of gross earnings to SASMI

DECISION NO. IL79-2031

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Unskilled	11.20	.40	.42		.035
Semi-skilled	11.40	.40	.42		.035
Skilled	11.60	.40	.42		.035

UNSKILLED - Common Laborer; Carpenter Tenders; Tool Cribmen; Fireman or Salamander Tenders; Flagmen; Gravel Box Men; Dumpmen and Spotters; Form Handlers; Material Handlers; Fencing Laborers; Cleaning Lumber; Pit Men Material Checkers; Dispatchers; Landscapers; Unloading explosives; Laying of sod; Planting of trees; Asphalt Plant Laborers; Wrecking Laborers; Writer or scale tickets; Fire shop Laborers; Fireproofing Laborers; Janitors; Wrecking-dismantling buildings; Wallmen and Housemovers; Driving of Stakes; Stringlines for all Machinery

SEMI-SKILLED - Handling of Materials treated with oil, creosote, asphalt or any foreign material, track Laborers; Cement Handlers; Chloride Handlers; the unloading and Laborers w/steel workers and rebard; Concrete Workers (wet); Tunnel Helpers in free air; Batch Dumpers; Mason and Plasterer Tenders and material wheelers; Kettlemen and Tarmen; Tank Cleaners; Plastic Installers; Scaffold Workers; Motorized buggies or motorized unit used for wet concrete or handlin of building materials; Laborers w/dewatering systems; All sewer workers plus depth; Rod and Chainmen with land surveyors; Vibrator Operators; Mortar Mixer Operator; Cement Silica, Clay, Fly Ash, Lime and Plasters; Handlers (bulk or bag); Cofferdam Workers plus depth; (on concrete paving); Placing, Cutting and trying or Reinforcing; Deck Hand; Dredge hand or Shore Laborers; Bankmen on floating plant; Asphalt Workers w/machine; Asphalt Raker; Grade Checker

SKILLED - Dynamite Man or Blasters; caisson workers plus depth; Gunnite Nozzl Men; Leadmen on sewer work; Welders; Cutters; Burners; Torchmen; Chain Saw Operator; Jackhammer and Drill Operators; Layout man; Wheel Form Setters (street and highway); Air Tamping Hammerman; Signalman on crane, Concrete Saw Operator; Screenman on Asphalt Pavers; Laborers tending Masons w/hot materials are used; Multiple Concrete Duct-Leadmen; Lutemen; Curb Asphalt Machine Operator; Ready-mix Scalemen; Portable or temporary plant; Laborers handling master plate or similar materials; Laser Beam Operator; Coring Machine Operator

DECISION NO. IL79-2031

ILL-12-PEO-1

POWER EQUIPMENT OPERATORS: Bureau (e. of Rt. #26); LaSalle; Livingston; Putnam (e. of Illinois River)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	12.55	1.00	1.00	.50	.05
CLASS II	11.25	1.00	1.00	.50	.05
CLASS III	10.10	1.00	1.00	.50	.05
CLASS IV	8.85	1.00	1.00	.50	.05

CLASS I - Asphalt plant, asphalt spreader, auto-grade, batch plant, Benoto (requires two engineers), boiler & throttle valve, caisson tugs, central ready-mix plant, combination backhoe front end-loader machine, compressor & throttle valve, concrete breaker (truck mounted), conveyor, concrete paver, concrete placer, concrete tower, cranes (all), derricks (all), grader, elevating, grouting machines, highlift shovels or front endloader 2½ yd. & over, hoists, one, two & three drum, hoists, two & three, drum, hoists, two tugger one floor, hydraulic boom trucks, locomotives (all) mechanic, motor patrol, pile drivers & skid rig, post-hole digger, pre-stress machine, pump cretes dual ram (requiring frequent lubrication & water), pumpcretes, squeeze cretes - screw types pumps, Cysum bulker & pump, rock drill (self-propelled), rock drill (truck mounted), scoopes - tractor drawn, slip form paver, straddle buggies, tournapull, tractor with boom & side, trenching machines

CLASS II - Boilers, bulldozers, broom all power propelled, concrete mixer (2 bag & over), conveyor portable, forklift truck greaser engineer, highlift shovels or front endloaders under 2½ yd., hoists, automatic, hoists, all elevators, hoists, tugger single drum, rollers, all steam generators, stone crushers, tractors, all winch trucks with "A" frame

CLASS III - Air compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air compressor - large over 150, combination - small equipment opr., generators under & over 50 KW, heaters, mechanical pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), pumps, well points, welding machines (2 through 5), winches, 4 small electric drill winches

CLASS IV - Oilers

DECISION NO. IL79-2031

ILL-6-PEO-1

POWER EQUIPMENT OPERATORS: Bureau (w. of Rt. #26); Marshall; Putnam (W. of Illinois River); & Woodford Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	13.00	.45	.80		.05
GROUP 2	12.88	.45	.80		.05
GROUP 3	12.505	.45	.80		.05
GROUP 4	12.23	.45	.80		.05
GROUP 5	11.62	.45	.80		.05

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27e-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, kohring scoopers, draglines, backhoe, loptoes-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotives, cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine, pumpcrete-belt-crete-squeeze cretes-screw-type pumps and gypsum bulker and pump, dinkey, power launches, tournapulls (all), multiple unit, earth mover, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine euclid loader, forklifts, formless finishing machine jeeps w/ditching machine, or other attachments, tuneluger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaser (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I. and similar types (require oiler) straw blower, hydro seedeer and F.W.D. and similar types

DECISION NO. IL79-2031

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling roller, center stripper, cement finishing machines, barger greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

GROUP 4 - Air compressor, all air and steam falves, power subgrader, oil distributor, straight tractor, trac-air without attachments, surb machines, truck crane oilers, and truck type hoptoe oilers

GROUP 5 - Herman Nelson heater, Dravo, Warner, Silent flo, and similar types, one engineer will opera 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spread, roller, 5 tons and under on earth or gravel, form grader, pump 1 Or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and umder (standard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO. IL79-2031

TRUCK DRIVERS; Bureau, LaSalle, Marshall & Putnam Cos., Woodford Co.: (NW Corner) Livingston Co: (SW Corner)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.80	.65	a20.00		
GROUP II	11.20	.65	a20.00		
GROUP III	11.40	.65	a20.00		

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units; ticket writers

GROUP III - 2,3, or 4 axle trucks hauling 16 tons or more, drivers on oil distributors, water pulls, mehcanics & working foreman; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week per employee

STATE: Illinois
COUNTIES: Logan, Mason & Menard
DECISION NUMBER: IL79-2032
DATE: Date of Publication
Supersedes Decision No. IL78-2111, dated October 20, 1978 in 43 FR 49179
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.63	.90	.97		
BOILERMAKERS:					
Menard County	11.45	.90	1.20		.03
Logan and Mason Counties	11.45	.95	1.00		.03
BRICKLAYERS:					
Logan and Mason Counties					
Bricklayers, Stonemasons, Cement Blocklayers, Caulkers, Pointers, Cleaners and Plasterers	12.40				
Marble-Tile and Terrazzo Workers	12.15				
Marble-Tile Finishers	11.40				
Menard County					
Bricklayers, Stonemasons, Marble-Tile and Terrazzo Workers, Pointer, Caulkers and Cleaners	11.25	.50	1.00		.02
Plasterers	13.26	.50	1.00		.02
Marble and Tile Finishers	10.90				
CARPENTERS:					
Logan County					
Carpenters and Soft Floor Layers	11.65	.45	.80		.06
Millwrights and Piledrivermen	12.15	.45	.80		.06
Menard County					
Carpenters and Soft Floor Layers	11.95	.55	.55		.06
Millwrights and Piledrivermen	12.45	.55	.55		.06
Mason County					
Carpenters and Soft Floor Layers	12.61	.40	.75		.05
Millwrights and Piledrivermen	13.11	.40	.75		.05
CEMENT MASONS:					
Logan	11.95				
Menard County	9.98	.35	.35		.02
Mason County	12.16	.80	.90		.05

DECISION NO. IL79-2032

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Logan and Menard Counties; the Townships of Bath, Crane Creek, Kilbourne, Lunchburg, Mason City and Salt Creek in Mason County	12.37	.50	3%+.60		.1 of 1%
Remainder of Mason County	12.32	.50	3%+.75		3/4%
GLAZIERS	10.39	.45	.50		
IRONWORKERS	12.25	.55	1.05		.08
LABORERS:					
Logan County and Northern half of Menard County					
Unskilled	10.10	.45	.40		.035
Semi-skilled	10.30	.45	.40		.035
Skilled	10.45	.45	.40		.035
Southern half Menard County					
Unskilled	10.55	.45	.45		.035
Semi-skilled	10.75	.45	.45		.035
Skilled	10.90	.45	.45		.035
Mason County					
Unskilled	10.44	.30	.45		.035
Semi-skilled	10.64	.30	.45		.035
Skilled	10.79	.30	.45		.035
LATHERS	13.15				
PAINTERS:					
Logan and Menard Counties					
Brush and Roller	10.15	.55	.50		
Spray	10.65	.55	.50		
Mason County					
Brush	10.15	.55	.50		.03
Spray	10.65	.55	.50		.03
PLUMBERS AND PIPEFITTERS	12.43	.35	.88		.07
ROOFERS	12.93	.70			
SHEET METAL WORKERS	11.86	3%+.50	.78		.07
SPRINKLER FITTERS	12.10	.75	1.05		.08
WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTE:
3% of Gross earnings to SASMI

DECISION NO. IL79-2032

POWER EUIPMENT OPERATORS LOGAN & MENARD COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	12.40	.70	.80		.05
CLASS II	10.85	.70	.80		.05
CLASS III	9.50	.70	.80		.05

CLASS I - Asphalt screed man, Aspco concrete spreaders, Asphalt paver, Asphalt rollers on bituminous concrete, athey loaders, backfiller, crane type, backhoes, cableways, cherry pickers, claim shell, C.N.E. & similar type autograde formless paver, autograde placer & finisher, concrete breakers, concrete plant operators, concrete pumps, cranes, derrick, derrick boats, draglines, earth augeror boring machines, levating graders engineers on dredge, gravel processing machines, high lifts or fork lifts, hoist w/two drums or two or more loadlines locomotive (all) mechanics, motar graders or auto patrols, operators or levelman on dredges, operator power boat, operators pug mill (asphalt plants), orange peels, overhead cranes, paving mixers, piledrivers, pipe wrapping & painting machines, push dozer, or push cats, rock crushers, ross carriers or similar machines, scoops, skimmer, 2 cu. yd. capacity & under, sheep foot roller (self propelled) shovels, skimmer scoops, test hole drilling machines, tower cranes, tower machines, tower mixers, track type and loaders, track type form lifts or high lifts, track jacks & tamper, tractor, sideboom, trenching machine, ditching machine, tunnel luggers, wheel type end laoders, winch cat, scoops, all or turnapull.

CLASS - Asphalt boosters & heaters, asphalt distributors, asphalt plant fireman, oiler on 2 paving mixers when used in tandem boom or winch truck, building elevator, bull floats or flexplanes, concrete finishing machines, concrete saws, self propeller, concrete saws, self propeller, concrete spreader machines, gravel or stone spreader, power operated, head equipment greaser, hoist automatic,hoist w/1 drum & 1 load line, mud jacks, post hole diggers, mechanical, road or street sweeper-self propelled, seaman tiller, straw machine vibratory compactor, well drill machines scissors hoist.

CLASS III - Air compressor*, air compressor, track or self-propelled, asphalt plant engineers, bulk cement batching plants, conveyors,* concrete mixers (except plant, paver, tower) firemen, generators*, greasers, helper on single paving mixer, light plants*, mechanic pug mills, when used for other than asphalt operation, rollers (except bituminous concrete) tractors w/o power attachments regardless of size or type) truck crane oiler & driver 1 (man), water pumps*, welding machines (300 amp. or over)* welding machines

*COMBINATIONS OF ONE TO FIVE OF ANY AIR COMPRESSORS, CONVEYORS. WELDING MACHINES, WATER PUMPS, LIGHT PLANTS OR GENERATORS SHALL BE IN BATTIERS OR WINTIN 300 FT.

DECISION NO. IL79-2032

ILL-6-PEO-1

POWER EQUIPMENT OPERATORS: MASON COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	13.08	.45	.80		.05
GROUP 2	12.88	.45	.80		.05
GROUP 3	12.505	.45	.80		.05
GROUP 4	12.23	.45	.80		.05
GROUP 5	11.62	.45	.80		.05

GROUP 1 - Cranes, escalated rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gredall, cherry pickers (and similar types, over 15 tons lifting capacity (require oiler), mechanics, central concrete mixing plant operator, road pavers (27E-dual drum tri-batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes,shovels skimmer scoops, koehring scoopers, draglines, badkhoe, hoptoes-cranes-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotive cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar type considered as cranes, caisson rigs (require oilers) dozer, tourna-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench machine, pumpcrete-belt crete-squeese crete-screw-type pumps and gysum bulker and pump, dinkeys, power launches, tournapulls (all), multiple unit, earth mover, $.25 per hour for each scoop over one, scoops (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine, euclid loader, forklifts, formless finishing machine, jeeps w/ditching machine, or other attachments, tune luger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and similar types), require oiler), flaherty spreader or similar types (require oiler), heavy equipment greaers (top greaser on spread), gurries and similar type), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I and similar types (require oilers) straw blower, hydro seeder and F.W.D. and similar types

DECISION NO. IL79-2032

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barger greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

GROUP 4 - Air compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air withour attachments, curb machines, truck crane oilers, and truck type hoptoe oilers

GROUP 5 - Herman Nelson heater, Dravo, Warner, Silent glo, and similar types, one engineer will operate 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistnat heavy equipment greaser on spreed, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (stnadard capacity), bulk cement plant, crawler crane and skid rig oilers

DECISION NO. IL79-2032

ILL-82-TD-1-2-3

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	10.80	.65	a20.00		
GROUP II	11.20	.65	a20.00		
GROUP III	11.40	.65	a20.00		

TRUCK DRIVERS

GROUP I - Drivers on 2 axle truckd hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehousemen, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tools, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II - 2 or 3 axle truck hauling more than 9 tons, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units. ticket writers

GROUP III - 2,3 or 4 axle truck hauling 16 tons or more, drivers on oil distributors, water pulls, mechanic & working foremen; 5-axle or more combination units; dispatchers

FOOTNOTES

a. Per week Per Employee

STATE: Illinois COUNTY: McLean
DECISION NUMBER: IL79-2033 DATE: Date of Publication
Supersedes Decision No. IL78-2112 dated October 20, 1978 in 43 FR 49182
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 13.01	.91	.99		.05
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS:					
Bricklayers, Stonemasons, Marble, Tile, Terrazzo Workers	11.50	.70	.80		
CARPENTERS:					
Carpenters & Soft Floor Layers	12.61	.40	.75		.05
Millwrights and Piledrivermen	13.11	.40	.75		.05
CEMENT MASONS	12.63	.75			
ELECTRICIANS:					
Cropsey, Anchor, Cheney Grove and Bell Flower Townships	12.45	.50	3%+.40		.3%
Remainder of County	11.95	.50	3%+.55		.002
ELEVATOR CONSTRUCTORS:					
Constructors	11.34	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
GLAZIERS	12.33	.55	.60		.01
IRONWORKERS:					
Eastern Part of County	12.15	.65	1.00		.08
Western Part of County	12.825	.65	.925		
LABORERS:					
Unskilled	9.97	.55	.60		.035
Semi-skilled	10.17	.55	.60		.035
Skilled	10.37	.55	.60		.035
LATHERS	11.92	.40	.40		.01
PAINTERS:					
Brush	*11.20	.55			.06
Structural Steel and Spray	11.70	.55			.06
PLASTERERS	13.05				.01
PLUMBERS & STEAMFITTERS	13.30	.70	1.20		.15
ROOFERS:					
Composition, slate, tile and Asbestos Damp and Waterproof	11.00		.45		
SHEET METAL WORKERS	12.68	.65	.99		.10
SPRIKLER FITTERS	12.10	.75	1.05		.08
Welders - Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. IL79-2033

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:
a. 7 Paid Holidays: A through G

b. Employer contributes 8% of Regular Hourly Rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 8% of Regular Hourly Rate to Vacation Pay Credit for employee who has worked in Business less than 5 years.

DECISION NO. IL79-2033

ILL-6-PEO-1

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	13.08	.45	.80		.05
GROUP 2	12.88	.45	.80		.05
GROUP 3	12.505	.45	.80		.05
GROUP 4	12.23	.45	.80		.05
GROUP 5	11.62	.45	.80		.05

GROUP 1 - Cranes, escalaed rate on crane, derricks, booms, $.01 per hour, per foot, after 80 feet or boom including jib, overhead cranes, gradall, cherry pickers (and similar types, over 15 ton lifting capacity (require oiler), machines, central concrete mixing plant operator, road pavers (27e-dual drum-tri batchers), blacktop plant operators and plant engineers, 3 drum hoist, derricks, hydro cranes, shovels skimmer scoops, kohring scoopers, draglines, backhoe, laptoes-crane-type that require oilers, derrick boats, pile drivers and skid rigs, clamshells, locomotives, cranes, dredge (all types), motor patrol, power blades dumore-elevating and similar types tower cranes (crawler mobile) and stationary, crane-type backfiller, drott yumbo and similar types considered as cranes caisson rigs (require oilers) dozer, tourn-dozer, work boats, ross carrier and helicopter

GROUP 2 - Trench macine, pumpcrete-belt-crete-squeeze cretes-screw-type pumps and gypsum bulker and pump, dinkey, power launches, tournapulls (all), multiple unit, earth mover, $.25 per hour for each scoop over one, scopps (all sizes), push cats, endloaders (all types), side boom, P-H one pass soil-cement machine (all similar types), wheel tractors (industrial or farm type w/dozer-hoe-end-loader or other attachments), pugmill with pump backfillers, asphalt surfacing machine euclid loader, forklifts, form-less finishing machine jeeps w/ditching machine or other attachments, tune-luger, rock crushers, automatic cement and gravel batching plants, mobile drills (soil testing and si ilar types), require oiler), flaherty spreader or similar types (require oiler), Heavy equipment greaser (top greaser on spread similar types (require oiler), 1 and 2 drum hoists (buck hoists and similar types freight and passenger elevators Chicago boom, boring machine and pipe jacking, machine, hydro boom, starting engineer on pipeline, C.M.I and similar types (require oiler) straw blower, hydro seeder and F.W.D and similar types

DECISION NO. IL79-2033

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (track type) without power unit pulling rollers, rollers on asphalt, brick or macadam, concrete breakers, concrete spreaders, mule pulling rollers, center stripper, cement finishing machines, barger greene or similar loaders, vibro tamper (all similar types), self-propelled, winch or boom truck, mechanical bull floats, mixer over 3 bags to 27E, tractor pulling power blade or elevating grader, porter rex rail, clary screed, pugmill (without pump) screed man on laydown machine, firemen and spray machine on paving

GROUP 4 - Air Compressor, all air and steam valves, power subgrader, oil distributor, straight tractor, trac-air without attachments, surb machines, truck crane oilers, and truck type hoptoe oilers

GROUP 5 - Herman Nelson heater, Dravo, Warner, Silent flo, and similar types, one engineer will opera 1-5 and after 5, two operators will be required, self-propelled concrete saws, assistant heavy equipment greaser on spread, roller, 5 tons and under on earth or gravel, form grader, pump 1 or 2, generator (1) or (2), welding machine (1) or (2) - 300 amp. or over, mixer (3) bag and under (standard capacity), bulk cement plant, crawler crane and skid rig oiler

DECISION NO. IL79-2033

ILL-82-TD-1-2-3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
GROUP I	10.80	.65	a20.00		
GROUP II	11.20	.65	a20.00		
GROUP III	11.40	.65	a20.00		

TRUCK DRIVERS:

GROUP I - Drivers on 2 axle trucks hauling less than 9 tons, air compressor and welding machine including those pulled by separate units, truck driver helpers, warehouseman, mechanic helpers, greasers & tiremen, pick-up trucks when hauling materials, tool, or men to and from and on the jobs site; Fork lifts up to 6,000 lbs., capacity

GROUP II - 2 or 3 axle trucks hauling more than 9 ton, but hauling less than 16 tons; A-frame winch trucks, hydrolifts trucks, or similar equipment when used for transportation purposes; Fork lifts over 6,000 lb. capacity; winch trucks; 4-axle combination units;

GROUP III - 2,3 or 4 axle trucks hauling 16 ton or more, drivers on oil distributores, water pulls, mechanics & working foremen; 5-axle or more combination unit; dispatchers

FOOTNOTES

a. Per week Per Employee

SUPERSEDEAS DECISION

STATE: MAINE COUNTY: CUMBERLAND
DECISION NUMBER: ME79-2042 DATE: DATE OF PUBLICATION
Supersedes Decision No. ME78-2158, dated November 17, 1978 in 43 FR 53959
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS	$ 9.00	.40	.50		.02
CARPENTERS	6.86				
CEMENT MASONS	9.00	.40	.50		.02
ELECTRICIANS	10.30	.65	3%+.25		.02
GLAZIERS	5.40				
IRONWORKERS, STRUCTURAL, ORNAMENTAL AND REINFORCING	9.65	.70	1.00		.04
LABORERS	6.45	.60	.80		.10
PLUMBERS & PIPEFITTERS	9.80	.55	.90		.02
ROOFERS	7.85				
SHEET METAL WORKERS	7.98	.52	.165		.05
SHEETROCKERS	7.85				
TAPERS	7.85				
POWER EQUIPMENT OPERATORS: Crane	6.92				

STATE: Michigan
DECISION NO. MI79-2012
COUNTIES: See Below
DATE: Date of Publication
Supersedes Decision No. MI78-2072 dated Spetember 29, 1978 in 43 FR 45103
DESCRIPTION OF WORK: Building (Does not include single family homes and garden type apartments up to and including 4 stories) and Heavy (excluding Bridge Airport and Sewer) Contruction Projects.

COUNTIES: Alcona, Alpena, Charlevoix, Emment, Grand Traverse, Leelanau, Mason, Montmorency, Muskegon, Oceana, Oscoda and Presque Isle.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.85	.95	1.63		.02
BOILERMAKERS	11.955	1.18	1.20	2.00	.03
BRICKLAYERS:					
Mason County:					
Bricklayers; Stonemasons; Marble-Tile Workers, Cement Masons & Plasterers	8.70	.65	.35		
Muskegon & Oceana Counties					
Bricklayers & Stonemasons	9.945	.80	.75		
Marble Masons	8.90	.55	.70		
Terrazzo & Tile Workers	8.65	.55	.70		
Plasterers	10.68	.60	.50		.02
Remaining Counties					
Bricklayers; Stonemasons; Plasterers-Marble Workers	9.93	.70	.25		.02
Terrazzo & Tile Workers	9.37	.70	.25		
CARPENTERS:					
Mason, Muskegon & Oceana Counties					
Carpenters	10.50	.60	.70		.04
Millwrights	12.25	.60	.70		.05
Piledrivers	10.90	.60	.70		.05
Remaining Counties					
Carpenters & Soft Floor Layers	10.01	.60	.80		.03
Millwrights	10.51	.60	.80		.03
Piledrivers	10.46	.60	.80		.03
CEMENT MASONS:					
Muskegon & Oceana Counties	9.65	.60	.50		.02
Remaining Counties	9.48	.70	.25		.02
ELECTRICIANS:					
Charlevoix, Grand Traverse, Leelanau & Emmet (except Wawatan Township) Counties and (Grant, Freesoil, and Meade Townships) in Mason County	11.50	.50	3%+.40		.1 of 1%

DECISION NO. MI79-2012

ELECTRICIANS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Muskegon, Oceana and the Remainder of Mason Counties	$11.68	.50	3%+.35		.03
Remaining Counties & (Wawatan Township) in Emmet County:					
Electrical Contractors $35,000 and below	9.75	.50	3%+.30		.1 of 1%
Electrical Contracts in excess of $35,000	11.70	.50	3%+.30		.1 of 1%
ELEVATOR CONSTRUCTORS:					
Alcona, Alpena, Montmorency, Oscoda and Presque Isle:					
Elevator Constructor	11.21	.745	.56	a	.025
Elevator Constructor Helpers	70%JR	.745	.56	a	.025
Elevator Constructor Helpers (Prob.)	50%JR				
ELEVATOR CONSTRUCTORS:					
Remainder of Counties:					
Elevator Constructors	10.195	.745	.56	a	.025
Elevator Constructors Helpers	70%JR	.745	.56	a	.025
Elevator Constructors Helpers (Prob.)	50%JR				
GLAZIERS:					
Emmet & Muskegon Counties	$ 8.55	.55	.30	3%	
Charlecoix, Grand Traverse, Leelanau, Mason, & Oceana Counties	8.30	.55	.30	3%	
IRONWORKERS:					
Alcona, Alpena, Montmorency, Oscoda and Preque Isle Counties:					
Structural and Ornamental	11.90	8%	15%	18%	.09
Reinforcing	10.97	.98+.25	15%	15%	.07
Fence Erectors	10.82	8%	14%	17%	.09
Remaining Counties	11.86	6%	8%		.03
LATHERS:	8.85	.64	.10	.50	.01
Grand Traverse County	9.60	.92	.30		.01
Muskegon County	9.82	.92	.30		.01
PAINTERS:					
Alcona and Oscoda Counties					
Brush	9.50	.55	.80		.02
Spray	10.35	.55	.80		.02

DECISION NO. MI79-2012

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Grand Traverse and Leelanau Counties and that portion of Charlevoix County lying South of and straight line drawn from Charlevoix (city) to Elmira					
Brush	$ 9.25	.50			.02
Spray	9.90	.50			.02
Tapers	9.85	.50			.02
Mason County	8.75				
Muskegon & Oceana Counties					
Brush, Tapers	8.00				
Paper hangers	8.25				
Spray & Sandblast	8.50				
Remainder of Clarlevoix County and Remaining Counties					
Brush & Drywall	9.95				
Spray - Commercial	10.70				
PLUMBERS & STEAMFITTERS:					
Alcona and Oscoda Counties	11.34	.85	.60	1.80	
Alpena, Montmorency & Presque Isle Counties	12.05	.35	.60		
Mason, Muskegon & Oceana Counties	11.71	1.19	.75		.04
Remaining Counties	11.41	.60	.50		.06
ROOFERS:					
Mason, Muskegon & Oceana Counties	9.45	.67		.20	.01
Remainder of Counties:					
Composition, Damp & Waterproofers	9.62				
SHEET METAL WORKERS:					
Charlevoix, Emmet, Grand Traverse and Leelanau Counties	10.70	.50	.53		.05
Mason, Muskegon & Oceana Counties	11.40	.77	.95	.67	.02
Remaining Counties	12.86	.80	1.00		.03
SPRINKLER FITTERS	12.10	.75	1.05		.08

DECISION NO. MI79-2012

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Alcona, Alpena, Montmorency, Oscoda & Oreque Isle Counties					
Regular Truck Driver	$ 8.25	b28.00	b37.00	.50	
8 cu. yds. and over	8.35	b28.00	b37.00	.50	
Euclid Type Bottom & End Dump	8.55	b28.00	b37.00	.50	
Charlevoix, Emmet, Grand Traverse and Leelanau Counties					
Regular Truck Driver	7.95	b26.00	b20.00	c	
8 cu. yds, and over	8.05	b26.00	b20.00	c	
Semi-Driver	8.15	b26.00	b20.00	c	

Welder receive rate prescribed for craft to which welding is incidental.

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years; 6% contribution for more than 5 years-plus 7 Paid Holidays-New Years Day-Memorial Day-Independence Day-Labor Day-Thanksgiving Day-Day after Thanksgiving & Christmas Day

b. Per week; Per Employee & Dental & Optical

c. Paid vacation computed at a 40 hour week at straight time as follows: one year or more - one week; three years or more - two weeks; eight years or more - three weeks; and 7 Paid Holidays provided employee has been in service of employer 20 days or more and worked the full scheduled day prior to and after the holiday - New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and the Friday after Christmas Day.

DECISION NO. MI79-2012

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Mason County					
Group 1	$ 7.70	.65	.35		.04
Group 2	7.85	.65	.35		.04
Group 3	8.15	.65	.35		.04
Group 4	8.05	.65	.35		.04
Group 5	8.10	.65	.35		.04
Group 6	7.95	.65	.35		.04
Muskegon and Oceana Counties					
Group 1	7.71	.65	.35	.55	.04
Group 2	7.86	.65	.35	.55	.04
Group 3	7.96	.65	.35	.55	.04
Group 4	8.21	.65	.35	.55	.04
Remaining Counties					
Group 1	7.35	.65	.35	.55	.04
Group 2	7.50	.65	.35	.55	.04
Group 3	7.95	.65	.35	.55	.04

LABORERS:

Mason County
Group 1 - Building and Heavy Construction Laborers
Group 2 - Plaster and Mason Tenders; Mortar Mixers; Material Mixers; All power Tools; Vibrator; Chain saw; Nozzleman; Green Cut Concrete work
Group 3 - Jackhammer; Acetylene Torch; Windlass and Tugger Operators; swing Scaffold Chimneys; Tower, Crane Scaffold; Rock Crusher
Group 4 - Pipelayers or Crock Layers in Buildings
Group 5 - Plasterers Tenders - Machine pumped
Group 6 - Work on Scaffold 30' in height or more
Muskegon and Oceana Counties
Group 1 - All Construction Laborers on Building and Heavy Construction Pumps and well Wheels
Group 2 - Plasterer tender; Material Mixers; Operators of Portable Mixers; Air, Electric or Casoline Tools; Mortar Driver Buggies; Swing Scaffold
Group 3 - Jackhammer Operator, Crocklayers & Caisson workers in Buildings
Group 4 - Top men on Chimney or Towers over 30' in Height
Remaining Counties:
Group 1 - Building and Heavy Construction Laborers
Group 2 - Mortar Mixer; Material Mixers (hand or machine); Vibrator Operators; Operators of Concrete Mixers; Chipping Hammer; Concrete Breakers (90 lb. hammer or less); Tamping Machine (air, gas or electric); Sand blasters; Operator or Motor Driven Buggies; Plaster Mixer; Plasterers Tenders
Group 3 - Cement Gun Nozzleman

DECISION NO. MI79-2012

LC - ZONE II

LINE CONSTRUCTION: ZONE II	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lineman; Heavy Equipment Operator	$11.00	.45	3%	a	.5%
Cable Splicer	11.44	.45	3%	a	.5%
Combination Digger Operator; Tractor Operator Groundman					
1st 6 months	7.94	.45	3%	a	.5%
Over 6 months	8.58	.45	3%	a	.5%
Light Equipment Operator Groundman; Distribution Line					
1st 6 months	6.90	.45	3%	a	.5%
Over 6 months	7.53	.45	3%	a	.5%
Combination Truck Driver Groundman	6.08	.45	3%	a	.5%

FOOTNOTES:

7 paid Holidays; New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; and Christmas Day.

DECISION NO. M179-2012

MICH-3-PEO-1-2

POWER EQUIPMENT OPERATORS:

BUILDING & HEAVY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$13.55	.95	1.50		.05
CLASS B	13.30	.95	1.50		.05
CLASS C	12.80	.95	1.50		.05
CLASS D	11.65	.95	1.50		.05
CLASS E	11.45	.95	1.50		.05
CLASS F	10.25	.95	1.50		.05
CLASS G	9.55	.95	1.50		

CLASS A - Crane with main boom & jib 220' or longer

CLASS B - Crane with main boom & jib 140' or longer, tower cranes, gantry cranes, whirley derrick

CLASS C - Regular equipment operator, cranes, stiff leg derrick, scraper, dozer, grader, front end loader, hoist, job mechanic & head grease man

CLASS D - Air Tugger (single drum), Material Hoist, Boiler Oprs., Sweeping Machine, winch Truck, Bob Cat & Similar type equipment, Fork Truck (over 20' lift)

CLASS E - Pump 6" or over, Well Points, Freeze systems, Boom truck (non Swinging) Fork Truck (20' Lift)

CLASS F - Air Compressor, Welder, Generators, Pumps under 6", Grease Man, Conveyers

CLASS G - Oiler, Firemen & Heater Operator

DECISION NO. M179-2012

MICH-2-PEO-SE

POWER EQUIPMENT OPERATORS:
STEEL ERECTION

ALCONA, ALPENA, MONTMORENCY, OSCODA & PRESQUE ISLE COUNTIES

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$11.57	.55	.75	10%	.05
CLASS B	11.33	.55	.75	10%	.05
CLASS C	10.85	.55	.75	10%	.05
CLASS D	10.70	.55	.75	10%	.05
CLASS E	9.61	.55	.75	10%	.05
CLASS F	8.65	.55	.75	10%	

CLASS A - Engineer when operation combination of boom jib 220' or longer
CLASS B - Engineer when operating combination of boom & jib 140' or longer Tower crane & derrick operator (where opeators work stations is 501 Or more above first sub level
CLASS C - Crane operator job mechanic
CLASS D Hoisting operator
CLASS E Compressor (or welder) operator
CLASS F - Oiler or fireman

MICH-6-PEO-SE

POWER EQUIPMENT OPERATORS:
STEEL ERECTION

REMAINING COUNTIES

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$13.90	.95	1.50		.05
CLASS B	13.65	.95	1.50		.05
CLASS C	13.15	.95	1.50		.05
CLASS D	12.00	.95	1.50		.05
CLASS E	10.75	.95	1.50		.05
CLASS F	9.55	.95	1.50		

CLASS A - Crane operator w/main boom & jib 220' or longer
CLASS B - Crane operator w/main boom & jib 140' or longer; power cranes, gantry crane; whirley derrick
CLASS C - Regular equipment operator; crane; dozer; loader; hoist, straddle wagon, Job mechanic
CLASS D - Air tugger (single drum); material hoist, pump 6' or over
CLASS E - Air compressor, welder, generators-conveyors
CLASS F - Oiler & Fireman

DECISION NO. M179-2012 MICH-9-PEO-U-Z-2

POWER EQUIPMENT OPERATORS: UNDERGROUND CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 9.24	.80	1.00	10%	.05
CLASS II	8.98	.80	1.00	10%	.05
CLASS III	8.52	.80	1.00	10%	.05
CLASS IV	8.27	.80	1.00	10%	.05

CLASS I - Power shovel, crane (crawler, truck type or pile driving), dragline, backhoe clamshell, trencher (over 8' digging capacity), mechanic, endloader (over 1½ cu. yd. cap.), grader, scraper (self-propelled or tractor drawn), dozer (9' blade & over), concrete paver (2 drum or larger), side boom tractor (type D-4 or equivalent & larger), elevating grader, roller (asphalt), gradall (and similar type machine), batching plant operator (concrete), backfiller tamper, well drilling rig, slip fom paver slope paver, conveyor loader (euclid type)

CLASS II - Trencher (8' digging capacity & smaller), endloader (1½ cu. yd. capacity & smaller), dozer (less than 9' blade), side boom tractor (smaller than type D-4 or equivalent), pump (1 or more 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps or more inclusive of generator), hoist, boom truck (power sing type boom), tractor (pneu-tired, other than backhoe or front endloader), crusher

CLASS III - Air compressor (2 or more - less than 600 CFM), air compressors 600 cu. ft. per min. or larger), pumpcrete machine (and similar equipment), mechanic helper, maintenance man, boom truck(non-swinging, non powered type boom), welding machine or generator (2 or more - 300 amp. or larger gas or diesel powered), pump (2 or more - 4" up to 6" discharge - gas or diesel powered - excluding submersible pumps), concrete paver (1 drum ½ dy or larger wagon drill (multiple), elevator (other than passenger), concrete breaker (self-propelled or truck mounted - includes compressor)

CLASS IV - Hydraulic pipe pushing machine, pumps (2 or more up to 4" discharge if used 3 hours or more a day gas or diesel powered - excluding submersible pumps), trencher (service), boiler, vibrating compaction equipment, self propelled (6' wide or over), stump remover, mulching equipment, farm tractor (with attachment), finishng machine (concrete), roller (other than asphalt), curing machine (self-propelled), concrete saw (40 H.P. or over)

SUPERSEDEAS DECISION

STATE: Michigan COUNTIES: See Below
DECISION NO.: M179-2013 DATE: Date of Publication
Supersedes Decision No. M178-2073, dated September 29, 1978 in 43 FR 45107
DESCRIPTION OF WORK: Building (Does not include single family homes and garden type apartments up to and including four stories) and Heavy (excluding Bridge, Airport and Sewer) Construction Projects.

COUNTIES: Alger, Baraga, Chippewa, Dickinson, Gogebic Houghton, Keweenaw, Mackinac, Marquette & Ontonagon

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Chippewa & Mackinac Counties	$11.85	.95	1.63		.02
Gogebic & Ontonagon Counties	11.10	.40	.50		
Remainder of Counties	11.36	.85	.50	1.00	.10
BOILERMAKERS	11.955	1.18	1.20	2.00	.03
BRICKLAYERS:					
Alger & Marquette Counties: Bricklayers, Stonemasons, Plasterers, & Marble-Tile-Terrazzo Workers	11.41	.75	.60		.02
Chippewa & Mackinac Counties:					
Bricklayers & Stonemasons	9.59	.70	.60		
Plasterers	9.44	.70	.60		
Tile & Terrazzo Workers	9.39	.70	.60		
Remainder of Counties: Bricklayers, Stonemasons, Plasterers, Marble-Tile and Terrazzo Workers	9.62	.75	.50		.01
CARPENTERS:					
Carpenters & Soft Floor Layers	10.94	.60	.80		.02
Millwrights	12.34	.60	.80		.02
Piledrivermen	11.14	.60	.80		.02
CEMENT MASONS:					
Alger & Marquette Counties	10.91	.75	.60		.02
Chippewa & Mackinac Counties	9.02	.70	.60		
Remainder of Counties	9.12	.75	.50		.01
ELECTRICIANS:					
Dickinson County:					
Contracts $50,000 or more & all Industrial Work	11.74	.50	3%		.5%
Contracts less than $50,000	10.42	.50	3%		.5%
Alger & Marquette Counties:					
Contracts over $50,000	12.55	.45	3%+1.00		½ of 1%
Contracts $50,000 or less	10.92	.45	3%+1.00		½ of 1%

DECISION NO. MI79-2013

ELECTRICIANS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
Chippewa & Mackinac Counties	$10.30	.50	3%+1.00		15.00 p/e
Gogebic County	11.47	4%	5%	11%	1%
Remainder of Counties:					
Contracts $45,000 & over	10.54	.50	3%+1.00		½ of 1%
Contracts up to $45,000	7.75	.50	3%+1.00		½ of 1%
ELEVATOR CONSTRUCTORS:					
Constructors	10.765	.745	.56	a	.025
Helpers	70%JR	.745	.56	a	.025
Helpers (Prob.)	50%JR				
IRONWORKERS	11.05	.70	1.00	1.70	.04
PAINTERS:					
Dickinson County:					
Commercial & Industrial	8.95		.75		
Alger & Marquette Counties					
Brush	9.75				
Glaziers	9.75				
Bridges, Water Tanks, Radio & TV	12.00				
Chippewa & Mackinac Counties:					
Commercial-Industrial & Sign Painter	8.80			1.50	
Taper-Hand	9.30			1.50	
Steel	11.30			1.50	
Glaziers	7.60			1.50	
Baraga, Houghton, Keweenaw & the northern portion of Ontonagon County:					
Brush, Paperhangers, Tapers and Glaziers	8.00				
Spray & Sandblasting	8.55				
Gogebic County & the Remainder of Ontonagon County:	6.00				
Brush, Paperhangers	6.00				
Spray	6.50				

DECISION NO. MI79-2013

	Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS & STEAM FITTERS	$10.66	.70	.70	1.00	.02
ROOFERS	9.15		.50		
SHEET METAL WORKERS	9.73	.70+.10	.88	1.25	.05
SPRINKLER FITTERS	12.10	.75	1.05		.08
TRUCK DRIVERS:					
Truck Driver	7.72	b22.00	b16.00		
Heavy Duty, Double Axle & Semi	7.85	b22.00	b16.00		
Euclid	8.08	b22.00	b16.00		

FOOTNOTES:

a. 7 Paid Holidays-New Year's Day-Memorial Day- Independence Day-Labor Day-Thanksgiving Day-Day after Thanksgiving & Christmas Day plus employer contributes 8% of Regular Hourly Rate to vacation pay credit for employee who has worked in business more than 5 years & 6% for employees in business less than 5 years

b. Per Week; Per Employee

DECISION NO. MT79-2013

Welders receive rate prescribed for craft performing operation to which welding is incidental.

FOOTNOTES:

a. Employer contributes 2% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years; 4% contribution for more than 5 years.

b. Per Week; Per Employee

LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Class A	$ 8.80	.65	.35		.04
Class B	8.90	.65	.35		.04
Class C	9.20	.65	.35		.04
Class D	9.35	.65	.35		.04

LABORERS

CLASS A: General Construction Laborers

CLASS B: Chipping Hammers; Concrete Mixers; Green Cutting (air, electric or gas); Material Mixers (hand or machine; Motor driven buggies; Morter Mixers; Sand Blasters; Tamping Machines; Vibrator operator; Laborers with concrete mixer to pour, including pour from trucks

CLASS C: Blasters; Buster Operators; Cement Gun Nozzleman; Drillers; Layers of all non-metallic pipe; Mixers

CLASS D: Underground Work, Tunnels and Shafts - muckers, caisson workers, miners, drillers, blasters.

DECISION NO. MT79-2013

LC -ZONE II

LINE CONSTRUCTION: ZONE II	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen; Heavy Equipment Operator	$11.00	.45	3%	a	.5%
Cable Splicer	11.44	.45	3%	a	.5%
Combination Digger Operator; Tractor Operator Groundman:					
1st 6 months	7.94	.45	3%	a	.5%
Over 6 months	8.58	.45	3%	a	.5%
Light Equipment Operator Groundman; Distribution Line Truck Driver Operator:					
1st 6 months	6.90	.45	3%	a	.5%
Over 6 months	7.53	.45	3%	a	.5%
Combination Winch Truck Driver Groundman:					
1st 6 months	6.28	.45	3%	a	.5%
Over 6 months	7.18	.45	3%	a	.5%
Combination Truck Driver Groundman	6.08	.45	3%	a	.5%

FOOTNOTE:

a. 7 paid Holiday; New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; and Christmas Day.

DECISION NO. MI79-2013 MICH-7-PED-1-2-SE-U

POWER EQUIPMENT OPERATORS: BUILDING, HEAVY & UNDERGROUND CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$ 9.95	.95	1.50	11%	.02
CLASS B	8.86	.95	1.50	11%	.02
CLASS C	8.34	.95	1.50	11%	.02
CLASS D	7.74	.95	1.50	11%	

CLASS A - Regular equipment operator, crane, dozer, front end loader, job mechanic
CLASS B - Air Track drill, boom truck, concrete mixers, fork truck, material hoist & tugger, pumps 6" or over, pumperete, belt creto, squeeze crete, sweeping machine trenchet, winches, well pointsa nd freeze systems
CLASS C - Air compressor, conveyor, concrete saw, farm tractor (without attachments) generatOR, guard post driver, mulching pumps under 6" welders
CLASS D - Oiler, fireman, heater operator

POWER EQUIPMENT OPERATORS: STEEL ERECTION					
CLASS 1 - Operator	$ 8.95	.80	1.00	10%	.02
CLASS 2 - Compressor ot Welder	7.95	.80	1.00	10%	.02
CLASS 3 - Oiler & Fireman	7.05	.80	1.00	10%	

SUPERSEDEAS DECISION

STATE: Michigan COUNTY: Marquette
DECISION NO.: MI79-2014 DATE: Date of Publication
Supersedes Decision No. MI78-2074, dated September 29, 1978 in 43 FR 45110
DESCRIPTION OF WORK: Residential Construction Projects of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$10.81	.70	.50		.05
BOILERMAKERS	11.955	1.18	1.20	2.00	.03
BRICKLAYERS & STONEMASONS	11.41	.75	.60		.02
CARPENTERS & SOFT FLOOR LAYERS	8.20	.60	.80		.02
CEMENT MASONS	10.91	.75	.60		.02
ELECTRICIANS	8.20	.45	3%		½of1%
ELEVATOR CONSTRUCTORS:					
Constructors	10.765	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR				
IRONWORKERS	11.05	.70	1.00	1.70	.04
LABORERS:					
Laborers	8.80	.65	.35		.04
Chipping Hammers; Concrete Mixers, Green Cutter (Air, Electric or Gas), Material Mixers, Mortar Mixers, Motor driven buggy operator, sand-blasters, Tamping machines, vibrator operators	8.90	.65	.35		.04
MILLWRIGHTS	12.34	.60	.80		.02
PAINTERS:					
Brush & Glaziers	9.25				
PILEDRIVERMEN	11.14	.60	.80		.02
PLASTERERS	11.41	.75	.60		.02
PLUMBERS & STEAMFITTERS	10.66	.70	.70	1.00	.02
ROOFERS	9.15		.50		
SHEET METAL WORKERS	9.73	.70+.10	.88	1.25	.05
SPRINKLER FITTERS	12.10	.75	1.05		.08
TILE-MARBLE & TERRAZZO WORKERS	11.41	.75	.60		.02
TRUCK DRIVERS:					
Regular	7.72	22.00c	16.00c		
Heavy Duty, double axle and semi	7.85	22.00c	16.00c		
Euclid type equipment	8.08	22.00c	16.00c		

DECISION NO. MI79-2014

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators					
Regular Equipment Operator Crane, Dozer, Front End Loaders Job Mechanic	$ 9.95	.95	1.50	11%	.02
Air Track Drill, Boom Truck Concrete Mixers, Fork Truck, Material Hoist and Tugger, Pump, 6" andover, Pumpcrete, Belt Crete, Squeeze crete, Sweeping Machine, trencher, Winches, Well points and Freeze Systems	8.86	.95	1.50	11%	.02
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS: (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving Day & Christmas Day

FOOTNOTES:

a. Six paid holidays: A through C

b. Employer contributes 8% of regular hourly rate to vacation credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years.

c. Per week, Per employee

SUPERSEDEAS DECISION

STATE: Michigan COUNTIES: See Below
DECISION NO. MI79-2015 DATE: Date of Publication
Supersedes Decision No: MI78-2075, dated September 29, 1978 in 43 FR 45111
DESCRIPTION OF WORK: Building (Does not include single family homes and garden type apartments up to and including four stories) and Heavy (excluding, Bridge, Airport and Sewer) Construction Projects

COUNTIES: Allegan, Berrien Calhoun, Clinton, Eaton, Ingham, Jackson & Kalamazoo

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Berrien County	$12.98	.65	.90		
Remaining Counties	11.85	.95	1.63		.02
BOILERMAKERS	11.955	1.18	1.20	2.00	.03
BRICKLAYERS & STONEMASONS:					
Allegan County (Casco, Clyde Ganges and Lee Townships) and Berrien County	10.75	.95	.60		
Allegan County (Allegan, Cheshire, Gun Plain, Martin, Otsego, Trowbridge, Valley, and Watson Townships) and Kalamazoo County	11.71	.85	.35		.09
Allegan County (Remainder)	9.90	.75	.25		.04
Calhoun County and Bellevue, Carmel, Kalamo, and Walton Townships in Eaton County	11.45	.85	.35		
Clinton and Ingham (except Onondaga, Leslie, Bunker Hill and Stockbridge Townships) Counties and the remainder of Eaton County	12.35		.90		.01
Jackson County and remainder of Ingham County	12.87	1.10	.80		
CARPENTERS:					
Berrien County (Chickaming, New Buffalo and Three Oaks Townships)	12.78	.65	.67		.05
Clinton, Eaton (except Bellevue, Walton, Kalamo and Vermontville Townships), Ingham & Jackson Counties	12.07	.60	.80		.03
Remaining Counties and the remainder of Berrien and Eaton Counties	10.50	.60	.70		.04

DECISION NO. MI79-2015

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:					
Kalamazoo County; Calhoun Co; Allegan Co., (Twps of Allegan, Cheshire, Gunn Plain, Martin, Otsego, Trowbridge, Valley & Watson)	$11.07	.85	.35		.02
Allegan County (Casco, Ganges & Lee Townships) and Berrien County	9.95	.95	.60		
Remainder of Allegan County	9.32	.50	.50		.02
Remainder of Counties	10.40	.60	.50		.02
ELECTRICIANS:					
Allegan County (Laketon, Fillmore, Leighton Townships	11.03	.50	3%+.35		.01
Allegan County (Remainder) and Kalamazoo County	12.02	.50	9½%		.01
Berrien County	11.85	4.8%	7%		.2%
Calhoun County and Sunfeild, Vermontville, Kalamo, Bellevue Eaton and Brookfield townships in Eaton County	12.15	.50	3%		.01
Clinton and Ingham (except Onondaga, Leslie, Stockbridge and Bunker Hill Townships) Counties and the remainder of Eaton County	12.57	.50	3%+1.00		.5%
Jackson County	11.47	4%+.50	3%+.60		2%
Remainder of Ingham County	11.81	4%+.50	3%+.60		3/4 of 1%
ELEVATOR CONSTRUCTORS:					
Allegan, Kalamazoo, and Calhoun Counties:					
Constructor	10.81	.745	.56	a	.025
Helper	70%JR	.745	.56	a	.025
Helper (Prob.)	50%JR				
Berrien County:					
Constructor	11.44	.745	.56	a	.035
Helper	70%JR	.745	.56	a	.035
Helper (Prob.)	50%JR				.035

DECISION NO. MI79-2015

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS (CONT'D)					
Eaton, Ingham & Jackson Counties:					
Constructor	$12.41	.745	.56	a	.025
Helper	70%JR	.745	.56	a	.025
Helper (Prob.)	50%JR				
IRONWORKERS:					
Berrien County	11.45	.90	1.33		.03
Clinton, Ingham & Jackson Cos.					
Structural & Ornamental	11.90	8%	15%	18%	.09
Fence Erectors	10.82	8%	15%	18%	.09
Reinforcing	10.97	.98+.25	15%	15%	.07
Remaining Counties	11.86	6%	8%		.03
LATHERS:					
Ingham & Jackson Cos.	9.92	.92	.30		.01
Calhoun County	9.82	.92	.30		.01
MARBLE, TILE & TERRAZZO WORKERS					
Allegan Co. (Gun Plain Otsego, Trowbridge Valley, Allegan, Cheshire, Martin and Watson Townships) and Kalamazoo County	9.10	.60			.05
Remainder of Allegan Co.	9.40	.75	.25		
Clinton, Ingham (except Onogdaga, Leslie, Bunker Hill, and Stockbridge Townships) and Eaton (except Kalamo, Carmel, Bellevue, and Walton Townships) Counties	11.73		.80		
Calhoun Co. & Bellevue, Carmel, Kalamo & Walton Twps. in Eaton County					
Marble Setters	11.45	.55	.35		
Tile & Terrazzo Workers	8.85	.85	.35		
Jackson County and the Remainder of Ingham County					
Tile & Terrazzo Workers	11.60	1.10	.80		
Marble Setters	12.87	1.10	.80		
PAINTERS:					
Allegan Co. (Northern portion)					
Brush	8.55	.50	.25		.02
Spray,	9.05	.50	.25		.02

DECISION NO. MI79-2015

PAINTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Allegan County (S.E.½) and Kalamazoo County					
Brush; Drywall Taping; Pan Roller	$10.45		.40		
Swing Stage; Structural Steel	11.10		.40		
Spray	11.35		.40		
Berrien County					
Brush	10.90				
Structural Steel	11.90				
Calhoun County					
Brush; Roller	8.30	.25			
Clinton, Eaton & Ingham Counties					
Brush and Roller & Tapers	11.39	.50	.40		.0025
Structural Steel	11.79	.50	.40		.0025
Spray & Sandblasting	12.14	.50	.40		.0025
Jackson County					
Brush and Roller	11.35	.92	1.15	1.10	50.00p/y
Spray	11.85	.92	1.15	1.10	50.00p/y
Drywall Taper	11.60	.92	1.15	1.10	50.00p/y
PLASTERERS:					
Allegan County (Casco, Clyde, Ganges and Lee Townships) and Berrien County	10.15	.95	.60		
Remainder of Allegan County and Remainder Counties	10.68	.60	.50		.03
PLUMBERS:					
Allegan County (Northern Tier Townships)	12.09	.60+.15	.90		.05
Allegan County (Remainder) and Kalamazoo County	11.71	.60	.86		

DECISION NO. MI79-2015

PLUMBERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Berrien County (except city of Niles and vicinity)	$12.17	.94	.65		
City of Niles and Vicinity in Berrien County	11.75	.55	.95		.10
Calhoun County and Bellevue, Olivet, Hastings and Charlotte in Eaton County	12.37	1.30	1.00		
Clinton and Ingham Counties and Sunfeild, Roxand, Oneida, Delta and Windson townships in Eaton County	12.16	.75	1.25		
Jackson County	12.10	.87+.30	.90		.02
ROOFERS:					
Jackson County					
Composition	10.65	.94	.65	1.05	.10
Slate & Tile	11.68	.94	.65	1.05	.10
Allegan County					
Built-Up	7.65	.55	.35	.70	
Slate, Tile & Asbestos	7.90	.55	.35	.70	
Calhoun and Kalamazoo Counties:					
Composition	10.35			.25	
Slate, Tile & Asbestos	10.60			.25	
Clinton, Eaton and Ingham Cos.	9.30		.65	.45	
SHEET METAL WORKERS:					
Berrien County	10.98	.65	.615		.035
Remaining Counties	11.58	.90	1.13		.05
SOFT FLOOR LAYERS:					
Allegan, Berrien (except Chickaming, New Buffalo and Three Oaks townships), Calhoun, Kalamazoo Counties and Bellevue, Vermontville, Kalmo and Walton townships in Eaton County	8.80	.60	.70		.01
Clinton and Ingham Counties and the remainder of Eaton County	9.98	.60	.70		.01
Jackson County	12.07	.60	.80		.03
Chickaming, 3 Oaks & New Buffalo Twps. in Berrien Co.	12.78	.65	.67		.05

DECISION NO. MI79-2015

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SPRINKLER FITTERS	$12.37	.75	1.05		.08
TRUCK DRIVERS:					
Allegan, Berrien and Kalamazoo Counties:					
8 cu yds. & under	8.84	b24.00	b22.00		
8 cu yds. & over	9.00	b24.00	b22.00		
Low Boys Semis	9.11	b24.00	b22.00		
Calhoun County					
Less than 8 cu. yds.	7.95	b21.00	b12.00	.20	
8 cu. yds, and over; Semi - Tandem	8.05	b21.00	b12.00	.20	
Clinton, Eaton and Ingham Cos.					
8 cu yds. & under	8.61	b28.00	b37.00	c	
Truck Drivers on dump trucks 8 cu. yds. Capacity and over pole trailers	8.71	b28.00	b37.00	c	
Low boys drivers; Double bottom drivers	8.81	b28.00	b37.00	c	
Jackson County	5.95	b24.00	b22.00		
Welders receive rate prescribed for craft performing operation to which welding is incidental.				¢	

DECISION NO. MI79-2015

PAID HOLIDAYS (WHERE APPLICABLE)

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Day after Thanksgiving; G-Christmas Day

FOOTNOTES:

a. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years, 6% contribution for more than 5 years, plus 7 paid holidays - A through G

b. Per week, Per employee

c. One year's service, one week vacation; 3 years service, two weeks vacation

DECISION NO. M179-2015

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Allegan, Berrien, Calhoun and Kalamazoo Counties					
Group 1	$ 8.35	.65	.35	.55	.04
Group 2	8.50	.65	.35	.55	.04
Group 3	8.60	.65	.35	.55	.04
Group 4	8.85	.65	.35	.55	.04
Clinton, Eaton and Ingham Counties					
Group 1	8.75	.65	.35	a	.04
Group 2	8.83	.65	.35	a	.04
Group 3	8.89	.65	.35	a	.04
Group 4	9.04	.65	.35	a	.04
Group 5	8.99	.65	.35	a	.04
Group 6	9.11	.65	.35	a	.04
Group 7	9.365	.65	.35	a	.04
Jackson County					
Group 1	9.48	.65	.35	.88	.04
Group 2	9.98	.65	.35	.88	.04

LABORERS:

Allegan, Berrien, Calhoun and Kalamazoo Counties
Group 1 - All construction laborers on buildings and Heavy Construction Pumps and Well Wheels
Group 2 - Plasterer Tenders; Material Mixers, Operators of Portable Mixers; Air, Electric or Gasoline Tools; Motor Driven Buggies; Swing Scaffolds
Group 3 - Jackhammer Operators, Crocklayers & Caisson Workers in Building
Group 4 - Top men on Chimney or Towers over 30' in height
Clinton, Eaton and Ingham Counties
Group 1 - Building Laborers
Group 2 - Mortar Mixers, hand or machine
Group 3 - Plasterer Tenders; Portable concrete mixer operator (14 and under); Air, Electric or Gasoline Tools; Tar Kettle tenders; Gasoline vibrators; Concrete gas buggies; concrete saw; Signal men and top men
Group 4 - Tunnel men; concrete shovelers; Car pushers, etc.
Group 5 - Windlass Operator (on caisson work)
Group 6 - Crock Layers (or pipe layers); Caisson workers; Tunnel muckers
Group 7 - Tunnel Miners
Jackson County
Group 1 - General Laborer
Group 2 - Jackhammer and Acetylene Torch

FOOTNOTE:
a - 5.00 per day

DECISION NO. M179-2015

LC ZONE I

LINE CONSTRUCTION WILLIAMSTON, LOCKE, LEROY, WHEATFIELD & WHITE OAK TOWN SHIPS IN INGHAM COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen - Technician	$13.37	1.40	9%		½%
Cable Splicer	13.95	1.40	9%		½%
Combination Equipment Operator & Groundman	10.71	1.40	9%		½%
Combination Driver & Groundmen	10.08	1.40	9%		½%
Groundman	9.28	1.40	9%		½%

LC -ZONE II

LINE CONSTRUCTION: ZONE II REMAINING COS: & THE REMAINDER OF INGHAM CO.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Lineman; Heavy Equipment operator	$11.00	.45	3%	a	.5%
Cable Splicer	11.44	.45	3%	a	.5%
Combination Digger operator; Tractor operator Groundman:					
1st 6 months	7.94	.45	3%	a	.5%
Over 6 months	8.58	.45	3%	a	.5%
Light Equipment operator Groundman; Distribution Line Truck Driver Operator:					
1st 6 months	6.90	.45	3%	a	.5%
Over 6 months	7.53	.45	3%	a	.5%
Combination Winch Truck Driver Groundman:					
1st 6 months	6.28	.45	3%	a	.5%
Over 6 months	7.18	.45	3%	a	.5%
Combination Truck Driver Groundman	6.08	.45	3%	a	.5%

FOOTNOTE:
a. 7 paid Holiday; New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; and Christmas Day.

DECISION NO. MI79-2015

MICH-3-PEO-1-2

POWER EQUIPMENT OPERATORS:

BUILDING & HEAVY CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$13.55	.95	1.50		.05
CLASS B	13.30	.95	1.50		.05
CLASS C	12.80	.95	1.50		.05
CLASS D	11.65	.95	1.50		.05
CLASS E	11.45	.95	1.50		.05
CLASS F	10.25	.95	1.50		.05
CLASS G	9.55	.95	1.50		

CLASS A - Crane with main boom & jib 220' or longer

CLASS B - Crane with main boom & jib 140' or longer, tower cranes, gantry cranes, whirley derrick

CLASS C - Regular equipment operator, cranes, stiff leg derrick, scraper, dozer, grader, front end loader, hoist, job mechanic & head grease man

CLASS D - Air Tugger (single drum), Material Hoist, Boiler Oprs., Sweeping Machine, winch Truck, Bob Cat & Similar type equipment, Fork Truck (over 20' lift)

CLASS E - Pump 6" or over, Well Points, Freeze systems, Boom truck (non Swinging) Fork Truck (20' Lift)

CLASS F - Air Compressor, Welder, Generators, Pumps under 6", Grease Man, Conveyors

CLASS G - Oiler, Firemen & Heater Operator

DECISION NO. MI79-2015

MICH-2-PEO-SE

POWER EQUIPMENT OPERATORS:
STEEL ERECTION

CLINTON, INGHAM & JACKSON COS.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$11.57	.55	.75	10%	.05
CLASS B	11.33	.55	.75	10%	.05
CLASS C	10.85	.55	.75	10%	.05
CLASS D	10.70	.55	.75	10%	.05
CLASS E	9.61	.55	.75	10%	.05
CLASS F	8.65	.55	.75	10%	

CLASS A - Engineer when operation combination of boom jib 220' or longer
CLASS B - Engineer when operating combination of boom & jib 140' or longer
Tower crane & derrick operator (where operators work stations is 501 or more above first sub level
CLASS C - Crane operator job mechanic
CLASS D - Hoisting operator
CLASS E - Compressor (or welder) operator
CLASS F - Oiler or fireman

MICH-6-PEO-SE

POWER EQUIPMENT OPERATORS:
[illegible]
FRANKLIN COUNTIES

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$13.90	.95	1.50		.05
CLASS B	13.65	.95	1.50		.05
CLASS C	13.15	.95	1.50		.05
CLASS D	12.00	.95	1.50		.05
CLASS E	10.75	.95	1.50		.05
CLASS F	9.55	.95	1.50		

CLASS A - Crane operator w/main boom & jib 220' or longer
CLASS B - Crane operator w/main boom & jib 140' or longer; power cranes, gantry crane; whirley derrick
CLASS C - Regular equipment operator; crane; dozer; loader; hoist, straddle wagon, Job mechanic
CLASS D - Air tugger (single drum); material hoist, pump 6' or over
CLASS E - Air compressor, welder, generators-conveyors
CLASS F - Oiler & Fireman

DECISION NO. MI79-2015

MICH-8-PUO-U

POWER EQUIPMENT OPERATORS: UNDERGROUND CONSTRUCTION CALHOUN, CLINTON, EATON, INGHAM & JACKSON COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$10.61	.80	1.00	10%	.05
CLASS II	10.49	.80	1.00	10%	.05
CLASS III	9.83	.80	1.00	10%	.05
CLASS IV	9.31	.80	1.00	10%	.05

CLASS I - Power shovel, crane (crawler, truck type or pile driving), dragline, backhoe clamshell, trencher (over 8' digging capacity), mechanic, endloader (over 1½ cu. yd. cap.), grader, scraper (self-propelled or tractor drawn), dozer (9' blade & over), concrete paver (2 drum or larger), side boom tractor (type D-4 or equivalent & larger), elevating grader, roller (asphalt), gradall (and similar type machine), batching plant operator (concrete), backfiller tamper, well drilling rig, slip fon paver slope paver, conveyor loader (euclid type)

CLASS II - Trencher (8' digging capacity & smaller), endloader (1½ cu. yd. capacity & smaller), dozer (less than 9' blade), side boom tractor (smaller than type D-4 or equivalent), pump (1 or more 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps or more inclusive of generator), hoist, boom truck (power sing type boom), tractor (pneu-tired, other than backhoe or front endloader), crusher

CLASS III - Air compressor (2 or more - less than 600 CFM), air compressors 600 cu. ft. per min. or larger), pumperete machine (and similar equipment), mechanic helper, maintenance man, boom truck(non-swinging, non powered type boom), welding machine or generator (2 or more - 300 amp. or larger gas or diesel powered), pump (2 or more - 4" up to 6" discharge - gas or diesel powered - excluding submersible pumps), concrete paver (1 drum ½ dy or larger wagon drill (multiple), elevator (other than passenger), concrete breaker (self-propelled or truck mounted - includes compressor)

CLASS IV - Hydraulic pipe pushing machine, pumps (2 or more up to 4" discharge if used 3 hours or more a day gas or diesel powered - excluding submersible pumps), trencher (service), boiler, vibrating compaction equipment, self propelled (6' wide or over), stump remover, mulching equipment, farm tractor (with attachment), finishng machine (concrete), roller (other than asphalt), curing machine (self-propelled), concrete saw (40 H.P. or over)

DECISION NO. MI79-2015

MICH-9-PUO-U

POWER EQUIPMENT OPERATORS: UNDERGROUND CONSTRUCTION REMAINING COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 9.24	.80	1.00	10%	.05
CLASS II	8.98	.80	1.00	10%	.05
CLASS III	8.52	.80	1.00	10%	.05
CLASS IV	8.27	.80	1.00	10%	.05

CLASS I - Power shovel, crane (crawler, truck type or pile driving), dragline, backhoe clamshell, trencher (over 8' digging capacity), mechanic, endloader (over 1½ cu. yd. cap.), grader, scraper (self-propelled or tractor drawn), dozer (9' blade & over), concrete paver (2 drum or larger), side boom tractor (type D-4 or equivalent & larger), elevating grader, roller (asphalt), gradall (and similar type machine), batching plant operator (concrete), backfiller tamper, well drilling rig, slip fon paver slope paver, conveyor loader (euclid type)

CLASS II - Trencher (8' digging capacity & smaller), endloader (1½ cu. yd. capacity & smaller), dozer (less than 9' blade), side boom tractor (smaller than type D-4 or equivalent), pump (1 or more 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps or more inclusive of generator), hoist, boom truck (power sing type boom), tractor (pneu-tired, other than backhoe or front endloader), crusher

CLASS III - Air compressor (2 or more - less than 600 CFM), air compressors 600 cu. ft. per min. or larger), pumperete machine (and similar equipment), mechanic helper, maintenance man, boom truck(non-swinging, non powered type boom), welding machine or generator (2 or more - 300 amp. or larger gas or diesel powered), pump (2 or more - 4" up to 6" discharge - gas or diesel powered - excluding submersible pumps), concrete paver (1 drum ½ dy or larger wagon drill (multiple), elevator (other than passenger), concrete breaker (self-propelled or truck mounted - includes compressor)

CLASS IV - Hydraulic pipe pushing machine, pumps (2 or more up to 4" discharge if used 3 hours or more a day gas or diesel powered - excluding submersible pumps), trencher (service), boiler, vibrating compaction equipment, self propelled (6' wide or over), stump remover, mulching equipment, farm tractor (with attachment), finishng machine (concrete), roller (other than asphalt), curing machine (self-propelled), concrete saw (40 H.P. or over)

SUPERSEDEAS DECISION

STATE: Michigan
COUNTIES: See Below
DECISION NO.: MI79-2016
DATE: Date of Publication
Supersedes Decision No. MI78-2076, dated September 29, 1978 in 43 FR 45118
DESCRIPTION OF WORK: Building (Does not include single family homes and garden type apartments up to and including 4 stories) and Heavy (excluding Bridge, Airport and Sewer) Construction Projects.

COUNTIES: Bay, Genesee, Huron, Iosco, Lapeer, Saginaw, St. Clair, Sanilac, Shiawassee & Tuscola

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
St. Clair County	$ 12.95	1.51	1.48		.07
Remainder of Counties	11.85	.95	1.63		.02
BOILERMAKERS	11.95	1.18	1.20	2.00	.03
BRICKLAYERS:					
Genesee, Lapeer & Shiawassee Cos.					
Bricklayers & Stonemasons	12.45	.80	1.30		
Marble-Tile-Terrazzo Workers	10.55	.80	1.30		
St. Clair & Sanilac Counties					
Bricklayers & Stonemasons	12.18	1.15	.85		
Marble Setters	12.88	.70	1.10		
Terrazzo Workers	11.99	.70	1.10		
Tile Setters	12.41	.70	1.10		
Remainder of Counties					
Bricklayers & Stonemasons	11.89	.88	.70		
Marble-Tile-Terrazzo Workers	11.30				
CARPENTERS:					
Sanilac (Except the West 5 Miles & St. Clair Counties:					
Carpenters & Piledrivermen	11.79	.95	11%	11%	.04
Soft Floor Layers	11.49	1.00	7%	8%	.03
Remainder of Counties & the West 5 Miles of Sanilac County:					
Carpenters & Piledrivermen	11.09	.60	.70		.02
Soft Floor Layers	9.98	.60	.70		.01
CEMENT MASONS:					
St. Clair & Sanilac Counties	11.62	1.15	.85		
Lapeer County	11.10	.80	1.30		
Genesee & Shiawassee Counties	10.80	.70	.75		.02
Remainder of Counties					
Cement Masonry on sidewalks, curbs & gutters not related to highway, road and street construction	11.19	.88	.70		

DECISION NO. MI79-2016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Iosco County; Northern ½ of Co.:					
Contracts over $35,000	11.70	.50	3%+.30		1/10of1%
Contracts under $35,000	9.75	.50	3%+.30		1/10of1%
Bay Co; & Southern ½ of Iosco Co.	13.15	.40	3%+.30		½ of 1%
Genesee, Lapeer & Shiawassee Cos.	12.10	.50	3%+1.25		.02
Saginaw & Tuscola Counties	12.85		3%+1.10		½ of 1%
Remainder of Counties	13.35	1.65	3%+1.06		.03
ELEVATOR CONSTRUCTORS:					
St. Clair County:					
Constructors	12.475	.745	.56	a	.025
Helpers	70%JR	.745	.56	a	.025
Helpers (Prob.)	50%JR				
Remainder of Counties:					
Constructors	11.21	.745	.56	a	.025
Helpers	70%JR	.745	.56	a	.025
Helpers (Prob.)	50%JR				
GLAZIERS:					
Genesee, Lapeer & Shiawassee Cos.	9.64	.55	.70		.02
St. Clair County	9.77	.55	.65		
Bay, Huron, Isoco, Tuscola & Sagianw Cos.	9.15		.50	.25	.01
IRONWORKERS:					
Structural & Ornamental	11.90	8%	15%	18%	.09
Reinforcing	10.97	.98+.25	15%	15%	.07
Fence Erectors	10.82	8%	15%	18%	.09
LABORERS:					
Iosco County; Unksilled	7.35	.65	.35	.55	.04
Motar & Plaster Mixers, Sewer & Caisson Workers, Plasterer Tenders,	7.50	.65	.35	.55	.04
Cement Gun Nozzlemen	7.95	.65	.35	.55	.04

DECISION NO. MI79-2016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Saginaw & Genesee Counties	$ 9.92	.92	.30		.01
PAINTERS:					
Bay Iosco Cos., Huron (West of M-53) Cos., & the Townships of Akron, Almer, Columbia, Elkland, Ellington, Elmwood, Fairgrove, Gilford, Novesta, & Wisner in Tuscola County:					
Commercial	9.50	.55	.80		.02
Industrial	10.20	.55	.80		.02
Spray	10.35	.55	.80		.02
Saginaw Co., & the Remainder of Tuscola County:					
Brush	9.95		.35		.02
Spray	10.70		.35		.02
Genesee, Lapeer, & Shiawassee Cos.	10.70	.50	.70		10.00p/mo
Western ½ of Shiawassee County	11.39	.50	.40		.0025
Huron (East of Hwy 53) St. Clair & Sanilac Cos.:					
Commercial & Industrial Brush	12.03	.55	.70		.01
Open Steel & Spray	12.58	.55	.70	"	.01
PLASTERERS:					
Lapeer County	11.35	.80	1.30		
Bay, Huron, Iosco, Saginaw & Tuscola Counties	11.29	.88	.20		
Genesee & Shiawassee Cos.	10.68	.60	.50		.03
St. Clair & Sanilac Counties	11.62	1.15	.85		
PLUMBERS AND STEAMFITTERS:					
Bay Iosco., N. ½ of Tuscola & the NW ¼ of Huron (running from Port Autin south to Sanilac County line)	11.34	.85	.60	1.80	
Genesee, Lapeer & Shiawassee Cos.	12.37	1.00	1.20		.02
Saginaw & S. ½ of Tuscola (including Carco, Washjamerga and South of the Lapeer County line Counties	11.03	.94	1.15	1.25	.02
Remainder of Huron County; St. Clair & Sanilac Counties	11.31	1.25	1.46	1.80	.07

DECISION NO. MI79-2016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Bay, Iosco, Saginaw, & Tuscola Cos.	$11.95	1.05	.60		
Genesee, Lapeer & Shiawassee Cos.					
Composition	11.45	.60	.60		
Slate & tile	11.80	.60	.60		
St. Clair, Sanilac & Huron Cos.	8.45				
SHEET METAL WORKERS:					
Bay, Iosco, Huron, Saginaw & Tuscola Counties	12.86	.80	1.00		.03
Genesee, Lapeer & Shiawassee Cos.	10.65	.79	1.20	1.00	
St. Clair & Sanilac Counties	11.305	1.81	1.73	1.24	.12
SPRINKLER FITTERS	12.37	.75	1.05		.08
TRUCK DRIVERS:					
Bay, Iosco, Saginaw & Tuscola					
Under 8 cubic yards	8.25	b28.00	b37.00	.50	
8 cubic yards & over	8.35	b28.00	b37.00	.50	
Euclid Type Equipment	8.55	b28.00	b37.00	.50	
Genessee, Lapeer & Shiawassee	9.60	a32.00	a37.00		
Huron, St. Clair & Sanilac					
Pole Trailers, Low Boys Straddle Carriers, Double Bottoms & Special Load Permit Drivers	10.60	b32.50	b31.00	"	
Semi Drivers	10.50	b32.50	b31.00		
All Other Truck Drivers	10.35	b32.50	b31.00		
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:

a. 7 paid holidays - New Year's Day - Memorial Day - Independence Day; Labor Day; Thanksgiving Day - Day after Thanksgiving Day and Christmas Day plus employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years and 6% for employees in business less than 5 years.

b. Per Week; Per Employee,(plus $3.00 per week - optical & dental - MSW T/D in Bay, Iosco, Saginaw & Tuscola Cos. - only)

DECISION NO. MI79-2016

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Bay, Huron, Saginaw & Tuscola Counties					
CLASS A	$ 9.49	.65	.35		.04
CLASS B	9.61	.65	.35		.04
CLASS C	9.69	.65	.35		.04
CLASS D	10.26	.65	.35		.04
Genesee, Lapeer & Shiawassee Cos:					
CLASS A	9.64	.65	.65		.04
CLASS B	9.74	.65	.65		.04
CLASS C	9.84	.65	.65		.04
CLASS D	9.94	.65	.65		.04
CLASS E	10.14	.65	.65		.04
St. Clair & Sanilac Counties:					
GROUP 1	10.28	.65	.35		.04
GROUP 2	10.40	.65	.35		.04
GROUP 3	10.53	.65	.35		.04
GROUP 4	10.45	.65	.35		.04
GROUP 5	10.63	.65	.35		.04

LABORERS:

Bay, Huron, Saginaw & Tuscola Counties

CLASS A - all Construction Laborers on Building & Heavy Construction not specified in Classes, B,C, & D, below; Also includes pumps with a 3" or less discharge and not hooked up in a battersy; Mechanized Buggy Operator and Motar Mixer when done by hand.

CLASS B - Mechanized Mortar Mixers; Air, electric and gas driven tools; Vibrators

CLASS C - Air or Electric driven pavement Breakers; Plasterers Tenders; Plaster Mixers; Crock and/or Pipelayers; Signal Men & Top Man; Windlass and Tugger Operator; Caisson Worker

CLASS D - Drillers & Plasters; Burners

DECISION NO. MI79-2016

LABORERS (CONT'D)

Genesee, Lapeer & Shiawassee Counties

CLASS A - Construction Laborers not specified in Classes B & E below

CLASS B - Mortar Mixer (includes concrete mixer ½ cu. yds. or smaller); Signal Men & Top Men (on caisson work; Air, Gasoline or Electric Tool Operators.

CLASS C - Jackhammer & Air Spade; Tunnel Menl Windlass Operators (on caisson work); Burner

CLASS D - Crock or Pipe Layers; Conduit and any Vertified Tile except 4" drain tile around Building; Caisson Workers & Tunnel Muckers

CLASS E - Tunnel Miners

St. Clair & Sanilac Counties

GROUP 1 - General Laborers; Mason Tenders; all Demolition Laborers

GROUP 2 - Mortar Mixers (Hand or Machine)

GROUP 3 - Air, Electric, Gas, Tool, Pump Operators

GROUP 4 - Concrete Gas Buggies; Concrete Saw Operators, Plasterers Tenders

GROUP 5 - Crock or Pipelayers - caisson workers in buildings

DECISION NO. MI79-2016

LC-ZONE-I

LINE CONSTRUCTION HURON, LAPEER, ST. CLAIR, SANILAC & TUSCOLA COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen - Technician	$13.37	1.40	9%		½%
Cable Splicer	13.95	1.40	9%		½%
Combination equipment Operator & Groundman	10.71	1.40	9%		½%
Combination Driver-Groundman	10.08	1.40	9%		½%
Groundman	9.28	1.40	9%		½%

LC-ZONE II

LINE CONSTRUCTION: ZONE II BAY, IOSCO, GENESEE, SAGINAW & SHIAWASSEE COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen; Heavy Equipment operator	11.00	.45	3%	a	.5%
Cable Splicer	11.44	.45	3%	a	.5%
Combination Digger operator; Tractor operator Groundman:					
1st 6 months	7.94	.45	3%	a	.5%
Over 6 months	8.58	.45	3%	a	.5%
Light Equipment operator Groundman; Distribution Line Truck Driver Operator:					
1st 6 months	6.90	.45	3%	a	.5%
Over 6 months	7.53	.45	3%	a	.5%
Combination winch Truck Driver Groundman:					
1st 6 months	6.28	.45	3%	a	.5%
Over 6 months	7.18	.45	3%	a	.5%
Combination Truck Driver Groundman	6.08	.45	3%	a	.5%

Footnote: a-7 Paid Holidays; New Years Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving; and Christmas Day

DECISION NO. MI79-2016

MICH-1-PEO-1-2

POWER EQUIPMENT OPERATORS: BUILDING & HEAVY CONSTRUCTION ST. CLAIR COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$12.74	.90	1.25	11%	.05
CLASS B	12.51	.90	1.25	11%	.05
CLASS C	12.20	.90	1.25	11%	05
CLASS D	12.08	.90	1.25	11%	.05
CLASS E	11.70	.90	1.25	11%	.05
CLASS F	10.32	.90	1.25	11%	

CLASS A - Crane with boom & job or leads 220' or longer
CLASS B - Crane with boom and jib or leads 140' or longer
CLASS C - Regular crane operator
CLASS D - Regular Engineer
CLASS E - Engineer when operating Compressor (or welding machine)
CLASS F - Fireman or oiler

MICH -2-PEO-SE

POWER EQUIPMENT OPERATORS: STEEL ERECTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	11.57	.55	.75	10%	.05
CLASS B	11.33	.55	.75	10%	.05
CLASS C	10.85	.55	.75	10%	.05
CLASS D	10.70	.55	.75	10%	.05
CLASS E	9.61	.55	.75	10%	.05
CLASS F	8.65	.55	.75	10%	

CLASS A - Engineer when operating combination of boom jib 220' or longer
CLASS B - Engineer when operating combination of boom jib 140' or longer Tower crane & derrick operator (where operators work stations is 501 or more above first sub level
CLASS C - Crane operator job mechanic
CLASS D - Hoisting operator
CLASS E - Compressor (or welder) operator
CLASS F - Oiler or fireman

DECISION NO. MI79-2016

MICH-3-PEO-1-2

POWER EQUIPMENT OPERATORS: BUILDING & HEAVY CONSTRUCTION REMAINDER OF COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$13.55	.95	1.50		.05
CLASS B	13.30	.95	1.50		.05
CLASS C	12.80	.95	1.50		.05
CLASS D	11.65	.95	1.50		.05
CLASS E	11.45	.95	1.50		.05
CLASS F	10.25	.95	1.50		.05
CLASS G	9.55	.95	1.50		

CLASS A - Crane with main boom & jib 220' or longer

CLASS B - Crane with main boom & jib 140' or longer, tower cranes, gantry cranes, whirley derrick

CLASS C - Regular equipment operator, cranes, stiff leg derrick, scraper, dozer, grader, front end loader, hoist, job mechanic & head grease man

CLASS D - Ait Tugger (single drum), Material Hoist, Boiler Oprs., Sweeping Machine,winch Truck, Bob Cat & Similar type equipment, Fork Truck (over 20' lift

CLASS E - Pump 6" or over, Well Points, Freeze systems, Boom truck (non Swinging Fork Truck (20' Lift)

CLASS F - Air Compressor, Welder, Generators, Pumps under 6", Grease Man, Conveyors

CLASS G - Oiler, Firemen & Heater Operator

DECISION NO. MI79-2016

MICH-9-PEO-U

POWER EQUIPMENT OPERATORS: UNDERGROUND CONSTRUCTION IOSCO COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr
CLASS I	9.24	.80	1.00	10%	.05
CLASS II	8.98	.80	1.00	10%	.05
CLASS III	8.52	.80	1.00	10%	.05
CLASS IV	8.27	.80	1.00	10%	.05

CLASS I - Power shovel, crane (crawler, truck type or pile driving), dragline, backhoe clamshell, trencher (over 8' digging capacity), mechanic, endloader (over 1½ cu. yd. cap.), grader, scraper (self-propelled or tractor drawn), dozer (9' blade & over), concrete paver (2 drum or larger), side boom tractor (type D-4 or equivalent & larger), elevating grader, roller (asphalt), gradall (and similar type machine), batching plant operator (concrete), backfiller tamper, well drilling rig, slip form paver slope, paver, conveyor loader (euclid type)

CLASS II - Trencher (8' digging capacity & smaller), endloader (1½ cu. yd. capacity & smaller), dozer less than 9' blade), side boom tractor (smaller than type D-4 or equivalent), pump (1 or more 6" discharve or larger - gas or diesel powered or powered by generator of 300 amps or more inclusive of generator), hoist boom truck (power single type boom), tractor (pneu-tired, other than backhoe or front endloader), crusher

CLASS III - Air compressor (2 or more - less than 600 CFM, air compressors 600 cu. ft. per min. or larger), pumpcrete machine (and similar equipment), mechanic helper, maintenance man, boom truck (non-swinging, non powered type boom), welding machine or generator (2 or more - 300 amp. or larger gas or diesel powered), pump (2 or more - 4" up to 6" discharge - gas or diesel powered - excluding submersible pumps), concrete paver (1 drum ½ yd. or larger wagon drill (multiple), elevator (other than passenger), concrete breaker (self-propleeed or truck mounted - includes compressor)

CLASS IV - Hydraulic pipe pushing machine, pumps (2 or more up to 4" discharge if used 3 hours or more a day gas or diesel powreed - excluding submersible pumps), trencher (service), boiler, vibrating compaction equipment, self propelled (6' wide or over), stump remover, mulching equipment, farm tractor (with attachment), finishing machine (concrete), roller (other than asphalt), curing machine (self-propelled), concrete saw (40 H.P. or over)

DECISION NO. MI79-2016 MICH-8-PEO-U

POWER EQUIPMENT OPERATORS: UNDERGROUND CONSTRUCTION REMAINDER OF COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	10.61	.80	1.00	10%	.05
CLASS II	10.49	.80	1.00	10%	.05
CLASS III	9.83	.80	1.00	10%	.05
CLASS IV	9.31	.80	1.00	10%	.05

CLASS I - Power shove, crane (crawler, truck type or pile driving), dragline, backhoe clamshell, trencher (over 8' digging capacity), mechanic, endloader (over 1½ cu. yd. cap.), grader, scraper (self-propelled or tractor drawn), dozer (9' blade & over), concrete paver (2 drum or larger), side boom tractor (type D-4 or equivalent & larger), elevating grader, roller (asphalt), gradall (and similar type machine), batching plant operator (concrete), backfiller tamper, well drilling rig, slip form paver, conveyor loader (euclid type)

CLASS II - Trencher (8' digging capacity & smaller), endloader (1½ cu. yd. capacity & smaller), dozer (less than 9' blade), side boom tractor (smaller than type D-4 or equivalent), pump (1 or more 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps or more inclusive of generator), hoist, boom truck power single type boom), tractor (pneu-tired, other than backhoe or front endloader), crusher

CLASS III - Air compressor (2 or more - less than 600 CFM), air compressors 600 cu. ft. per min. or larger), pumpcrete machine (and similar equipment), mechanic helpers, maintenance man, boom truck (non-swinging, non powered type boom), welding machine or generator (2 or more - 300 amp. or larger gas or diesel powered), pump (2 or more - 4" up to 6" discharge - gas or diesel powered - excluding submersible pumps), concrete paver (1 drum ½ yd. or larger wagon drill (multiple), elevator (other than passenger), concrete breaker (self-propelled or truck mounted - includes compressor)

CLASS IV - Hydraulic pipe pushing machine, pumps (2 ore more up to 4" discharge if used 3 hours or more a day gas or siesel powered - excluding submersible pumps), trencher (service), boiler, vibrtaing compaction equipment, self propelled (6' wide or over), stump remover, mulching equipment, farm tractor (with attachment, finishing machine (concrete), roller (other than asphalt), curing machine (self-propelled), concrete saw (40 H. P. or over)

STATE: Michigan

COUNTIES: Genesee, Lapeer, Saginaw, St. Clair & Shiawassee

DECISION NUMBER: MI79-2017

DATE: Date of Publication

Supersedes Decision Number MI78-2077, dated September 29, 1978 in 43 FR 45123

DESCRIPTION OF WORK: Residntial Construction Projects consisting of Single Family Homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
St. Clair County	$12.95	1.51	1.48		.07
Remainder of Counties	11.85	.95	1.63		.02
BOILERMAKERS	11.955	1.18	1.20	2.00	.03
BRICKLAYERS:					
Genesee, Lapeer & Shiawassee	12.45	.80	1.30		
Saginaw County	11.89	.88	.70		
St. Clair County	9.25	1.15	.85		
CARPENTERS:					
Saginaw County & Remaining Cos.	7.67	.60	.70		.02
St. Clair	11.79	.95	11%	11%	.04
CEMENT MASONS:					
Genesse & Shiawasee Counties	10.80	.70	.75		.02
Lapeer County	11.10	.80	1.30		
Saginaw County	11.19	.88	.70		
St. Clair County	8.63	1.15	.85		
ELECTRICIANS:					
Genesee, Lapeer & Shiawasee Cos.	7.28	.40	3%+.75		.02
Saginaw County	8.13		3%+.15		½ of 1%
St. Clair County	13.35	1.65	3%+1.06		.03
ELEVATOR CONSTRUCTORS:					
St. Clair County					
Constructors	12.475	.745	.56	a	.025
Helpers	70%JR	.745	.56	a	.025
Helpers (Prob.)	50%JR				
Remainder of Counties					
Constructors	11.21	.745	.56	a	.025
Helpers	70%JR	.745	.56	a	.025
Helpers	50%JR				
GLAZIERS:					
Genesee, Lapeer & Shiawassee Cos.	9.64	.55	.70		.02
Saginaw County	9.15		.50	.25	.01
St. Clair County	9.77	.55	.65		
IRONWORKERS:					
Structural & Ornamental	11.90	8%	15%	18%	.09
Reinforcing	10.97	.98+.25	15%	15%	.07
Fence Erectors	10.82	8%	15%	18%	.09

DECISION NO. MI79-2017

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Saginaw County					
Laborers; Mortar Mixers (Hand)	$ 9.49	.65	.35		.04
Plaster Mixers & Tenders	9.69	.65	.35		.04
Genesee, Lapeer & Shiawassee Cos.					
Laborers	9.64	.65	.65		.04
Air, Gas & Electric Tool Oprs	9.74	.65	.65		.04
Mortar Mixers	9.74	.65	.65		.04
Crock or Pipelayers	9.94	.65	.65		.04
St. Clair County					
Laborers; Mason Tenders	10.28	.65	.35		.04
Mortar Mixers	10.40	.65	.35		.04
Air, Gas & Electric Tool Oprs	10.53	.65	.35		.04
Corck or Pipelayers	10.63	.65	.35		.04
LATHERS:					
Saginaw & Genesee Cos.	9.92	.92	.30		.01
MARBLE, TILE & TERRAZZO WORKERS:					
Genesee, Lapeer & Shiawasee Cos.	10.55	.80	1.30		
Saginaw County	11.30				
St. Clair County:					
Marble Masons	12.88	.70	1.10		
Terrazzo Workers	11.99	.70	1.10		
Tile Setters	12.41	.70	1.10		
PAINTERS:					
Genesee & Eastern ¼ of Counties: West of Hwy. #53 in Lapeer	10.70	.50	.70		10.00p/mo
St. Clair Co; & East of Hwy. #53 in Lapeer County	12.03	.55	.70		.01
Saginaw County	9.95		.35		.02
Western ¼ of Shiawasee County	11.39	.50	.40		.0025
PLASTERERS:					
Saginaw County	11.29	.88	.20		
Genesee & Shiawasee Counties	10.68	.60	.50		.02
Lapeer County	11.35	.80	1.30		
St. Clair County	8.82	1.15	.85		
PLUMBERS:					
Genesee, Lapeer & Shiawassee Cos.	12.37	1.00	1.20		.02
Saginaw County	11.03	.94	1.15	1.25	.02
St. Clair County	11.31	1.25	1.46	1.80	.07

DECISION NO. MI79-2017

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
St. Clair County					
Regular Engineer	$12.08	.90	1.25	11%	.05
Regular Crane Operator	12.20	.90	1.25	11%	.05
Remainder of Counties					
Regular Equipment Operator; Scraper; Dozer; Grader, Front End Loader	12.80	.95	1.50		.05
Bob Cat & Similar Type Equip.	11.65	.95	1.50		.05
Air compressors; Generators	10.25	.95	1.50		.05
ROOFERS:					
Genesee, Lapeer & Shiawassee Cos.	11.45	.60	.60		
St. Clair County	8.45	.[illegible]			
SHEET METAL WORKERS:					
Genesee, Lapeer & Shiawassee Cos.	10.65	.79	1.20	1.00	
Saginaw County	12.86	.80	1.00		.03
St. Clair County	11.305	1.81	1.73	1.24	.12
SOFT FLOOR LAYERS:					
St. Clair County	11.49	1.00	7%	8%	.03
Remainder of County	9.98	.60	.70		.01
SPRINKLER FITTERS	12.37	.75	1.05		.08
TRUCK DRIVERS:					
Genesee, Lapeer, & Shiawassee Cos.	9.60	b32.50	b37.00		
Saginaw County					
Truck drivers	8.25	b28.00	b37.00	.50	
8 Cubic yards & over	8.35	b28.00	b37.00	.50	
Euclid Type Equipment	8.55	b28.00	b37.00	.50	
St. Clair County					
Truck Drivers	10.35	b32.50	b31.00		
Semi Trucks	10.50	b32.50	b31.00		

FOOTNOTES:

a. 7 paid Holidays - New Year's Day - Memorial Day - Independence Day - Labor Day - Thanksgiving Day - Day after Thanksgiving - Christmas Day plus employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years and 6% for employees in business less than 5 years.

b. Per week; Per Employee plus $3.00 for dental & optical - H&W - T/D in Saginaw County, only

SUPERSEDEAS DECISION

STATE: Michigan COUNTY: Kent
DECISION NUMBER: MI79-2018 DATE: Date of Publication
Supersedes Decision No. MI78-2001 dated February 3, 1978 in 43 FR 4817
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 7.50				
BOILERMAKERS	11.07	1.10	1.20	1.50	.03
BRICKLAYERS & STONEMASONS	7.45				
CARPENTERS	5.96				
CEMENT MASONS	6.12				
ELECTRICIANS	11.03	.50	3%+.35		.02
ELEVATOR CONSTRUCTORS	9.90	.545	.35	4%+a&b	.02
IRONWORKERS:					
Structural & Ornamental	5.86				
Reinforcing	5.92				
LABORERS - UNSKILLED	4.89				
LABORERS - MASON TENDERS	5.15				
PAINTERS - BRUSH	8.55	.50	.25		.02
PAINTERS - TAPERS	8.55	.50	.25		.02
PLASTERERS	7.80				
PLUMBERS & STEAMFITTERS	12.09	.60+.15	.90		
ROOFERS	5.55				
SHEET METAL WORKERS	11.40	.77	.95	.67	.02
TRUCK DRIVERS	5.62				
POWER EQUIPMENT OPERATORS:					
Backhoe Operator	7.15				
Bulldozer Operator	8.35				
Crane Operator	5.27				
Finishing Machine Operator	5.50				
Front End Loader	7.02				
Scraper	7.00				

FOOTNOTES:
a. 6 Paid Holidays: New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day.
b. Employer contributes 4% or regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years & 2% for employee in business less than 5 years.
c. $5.00 per month - Life Insurance

SUPERSEDEAS DECISION

STATE: Michigan COUNTIES: *See below
DECISION NO.: MI79-2019 DATE: Date of Publication
Supersedes Decision No.: MI78-2078 dated September 29, 1978 in 43 FR 45125
DESCRIPTION OF WORK: Building Construction (Including Residential) and Heavy (Excluding Bridge, Airport and Sewer) Construction Projects.

*Counties: Macomb, Monroe, Oakland, Washtenaw, & Wayne.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Monroe County	$13.08	.55	1.30		.04
Twps. of Bridgewater, Dexter, Freedom, Lima, Lydon, Manchester, Sharon & Sylvan in Washtenaw County	11.85	.95	1.63		.02
Remainder of Counties & the Remainder of Washtenaw County	12.95	1.51	1.48		.07
BOILERMAKERS:					
Monroe County	13.10	.70	1.00		.03
Remainder of Counties	11.955	1.18	1.20	2.00	.03
BRICKLAYERS & STONEMASONS:					
West of Hwy # 23 in Monroe Co.	10.53	.86	.55	.75	.05
Washtenaw County	13.88		1.25		
Remainder of Counties & East of Hwy. # 23 in Monroe County	12.27	.95	8%+.20	11%	.05
CARPENTERS & PILEDRIVERMEN					
Washtenaw County	11.94	.60	.70		.03
Remainder of Counties	11.79	.95	11%	11%	.04
CEMENT MASONS:					
South of Hwy. # 151 in Monroe County	14.14	.60			.02
Washtenaw County	13.73		1.25		
Remainder of Counties & North of Hwy. # 151 in Monroe County	12.35	.95	11%		.02
ELECTRICIANS:					
Washtenaw County	11.81	.50+4%	3%+.60	10%	2%
Monroe County:					
Building	13.80	.65	3%+.55		.1%
Residential	8.28	.65	3%+.55		.1%
Remainder of Counties:					
Building	13.35	1.65	3%+1.06		.03
Residential	13.35	1.65	3%+1.06		.03

DECISION NO. MI79-2019

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
Monroe County:					
Constructors	$12.355	.745	.56	a	.025
Helpers	70%JR	.745	.56	a	.025
Helpers (prob.)	50%JR				
Washtenaw County					
Constructors	12.41	.745	.56	a	.025
Helpers	70%JR	.745	.56	a	.025
Helpers (prob.)	50%JR				
Remainder of Counties					
Constructors	12.475	.745	.56	a	.025
Helpers	70%JR	.745	.56	a	.025
Helpers (prob.)	50%JR				
GLAZIERS	$ 9.77	.55	.65		
IRONWORKERS:					
Monroe County	12.87	1.06	1.22		.05
Remainder of Counties:					
Structural & Ornamental	11.90	8%	15%	18%	.09
Reinforcing	10.97	.98+.25	15%	15%	.07
Fence Erectors	10.82	8%	15%	18%	.09
Riggers & Machinery Erectors	10.50	1.25	1.98	16%	.02
LABORERS: (BUILDING, RESIDENTIAL & HEAVY)					
Monroe County:				¢	
Construction Laborer & Carpenter helper	10.07	.65	.35	.90	.04
Mortar Mixer, Mason & Plaster Tender, Carpenter Helper, Cement Mason Helper, Tool Operator & Caisson Worker	10.27	.65	.35	.90	.04
LATHERS:					
Monroe County; excluding s/w corner-eastern portion of Washtenaw County & Remainder of Counties	12.08	1.62	1:07		.04
MILLWRIGHTS:					
Washtenaw County	11.94	.60	.70		.03
Remainder of Counties	11.63	.97	13%	23%	.06

DECISION NO. MI79-2019

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE MASONS:					
Washtenaw County	$13.88		1.25		
Remainder of Counties:					
Marble Mason	12.88	.70	1.10		
Marble Mason Finishers	10.37	.85	.80		
PAINTERS:					
Brush - Roller	11.35	.92	1.15	1.10	50.00p/y
Spray	11.85	.92	1.15	1.10	50.00p/y
Drywall Tapers	11.60	.92	1.15	1.10	50.00p/y
PLASTERERS:					
South of Hwy. #151 in Monroe Co.	13.80	.60			.01
Washtenaw County	13.88		1.25		
Remainder of Counties & Remainder of Monroe County	13.22	.85	.75		
PLUMBERS & STEAMFITTERS:					
Monroe County	11.95	.90	.80		.12
Washtenaw County	11.76	.95+.15	.75		.10
Remainder of Countyies:					
Plumbers	11.31	1.25	1.46	1.80	.07
Pipefitters	11.55	1.25	1.51	1.50	.05
ROOFERS:					
Monroe County	12.63	1.06	1.00	¢	.02
Washtenaw County:					
Composition	10.65	.94	.65	1.05	.10
Slate	11.68	.94	.65	1.05	.10
Remainder of Counties:					
Compositon	11.51	.90	.90	1.10	
Slate	12.51	.90	.90	1.10	
SHEET METAL WORKERS:					
Monroe County	12.655	1.06	1.36		.045
Remainder of Counties	11.305	1.81	1.73	1.24	.12

DECISION NO. MI79-2019

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS:					
Washtenaw County	$11.94	.60	.70		.03
Remainder of Counties	11.49	1.00	7%	8%	.03
SOUND & COMMUNICATION WORKERS:					
Wayne, Oakland & Macomb Cos:					
Electrical Technician	8.28	b1.60	b6.00		
Electrical Technician Jr.	6.86	b1.60	b6.00		
SPRINKLER FITTERS:					
Monroe County	12.37	.75	1.05		.08
Remainder of Counties	13.805	.75+.50	1.05		.10
TILE & TERRAZZO WORKERS:					
Washtenaw County	13.47		1.00		
Remainder of Counties:					
Terrazzo Workers	11.99	.70	1.10		
Terrazzo Workers' Finishers	11.77	.70	.40	.65	
Tile Setters	12.41	.70	1.10		
Tile Setters' Finishers	9.27	.85	.80	.90	
TRUCK DRIVERS: Building, Heavy & Residential Construction					
Pole Trailer; Low Boys; Straddle Carrier; Double Bottoms & special Load Permits	10.60	b32.50	b31.00		
Semi Drivers	10.50	b32.50	b31.00		
All Other Truck Drivers	10.35	b32.50	b31.00		
TRUCK DRIVERS: Underground Construction					
Truck Drivers (Except dump trucks of 8 cubic yards capacity or over, pole trailers, semis, low boys, Euclid, double bottom & Fuel trucks	9.08	b24.00	b28.00		
Truck Drivers on dump trucks 8 cubic yards capacity or over, Pole trailers, semis & fuel trucks	9.21	b24.00	b28.00		
Low boys, Euclid & double bottom driver	9.41	b24.00	b28.00		

FOONOTES: a. 7 Paid Holidays-New Years Day-Memorial Day-Independence Day-Labor Day Thandsgiving Day-Day after Thanksgiving-Christmas Day plus Employer contributes 8% or Regular Hourly Rate to Vacation Pay Credit for employe who has worked in business more than 5 years & 6% for employees in business less than 5 years.

b. Per Week; Per Employee

DECISION NO. MI79-2019

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS BUILDING, RESIDENTIAL & HEAVY					
Washtenaw County:					
GROUP 1	9.14	.65	.35	1.00	.04
GROUP 2	9.34	.65	.35	1.00	.04
GROUP 3	9.46	.65	.35	1.00	.04
Wayne, Oakland & Macomb Cos:					
GROUP 1	9.53	.90	.90	.85	.04
GROUP 2	9.61	.90	.90	.85	.04
GROUP 3	9.78	.90	.90	.85	.04
GROUP 4	9.76	.90	.90	.85	.04
GROUP 5	10.03	.90	.90	.85	.04
GROUP 6	9.86	.90	.90	.85	.04
GROUP 7	9.91	.90	.90	.85	.04
GROUP 8	10.28	.90	.90	.85	.04

LABORERS: BUILDING, RESIDENTIAL & HEAVY

Washenaw County:

GROUP 1 - All Construction Laborers not specified below
GROUP 2 - Mortar mixers; Material Mixers (hand or machine) Air, Gas, Electric Tool Operators; Power Buggie Operators; Scaffold Building or Dismantler; Windlass Operators; Tar and Kettle Operators
GROUP 3 - Crock or Pipe Layers; Caisson Workers

Wayne, Oakland & Macomb Counties:

GROUP 1 - All Construction Laborers not specidied below
GROUP 2 - Mortar Mixers, Scaffold Builders
GROUP 3 - Signal Men, Air gas or electric tool operators, Windlass and Tugger operator, Jackahmmer and Vibrator Operator
GROUP 4 - Crock grade man
GROUP 5 - Furnace Battery Heater Helper
GROUP 6 - Crock and Pipe Layers
GROUP 7 - Caisson Workers
GROUP 8 - Lansing Burners, Blasters, Powderman

DECISION NO. MI79-2019

LABORERS: OPEN CUT CONSTRUCTION WASHTENAW COUNTY	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.40	.65	.35	.55	.04
CLASS 2	8.48	.65	.35	.55	.04
CLASS 3	8.53	.65	.35	.55	.04
CLASS 4	8.58	.65	.35	.55	.04
CLASS 5	8.63	.65	.35	.55	.04
WAYNE, OAKLAND, & MACOMB COS:					
CLASS 1	8.81	.90	.75	.85	.04
CLASS 2	8.89	.90	.75	.85	.04
CLASS 3	8.94	.90	.75	.85	.04
CLASS 4	8.99	.90	.75	.85	.04
CLASS 5	9.04	.90	.75	.85	.04
MONROE COUNTY					
CLASS 1	8.40	.65	.35	.55	.04
CLASS 2	8.50	.65	.35	.55	.04
CLASS 3	8.60	.65	.35	.55	.04
CLASS 4	8.65	.65	.35	.55	.04
CLASS 5	8.75	.65	.35	.55	.04

CLASS 1 - Construction Laborer
CLASS 2 - Mortar, & Material Mixers, Concrete form man, Signal Man, Wheel Point, Man, Manhole, Headwall & catch Basin Building, Guard Rail Builders & fence Erectors.
CLASS 3 - Air, gasoline, Electric Tool Ops., Vibrator Op., Drillers, Pumpman Tar Kettle Oprs., bracers, rodder, Reinfroced Steel or Mesh (under 40 H.P.) Windlass & Tugger Man
CLASS 4 - Trench Excavating Grade Man
CLASS 5 - Pipelayer

DECISION NO. MI79-2019

LABORERS: TUNNEL, SHAFT & CASSION CONSTRUCTION WASHTENAW & MONROE COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.03	.65	.35	.55	.04
CLASS 2	9.11	.65	.35	.55	.04
CLASS 3	9.16	.65	.35	.55	.04
CLASS 4	9.31	.65	.35	.55	.04
CLASS 5	9.51	.65	.35	.55	.04
CLASS 6	9.76	.65	.35	.55	.04
Wayne, Okaland & Macomb Cos:					
CLASS 1	8.81	.90	.75	.85	.04
CLASS 2	8.89	.90	.75	.85	.04
CLASS 3	8.94	.90	.75	.85	.04
CLASS 4	9.09	.90	.75	.85	.04
CLASS 5	9.29	.90	.75	.85	.04
CLASS 6	9.54	.90	.75	.85	.04

CLASS 1 - Tunnel, Shaft & cassion laborer, dump man, Shanty man, Hog house tender, Testing Man (on gas)
CLASS 2 - Manhole, Headwall catch basin builder, Bricklayers Tender, Mortar man, Material mixer, fence Erector & Guard rail Builder
CLASS 3 - Air Tool operator (Jackhammer amn, Brush Hammer man & Grinding Man) First Bottom man, Second bottom man, Cage Tender, Car pusher, carrier man, Concrete man, concrete form man, Concrete repair man, Cement invert laborer, Cement finisher, concrete shoveler, conveyor man, Floor man, Gasoline & Electric Tool operator, Gunnite man, grout operator, Heading dinry man, inside lock tender, pea gravel operator, pump man, outside lock tender, Vibrator man, top signal man switch man, track man, Tugger man, Utility man, Vibrator man, Winch Operator, concrete saw operator (under 40 H.P.)
CLASS 4 - Tunnel, shaft & cassion mucker, Bracer man, Under Plate man, Long Haul Dinky driver & well point man
CLASS 5 - Tunnel, shaft, & Cassion Miner, Driller Runner, Key board Operator, Power Knife operator, reinforced steel or mesh man (Wire Mesh, Steel Mats, Dowell Bars, Etc.)
CLASS 6 - Dynamite man & Powerman

DECISION NO. MI79-2019

LANDSCAPE LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS "A"					
Landscape Specialist, including air, gas, diesel, electric tool and/or equipment	$ 6.89				
CLASS "B"					
Landscape Laborers, Truck Drivers, Material Haulers & Small Power Equipment	5.14				

DECISION NO. MI79-2019

LINE CONSTRUCTION Wayne, Macomb, & Remainder of Washtenaw, Monroe & Oakland Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Linemen - Technician	$13.37	1.40	9%		½%
Cable splicers	13.95	1.40	9%		½%
Combination Equipment Operator & Groundman	10.71	1.40	9%		½%
Combination Driver-Groundman	10.08	1.40	9%		½%
Groundman	9.28	1.40	9%		½%
LINE CONSTRUCTION: Twys. of Lyndon, Manchester, Sharon & Sylvan in Washtenaw Co; Twps. of Bedford, Erie LaSalle & Whiteford in Monroe County-Twp. of Holly in Oakland Co.					
Lineman; Heavy Equipment Operator	11.00	.45	3%	a	.5%
Cable Splicers	11.44	.45	3%	a	.5%
Combination Digger Operator; Tractor Operator Groundman:					
1st 6 months	7.94	.45	3%	a	.5%
Over 6 months	8.58	.45	3%	a	.5%
Light Equipment Operator Groundman; Distribution Line Truck Driver Operator:					
1st 6 months	6.90	.45	3%	a	.5%
Over 6 months	7.53	.45	3%	a	.5%
Combination Winch Truck Driver Groundman:					
1st 6 months	6.28	.45	3%	a	.5%
Over 6 months	7.18	.45	3%	a	.5%
Combination Truck Driver Groundman	6.08	.45	3%	a	.5%

FOOTNOTES:

7 paid Holidays; New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day After Thanksgiving Day; and Christmas Day.

DECISION NO. MI79-2019

MICH-1-PEO-1-2

POWER EQUIPMENT OPERATORS: BUILDING, RESIDENTIAL & HEAVY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$12.74	.90	1.25	11%	.05
CLASS B	12.51	.90	1.25	11%	.05
CLASS C	12.20	.90	1.25	11%	.05
CLASS D	12.08	.90	1.25	11%	.05
CLASS E	11.70	.90	1.25	11%	.05
CLASS F	10.32	.90	1.25	11%	
CLASS G	9.44	.90	1.25	11%	

CLASS A - Crane with boom & jib or leads 220' or longer
CLASS B - Crane with boom and jib or leads 140' or longer
CLASS C - Crane with boom & jib 120' or longer
CLASS D - Regular Crane Operator
CLASS E - Regular Engineer
CLASS F - Engineer when operating compressor or welding machine
CLASS G- Firemen or Oiler

MICH-2-PEO-SE

POWER EQUIPMENT OPERATORS: STEEL ERECTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS A	$11.57	.55	.75	10%	.05
CLASS B	11.33	.55	.75	10%	.05
CLASS C	10.85	.55	.75	10%	.05
CLASS D	10.70	.55	.75	10%	.05
CLASS E	9.61	.55	.75	10%	.05
CLASS F	8.65	.55	.75	10%	

CLASS A - Engineer when operation combination of boom jib 220' or longer
CLASS B - Engineer when operating combination of boom & jib 140' or longer tower crane & derrick operator (where operators work stations is 501 or more above first sub level)
CLASS C - Crane operator job mechanic
CLASS D - Hoisting operator
CLASS E - Compressor (or welder) operator
CLASS F - Oiler or fireman

DECISION NO. MI79-2019

MICH-8-PEO-U

POWER EQUIPMENT OPERATORS: UNDERGROUND CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	10.61	.80	1.00	10%	.05
CLASS II	10.49	.80	1.00	10%	.05
CLASS III	9.83	.80	1.00	10%	.05
CLASS IV	9.31	.80	1.00	10%	.05

CLASS I - Power shovel, crane (crawler, truck type or pile driving), dragline, backhoe clamshell, trencher (over 8' digging capacity), mechanic, endloader (over 1½ cu. yd. cap.), grader, scraper (self-propelled or tractor drawn), dozer (9' blade & over), concrete paver (2 drum or larger), side boom tractor (type D-4 or equivalent & larger), elevating grader, roller (asphalt), gradall (and similar type machine), batching plant operator (concrete), backfiller tamper, well drilling rig, slip fom paver slope paver, conveyor loader (euclid type)
CLASS II - Trencher (8' digging capacity & smaller), endloader (1½ cu. yd. capacity & smaller), dozer (less than 9' blade), side boom tractor (smaller than type D-4 or equivalent), pump (1 or more 6" discharge or larger - gas or diesel powered or powered by generator of 300 amps or more inclusive of generator), hoist, boom truck (power sing type boom), tractor (pneu-tired, other than backhoe or front endloader), crusher
CLASS III - Air compressor (2 or more - less than 600 CFM), air compressors 600 cu. ft. per min. or larger), pumpcrete machine (and similar equipment), mechanic helper, maintenance man, boom truck(non-swinging, non powered type boom), welding machine or generator (2 or more - 300 amp. or larger gas or diesel powered), pump (2 or more - 4" up to 6" discharge - gas or diesel powered - excluding submersible pumps), concrete paver (1 drum ½ yd or larger wagon drill (multiple), elevator (other than passenger), concrete breaker (self-propelled or truck mounted - includes compressor)
CLASS IV - Hydraulic pipe pushing machine, pumps (2 or more up to 4" discharge if used 3 hours or more a day gas or diesel powered - excluding submersible pumps), trencher (service), boiler, vibrating compaction equipment, self propelled (6' wide or over), stump remover, mulching equipment, farm tractor (with attachment), finishing machine (concrete), roller (other than asphalt), curing machine (self-propelled), concrete saw (40 H.P. or over)

SUPERSEDEAS DECISION

STATE: Michigan
DECISION NO. MI79-2045
COUNTIES: INGHAM, EATON, CLINTON
DATE: Date of Publication
Supersedes Decision No. MI79-2009, dated March 23, 1979 in 44 FR 17895
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS/BLOCKLAYERS	$ 8.64				
CARPENTERS	7.53				
CEMENT MASONS/FINISHERS	8.78				
DRYWALL WORKERS:					
Hangers	8.00				
Tapers/Finishers	8.94				
ELECTRICIANS	8.47				
LABORERS:					
Common	5.79				
Landscape	3.00				
PAINTERS	6.64				
PLUMBERS/PIPEFITTERS	8.49				
ROOFERS	8.00				
SOFT FLOOR LAYERS/CARPET LAYERS	7.39				
SHEET METAL WORKERS	6.10				
TRUCK DRIVERS	7.36				
POWER EQUIPMENT OPERATORS:					
Bulldozer Operators	9.94				
Backhoe Operators	9.55				
Crane Operators	9.82				
Grader	9.82	.90	1.25	11%	.05
Paver	9.82	.90	1.25	11%	.05
Roller Operators	9.82	.90	1.25	11%	.05

SUPERSEDEAS DECISION

STATE: Minnesota
DECISION NUMBER: MN79-2021
COUNTIES: See Below
DATE: Date of Publication
Supersedes Decision No. MN78-2095, dated September 29, 1978 in 43 FR 45130
DESCRIPTION OF WORK: Building (Including Residential), Construction Projects

COUNTIES: Anoka, Carver, Hennepin, Scott, Dakota, Ramsey & Washington

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.13	.70	.65		.02
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS & STONEMASONS	11.51	.655	.53	.56	
CARPENTERS:					
Building					
S.W. Portion of Scott Co.	11.70	.42			
Remainder of Cos. & Scott Co. Carpenters, Millwrights & Piledrivermen	11.06	.55+.15	.55	.55	.02
Soft Floor Layers	10.73	.71	.64	.60	.02
Site Preparation, Excavation & Incidental Paving	10.13	.60	.60		
ELECTRICIANS:					
Building					
Hennepin & Scott Cos. & Twps. of Anoka & Fridley in Anoka County					
Contracts over $50,000	11.35	7%	6%	10½%	1 3/4%
Contracts less than $50,000	9.20	7%	6%	10½%	1 3/4%
Remainder of Anoka County & Remaining Counties	11.85	5 3/4%	5 7/8%	11½%	3/8%
Residential					
Carver, Hennepin & Scott Cos; Twps. of Anoka, Fridley, Crow & Ramsey in Anoka County: Construction of all new family dwellings up to & including 4-plexes; and to all residential remodeling, rewiring & repairing in apartment buildings up to & including a 400 ampere service. This is limited to 3 floor occupied as living quarters floors, & non-elevator apartment buildings.	7.13	.48	3%	.27	1%
CEMENT MASONS:					
Building	11.63	.60	.60		
Site Preparation, Excavation & Incidental Paving	10.13	.60	.60		

DECISION NO. MN79-2021

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (CONT'D)					
Dakota, Ramsey, Washington Cos. & Remainder of Anoka Co.: Construction of all new family dwellings up to & including 4-plexes, townhouses of 4 or less contiguous units; and to all residential remodeling, rewiring & repairing except that any single apartment project including a change of main service entrance shall not exceed 8 living units or 400 amps.	8.00	.50	3%	5%	3/4 of 1%
ELEVATOR CONSTRUCTORS:					
Constructors	11.31	.745	.35	a	.02
Helpers	70%JR	.745	.35	a	.02
Helpers (Prob.)	50%JR				
IRONWORKERS	12.40	.75	.70		.04
LATHERS:					
Anoka, Carver & Hennepin Cos.	10.99	.50	.65		.01
Washington; Dakota & Ramsey Cos.	11.69		.50	.70	.01
MARBLE SETTERS	11.555	.655	.53		
MARBLE FINISHERS	9.35	.37	.50		
TERRAZZO WORKERS	12.02	.64	.25		
TILE SETTERS	11.50	.62	.50		
TILE FINISHERS	10.65	.62	.50		
PAINTERS:					
Dakota, Ramsey & Washington Cos:					
Brush & Drywall Finisher	10.84	.55	.25		.12
Structural Steel & Spray	11.44	.55	.25		.12
Remaining Counties:					
Brush & Roller	10.76	.55	.30		.11
Structural Steel & Spray	11.36	.55	.30		.11
PLASTERERS:					
Dakota, Ramsey & Washington Cos.	10.00	.70	.25	.65	.01
Remaining Counties	9.50	.45	.20		.01
GLAZIERS	10.50	.45	.50	.35	.01

DECISION NO. MN79-2021

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS:					
Plumbers, Steamfitters & Pipefitters:					
Dakota, Ramsey & Washington Cos.	$10.92	.53	.50	1.52	.06
Plumbers & Steamfitters & P/F Remaining Counties:					
Plumbers	11.09	.53	.50	1.35	.05
Steamfitter & Pipefitters	11.14	.54	.50	1.25	.05
ROOFERS	11.75	.85	.35		.03
SHEET METAL WORKERS:					
Dakota, Ramsey & Washington Cos.	12.66	.79	.90		.06
Remaining Counties	13.02	.52	.81		.06
SPRINKLER FITTERS	12.03	.75	1.05		.02
Welders - receive rate prescribed for craft performing operation to which welding is incidental.					

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Day After Thanksgiving

FOOTNOTE:

a. Employer contributes 8% Basic Hourly Rate for over 5 years service, 6% Basic Hourly Rate for under 5 years as Vacation Pay; 7 Paid Holidays A through G

DECISION NO. MN79-2021

MINN-27-LAB-1

LABORERS: BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.40	.60	.45	.40	
CLASS 2	9.45	.60	.45	.40	
CLASS 3	9.50	.60	.45	.40	
CLASS 4	9.55	.60	.45	.40	
CLASS 5	9.65	.60	.45	.40	
CLASS 6	9.70	.60	.45	.40	
CLASS 7	9.75	.60	.45	.40	
CLASS 8	9.80	.60	.45	.40	
CLASS 9	10.105	.60	.45	.40	

CLASS 1 - Common Laborer, Steel hoist handler (erection); Power Buggy Operator, Carpenter Tender, Earth Dumpman, Flagman
CLASS 2 - Reinforced Steel Handler
CLASS 3 - Men handling cement 2 hours per day (Bulk or Sack, excluding Mortar Mixer; Mason Tender; Concrete Joint Saw Operator, Demolition & Wrecking Laborer
CLASS 4 - Hot tar caulker & corker; Laborers on swing stage line scaffold (excl. "patent" scaffolding); Automatic Tamper Operator; chipping Hammer Setter & Driver on Heavy Building, Excavation, Jackhammer Men
CLASS 5 - Underground Work
CLASS 6 - Pipelayer
CLASS 7 - Caisson Work, Underpinning
CLASS 8 - Nozzlemen
CLASS 9 - Dynamite Men, Power for Blasting purposes

DECISION NO. MN79-2021

MINN-9-LAB

SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.35	.60	.45	.40	
CLASS 2	9.45	.60	.45	.40	
CLASS 3	9.50	.60	.45	.40	
CLASS 4	9.60	.60	.45	.40	
CLASS 5	9.65	.60	.45	.40	
CLASS 6	9.70	.60	.45	.40	
CLASS 7	9.75	.60	.45	.40	
CLASS 8	9.78	.60	.45	.40	
CLASS 9	9.80	.60	.45	.40	
CLASS 10	9.98	.60	.45	.40	
CLASS 11	10.03	.60	.45	.40	

CLASS 1 Unskilled Laborer, Drill Runner Helper, Landscape Gardener, Sod Layer & Nurseryman, Powder Monkey, Rein. Steel Lab., Rein. Steel Setter Salamander Heater & Blower Tender Carpenter Tender; Winch Handler
CLASS 2 Laborer, wrecking & Demolition; Bit. Batchermen (Stationary Plant); Bricklayer Tender; Cement Handler; Cement Coverman (Batch trucks); Compaction Equip. Shoveler, batchermen Conc., Conc. Vibrator Tamper & Puddler (Paving) Conc. Longitudinal Floatmen; Conduit Layer (w.o. wiring); Chipping Hammer, Surb Setter (Stone or Precast Conc.) Kettleman (BIT. or lead); Sefvice connection maker; Power Buggy; Joint Sawer; Squeeze man (Bit. Brick or Block); Stabilizing batchermen (Stationary Plant); Stonemasons tender; Drill Runner (Heavy, including Churn Drill)
CLASS 3 Chainsaw Man, Conc. Mixer (1 bag); Jackhammer Man & Paving Buster; Mortar Mixer' Pipe Handler; Pipe Derrickman (Triped, manual)
CLASS 4 Bottom Man (Sewer, Water or Gas trench, more than 8' below starting level of manual work); Tunnel Laborer (Atmospheric pressure) Underpinning Work, Caisson Work, Oher work more than 8' below level of manual work Open ditch Work

DECISION NO. MN79-2021

LABORERS: (CONT'D)

CLASS 5 - Bituminous Tamper; Pipelayers; Sand Cushion & Bedmaker
CLASS 6 - Cement Gun (1½ & over); Leadman
CLASS 7 - Nozzlemen (Gunite)
CLASS 8 - Brick or Block Paving Setter
CLASS 9 - Bituminous Raker, Floater & Utility Man
CLASS 10 - Tunnel Man (Air pressure); Tunnel Miner
CLASS 11 - Powderman

MINN-62-TD

TRUCK DRIVERS: BUILDING, SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.20	.40	.50		
GROUP 2	8.90	.40	.50		
GROUP 3	8.80	.40	.50		
GROUP 4	8.60	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver.

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Operator; Single Axle Trucks.

DECISION NO. MN79-2021

MINN-1-PEO-1

POWER EQUIPMENT OPERATORS: Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$15.10	.70	.55		.05
CLASS 2	13.45	.70	.55		.05
CLASS 3	13.20	.70	.55		.05
CLASS 4	12.60	.70	.55		.05
CLASS 5	12.25	.70	.55		.05
CLASS 6	12.15	.70	.55		.05
CLASS 7	11.90	.70	.55		.05
CLASS 8	11.78	.70	.55		.05
CLASS 9	11.70	.70	.55		.05
CLASS 10	11.43	.70	.55		.05
CLASS 11	10.75	.70	.55		.05
CLASS 12	10.30	.70	.55		.05

CLASS 1 - Helicopter Operator
CLASS 2 - Truck & Crawler Cranes with 300' of Boom and over, including jib
CLASS 3 - Truck & Crawler Cranes w/200' of Boom, up to and not including 300' of Boom, including jib
CLASS 4 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib
CLASS 5 - Treveling Tower Crane
CLASS 6 - Master Mechanic; Pile Driving Operator
CLASS 7 - Truck & Crawler Cranes up to 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License
CLASS 8 - Air Compressor Operator, 375 CFM or over; Pump Operator and/or Conveyor Opr., (2 or more machines); Hoist Engineer (two drum); Mechanic or Welder; Pumperete or Complaco-type Machine Operator; Forklift
CLASS 9 - Boom Truck Operator; Concrete Mixer Operator; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on miltiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator
CLASS 10 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.
CLASS 11 - Air Compressor Opr., 375 CFM or over; Pump and/or Conveyor Opr.; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Opr. (see Schedule 16 on Air Comp., Pumps, Conveyors, Welding Mach.
CLASS 12 - Mechanical Space Heater (Temporary Heat); Oiler or Greaser; Elevator Operator

DECISION NO. MN79-2021

MINN-7M-PEO-2-3

SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING

POWER EQUIPMENT OPERATORS:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.30	.70	.55		.05
GROUP 2	12.01	.70	.55		.05
GROUP 3	11.65	.70	.55		.05
GROUP 4	11.52	.70	.55		.05
GROUP 5	11.43	.70	.55		.05
GROUP 6	10.55	.70	.55		.05
GROUP 7	10.05	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer

GROUP 5 - Air track Rock Drill; Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op.,(or similar type) well point installation, dismatling or repair mechanic

DECISION NO. MN79-2021

POWER EQUIPMENT OPERATORS: (CONT'D)

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. gunall, lead greader on truck or rack, loader op., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman,conveyor op., deckhand, Fireman, Tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

SUPERSEDEAS DECISION

STATE: Minnesota

COUNTIES: Blue Earth, Fairbault, Freeborn & Mower

DECISION NUMBER: MN79-2022

DATE: Date of Publication

Supersedes Decision NO. : MN78-2150, dated October 27, 1978 in 43 FR 50332

DESCRIPTION OF WORK: Building Construction (Including Residential), Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.13	.70	.65		.02
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS:					
Blue Earth County					
Bricklayers, Stonemasons & Blocklayers	11.105	.65	.51	.61	
Mower County & that part of Freeborn Co., east of a line running north & south from Geneva to Gordon & the City of Blooming Prairie:					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Caulkers & Cleaners	11.775	.70	.25		
Fairbault & Remainder of Freeborn County					
Bricklayers, Stonemasons, Tuck-Pointers & Blocklayers	11.20	.70	.50		
CARPENTERS:					
Building:					
Blue Earth County					
N. W. Portion of County	10.85				
Remainder of County	11.70	.42			.02
Freeborn & Fairbault Counties					
Carpenters, Millwrights & Piledrivermen	10.42	.55	.55		
Mower County	11.52				
Carpenters & Piledrivermen					
Site Preparation, Excavating & Incidential Paving					
Blue Earth County	7.32	.30			
Fairbault, Freeborn & Mower Cos.	8.48				
CEMENT MASONS & PLASTERERS:					
Building:					
Blue Earth County					
Cement Masons	10.10				
Plasterers	9.40				
Mower County & that part of Freeborn Co., east of a line running north & south from Geneva to Gordon:					
Cement Masons & Plasterers	9.35	.50	.25		

DECISION NO.MN79-2022

CEMENT MASONS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Fairbault Co., & Remainder of Freeborn No.:					
Cement Masons & Plasterers	$10.30	.70	.50		
Site preparation, Excavation & Incidential Paving					
Blue Earth County	10.10				
Fairbault Co.; Freeborn Co: (West of a line running North & South from Geneva to Gordonsville)	9.43	.42	.25		
Mower Co. & Remainder of Freeborn County	9.50	.35	.25		
ELECTRICIANS:					
Blue Earth & Fairbault Counties					
Jobs outside the Mankato City Area less than $50,000	9.20	7%	6%	10½%	3/4 of 1%
Jobs within a 5 mile radius of Mankato $50,000 & over	11.35	7%	6%	10½%	3/4 of 1%
Freeborn & Mower Counties $75,000 or more	10.65	.60	3%	6%	.25%
$75,000 or less & Residential	8.52	.60	3%	6%	.25%
ELEVATOR CONSTRUCTORS:					
Blue Earth County					
Constructors	11.31	.745	.35	a	.02
Helpers	70%JR	.745	.35	a	.02
Helpers (Prob.)	50%JR				
GLAZIERS:					
Blue Earth County	10.76			.30	
Remainder of Counties	10.00				
IRONWORKERS	12.40	.75	.70		.04
LABORERS: Building					
General Laborers & Carp. Tender	9.45	.35	.15		
Mason tenders & Vibrator Oprs.	9.55	.35	.15		
Mortar Mixers	9.60	.35	.15		
MARBLE-TILE-TERRAZZO WORKERS:					
Marble Setters	11.555	.655	.53		
Terrazzo Workers	12.02	.64	.25		
Tile Setters	11.50	.62	.50		
Marble Setters' Finishers	9.35	.37	.50		
Tile Setters Finishers	10.65	.62	.50		

DECISION NO. MN79-2022

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Mower County					
Brush & Roller	$10.75	.37	.40		.08
Spray	11.25	.37	.40		.08
Remainder of Counties					
Brush & Tapers	10.50	.65	.15		.11
Spray	11.00	.65	.15		.11
Structural Steel	11.50	.65	.15		.11
PLUMBERS & STEAMFITTERS:					
Blue Earth County	12.47	.53			.05
Remainder of Counties	12.36	.50	.20		.02
ROOFERS:					
Mower County	10.02		.20		
Remainder of Counties	9.95	.55			
SHEET METAL WORKERS	10.74	.52	.33		
SPRINKLER FITTERS	11.93	.75	1.05		.08
TRUCK DRIVERS	9.45				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES:

a. Employer contributes 8% BHR for over 5 years service & 6% BHR for under 5 years service as Vacation Pay. Seven Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day and Day after Thanksgiving

DECISION NO. MN79-2022

MINN-12-LAB

LABORERS: SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.50	.35	.15		
CLASS 2	9.60	.35	.15		
CLASS 3	9.65	.35	.15		
CLASS 4	9.75	.35	.15		
CLASS 5	9.90	.35	.15		
CLASS 6	9.95	.35	.15		
CLASS 7	10.00	.35	.15		

CLASS 1 - Unskilled Laborers, Bricklayer & Carpenter Tenders; Drill Runner Helper; Laborers-Wrecking & Demolition; Landscape Gardner; Pipe Handler (Water, Gas, Cast Iron); Salamander Heater & Blower Tender; Sod; Sod Layer & Nurseryman, Stonemason Tender.

CLASS 2 - Bituminous Shoveler; Bottom Man (Sewer, Water or Gas Trench); Cement Coverman (Batch Trucks); Cement Handler (Bulk or bag) Chain Saw Shoveler; Temper & Puddler (Paving); Concrete Vibrator; Conduit Layers (w/o wiring); Drill Runner (Heavy, incl. Churn Drill) Dumper (wagon, Truck Jackhammerman; Joint Sawyer, Kettlemen (Bituminous or Lead); Mortar Mixers; Paving Buster; Power Buggy; Tunnel Laborer (Atomspheric Pressure).

CLASS 3 - Bituminous Tamper

CLASS 4 - Bituminous Raker; Floater & Utility Man; Caisson Work; Cofferdam

CLASS 5 - Nozzleman (Gunite)

CLASS 6 - Pipelayer (Sewer, Water & Gas) Laser Beam

CLASS 7 - Powderman - Tunnel Miner

DECISION NO. MN79-2022

MINN-1-PEO-1

POWER EQUIPMENT OPERATORS: Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$15.10	.70	.55		.05
CLASS 2	13.45	.70	.55		.05
CLASS 3	13.20	.70	.55		.05
CLASS 4	12.60	.70	.55		.05
CLASS 5	12.25	.70	.55		.05
CLASS 6	12.15	.70	.55		.05
CLASS 7	11.90	.70	.55		.05
CLASS 8	11.78	.70	.55		.05
CLASS 9	11.70	.70	.55		.05
CLASS 10	11.43	.70	.55		.05
CLASS 11	10.75	.70	.55		.05
CLASS 12	10.30	.70	.55		.05

CLASS 1 - Helicopter Operator
CLASS 2 - Truck & Crawler Cranes with 300' of Boom and over, including jib
CLASS 3 - Truck & Crawler Cranes w/200' of Boom, up to and not including 300' of Boom, including jib
CLASS 4 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib
CLASS 5 - Traveling Tower Crane
CLASS 6 - Master Mechanic; Pile Driving Operator
CLASS 7 - Truck & Crawler Cranes up to 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License
CLASS 8 - Air Compressor Operator, 375 CFM or over; Pump Operator and/or Conveyor Opr., (2 or more machines); Hoist Engineer (two drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Operator; Forklift
CLASS 9 - Boom Truck Operator; Concrete Mixer Operator; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on miltiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator
CLASS 10 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.
CLASS 11 - Air Compressor Opr., 375 CFM or over; Pump and/or Conveyor Opr.; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Opr. (see Schedule 16 on Air Comp., Pumps, Conveyors, Welding Mach.
CLASS 12 - Mechanical Space Heater (Temporary Heat); Oiler or Greaser; Elevator Operator

DECISION NO. MN79-2022

MINN-6-PEO

POWER EQUIPMENT OPERATORS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.00	.70	.55		.05
GROUP 2	11.71	.70	.55		.05
GROUP 3	11.35	.70	.55		.05
GROUP 4	11.23	.70	.55		.05
GROUP 5	11.13	.70	.55		.05
GROUP 6	10.25	.70	.55		.05
GROUP 7	9.75	.70	.55		.05

GROUP 1 - Helicopter Pilot
GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rated capacity
GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rated capacity, Dredge Operator or Engineer, dredge Oper. (power) & Engineer, Front End Loader Op., 5 cu. yds. & over, Grader or Motor Patrol, Finishing earthwork & bituminous, Locomotive Crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over
GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer
GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Straddle carrier Op., Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm-tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op., (or similar type) well point installation, dismatling or repair mechanic

DECISION NO. MN79-2022

POWER EQUIPMENT OPERATORS: (CONT'D)

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrc , gunite op. gunall, lead greader on truck or rack, loaderop., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman, conveyor op., deckhand, Fireman, Tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN79-2022

MINN-5-TD

TRUCK DRIVERS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING Fairbault County	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 8.02	.40	.50		
GROUP 2	7.72	.40	.50		
GROUP 3	7.62	.40	.50		
GROUP 4	7.42	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver.

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Operator; Single Axle Trucks.

DECISION NO. MN79-2022

MINN-7-TD

TRUCKD RIVERS: SITE PREPARATION, EXCAVATING & INCIDENTIAL PAVING Blue Earth County	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 8.62	.40	.50		
GROUP 2	8.32	.40	.50		
GROUP 3	8.22	.40	.50		
GROUP 4	8.02	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver.

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Operator; Single Axle Trucks.

DECISION NO. MN79-2022

MINN-55-TD

SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING Freeborn & Mower Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$ 9.15	.40	.50		
GROUP 2	8.85	.40	.50		
GROUP 3	8.75	.40	.50		
GROUP 4	8.55	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver.

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Operator; Single Axle Trucks.

SUPERSEDEAS DECISION

STATE: Minnesota COUNTY: Olmsted
DECISION NUMBER: MN79-2023 DATE: Date of Publication
Supersedes Decision No. MN78-2097, dated September 29, 1978 in 43 FR 45141
DESCRIPTION OF WORK: Building (Including Residential) Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.13	.70	.65		.02
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS:					
Bricklayers; Stonemasons; Cement Blocklayers; Pointers; Caulkers & Cleaners	11.775	.70	.25		
CARPENTERS:					
Building	10.80	.55	.55		
Site Preparation, Excavation & Incidential Paving					
Carpenters & Piledrivermen	7.88	.50	.20		
CEMENT MASONS:					
Building	10.55	.70	.25		
Site Preparation, Excavation & Incidential Paving	10.35				
ELECTRICIANS:					
$75,000 or more	10.65	.60	3%	6%	.25%
Under $75,000 & Residential	8.52	.60	3%	6%	.25%
GLAZIERS	10.06			.30	
IRONWORKERS	12.40	.75	.70		.04
LABORERS: BUILDING CONSTRUCTION					
General Laborer; Carpenter Tender; Flagman; Power Buggy Operator	9.45	.35	.15		
Mason Tender; Drill Runner; Vibrator Operator; Rebar Laborer	9.55	.35	.15		
Mortar Mixer; Air Acutated Tool	9.60	.35	.15		
Plasterer Tender	9.70	.35	.15		
Nozzleman	9.85	.35	.15		
LATHERS	10.50				
MARBLE SETTERS	11.555	.655	.53		
PAINTERS:					
Brush & Roller	10.75	.37	.40		.08
Spray	11.25	.37	.40		.08
Structural Steel	11.00	.37	.40		.08

DECISION NO. MN79-2023

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
PLASTERERS	10.55	.70	.25		
PLUMBERS & STEMAFITTERS	12.36	.50	.20		.02
ROOFERS	9.40	.42	.33		
SHEET METAL WORKERS	10.74	.52	.33		.02
SPRINKLER FITTERS	11.93	.75	1.05		.08
TILE SETTERS	11.95				
TRUCK DRIVERS -	9.45				
Welders - Receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. MN79-2023

MINN-12-LAB

LABORERS: SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.50	.35	.15		
CLASS 2	9.60	.35	.15		
CLASS 3	9.65	.35	.15		
CLASS 4	9.75	.35	.15		
CLASS 5	9.90	.35	.15		
CLASS 6	9.95	.35	.15		
CLASS 7	10.00	.35	.15		

CLASS 1 - Unskilled Laborers, Bricklayer & Carpenter Tenders; Drill Runner Helper; Laborers-Wrecking & Demolition; Landscape Gardner; Pipe Handler (Water, Gas, Cast Iron); Salamander Heater & blower Tender; Sod Layer & Nurseryman, Stonemason Tender.

CLASS 2 - Bituminous Shoveler; Bottom Man (Sewer, Water or Gas Trench); Cement Coverman (Batch Trucks); Cement Handler (Bulk or bag) Chain Saw Shoveler; Tamper & Puddler(Paving); Concrete Vibrator; Conduit Layers (w/o wiring); drill Runner (Heavy, incl. Churn Drill) Dumper (wagon, Truck Jackhammerman; Joint Sawyer, Kettlemen (Bituminous or Lead); Mortar Mixers; Paving Buster; Power Buggy; Tunnel Laborer (Atmospheric Pressure).

CLASS 3 - Bituminous Tamper

CLASS 4 - Bituminous Raker; Floater & Utility Man; Caisson Work;Cofferdam

CLASS 5 - Nozzleman (Gunite)

CLASS 6 - Pipelayer (Sewer, Water & Gas) Laser Beam

CLASS 7 - Powderman - Tunnel Miner.

DECISION NO. MN79-2023

MINN-1-PEO-1

POWER EQUIPMENT OPERATORS: Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$15.10	.70	.55		.05
CLASS 2	13.45	.70	.55		.05
CLASS 3	13.20	.70	.55		.05
CLASS 4	12.60	.70	.55		.05
CLASS 5	12.25	.70	.55		.05
CLASS 6	12.15	.70	.55		.05
CLASS 7	11.90	.70	.55		.05
CLASS 8	11.78	.70	.55		.05
CLASS 9	11.70	.70	.55		.05
CLASS 10	11.43	.70	.55		.05
CLASS 11	10.75	.70	.55		.05
CLASS 12	10.35	.70	.55		.05

CLASS 1 - Helicopter Operator

CLASS 2 - Truck & Crawler Cranes with 300' of Boom and over, including jib

CLASS 3 - Truck & Crawler Cranes w/200' of Boom, up to and not including 300' of Boom, including jib

CLASS 4 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib

CLASS 5 - Traveling Tower Crane

CLASS 6 - Master Mechanic; Pile Driving Operator

CLASS 7 - Truck & Crawler Cranes up to 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License

CLASS 8 - Air Compressor Operator, 375 CFM or over; Pump Operator and/or Conveyor Opr., (2 or more machines); Hoist Engineer (two drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Operator; Forklift

CLASS 9 - Boom Truck Operator; Concrete Mixer Operator; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on miltiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator

CLASS 10 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.

CLASS 11 - Air Compressor Opr., 375 CFM or over; Pump and/or Conveyor Opr.; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Opr. (see Schedule 16 on Air Comp., Pumps, Conveyors, Welding Mach.

CLASS 12 - Mechanical Space Heater (Temporary Heat); Oiler or Greaser; Elevator Operator

DECISION NO. MN79-2023 MINN-6-PEO

POWER EQUIPMENT OPERATORS: SITE PREPARATION, EXCAVATION & INCIDENTIALPAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.00	.70	.55		.05
GROUP 2	11.71	.70	.55		.05
GROUP 3	11.35	.70	.55		.05
GROUP 4	11.23	.70	.55		.05
GROUP 5	11.11	.70	.55		.05
GROUP 6	10.25	.70	.55		.05
GROUP 7	9.75	.70	.55		.05

GROUP 1 - Helicopter Pilot
GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity
GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over
GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer
GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op.,(or similar type) well point installation, dismatling or repair mechanic

DECISION NO. MN79-2023

POWER EQUIPMENT OPERATORS: (CONT'D)

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. gunall, lead greader on truck or rack, loader op., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)
GROUP 7 - Brakeman, switchman,conveyor op., deckhand, Fireman, Tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN79-2023

MINN-55-TD

TRUCK DRIVERS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$9.15	.40	.50		
GROUP 2	8.85	.40	.50		
GROUP 3	8.75	.40	.50		
GROUP 4	8.55	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver.

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Operator; Single Axle Trucks.

SUPERSEDEAS DECISION

STATE: Minnesota
COUNTIES: Benton, Sherburne & Stearns
DECISION NUMBER: MN79-2024
DATE: Date of Publication
Supersedes Decision No. MN78-2151, dated October 27, 1978, in 43 FR 50337
DESCRIPTION OF WORK: Building (Including Residential), Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.13	.70	.65		.02
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS & STONEMASONS	11.10		.25	1.00	
CARPENTERS:					
Building Construction					
Southern tip of Sherburne Co.					
Carpenters, Millwirghts & Piledrivermen	11.06	.70	.55	.55	.02
Soft Floor Layers	10.73	.71	.64	.60	.02
Cities of Little Rock & Skaja in Benton County					
Carpenters	10.75				
Stearns Co., Remainder of Benton & Sherburne Counties					
Carpenters & Piledrivermen	11.18	.35		.75	
Soft Floor Layers	7.50				
Site Preparation, Excavation & Incidential Paving					
Sherburn Co.; Northern Bondary of T-34-N & East of the Western Boundary of R-27-W	8.21	.40	.30	.50	.02
Benton Co., Stearns Co. (East of A North-South Line Drawn from the intersection of Stearns, Todd & Morrison Cos.) & the remainder of Sherburne Co.	7.47			.75	
Remainder of Stearns County	7.62				
CEMENT MASONS:					
Building Construction					
Benton & Stearns Counties					
Cement masons & Plasterers	9.55		.25	.35	
Sherburne County					
Cement Masons	11.63	.60	.60		
Plasterers	10.00	.70	.25	.65	.01
Site Prepatation, Excavation & Incidential Paving					
Sherburne County	10.13	.60	.60		
Benton & Stearns Counties	9.90			.25	

DECISION NO. MN79-2024

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:					
Benton & Stearns Cos.; Twps. of Haven, Palmer, Santiago, Becker & Clear Lake in Sherburne County:					
Jobs under $50,000	$ 9.20	7%	6%	10½%	3/4 of 1%
Jobs over $50,000	11.35	7½%	6%	10½%	1⅛
Remainder of Sherburne County	11.85	$ 3/4	$ 7/8%	11⅛	3/8%
GLAZIERS	10.75	.40			
IRONWORKERS	12.40	.75	.70		.04
LABORERS:					
Building Construction					
Stearns & Benton Counties:					
General Laborers, Demolition & Wrecking; Concrete Joint Saw Opr.; Signal Men	9.25	.35	.15		
Power Buggy Operators	9.30	.35	.15		
Mortar Mixers; Plasterer Tenders	9.35	.35	.15		
Jackhammer Men	9.40	.35	.15		
Underground; Caisson; Cofferdam & Tunnel work	9.50	.35	.15		
Dynamite Men & Pipelayers	9.55	.35	.15		
Sherburne County:					
Common, Carpenter Tender	9.40	.60	.45	.40	
Wrecking & demolition	9.50	.60	.45	.40	
Vibrator Opr; Jackhammermen; Mortar Mixers	9.55	.60	.45	.40	
Underground Work	9.65	.60	.45	.40	
Pipelayers	9.70	.60	.45	.40	
Caisson Work - Underpinning	9.75	.60	.45	.40	
Dynamite Men	10.105	.60	.45	.40	
LATHERS:					
Benton & Stearns Counties	10.99	.50	.65	.01	
MARBLE SETTERS	11.355	.655	.53		

DECISION NO. MN79-2024

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Eastern 2/3 of Sherburne County:					
Brush, Roller & Paperhangers	10.76	.55	.30		.11
Spray, Structural Steel & Sandblasting	11.36	.55	.30		.11
Benton, & Stearns Counties & the Remainder of Sherburne County:					
Residential	8.50			3%	
Brush	7.90			3%	
Structural Steel	8.40			3%	
Spray	8.90			3%	
PLUMBERS & STEAMFITTERS:					
Sherburne County:					
Plumbers Eastern ½ of County	11.09	.53	.50	1.35	.05
Steamfitters Eastern ½ of County	11.14	.54	.50	1.25	.05
Benton & Stearns Cos. & the Western ½ of Sherburne Co:					
Plumbers & Steamfitters	11.82	.53	.50		.06
ROOFERS:					
Roofers	9.60		.30	.25	
SHEET METAL WORKERS	11.52	.52	.31		.03
SPRINKLER FITTERS	11.93	.75	1.05		.08
TRUCK DRIVERS - Building	9.25				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental					

DECISION NO. MN79-2024

MINN-9-LAB

SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING LABORERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sherburne County					
CLASS 1	$ 9.35	.60	.45	.40	
CLASS 2	9.45	.60	.45	.40	
CLASS 3	9.50	.60	.45	.40	
CLASS 4	9.60	.60	.45	.40	
CLASS 5	9.65	.60	.45	.40	
CLASS 6	9.70	.60	.45	.40	
CLASS 7	9.75	.60	.45	.40	
CLASS 8	9.78	.60	.45	.40	
CLASS 9	9.80	.60	.45	.40	
CLASS 10	9.98	.60	.45	.40	
CLASS 11	10.05	.60	.45	.40	

CLASS 1 Unskilled Laborer, Drill Runner Helper, Landscape Gardener, Sod Layer & Nurseryman, Powder Monkey, Rein. Steel Lab., Rein. Steel Setter Salamander Heater & Blower Tender Carpenter Tender; Winch Handler

CLASS 2 Laborer, wrecking & Demolition; Bit. Batchermen (Stationary Plant); Bricklayer Tender; Cement Handler; Cement Coverman (Batch trucks); Compaction Equip. Shoveler, batchermen Conc., Conc. Vibrator Tamper & Puddler (Paving) Conc. Longitudinal Floatmen; Conduit Layer (w.o. wiring); Chipping Hammer, Surb Setter (Stone or Precast Conc.) Kettleman (BIT. or lead); Service connection maker; Power Buggy; Joint Sawer; Squeeze man (Bit. Brick or Block); Stabilizing batchermen (Stationary Plant); Stonemasons tender; Drill Runner (Heavy, including Churn Drill)

CLASS 3 Chainsaw Man, Conc. Mixer (1 bag); Jackhammer Man & Paving Buster; Mortar Mixer' Pipe Handler; Pipe Derrickman (Triped, manual)

CLASS 4 Bottom Man (Sewer, Water or Gas trench, more than 8' below starting level of manual work); Tunnel Laborer (Atmospheric pressure) Underpinning Work, Caisson Work, Ober work more than 8' below level of manual work Open ditch Work

DECISION NO. MN79-2024

LABORERS: (CONT'D)

CLASS 5 - Bituminous Tamper; Pipelayers; Sand Cushion & Bedmaker
CLASS 6 - Cement Gun (1½ & over); Leadman
CLASS 7 - Nozzlemen (Gunite)
CLASS 8 - Brick or Block Paving Setter
CLASS 9 - BITUminous Raker, Floater & Utility Man
CLASS 10 - Tunnel Man (Air pressure); Tunnel Miner
CLASS 11 - Powderman

DECISION NO. MN79-2024

MINN-11-LAB

LABORERS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Benton & Stearns Counties					
CLASS 1	$ 8.85	.55	.35	.40	
CLASS 2	8.90	.55	.35	.40	
CLASS 3	8.95	.55	.35	.40	
CLASS 4	9.00	.55	.35	.40	
CLASS 5	9.10	.55	.35	.40	
CLASS 6	9.25	.55	.35	.40	
CLASS 7	9.30	.55	.35	.40	
CLASS 8	9.35	.55	.35	.40	

CLASS 1 - Bricklayer Tender, Carpenter, Drill Runner Helper, Laborers-Wrecking & Demolition, Landscape Gardner, Pipe Handler (Water, Gas & Cast Iron); Salamander Heater & Blower Tender, Sod Layer & Nurseryman; Stonemason Tenders; Unskilled Laborers

CLASS 2 - Form Setter (Municipal Type Curb & Sidewald, Form Setter (Pavement) coverman (Batch Trucks); Cement Handler (Bulk or Bag); chain Saw Man; Compaction equipment (Hand operated); Concrete Mixer (1 Bag); Concrete Shoveler Tamper & Puddler (Paving); Concrete Vibrator; Conduit Layers (w/o wiring); Drill Runner (wagon, Truck, etc.); Jackhammerman, Joint Sawer, Kettleman (Bituminous or Lead); Mortar Mixers, Paving Buster, Power Buggy, Tunnel Laborer (Atmospheric pressure)

CLASS 4 - Bituminous Raker, Floater & Utility Man;, Caisson work, Cofferdam

CLASS 5 - Leadman

CLASS 6 - Gunnite

CLASS 7 - Pipelayer (Sewer, Water & Gas)

CLASS 8 - Powderman, Tunnel Miner

DECISION NO. MN79-2024

MINN-1-PEO-1

POWER EQUIPMENT OPERATORS: Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$15.10	.70	.55		.05
CLASS 2	13.45	.70	.55		.05
CLASS 3	13.20	.70	.55		.05
CLASS 4	12.60	.70	.55		.05
CLASS 5	12.25	.70	.55		.05
CLASS 6	12.15	.70	.55		.05
CLASS 7	11.90	.70	.55		.05
CLASS 8	11.78	.70	.55		.05
CLASS 9	11.70	.70	.55		.05
CLASS 10	11.43	.70	.55		.05
CLASS 11	10.75	.70	.55		.05
CLASS 12	10.30	.70	.55		.05

CLASS 1 - Helicopter Operator

CLASS 2 - Truck & Crawler Cranes with 300' of Boom and over, including jib

CLASS 3 - Truck & Crawler Cranes w/200' of Boom, up to and not including 300' of Boom, including jib

CLASS 4 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib

CLASS 5 - Traveling Tower Crane

CLASS 6 - Master Mechanic; Pile Driving Operator

CLASS 7 - Truck & Crawler Cranes up to 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License

CLASS 8 - Air Compressor Operator, 375 CFM or over; Pump Operator and/or Conveyor Opr., (2 or more machines); Hoist Engineer (two drum); Mechanic or Welder; Pumpcrete or Complaco-type Machine Operator; Forklift

CLASS 9 - Boom Truck Operator; Concrete Mixer Operator; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on miltiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator

CLASS 10 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.

CLASS 11 - Air Compressor Opr., 375 CFM or over; Pump and/or Conveyor Opr.; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Opr. (see Schedule 16 on Air Comp., Pumps, Conveyors, Welding Mach.

CLASS 12 - Mechanical Space Heater (Temporary Heat); Oiler or Greaser; Elevator Operator

DECISION NO. MN79-2024

SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING

MINN-7M-PFO-2-3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sherburne Co. (South of the Northern Boundary of T-33-N & East of the Western Boundary of R-27-W					
GROUP 1	$15.30	.70	.55		.05
GROUP 2	12.01	.70	.55		.05
GROUP 3	11.65	.70	.55		.05
GROUP 4	11.52	.70	.55		.05
GROUP 5	11.43	.70	.55		.05
GROUP 6	10.55	.70	.55		.05
GROUP 7	10.05	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Pinishing earth & bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similar type, Pick-up

DECISION NO. MN79-2024

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 5 (Cont'd)

sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & ballast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op.,(or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. gunall, lead greader on truck or rack, loader op., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman,conveyor op., deckhand, Fireman, Tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN79-2024 MINN-6-PEO

POWER EQUIPMENT OPERATORS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Stearns Co; (East of the Western Right-of-Way of Minn. Hwy. 15) Benton Co.: (East of the Western Right-of-Way of Hwy. 10) & Remainder of Sherburne Co.					
GROUP 1	$15.00	.70	.55		.05
GROUP 2	11.71	.70	.55		.05
GROUP 3	11.35	.70	.55		.05
GROUP 4	11.23	.70	.55		.05
GROUP 5	11.13	.70	.55		.05
GROUP 6	10.25	.70	.55		.05
GROUP 7	9.75	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping

DECISION NO. MN79-2024

(POWER EQUIPMENT OPERATORS) (CONT'D)

GROUP 5 (Cont'd)

machines op., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power-actuated horizogtal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op.,(or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. gunall, lead greader on truck or rack, loader op., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman,conveyor op., deckhand, Fireman, Tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN79-2024

MINN-7-PEO

POWER EQUIPMENT OPERATORS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Remainder of Benton & Stearns Cos.					
GROUP 1	$14.55	.70	.55		.05
GROUP 2	10.37	.70	.55		.05
GROUP 3	9.72	.70	.55		.05
GROUP 4	9.58	.70	.55		.05
GROUP 5	9.50	.70	.55		.05
GROUP 6	8.97	.70	.55		.05
GROUP 7	8.57	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber

DECISION NO. MN79-2024

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 5 (Cont'd)

tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op.,(or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Pine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. gunall, lead greader on truck or rack, loader op., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman,conveyor op., deckhand, Fireman, Tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISIN NO. MN79-2024

MINN-62-TD

TRUCK DRIVERS: BUILDING, SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sherburne County					
GROUP 1	$ 9.20	.40	.50		
GROUP 2	8.90	.40	.50		
GROUP 3	8.80	.40	.50		
GROUP 4	8.60	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver.

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Operator; Single Axle Trucks.

DECISION NO. MN79-2024

MINN-5-TD

TRUCK DRIVERS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Benton & Stearns Counties					
GROUP 1	$ 8.02	.40	.50		
GROUP 2	7.72	.40	.50		
GROUP 3	7.62	.40	.50		
GROUP 4	7.42	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver.

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propelled Packer; Slurry Operator; Single Axle Trucks.

SUPERSEDEAS DECISION

STATE: Minnesota COUNTIES: *See Below
DECISION NUMBER: MN79-2025 DATE: Date of Publication
Supersedeas Decision No.: MN78-2099 dated September 29, 1978 in 43 FR 45151
DESCRIPTION OF WORK: Building Construction (Including Residential) Construction Projects

*Counties: Carlton, Cook, Itasca, Koochiching Lake and St. Louis

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.10	.40	.50	1.15	
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS:					
Bricklayers & Stonemasons:					
Koochiching County	11.95	.60	.30		
Cook, Lake & Carlton Counties & all that part of St. Louis County South of line between township 54 & 55 to 2 miles north of Cotton	10.27	.40	.30	.30	
Itasca County & the northern half of St. Louis County	10.875	.30			
CARPENTERS:					
Building Construction:					
Koochiching County & Cities of Ashe Lake, Crane Lake, Kebetogama & Kinmount in St. Louis County	10.85	.40			
Cook County; Cities of Alborn, Arnold, Barlett, Birch, Brookston, Canyon, Clinton, Culver, Duluth, Floodwood, Cowan, Island, Kelsey, Lakewood, Meadowlands, Munger, Palmers, Payne, Praist, Shaw Taff in St. Louis County & Southern portion of Lake County					
Carpenters, Piledrivermen & Soft Floor Layers	10.65	.40	.50	.75	
Millwrights	10.87	.40	.50	.75	
Carlton County:					
Carpenters & Piledrivermen	10.08	.40	.40	.50	
Millwrights	10.94	.40	.40	.50	
Cities of Ball Club, Bass Lake, Big Fork, Blackberry, Bovey, Bowstring, Calument, Cohasset, Colerain, Deer River, Dora, Lake, Dunbar, Effie, Grand Rapids, Inger Marble, Marcell, Max, Pomroy, Spring Lake, Square Lake, Suomi, Talmoon, Warba & Wirt in Itasca County	10.64	.40	.50	.30	

DECISION NO. MN79-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Cities of Allen, Aurora, Babbit, Britt, Biwabik, Buyck, Casco, Central, Lakes, Cook, Cusson, Ely, Embarrass, Eveleth, Florenton, Forbes, Gilbert, Hoyt Lakes, Indington, Iron Junction, Makinen, McComber, Masaba, Mountain, Iron, Ridge, Sax, Sherman Corners, Sherwood, Skibo, Soudon, Tower, Virginia, Wahlsten, Winton & Zim in St. Louis & Northern portion of Lake County					
Carpenters, Soft Floor Layers, and Tile Setters	$10.89	.40	.50	.30	
Cities of Goodland, Keewatin, Nashwauk, Pengillu, Sawan River, Togo & Wawina in Itasca County & Cities of Bengal, Beer Lake Buhl Chrisholm, Gheen, Greaney, Hibbing, Kelly, Lake, Nett Lake, Orr Riley, Side Lake, Silica & Tovola in St. Louis County:					
Carpenters & Soft Floor Layers	11.14	.40		.30	
Site Preparation, Excavation & Incidential Paving:					
Lake, Cook, Carlton, Itasca & St. Louis Counties	8.28	.30		.30	
Koochiching County	7.32	.30			

DECISION NO. MN79-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS & PLASTERERS:					
Building Construction:					
Koochiching County:					
Cement Masons & Plasterers	$11.60	.60	.30		
Itasca Co. and the Northern portion of St. Louis County, North or White Face River					
Cement Masons	10.05	.30			
Plasterers	10.65	.30			
Cook, Lake, Carlton Counties & the City or Duluth in St. Louis County:					
Cement Masons	11.845	.40			
Plasterers	10.20	.30		.45	
ELECTRICIANS:					
Cook, Lake, Carlton Counties the southerly 12 Townships of Itasca County including Harris, Feely, Blackberry, Spang, Goodland, Sago & Wawina & all of the southerly part of County bounded on the north by the lines of Kelsey Township extended east & west in St. Louis County	11.43	4%	8%	11%	½ of 1%
Koochiching County, Itasca County, (except that section south of a line extending east and west of the south line of Grand Rapids & Trout Lake Township), Northern part of St. Louis County bounded by the South Line of Ellsburg Township extended east and west	11.28	4%	6%	11%	1½%

DECISION NO. MN79-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
St. Louis & Lake Counties:					
Constructors	$10.31	.75	.35	8%+a	.02
Helpers	70%JR	.75	.35	8%+a	.02
Helpers (Prob.)	50%JR				
GLAZIERS:					
Cook, Lake, St. Louis, Carlton, Koochiching Counties	9.60	.40	.40	b	
IRONWORKERS	12.00	.40	.60		.02
LABORERS: BUILDING CONSTRUCTION					
Carlton, Cook, Lake, St. Louis Co. South of T-55-N, including the City of Duluth:					
Common Laborers	9.30	.40	.45	.50	
Mortar Mixers, Carpenters & Mason Tender, Jackhammer & Vibrator Operator	9.40	.40	.45	.50	
Itasca & Koochiching Counties and north of T-55-N, including Cities of Hibbing, Chisolm & Buhl in St. Louis County					
Common Laborer	9.90	.35	.15		
Carpenters & Mason Tender, Mortar Mixer, Bricklayer Tender and Jackhammer	10.00	.35	.15		
Pipelayer (non-metallic)	10.25	.35	.15		
LATHERS:					
St. Louis & Lake Counties	11.20	.40			
MARBLE, TILE & TERRAZZO WORKERS:					
St. Louis Co. (City of Duluth)					
Marble & Tile Setter	10.43	.30			
Remainder of Counties & Remainder of St. Louis County					
Marble Setters	11.555	.655	.53		
Tile Setters	11.50	.62	.50		
Marble Finishers	9.35	.37	.50		
Tile Finishers	10.65	.62	.50		

DECISION NO. MN79-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush, Tapers & Rollers	$10.81	.40	.40		.11
Spray, Structural Steel, Tapers & Paperhangers	11.41	.40	.40		.11
PLUMBERS & STEAMFITTERS:					
Koochiching County	13.90				
Cook & Carlton Counties & Southern half of St. Louis & Lake Counties	10.66	.40	.75	1.50	.05
Itasca Coutny & Northern portions of St. Louis & Lake Counties	10.65	.56	.64	1.00	.05
ROOFERS:					
Cook, Lake, Carlton Counties & Southern half of St. Louis County					
Roofers	10.58	.40	.25	1.25	
2nd Roofers	10.33	.40	.25	1.25	
Kettlemen	10.13	.40	.25	1.25	
Itasca & Koochiching Counties, the Northern half of St. Louis County					
1st Roofer	10.66	.52	.55		
2nd Roofer	10.36	.52	.55		
SHEET METAL WORKERS:					
Cook, Lake, Carlton Counties & Southern half of St. Louis County	10.81	.40	.55	1.25	.03
Itasca & Koochiching Counties, the Northern half of St. Louis County	10.92	.52	.55		
TRUCK DRIVERS:					
Building Construction:					
Koochiching County	9.90				
Itasca County	9.90				

FOOTNOTES:

a. Employer contributes 4% Basic Hourly Rate for over 5 years service, 2% of Basic Hourly Rate for 6 months to 5 years service as Vacation Pay Credit. Six (60 Paid Holdiays, New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day and Christmas Day.

b. 2 weeks vacation

DECISION NO. MN79-2025

MINN-10-LAB

LABORERS: Counties of Itaska and St.Louis Counties North of T-55, Site Preparation, Excavation & Incidental Paving:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 9.73	.35	.15	.25	
CLASS II	9.83	.35	.15	.25	
CLASS III	9.98	.35	.15	.25	
CLASS IV	10.03	.35	.15	.25	
CLASS V	10.08	.35	.15	.25	
CLASS VI	10.13	.35	.15	.25	
CLASS VII	10.23	.35	.15	.25	
CLASS VIII	10.33	.35	.15	.25	

CLASS I - Unskilled-Laborers, Laborers; wrecking & demolition; Bricklayer tender, drill runner helper, Landscape gardner, Sod layer & nurseryman pipihandler (water, gas cast iron); Salamander heater & blower tender; Carpenter tender; Stonemasons tender

CLASS II - Bituminous Shoveler, Bottom man (sewer , water or gas trench), Cement handler (bulk or bag); Chain saw man, compaction equipment (hand operator); Concrete mixer operator (1 bag), Concrete Shoveler, tamper & puddler (paving)) Concrete Vibrator, Conduit layers (w/o wiring); Dumper (wagon, truck etc.), Formsetter (municipal type curb & side walk) Formsetter (pavement); Jackhammer man & paving busters, Kettlemen (Bituminous or lead), Mortar mixer, Power buggy, Joint drawer, tunnel laborer (atmospheric pressure)

CLASS III - Bitminous Tamper, Cofferdam work, Caisson work

CLASS IV - Drill Runner (Heavy, including churn drill)

CLASS V: Bituminous Raker, Floater, Utility Men, Pipelayers (sewer, water, gass); Leadsman (Gunnite)

CLASS VI - Nozzleman (Gunite)

CLASS VII - Powderman

CLASS VIII - Tunnel Miner

DECISION NO. MN79-2025

MINN-13-LAB

LABORERS Site preparation, Excavation & Incidential Paving Koochiching County	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.25	.35	.15		
CLASS 2	8.35	.35	.15		
CLASS 3	8.40	.35	.15		
CLASS 4	8.50	.35	.15		
CLASS 5	8.60	.35	.15		
CLASS 6	8.65	.35	.15		
CLASS 7	8.70	.35	.15		
CLASS 8	8.75	.35	.15		

CLASS 1 - Skilled Laborers, Bricklayers & Carpenters Tenders; Drill Runner Helper; Laborers Wreching & Demolition, Landscape Gardner, Pipe Handler (Water, Gas, Cast Iron), Salamander Heater, & Blower Tender, Sod Layer & Nurseryman; Stonemasons tender

CLASS 2 - Bituminous Shoveler, Bottom man (Sewer, Water or gas trench), Cement Coverman (Batch Trucks); Cement handler (Bulk or bag); Chain Saw Man, Compaction equipment (hand operated), Concrete mixer (1 bag); Concrete Shoveler, Tamper & Puddler (paving), Concrete vibrator, Conduit layers (w/o wiring); Drill runner (heavy, incl. Churn Driver Dumper (wagon truck, etc.); Jackhammerman, Joint Sawer, Kettlemen (Bituminous or Lead), Mortar Mixer Paving Buster; Power Buggy; Tunnel Laborer (atmospheric pressure)

CLASS 3 - Form setters (Municipal type curb & Sidewalk) form setter(pavement)

Class 4 - Bituminous Tamper, caisson work & cofferdam

CLASS 5 - Bituminous raker, floater, & Utility man; Leadman

CLASS 6 - Nozzleman (Gunnite)

CLASS 7 - Pipelayer, (Sewer, Water & Gas)

CLASS 8 - Powderman, Tunnel Miner

DECISION NO. MN79-2025

MINN-14-LAB

LABORERS - SITE PREPARATION EXCAVATION & INCIDENTIAL PAVING Cook, Lake, Carlton & St. Louis Counties South of T-55	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 9.13	.40	.45	.50	
CLASS II	9.23	.40	.45	.50	
CLASS III	9.38	.40	.45	.50	
CLASS IV	9.43	.40	.45	.50	
CLASS V	9.48	.40	.45	.50	
CLASS VI	9.53	.40	.45	.50	
CLASS VII	9.63	.40	.45	.50	
CLASS VIII	9.73	.40	.45	.50	

CLASS I - Unskilled Laborers, Laborers; wrecking & demolition; Bricklayer tender, drill runner helper, Landscape gardner, Sod layer & nurseryman Pipehandler (water, gas, cast iron); Salamander heater & blower tender; Carpenter tneder; Stonemasons tender

CLASS II - Bituminous Shoveler, Bottom man (sewer, water or gas trench), Cement handler (bulk or bag); Chain saw man, compaction equipment (hand operated); Concrete mixer operator (1 bag), Concrete Shoveler, tamper & puddler (paving) Concrete Vibrator, Conduit layers (w/o wiring); Dumper (wagon, truck, etc.), Formsetter (municipal type curb & side walk) Formsetter (pavement); Jackhammer man & paving busters, Kettleman (Bituminous or lead), Mortar mixer, Power buggy, Joint drawer, tunnel laborer (atmospheric pressure)

CLASS III - Bituminous Tamper, Cofferdam work, Caisson work

CLASS IV - Drill Runner (Heavy, including churn drill)

CLASS V - Bituminous Raker, Floater & Utility Man, Pipelayers (sewer, water, gas); Leadman (Gunite)

CLASS VI - Nozzleman (Gunnite)

CLASS VII - Powderman

CLASS VIII - Tunnel Miner

DECISION NO. MN79-2025

MINN-1-PEO-1

POWER EQUIPMENT OPERATORS: Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$15.10	.70	.55		.05
CLASS 2	13.45	.70	.55		.05
CLASS 3	13.20	.70	.55		.05
CLASS 4	12.60	.70	.55		.05
CLASS 5	12.25	.70	.55		.05
CLASS 6	12.15	.70	.55		.05
CLASS 7	11.90	.70	.55		.05
CLASS 8	11.78	.70	.55		.05
CLASS 9	11.70	.70	.55		.05
CLASS 10	11.43	.70	.55		.05
CLASS 11	10.75	.70	.55		.05
CLASS 12	10.35	.70	.55		.05

CLASS 1 - Helicopter Operator
CLASS 2 - Truck & Crawler Cranes with 300' of Boom and over, including jib
CLASS 3 - Truck & Crawler Cranes w/200' of Boom, up to and not including 300' of Boom, including jib
CLASS 4 - Truck & Crawler Cranes with 150' of Boom, up to and not including 200' of Boom, including jib
CLASS 5 - Traveling Tower Crane
CLASS 6 - Master Mechanic; Pile Driving Operator
CLASS 7 - Truck & Crawler Cranes up to 150' of Boom, including jib; Derrick (Guy & Stiffleg); Hoist Engineer (3 drums or more); Locomotive Operator; Overhead Crane Operator (Inside Building Perimeter); Tower Cranes - Stationary Tractor Operator with Boom; All Terrain Vehicle Cranes; Fireman, Chief License
CLASS 8 - Air Compressor Operator, 375 CFM or over; Pump Operator and/or Conveyor Opr., (2 or more machines); Hoist Engineer (two drum); Mechanic or Welder; Pumperete or Complaco-type Machine Operator; Forklift
CLASS 9 - Boom Truck Operator; Concrete Mixer Operator; Drill Rigs - Heavy Rotary or Churn when used for caisson drilling for Elevator Cylinder or Building Construction; Front End loader Operator; Hoist Engineer (one drum); Straddle Carrier Operator; Power Plant Engineer (100 KW and over on miltiples equal to 100 KW and over); Tractor Operator over D2; Well Point Pump Operator
CLASS 10 - Concrete Batch Plant Operator; Fireman, First Class License; Gunite Operator; Tractor Operator D-2 or similar size; Front End Loader Operator, up to 1 cu. yd.
CLASS 11 - Air Compressor Opr., 375 CFM or over; Pump and/or Conveyor Opr.; Fireman, Temporary Heat; Brakeman; Pick-up Sweeper (1 cu. yd. and over hopper capacity); Truck Crane Oiler; Welding Machine Opr. (see Schedule 16 on Air Comp., Pumps, Conveyors, Welding Mach.
CLASS 12 - Mechanical Space Heater (Temporary Heat); Oiler or Greaser; Elevator Operator

DECISION NO. MN79-2025

MINN-7M-PEO-2-3

SITE PREPARATION, EXCAVATION & INCIDENTAL PAVING POWER EQUIPMENT OPERATORS: Cook, Lake, & St. Louis Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.30	.70	.55		.05
GROUP 2	12.01	.70	.55		.05
GROUP 3	11.65	.70	.55		.05
GROUP 4	11.52	.70	.55		.05
GROUP 5	11.43	.70	.55		.05
GROUP 6	10.55	.70	.55		.05
GROUP 7	10.05	.70	.55		.05

GROUP 1 - Helicopter Pilot
GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity
GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over
GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumperete Op., Scraper Op. Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer
GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning

DECISION NO. MN79-2025

POWER EQUIPMENT OPERATORS (Cont'd)

or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & ballast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op.,(or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. gunall, lead greader on truck or rack, loader op., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman,conveyor op., deckhand, Fireman, Tank Car Heater op,, Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN79-2025

MINN-6-PEO

SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING

(JURISDICTION - NEXT PAGE)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.00	.70	.55		.05
GROUP 2	11.71	.70	.55		.05
GROUP 3	11.35	.70	.55		.05
GROUP 4	11.23	.70	.55		.05
GROUP 5	11.13	.70	.55		.05
GROUP 6	10.25	.70	.55		.05
GROUP 7	9.75	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumperete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning

POWER EQUIPMENT OPERATORS (Cont'D) SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING-CARLTON CO; KOOCHICHING CO., EAST OF A NORTH SOUTH LINE FROM THE CANADIAN BORDER TO PELLAND TO BIG FALLS & MINN. HWY. #6; ITASCA COUNTY EAST OF THE WESTERN RIGHT OF WAY OF MINN. HWY. #6.

or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & ballast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, ti .ching machine Op., (sewer, water, gas) turnapull op.,(or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. gunall, lead greader on truck or rack, loader op., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman,conveyor op., deckhand, Fireman, Tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

MINN-7-PEO

POWER EQUIPMENT OPERATORS: SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING Remainder of Itasca & Koochiching	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$14.55	.70	.55		.05
GROUP 2	10.37	.70	.55		.05
GROUP 3	9.72	.70	.55		.05
GROUP 4	9.58	.70	.55		.05
GROUP 5	9.50	.70	.55		.05
GROUP 6	8.97	.70	.55		.05
GROUP 7	8.57	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 - Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3 cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mole., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op. (Boom Type), Truck Crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, Self-Propelled. Traveling Soil Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Launcherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similar type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning

(POWER EQUIPMENT OPERATORS (Cont'd)

or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & ballast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op.,(or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray., concrete mixer op. 14S and under, concrete op. (Mult. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op. (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. gunall, lead greader on truck or rack, loader op., power actuated Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shouldering mach. Op., stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman,conveyor op., deckhand, Fireman, Tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper, mech. space heater, oiler, self-prop. vib. packer op., sheep foot roller, tractor op. 50 HP or less w/o power take-off, truck crane oiler

MINN-62-TD

TRUCK DRIVERS: BUILDING, SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING

Cook, Lake, Carlton & St. Louis Counties

	Basic Hourly Rates	Fringe Benefit Payments: H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.20	.40	.50		
GROUP 2	8.90	.40	.50		
GROUP 3	8.80	.40	.50		
GROUP 4	8.60	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches); Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry Batch Hauler; Tank Truck (Gas, Oil Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; Slurry Driver.

GROUP 3 - Bituminous Distributor; Bituminous Distributor (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; Greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel Type used for any purpose) Pilot car driver, self-Propells Packer; Slurry Operator; Single Axle Trucks.

MINN-5-TD

DECISION NO MN79-2025

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
SITE PREPARATION, EXCAVATION & INCIDENTIAL PAVING					
ITASCA & KOOCHICHING COS.					
GROUP 1	$ 8.02	.40	.50		
GROUP 2	7.72	.40	.50		
GROUP 3	7.62	.40	.50		
GROUP 4	7.42	.40	.50		

GROUP 1
Driver (hauling machinery for employer's own use including operation of hand & power operated winches); Truck train mechanic; Welder; Tractor-Trailer; Off road truck.

GROUP 2
Tri-Axle (including 4 Axles); Dump dry batch hauler; Tank truck (gas, oil, road oil & water); Boom & "A" Frame; Ready mix concrete; Slurry driver.

GROUP 3
Bituminous distributor driver; Bituminous distributor (1 man operation); Tandem axle.

GROUP 4
Bituminous distributor spray (rear-end oiler); Dumpman; Greaser & truck service man; Tank truck helper (gas, oil, road oil & water); Teamster and stableman; Tractor operator (wheel type used for any purpose); Pilot car; Self-propelled packer; Slurry operator; Single axle.

Login

SUPERSEDEAS DECISION

STATE: Minnesota
DECISION NUMBER: MN79-2026
COUNTIES: See Below
DATE: Date of Publication
Supersedes Decision No. MN78-2062 dated July 14, 1978 in 43 FR 30459
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

COUNTIES

Aitken	Dakota	Houston	Mower	Stearns
Anoka	Dodge	Itaska	Nicollet	Steel
Benton	Fairbault	Kanabec	Olmsted	St. Louis
Blue Earth	Fillmore	Koochiching	Ramsey	Wabasha
Carlton	Freeborn	Lake	Rice	Waseca
Carver	Goodhue	LeSueur	Scott	Washington
Chisago	Hennepin	Mille Lacs	Sherburne	Winona
Cook		Morrison	Sibley	Wright

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS & PILEDRIVERMEN:					
Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott & Washington, Sherburne County (North of the Northern Boundary of T-34- or West of the western Boundary of R-27), & Wright County east of & including Minnesota Highway #25	$ 8.21	.40	.30	.50	.02
Counties of Aitkin, Cook, Itaska, Kanabec, Lake, Mille Lacs & St. Louis	8.28	.30		.30	
Carlton County	8.58	.30			
Benton County, the Remainder of Sherburne & Wright Counties, Stearns County east of a north-south line drawn from the Intersection of Stearns, Todd and Morrison Counties	7.47			.75	
Blue Earth County (entire Co. except N.W. corner including cities of Butternut, Judson & Cambria), LeSueur County (West 2/3 of county including Cities of New Sweden, Nicollet, Norseland, North Mankato & St. Peter), Waseca County (N.W. Corner including City of Smithmill), & Sibley County (S.E. corner incl. Cities of Henderson & Rush River	7.32	.30			

DECISION NO. MN79-2026

CARPENTERS & PILEDRIVERMEN (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Rice County, Dodge County (MN portion including Cities of Clermont & West Concord), Goodhue County (Along west border including Cities of Geyon, Denmison, Skyburg, Sogn, Stanton & Wangs), steele County (Entire County except along south border including Cites of Blooming prairie & Ellendale), Waseca County (Entire County except Smithmill in NW corner & along the South border including the cities of Matawan & New Richland) & the Remainder of LeSueur Co.	8.08	.40			
Olmsted County, Fillmore County The vicinity of the Cities of Borne, Concord, Dodge Center, Kasson, Dansville, Eden, Materville & Wasioja), Mower County (N.W. Corner including the city of Racine & Wabasha County (in the vicinity of the Cities of Elgin, Hammond, Millville, Plainview, Conseption, Dunfries, Jarret, South Troy & Theilman	7.88	.40	.20		
Counties of Fairbault, Freeborn, Houston & Winona & the remainder of Dodge, Pillmore, Goodhue, Mower, STeele, Wabasha & Waseca Counties	8.48				
Koochiching County	7.32	.30			
Counties of Morrison, Remainder of Sibley & Stearns Counties	7.62				

DECISION NO. MN79-2026

CEMENT MASONS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Counties of Anoka, Carver, Chisago, Dakota, Hennepin Kanabec, McLeod, Mills Lacs, Ramsey, Scott, Sherburne, Sibley, Washington & Wright	10.13	.60	.60		
Counties of Aitkin, Carlton, Cook, Lake & St. Louis Co. South of T-55-N	12.13	.40			
Itaska County & St. Louis co. North of T-54-N	10.05	.30			
Koochiching County	10.35	.40	.15		
Morrison County	10.20		.15		
counties of Benton & stearns	9.90		.25		
Counties of Blue earth & Nicollet, LeSueur Co. (East ½ including the Cities of Cleveland, Elysian, Kasato, LeCenter, LeSueur, Lexington, Ottawa, & ST. Thomas), Waseca County (East ½ including the Cities of Alma City, Janesville, Smithmill & Waldorf	10.10				
Fairbault County & Freeborn Counties (West of a line running north & south from Genevia to Gordansville	9.43	.42	.25		
Counties of Rice & Steele, the Remainder of LeSueur & Waseca Counties & Dodge County West of Highway 56	10.10				
Olmsted County, Dodge County (east of Highway 56), & Fillmore Co. east of a line drawn north & south established east of the City of Dodge Center	10.35				
Counties of Houston & Winona & the Remainder of Fillmore Co.	10.10				

DECISION NO. MN79-2026

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS (CONT'D)					
Counties of Goodhue & Wabasha Mower County & the Remainder of Freeborn	10.33	.42	.25		
	9.50	.35	.25		
IRONWORKERS:					
Counties of Anoka, Benton, Blue Earth, Carver, Chisago, Dakota Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Hennepin Houston, LeSueur, Morrison, Mower, Nicollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Stearns, Steele, Wabasha, Waseca, Washington, Winona & Wright; Kanabec Co., (excluding north 1/3 of County including cities of Warman, Kruschel & Woodland), Mille Lacs County (excluding NE cor. including cities of Bayview, Opstead, Isle, Wahkun Cove & Vineland), & Pine County (the SW corner including the cities of Pine City, Henriette, Greely, rock Creek & West Rock)	12.40	.75	.70		.04
Counties of Aitkin, Carlton, Cook, Itaska, Koochiching, Lake, St. Louis, Kanabec & Mille Lacs Counties	12.00	.40	.60		.02

DECISION NO. MN79-2026

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINEMEN:					
Counties of Aitkin, Carlton, Cook, Lake, Morrison, Itaska County that portion South of T-55 R-27, Bass Rock Grand Rapids, Trout Lake, T-55 R-23 & that portion of Goodhue & Township South of a Line west from the S.W. of T-55 R-23; St. Louis Co; that portion south of Ault, Ellsburg, Lavell, T-55 R-14, T-55 R-15, T-55 R-18 & T-55 R-21 Townships, Kanabec co. north of Ann Lake, Knife Lake & White Townships; Mille Lacs county north of baily and Mudgett Townships	$11.43	4%	8%	11%	½ of 1%
Koochiching County & the Remainder of Itaska & St. Louis Cos	11.28	4%	6%	11%	1½%
Counties of Chisago, Dakota, Ramsey, Rice & Washington; Remainder of Kanabec & Mille Lacs Cos., Anoka County (Entire County except Anoka, Pirdely, Grow & Ramsey Twps.)					
Goodhue Co. (Entire County (except Pine Island, Minneola Rosecoe & Zumbrota Twps.), LeSueur County (that portion east of Cleveland, Sharon, Tyrone of Washington Twps.); Sherburne Co. (that portion east of Becker & Santiago Twps; & Wabasha County (Entire Co. excpet Elgin & Plainview Twps.)	11.85	5-3/4%	5 7/8%	11½%	3/8%
Houston & Winona County	9.97	.45	3%		.5%

DECISION NO. MN79-2026

LINEMEN (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Counties of Benton, Blue Earth Carver, Fairbault, Hennepin, Nicollet, Scott, Sibley, Stearns, Waseca, Wright & the Remainder of Anoka, LeSueur & Sherburne Cos.	11.35	7%	6%	10½%	3/4 of 1%
Counties of Dodge, Fillmore, Freeborn, Mower, Olmsted, Steele & the Rem. of Goodhue & Wabasha Counties	8.31	.35	1%		.04
PAINTERS:					
Counties of Carlton, Cook, Lake, Koochiching, St. Louis & Itaska					
Brush	10.81	.40	.40		.11
Structural Steel & Bridges	11.41	.40	.40		.11
Counties of Chisago, Dakota, Ramsey & Washington					
Brush	10.84	.55	.25		.12
Structural Steel & Bridges	11.44	.55	.25		.12
Counties of Anoka, Carver, Hennepin, Kanabec, Scott and the eastern 2/3 of Sherburne & Wright counties:					
Brush & Roller	10.76	.55	.30		.11
Structural Steel & Bridges	11.36	.55	.30		.11
Counties of Benton, Mille Lacs & Stearns (the western 1/3 of Sherburne & Wright Counties) & the Southern ½ of Morrison County:					
Brush	5.90				.02
Structural Steel	6.40				.02
Spray	6.90				.02
Aitkin & the southern ½ of Morrison County:					
Brush	9.10				
Structural Steel & Bridges	9.60				

DECISION NO. MN79-2026

PAINTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Counties of Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Houston, Mower, Olmsted, Wabasha & Winona:					
Brush	9.50	.37	.25		.08
Spray	10.10	.37	.25		.08
Counties of Blue Earth, Nicollet Sibley, Rice, LeSueur, Steel & Waseca					
Brush	10.50	.65	.20		.11
Structural Steel & Bridges	11.00	.65	.20		.11
WELL DRILLING:					
(Construction or Repair of water wells and aprurtenances)					
Metropolitian Area					
Hennepin, Ramsey, Washington, Anoka, Carver, Scott & Dakota Counties; that part of Wright County east of T.H. 25, Sherburne County South of T-34N & East of R-27W & that Part of Chisago Co. South of T-35N					
Field Work					
Driller - Pumpman	9.00				
General - Helper	7.40				
Mechanic - Welder	8.35				
Driver or Service Man	7.40				
Rural Area					
Remainder of Counties					
Field Work					
Driller - Pumpman	9.00				
General Helper	6.50				
Mechanic - welder	7.85				
Driver or Service Man	6.95				

DECISION NO. MN79-2026

MINN-9-LAB

LABORERS: Counties of Anoka, Carver, Chisago, Dakota, Hennepin, Ramsey, Scott, Sherburne, Washington & Wright	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.35	.60	.45	.40	
CLASS 2	9.45	.60	.45	.40	
CLASS 3	9.50	.60	.45	.40	
CLASS 4	9.60	.60	.45	.40	
CLASS 5	9.65	.60	.45	.40	
CLASS 6	9.70	.60	.45	.40	
CLASS 7	9.75	.60	.45	.40	
CLASS 8	9.78	.60	.45	.40	
CLASS 9	9.80	.60	.45	.40	
CLASS 10	9.98	.60	.45	.40	
CLASS 11	10.03-	.60	.45	.40	

CLASS 1 Unskilled Laborer, Drill Runner Helper, Landscape Gardener, Sod Layer & Nurseryman, Powder Monkey, Rein. Steel Lab., Rein. Steel Salamander Heater & Blower Tender Carpenter Tender; Winch Handler
CLASS 2 - Laborer,wwrecking & Demolition; Bit. Batchermen (Stationary Plant); Bricklayer Tender; Cement Handler; Cement Coverman (Batch trucks); Compaction Equip. Shoveler, batchermen Conc., Conc. Vibrator TAmper & Puddler (Paving) Conc. Longitudinal Floatmen; Conduit Layer (w.o wiring); Chipping Hammer, Curb Setter (Stone or Precast Conc.) Kettleman (Bit. or lead); Service connection maker; Power Buggy; Joint Sawer' Squeeze man (Bit. Brick or Block); Stablizing batchermen (Stationary Plant); Stonemasons tender; Drill Runner (Heavy, including Churn Drill)
CLASS 3 - Chainsaw Man, Conc. Mixer (1 bag); Jackhammer Man & Paving Buster; Mortar Mixer' Pipe Handler; Pipe Derrickman (Triped, manual)
CLASS 4 - Bottom Man (Sewer, Water or Gas Trench, more than 8' below starting level of manual work); Tunnel Laborer (ATmospheric pressure) Underpinning work, Caisson Work, other work more than 8' below level of manual work Open ditch work

DECISION NO. MN79-2026

LABORERS: (CONT'D)

Class 5 - Bituminous Tamper; Pipelayers; Sand Cushion & Bedmaker
CLASS 6 - Cement Gun (1½ & over); Leadman
CLASS 7 - Nozzlemen (Gunite)
CLASS 8 - Brick or Block Paving Setter
CLASS 9 - Bituminous Raker, Floater & Utility Man
CLASS 10 - Tunnel Man (Air pressure); Tunnel Miner
CLASS 11 - Powderman

MINN-10-LAB

LABORERS: Counties of Itaska and St. Louis Counties North of T-55	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 9.73	.35	.15	.25	
CLASS II	9.83	.35	.15	.25	
CLASS III	9.98	.35	.15	.25	
CLASS IV	10.03	.35	.15	.25	
CLASS V	10.08	.35	.15	.25	
CLASS VI	10.13	.35	.15	.25	
CLASS VII	10.23	.35	.15	.25	
CLASS VIII	10.33	.35	.15	.25	

CLASS I - Unskilled Laborers, Laborers; wrecking & demolition; Bricklayer tender, drill runner helper, Landscape gardner, Sod layer & nurseryman Pipehandler (water, gas, cast iron); Salamander Heater & blower tender; Carpenter tender; Stonemasons tender
CLASS II - BitUminous Shoveler, bottom man (sewer, water or gas trench), Cement hnadler (bulk or bag); Chain saw man, compaction equipment (hand operated); Concrete mixer operator (1 bag), Concrete Shoveler, tamper & puddler (paving) Concrete Vibrator, Conduit layers (w/o wiring); Dumper (wagon, truck, etc.), Formsetter (municipal type curb & side walk) Formsetter (pavement); Jackhammer man & paving busters, Kettleman (Bituminous or lead), Mortar mixer, Power buggy, Joint drawer, tunnel laborer (atmospheric pressure)
CLASS III - Bituminous Tamper, Cofferdam work, Caisson work
CLASS IV - Drill Runner (Heavy, including churn drill)
CLASS V - Bituminous Raker, Floater & Utility Man, Pipelayers (sewer, water, gas); Leadman (Gunite)
CLASS IV - Nozzleman
CLASS VII - Powderman
CLASS VIII - Tunnel miner

DECISION NO. MN79-2026

MINN-11-LAB

LABORERS: COUNTIES OF BENTON, KANABEC, MILLE LACS & STEARNS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.85	.55	.35	.40	
CLASS 2	8.90	.55	.35	.40	
CLASS 3	8.95	.55	.35	.40	
CLASS 4	9.00	.55	.35	.40	
CLASS 5	9.10	.55	.35	.40	
CLASS 6	9.25	.55	.35	.40	
CLASS 7	9.30	.55	.35	.40	
CLASS 8	9.35	.55	.35	.40	

CLASS 1 - Bricklayer Tender, Carpenter, Drill Runner Helper, Laborers-Wrecking & Demolition, Landscape Gardner, Pipe Handler (water, Gas & Cast Iron); Salamander Heater & Blower Tender, Sod Layer & Nurseryman; Stonemasons Tenders; Unskilled Laborers
CLASS 2 - Form Setter (Municpal Type Curb & Sidewalk, Form Setter (Pavement) coverman (Batch Trucks); Cement Handler (Bulk or Bag); Chain Saw Man; compaction equipment (Hand operated); Concrete Mixer (1 bag); Concrete Shoveler Tamper & Puddler (Paving); Concrete Vibrator; Conduit Layers (w/o wiring); Drill Runner (wagon, truck, etc.); Jackhammerman, Joint Sawer, Kettleman (Bituminous or Lead); Mortar mixers, Paving Buster, Power Buggy, Tunnel Laborer (Atmospheric pressure)
CLASS 4 - Bituminous Raker, Floater & Utility Man;, Caisson work, Cofferdam
CLASS 5 - Leadman
CLASS 6 - Gunnite
CLASS 7 - Pipelayer (Sewer, water & Gas)
CLASS 8 - Powderman, Tunnel Miner

DECISION NO. MN79-2026

MINN-12-LAB

LABORERS: Counties of Blue Earth, Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Houston, LeSueur. Mower, Nicholett, Olmsted, Rice, Steele, Wabasha, Waseca & Winona	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 9.50	.35	.15		
CLASS 2	9.60	.35	.15		
CLASS 3	9.65	.35	.15		
CLASS 4	9.75	.35	.15		
CLASS 5	9.90	.35	.15		
CLASS 6	9.95	.35	.15		
CLASS 7	10.00	.35	.15		

CLASS 1 - Unskilled Laborers, Bricklayer & Carpenter Tenders; Drill Runner Helper; Laborers-Wrecking & Demolition; Landscape Gardner; Pipe Handler (Water, Gas, Cast Iron); Salamander Heater & blower Tender; Sod Layer & Nurseryman, Stonemason tender.
CLASS 2 - Bituminous shoveler; Bottom Man (Sewer, Water or Gas Trench); Cement Coverman (Batch Trucks); Cement Handler (Bulk or bag) Chain Saw Shoveler; Tamper & Puddler (Paving); Concrete Vibrator; Condit Layers (w/o wiring); Drill Runner (Heavy, incl. Churn Drill) Dumper (wagon, Truck Jackhammerman; Joint Sawyer, Kettlemen (Bituminous or Lead); Mortar Mixers; Paving Buster; Power Buggy; Tunnel Laborer (Atmospheric Pressure).
CLASS 3 - Bituminous Tamper
CLASS 4 - Bituminous Raker; Floater & Utility Man; Caisson Work; Cofferdam
CLASS 5 - Nozzleman (Gunite)
CLASS 6- Pipelayer (Sewer, Water & Gas) Laser Beam
CLASS 7 - Powderman - Tunnel Miner

DECISION NO. MN79-2026 MINN-13-LAB

LABORERS Counties of Aitkin, Koochiching, Morrison, & Sibley	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$ 8.25	.35	.15		
CLASS 2	8.35	.35	.15		
CLASS 3	8.40	.35	.15		
CLASS 4	8.50	.35	.15		
CLASS 5	8.60	.35	.15		
CLASS 6	8.65	.35	.15		
CLASS 7	8.70	.35	.15		
CLASS 8	8.75	.35	.15		

CLASS 1 - Skilled Laborers, Bricklayer & carpenter Tenders; Drill Runner Helpers; Laborers Wrecking & demolition, Landscape, Pipe Handler (Water, Gas, Cast Iron), Salamander Heater & Blower Tender, Sod Layer & Nurseryman; Stonemason Tender
CLASS 2 - Bituminous Shoveler, Bottom Man (Sewer, Water or gas Trench), Cement Coverman (Batch Trucks); Cement Handler (Bulk or bag); Chain Saw Man, Compaction equipment (hand operated), Concrete mixer (1 bag); Concrete Shoveler, Tamper & Puddler (paving), Concrete vibrator, Conduit layers (w/o wiring); Drill runner (Heavy, incl. Churn driver Dumper (wagon truck, etc.); Jackhammerman, Joint Sawer, Kettleman (Bituminous or Lead), Mortar Mixer Paving Buster, Power Buggy; Tunnel Laborer (Atmospheric pressure)
CLASS 3 - form setters (Municipal type curb & Sidewalk) formsetter (pavement)
CLASS 4 - Bituminous Tamper, caisson work & cofferdam
CLASS 5 - Bituminous raker, floater & utility man; Leadman
CLASS 6 - Nozzleman (Gunnite)
CLASS 7 - Pipelayer, (Sewer, water & Gas)
CLASS 8 - Powderman, Tunnel Miner

DECISION NO. MN79-2026 MINN-14-LAB

LABORERS: Counties of Carlton, Cook, Lake, & St. Louis - South at T-55	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 9.13	.40	.45	.50	
CLASS II	9.23	.40	.45	.50	
CLASS III	9.38	.40	.45	.50	
CLASS IV	9.43	.40	.45	.50	
CLASS V	9.48	.40	.45	.50	
CLASS VI	9.53	.40	.45	.50	
CLASS VII	9.63	.40	.45	.50	
CLASS VIII	9.73	.40	.45	.50	

CLASS I - Unskilled Laborers, Laborers; Wrecking & Demolition; Bricklayer tender, Drill runner helper, Landscape Gardner, Sod Layer & Nurseryman Pipehandler (water, gas, cast iron); Salamander heater & blower Tender; Carpenter Tender; Stonemasons Tender
CLASS II - Bituminous Shoveler, Bottom man (sewer, water or gas trench), Cement handler (bulk or bag); Chain saw man, compaction equipment (hand operated); Concrete mixer operator (1 bag), Concrete Shoveler, Tamper & puddler (paving) Concrete Vibrator, Conduit layers (w/o wiring); Dumper (wagon, truck, etc.), Formsetter (municipal type curb & side walk) Formsetter (pavement); Jackhammer man & paving busters, Kettleman (Bituminous or lead), Mortar mixer, Power buggy, Joint darwer, tunnel laborer (atmospheric pressure)
CLASS III - Bituminous Tamper, Cofferdam work, Caisson work
CLASS IV - Drill Runner (Heavy, including churn drill)
CLASS V - Bituminous Raker, Floater & Utility Man, Pipelayers (sewer, water, gas); Leadman (Gunite)
CLASS IV - Nozzleman
CLASS VII - Powderman
CLASS VIII - Tunnel Miner

DECISION NO. MN79-2026

MINN-7M-PEO

POWER EQUIPMENT OPERATORS: ZONE 1 Counties of Anoka, Carver, Cook Dakota, Hennepin, Lake, Ramsey, St. Louis, Scott & Washington, Sherburne County south of the northern boundary of T-33-N and east of the west ern boundary of R-27-W, Wright county east of and including Highway #25, Chisago County south of the northern boundary of T-34-N and that part consisting substantially of the cities of Thompson, Colquet, Scanlon & Carlton	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.30	.70	.55		.05
GROUP 2	12.01	.70	.55		.05
GROUP 3	11.65	.70	.55		.05
GROUP 4	11.52	.70	.55		.05
GROUP 5	11.43	.70	.55		.05
GROUP 6	10.55	.70	.55		.05
GROUP 7	10.05	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, Dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & Bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mile., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op., (Boom Type), Truck crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, self-propelled. Travelling Soil

DECISION NO. MN79-2026

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 4 (Cont'd)

Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Lanucherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similr type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op., (or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray, concrete mixer op. 14S and under, concrete op. (Multi. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shoudering mach. Op. stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman, conveyor Op., deckhand, Fireman, tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper mech. space heater, Oiler, Self-prop. vib. pactor op., sheen foot roller tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN79-2026

MINN-6-PEO

POWER EQUIPMENT OPERATORS:

ZONE 2

Counties of Aitkin, Blue Earth, Carlton, Dodge, Fairbault, Fillmore, Freeborne, Goodhue, Houston, Kanabec, LeSueur, Mille Lacs, Mower, Olmsted, Steele, Wabasha, Waseca, Winona & Washington; The remainder of Chisago, Sherburne & Wright Counties; Koochiching County East of a North-South Line From the Canadian Boarder to Pelland-The Western Right-of-Way of U. S. Hwy. 71 from Pelland to Big Falls & Minn. Hwy. #6; Itaska County East of the Western Right-of-way of Minn. Hwy. #6; Morrison County east of the western Right-of-Way of U.S. Hwy. #371 & U.S. Hwy #10 from Little Falls to the Morrison Benton County lines; Benton Co. East of the western-Right-of-Way of U. S. Hwy #10; and in Martin, Nicollet, Sibley & Stearns Counties, East of the Western Right-of-way of Minn. Hwy. #15. In every case the entire corporation limits of cities, towns & villages located on the boundaried described as highways shall be included in this area

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$15.00	.70	.55		.05
GROUP 2	11.71	.70	.55		.05
GROUP 3	11.35	.70	.55		.05
GROUP 4	11.23	.70	.55		.05
GROUP 5	11.13	.70	.55		.05
GROUP 6	10.25	.70	.55		.05
GROUP 7	9.75	.70	.55		.05

DECISION NO. MN79-2026

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 1 - Helicopter Pilot

GROUP 2 Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34E, Derrick, Dragline and/or similar equipment with shovel type control up to 3cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, Dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & Bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mile., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op., (Boom Type), Truck crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, self-propelled. Travelling Soil Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Lanucherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similr type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & ballast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op., (or similar type) well point installation, dismatling or repair mechanic

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray, concrete mixer op. 14S and under, concrete op. (Multi. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shoudering mach. Op. stump chipper op., tractor op. (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman, conveyor Op:, deckband, Pireman, tank Car Heater op., Gravel screening plant op., greaser leverman, mech. helper mech. space heater, Oiler, Self-prop. vib. pactor op., sheen foot roller tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN79-2026 MINN-7-PEO

POWER EQUIPMENT OPERATORS: ZONE 3 The Remainder of Benton, Itaksa Koochiching, Morrison, Nicollet, Sibley & Stearns Cos.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$14.55	.70	.55		.05
GROUP 2	10.37	.70	.55		.05
GROUP 3	9.72	.70	.55		.05
GROUP 4	9.58	.70	.55		.05
GROUP 5	9.50	.70	.55		.05
GROUP 6	8.97	.70	.55		.05
GROUP 7	8.57	.70	.55		.05

GROUP 1 - Helicopter Pilot

GROUP 2 Crane with over 135' Boom, excluding jib, Dragline and/or other similar equipment w/shovel type controls 3 cu. yds. & over Mfg. rates capacity

GROUP 3 - Cableway Op., concrete Mixer, Stationary Plant over 34B, Derrick, Dragline and/or similar equipment with shovel type control up to 3cu. yds. Mfg. rates capacity, Dredge Operator or Engineer, Dredge Oper. (power) & Yds. & over, Grader or Motor Patrol Finishing earth & Bituminous, Locomotive crane Operator, Master Mechanic, Mixer (paving) Concrete Paving Op., Road Mile., Op., incl. power supply, Mucking Mach., incl. mucking operations Conway or similar type, Refrigeration Plant Engineer, Tandem Scraper, Tractor Op., (Boom Type), Truck crane Op., Tugboat Op. 100 HP & over

GROUP 4 - Dual Tractor Op., Elevating Grader Op., Pumpcrete Op., Scraper Op., Struck Capacity 32 cu. yds. & over, self-propelled. Travelling Soil Stabilizer

GROUP 5 - Air track Rock Drill, Asphalt Bituminous Stabilizer Plant Op., Crushing Plant Op., or Gravel Washing, Crushing and Screening Plant Op., Dope Machine Op., Drill Rigs, Heavy Rotary or Churn or Cable Drill, Engineer in charge of Plant requiring First Class License, Fork Lift or Lumber Stacker, Front End Loader Op., Loader Op., over 1 cu. yds., Hoist Engineer, Hydraulic Tree Planter, Lanucherman, Locomotive, all types, Mechanic or welder, Multiple machines, such as air compressors, welding machines, generators, pumps or crane oilers, paving breaker or tamping machines op., (power-driven - Mighty might or similr type, Pick-up sweeper, 1 cu. yd. & over Hopper capacity, Pipeline wrapping, cleaning or bending machine Op. Power Plant Engineer, Power actuated horizontal boring mach., over 6" op., pugmill op., roller, 8 tons & over, Rubber tired farm tractor, backhoe att., sheep foot op., tie tamper & hallast mach. Op., Tractor op., over D2, TD6 or similar HP with power take-off, tractor Op., over 50 HP without power take-off, trenching machine Op., (sewer, water, gas) turnapull op., (or similar type) well point installation, dismatling or repair mechanic

DECISION NO. MN79-2026

POWER EQUIPMENT OPERATORS: (CONT'D

GROUP 6 - Air compressor Op. 375 CFR or over, bituminous spreader and bituminous finishing machine op., Concrete dist. & Spreader op., finishing machine longitudinal float op., joint mach. op., spray, concrete mixer op. 14S and under, concrete op. (Multi. Blade), curb mach. op., Fine grade Op., form trench digger, front end loader op (up to & incl. 1 cu. yd.), grader op. (motar patrol), gunite op. Augars and boring mach. op. power actuated jacks op., pump op., roller op., self-propelled chip Spreader, shoudering mach. Op. stump chipper op., tractor op, (D2, TD6 or similar HP with power take-off)

GROUP 7 - Brakeman, switchman, conveyor Op., deckhand, Fireman, tank Car Heater op., Gravel screening plant op.; greaser leverman, mech. helper mech. space heater, Oiler, Self-prop. vib. pactor op., sheen foot roller tractor op. 50 HP or less w/o power take-off, truck crane oiler

DECISION NO. MN79-2026 MINN 62 TD

TRUCK DRIVERS: Areas 1 and 2 Twin City & Duluth Metro Area Counties of Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, Wright, Sherburne, Chisago south of T-34-N, Carlton, Cook, Lake, St. Louis & Itaska Co., East of T-N-6	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.20	.40	.50		
GROUP 2	8.90	.40	.50		
GROUP 3	8.80	.40	.50		
GROUP 4	8.60	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches);Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; slurry Driver.

GROUP 3 - Bituminous Distributor; (1-Man Operatin); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel type used for any purpose) Pilot car driver, self-propelled Packer; Slurry Operator; single Axle Trucks.

DECISION NO. MN79-2026 MINN-55-TD

TRUCK DRIVERS Area 3 Southeastern Area Counties of Dodge, Fillmore, Freeborn, Goodhue, Mower, Olmsted, Rice, Steele, Wabasha & Winona Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	9.15	.40	.50		
GROUP 2	8.85	.40	.50		
GROUP 3	8.75	.40	.50		
GROUP 4	8.55	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches);Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; slurry Driver.

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel type used for any purpose) Pilot car driver, self-propelled Packer; Slurry Operator; single Axle Trucks.

DECISION NO. MN79-2026

MINN-7-TD

TRUCK DRIVERS: Area 4 Mankato Area	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COUNTIES OF: Blue Earth, LeSueur Nicollet and Waseca					
GROUP 1	8.62	.40	.50		
GROUP 2	8.32	.40	.50		
GROUP 3	8.22	.40	.50		
GROUP 4	8.02	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches);Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; slurry briver.

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel type used for any purpose) Pilot car driver, self-propelled Packer; Slurry Operator; single Axle Trucks.

DECISION NO. MN79-2026

MINN-5-TD

TRUCK DRIVERS - Area 5 Western Area	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Counties of Aitkin, Benton, Fairbault, Kanabec, Koochiching LeSueur, Mille Lacs, Morrison, Sibley, Stearns, Remainder of Chisago & Itaska Counties					
GROUP 1	8.02	.40	.50		
GROUP 2	7.72	.40	.50		
GROUP 3	7.62	.40	.50		
GROUP 4	7.42	.40	.50		

GROUP 1 - Driver (Hauling machinery for employer's own use, including operation of hand & power operated winches);Truck train Mechanic, Welder; Tractor-Trailer; Off-Road Truck

GROUP 2 - Tri-axle (including 4-Axles); Dump Dry batch Hauler; Tank Truck (Gas, Oil, Road Oil & Water); Boom & "A" Frame; Ready Mix Concrete; slurry Driver.

GROUP 3 - Bituminous Distributor; (1-Man Operation); Tandem Axle.

GROUP 4 - Bituminous Distributor Spray (rear-end oiler); Dumpman; greaser & truck Servicemen; Tank Truck Helper (Gas, Oil, Road Oil & Water) Teamster and Stableman. Tractor Operator (Wheel type used for any purpose) Pilot car driver, self-propelled Packer; Slurry Operator; single Axle Trucks.

SUPERSEDEAS DECISION

STATE: Ohio
COUNTIES: Statewide
DECISION NO: OH79-2043
DATE: Date of Publication
Supersedes Decision No. OH78-2157, dated November 24, 1978, in 43 FR 55205
DESCRIPTION OF WORK: Heavy and Highway Construction

BRICKLAYERS & STONE MASONS:

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ALLEN, AUGLAIZE, MERCER & VAN WERT COS.	$12.29		.60		.02
ASHLAND, CRAWFORD, HARDIN, HOLMES, MARION, MORROW, RICHLAND, & WAYNE (except Twps. of Milton & Chippewa) Cos. & WYANDOT Co. (except Twps. of Crawford, Richland, Ridge & Tymochtee)					
Bricklayers	12.23	.70	1.00		.02
Sewer Bricklayers	12.23	.70	1.00		.02
ASHTABULA COUNTY					
Bricklayers	11.21	.95	.70		
Sewer Bricklayers	11.46	.95	.70		
ATHENS COUNTY	11.75	.60	.60		.05
BROWN, BUTLER, CLERMONT, HAMILTON, PREBLE (Twps. of Dixon, Gratis, Isreal, Lanier, & Somers), & WARREN COS.	12.845	.65	.35		.02
CARROLL, STARK & TUSCARAWAS Cos., MAHONING Co. (Twp. of Smith), COLUMBIANA Co. (Townships of Butler, Hanover, Knox & West)	12.29	.95	.70		.01
CHAMPAIGN, CLARK & LOGAN COS.	10.72	.85	.75		.03
CLINTON & HIGHLAND COS.	9.25				
COLUMBIANA CO., (Twps. of Center, Elk Run, Fairfield, Middletown, New Waterford, Perry, Salem & Unity), MAHONING CO. (except Smith Twp;)	11.74	.75	1.00		.02

DECISION NO. OH79-2043

BRICKLAYERS & STONEMASONS (CONT'D	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
COLUMBIANA County (Twps. of E. Liverpool, Franklin, Madison, St. Clair, Washington, Wayne & Yellow Creek), JEFFERSON Co. (Twps. of Bush, Creek & Saline)	$11.15	.60	.50		
COSHOCTON, GUERNSEY, KNOX, LICKING, MORGAN, MUSKINGUM Counties	10.70	.60	.90		.10
CUYAHOGA Co. & MEDINA Co. (except the Twps. of Chatham, Wadsworth, Guilford, Westfield, Sharon, Lafayette, Harrisville, Homer, Litchfield & Spencer)	12.65	1.05	1.20		.01
DARKE, MIAMI, & SHELBY Cos.	11.48	.85	.75		.03
DEFIANCE, PAULDING, PUTNAM & WILLIAMS Cos., FULTON Co. (except Twps. of Amboy, Fulton & Swan Creek), HENRY CO. (except Twps. of Barlo, Damascus, Liberty, Marion, Monroe, Richfield, Washington & that part of Harrison outside City limits of Napolean)	11.97	1.06	.50		
DELAWARE, FRANKLIN, MADISON, PICKAWAY & UNION COS.					
Bricklayers	12.29	.80	1.00		.03
ERIE, HANCOCK & HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Twps.) WYANDOT (Tymochtee, Crawford, Ridge, & Richland Twps.) & ISLAND OF LAKE ERIE North of SANDUSKY Cos.	11.84	.60	.80		.01
FAIRFIELD, HOCKING & PERRY Cos.	10.43	.60	.90		.10
FAYETTE, ROSS & PIKE COS.	12.20				
GALLIA & MEIGS Cos.	12.05	.50			
GEAUGA & LAKE Cos.	13.12	.60	1.00		
GREENE & MONTGOMERY Cos. & the Remainder of PREBLE CO.	11.93	.85	.75		.03

DECISION NO. OH79-2043

BRICKLAYERS & STONEMASONS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HARRISON Co. & the Remainder of JEFFERSON Co.	$ 11.33	.50			.02
JACKSON & VINTON Cos.	12.05				.05
LAWRENCE County	11.50		.50		.05
LORAIN Co. & MEDINA Co. (Chatham, Harrisville, Homer, Litchfield, & Spencer Twps.)	12.85		.60	e	.01
LUCAS Co., the remainder of HENRY, FULTON & WOOD Cos.	12.425	1.06	1.30		.01
MEDINA (Remainder of Co.,) PORTAGE, SUMMIT & WAYNE COS. (Twps. of Milton & Chippewa) Bricklayers	13.16	.88	.55		.02
TRUMBULL COUNTY	12.24	.75	.50		.02
WASHINGTON Co., & the remainder of NOBLE CO.	11.30	.50			.04
FOOTNOTE: e. 2 paid holidays: Independence Day & Labor Day					
CARPENTERS & PILEDRIVERMEN					
ADAMS, FAYETTE, GALLIA, HIGHLAND, JACKSON, LAWRENCE, MEIGS, PIKE, ROSS, & SCIOTO COS.					
Carpenters	11.55	.55	1.00		.03
Piledrivermen	11.84	.55	1.00		.03
ALLEN, AUGLAIZE, CHAMPAIGN, CLARK, COSHOCTON, DELAWARE, FAIRFIELD, FRANKLIN, GUERNSEY, HARDIN, HOLMES, KNOX, LICKING, LOGAN, MADISON, MARION, MERCER, MORGAN, MORROW, MUSKINGUM, NOBLE, PERRY, PICKAWAY, PUTNAM, UNION, VAN WERT, & WYANDOT COS.					
Carpenters	11.47	.60	1.00		.04
Piledrivermen	12.12	.60	1.00		.04

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASHLAND, CRAWFORD, ERIE (East of B&O Railroad Tracks), HURON, LORAIN and RICHLAND Counties					
Carpenters	$11.59	.85	$1.00	a	.06
Piledrivermen	12.60	.85	1.52		.03
ERIE (West of B&O Railroad Tracks), OTTAWA, SANDUSKY and SENECA Counties and City of Fostoria in WOOD and HANCOCK Counties					
Carpenters	11.59	.85	1.00	a	.06
Piledrivermen	12.99	1.06	.75		.05
ASHTABULA, CUYAHOGA, GEAUGA and LAKE Counties					
Carpenters	12.87	.85	1.25		.03
Piledrivermen	12.60	.85	1.52		.03
ATHENS, HOCKING, VINTON and WASHINGTON Counties					
Carpenters	11.47	.60	1.00		.04
Piledrivermen	12.12	.60	1.00		.04
BELMONT and MONROE Counties					
Carpenters	10.75	.92	.95		.02
Piledrivermen	11.82	.50	.50		.03
BROWN, BUTLER, CLERMONT, CLINTON, HAMILTON and WARREN Counties					
Carpenters	13.20	.60	.65		.075
Piledrivermen	13.20	.60	.65		.075
CARROLL, STARK, TUSCARAWAS and WAYNE Counties					
Carpenters	11.88	.60	.70		.02
Piledrivermen	12.36	.60	.70		.02
COLUMBIANA, HARRISON, & JEFFERSON Counties					
Carpenters	10.75	.92	.95		.02
Piledrivermen	11.85	5.5%	10%		.5%

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DARKE, GREENE, MIAMI, MONTGOMERY PREBLE and SHELBY Counties					
Carpenters	$11.55	.90	$ 1.35		.07
Piledrivermen	11.55	.90	1.35		.07
DEFIANCE, HENRY, PAULDING and WILLIAMS COUNTIES					
Carpenters	12.26	1.06	.75		
Piledrivermen	12.99	1.06	.75		.05
FULTON, HANCOCK, LUCAS and WOOD COUNTIES, excluding the City of Fostoria in HANCOCK and WOOD COUNTIES					
Carpenters; Piledrivermen	12.99	1.06	.75		.05
MAHONING and TRUMBULL COUNTIES					
Carpenters	11.69	1.22	1.20		.05
Piledrivermen	12.48	1.22	1.20		.05
MEDINA, PORTAGE and SUMMIT COUNTIES					
Carpenters	12.95	.50	.90		.02
Piledrivermen	12.60	.85	1.52		.03
FOOTNOTE: a. 2 Paid Holidays: Memorial Day and Independence Day.					
CEMENT MASONS:					
CUYAHOGA, FULTON, GEAUGA, HANCOCK, HENRY, LAKE, LORAIN, LUCAS, PUTNAM, and WOOD COUNTIES	12.73	.60	.45		.02
ASHTABULA, BROWN, BUTLER, CLERMONT, COLUMBIANA, DEFIANCE, ERIE, HAMILTON, HIGHLAND, HURON, MAHONING, MEDINA, OTTAWA, PAULDING, PORTAGE, SANDUSKY, SENECA, STARK, SUMMIT, TRUMBULL, WARREN and WILLIAMS	12.08	.60	.45		.02
REMAINING COUNTIES	11.28	.60	.45		.02
ELECTRICIANS:					
ADAMS and SCIOTO COUNTIES, JACKSON COUNTY (All but Coal, Jackson, Liberty, Milton and Washington Twps.), PIKE County (Twps. of Camp Creek, Marion, Newton, Scioto, Sunfish and Union)	11.60	.50	3%+.60	1.00	.04

DECISION NO.OH79-2043

ELECTRICIANS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY, & VAN WERT COS. & WYANDOT Co. (West of Crane, Pitt, & Tymochtee Twps.)	$ 12.41	.45	3%+.37		.04
ASHLAND, CRAWFORD, MARION, MORROW & RICHLAND Cos., WYANDOT CO. (Remainder of County). KNOX Co. (North ½ including Clinton, Howard, Liberty, Monroe & Union Twps.), & HURON CO. (Twps. of Greenwich, New Haven, Richmond & Ripley	12.30	.45	3%+.50		.1%
ASHTABULA Co. (all but Colebrook, Orwell, Wayne, Williamsfield & Windsor Twps.)	13.05	.90	3%+.85		.2%
ATHENS, MEIGS, MONROE, MORGAN, NOBLE and WASHINGTON Cos., and VINTON CO. (East of Clinton, Elk and Swan Twps.)	11.55	.50	3%+.80	1.25	.04
BELMONT Co.	11.70	.50	3%+.35	1.00	.04
BROWN, CLERMONT & HAMILTON COUNTIES					
Within 18 Mi. of Hamilton County Court House	12.90	.70	3%+.60		½%
From 18 to 21 Miles	13.20	.70	3%+.60		½%
From 21 to 25 Miles	13.30	.70	3%+.60		½%
Over 25 Miles	13.45	.70	3%+.60		½%
BUTLER County & WARREN CO. excluding Clear Creek, franklin & Wayne Twps.):					
West of Interstate 75	12.35	.50	3%+.75		½%
East of Interstate 75	12.90	.50	3%+.75		½%
CHAMPAIGN & CLARK Cos. & MADISON CO. (Twps. of Paint, Pike, Somerford, Stokes & Union)	11.64	.75	3%+.90		.04

DECISION NO. 0H79-2043

ELECTRICIANS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, & PREBLE COS. & WARREN CO. (Rem. of Co.)					
Within 11 Mi. Radius of 3rd & Main Streets, Dayton	$12.43	.75	3%+1.00		.5%
Beyond 11 Mi. Radius	12.66	.75	3%+1.00		.5%
COLUMBIANA Co. (except twps.of Butler, Fairfield, Knox, Perry, Salem & Unity)	11.90	.95	3%+.48		.07
COSHOCTON Co., GUERNSEY, KNOX (Jackson, Clay, Morgan, Miller, Milford, Hilliard, Butler, Harrison, Pleasant, and College Twps.), LICKING CO., MUSKINGUM, PERRY, TUSCARAWAS CO. (S½ incl. Twps. of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, and Bucks)	11.40	.40	3%+.85		.03
CUYAHOGA CO., LORAIN CO. (Twp. of Columbia), & GEAUGA Co. (Twps. of Bainbridge, Chester & Russell)	13.75	.55	3%+.48		.02
DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS & WOOD COS.	13.80	.65	3%+.55		.1%
DELAWARE, FAIRFIELD, FRANKLIN & UNION COS., MADISON (Rem. of Co. & PICKAWAY CO. (Excl. Deer Creek Perry, Pickaway, Salt Creek & Wayne Twps.)	12.18	.38	3%+1.00		.06
ERIE CO., HURON CO. (Rem. of Co.)	13.05	.73	3%		.1%
FAYETTE, HIGHLAND, HOCKING, & ROSS COS. & JACKSON CO. (Rem. of Co.), PICKAWAY, PIKE & VINTON COS.	12.35	.40	3%		.02
GALLIA CO.	12.27	.50	3%+.80	1.00	.04

DECISION NO. 0H79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HARRISON & JEFFERSON COUNTIES & CARROLL County (South of Fox, Harrison, Rose and Washington Twps.)	$ 13.50	7%	10%	10%	½%
HOLMES & STARK Counties, the remainder of CARROLL and TUSCARAWAS Counties, COLUMBIANA County (Knox Twp.), MAHONING County (Smith twp.) and WAYNE County (south of Baughman, Chester, Green and Wayne Twps.)	12.60	.50	3%+.50		.3%
LAKE COUNTY & GEAUGA Co. (all but Auburn, Bainbridge, Chester, Middlefield, Parkman, Russell, & Troy Twps.)	13.13	.70	3%+.70		.3%
LAWRENCE COUNTY	11.82	.50	3%+.80	1.00	.04
LORAIN County (remainder of Co.) and MEDINA County (Twps. of Litchfield and Liverpool)	13.25	.75	3%+.80		.1%
MAHONING County (excluding Milton and Smith Twps.), TRUMBULL Co. (Twps. of Hubbard and Liberty) and COLUMBIANA COUNTY (Twps. of Butler, Fairfield, Perry, Salem and Unity)	13.03	.59	7%		.3%
SUMMIT County, the remainder of MEDINA & WAYNE Counties & PORTAGE County (excluding Twps. of Charleston, Edinburg, Freedom, Hiram, Palmyra, Paris and Windham)	12.81	.74	3%+.65		.2%
ASHTABULA (Remainder of County), Remainder of PORTAGE And TRUMBULL Counties, GEAUGA County (Twps. of Auburn, Middlefield, Parkman and Troy), and MAHONING County (Twp. of Milton)	13.39	.60	7%		.7%

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
ADAMS (Part), BROWN, CLERMONT & HAMILTON Cos. & the South half of BUTLER & WARREN Cos.					
Structural & Ornamental	$12.33	.90	1.20		.03
Reinforcing	11.53	.90	2.00		.02
ALLEN, AUGLAIZE, CLINTON, DARKE, GREENE, MERCER, MIAMI, MONTGOMERY, PREBLE & SHELBY COS., The North ½ of BUTLER & WARREN Cos. the West 2/3 of CHAMPAIGN & LOGAN COS., The West 3/4 of CLARK CO. & the West 4/5 HIGHLAND CO., Dayton Metropolitan Area	10.96	.90	1.25		.04
Outside Dayton Metro area	11.11	.90	1.25		.04
ASHLAND, CARROLL, COSHOCTON, HOLMES, RICHLAND, STARK, TUSCARAWAS & WAYNE COS.	12.58	.80	.95		.05
CUYAHOGA, ERIE, GEAUGA, HURON, LAKE, LORAIN, MEDINA & SUMMIT, Cos., & ASHTABULA CO. (except The N/E ¼), PORTAGE CO. (except the Ravenna Ordnance Depot)	12.72	1.05	1.30		.03
ASHTABULA (Remainder of Co.)	12.00	1.86	1.01		.15
ATHENS, MEIGS, MORGAN, NOBLE & WASHINGTON COS.	11.67	.75	.85		.01
BELMONT, GUERNSEY, HARRISON, JEFFERSON & MONROE COS.	11.93	.80	.95		.03
COLUMBIANA, MAHONING & TRUMBULL COS. & The Ravenna Ordnance Depot in PORTAGE CO.	12.03	.40	1.30		.07
CRAWFORD, FAYETTE, HARDIN, HOCKING, JACKSON (N ½ of Co.), KNOX, MARION, MORROW, MUSKINGUM, PERRY, PIKE (Pt.), ROSS, VINTON, WYANDOT, & The rem. of CHAMPAIGN, CLARK, HIGHLAND & LOGAN COS.	11.55	.90	1.95		.05
DELAWARE, FAIRFIELD, LICKING, MADISON, PICKAWAY & UNION COS.	11.45	.90	1.95		.05
FRANKLIN CO.	11.30	.90	1.95		.05
DEFIANCE, PAULDING, PUTNAM, VAN WERT & WILLIAMS COS.	11.80	.90	1.45		.02
FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, SANDUSKY, SENECA, & WOOD COS.	12.86	1.06	1.22		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GALLIA, LAWRENCE, SCIOTO, ADAMS (Pt.), JACKSON (S½ of Co.), and PIKE (Pt.) COUNTIES:					
10 mi. from Union Hall in Ashland, Kentucky	$11.27	.90	$1.05		.01
10 to 15 mi. from Union Hall	11.42	.90	1.05		.01
15 to 20 mi. from Union Hall	11.52	.90	1.05		.01
20 mi. and over from Union Hall	11.62	.90	1.05		.01
PAINTERS:					
ADAMS, HIGHLAND, JACKSON, PIKE, And SCIOTO COUNTIES					
Brush	12.55		.50		
Spray	13.55		.50		
ALLEN, AUGLAIZE, DEFIANCE, HARDIN, MERCER, PAULDING, PUTNAM, SHELBY, VAN WERT And WILLIAMS Counties	10.80	.73	.50		.03
ASHLAND, CRAWFORD, MARION, MORROW, & RICHLAND Counties					
Brush	9.80		.50		
Structural Steel	10.30		.50		
Spray	10.55		.50		
ATHENS & HOCKING Counties:					
Brush	12.00				
Spray	12.65				
BELMONT, JEFFERSON, & HARRISON COS.	10.05	.50	.40		
BROWN, CLERMONT & HAMILTON Cos.					
Brush	12.30		.25		25.00p/yr.
Spray	12.90		.25		25.00p/yr.
BUTLER & WARREN Counties					
Brush	10.73				
Spray	11.23				
CARROLL, HOLMES, STARK, TUSCARAWAS & WAYNE Counties					
Brush	10.61	.93	.60		.02
Spray	11.14	.93	.60		.02
Structural Steel	11.32	.93	.60		.02
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY & PREBLE COUNTIES					
Brush; Roller	12.59		.80		.08
Structural Steel	12.99		.80		.08
Spray	13.09		.80		.08
COSHOCTON:					
Brush	8.10				
Roller	8.10				
Spray; Sandblasting	8.60				
Sandblasting pot tend	7.60				

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS: (CONT'D)					
ASHTABULA, CUYAHOGA, GEAUGA, & LAKE COUNTIES, LORAIN (North East Part) and PORTAGE & SUMMIT Counties (North of the Ohio Turnpike):					
Brush	$12.21	.67	1.00		.05
Bridge and open steel; closed steel over 55'	12.91	.67	1.00		.05
Closed steel below 55'; Spray	12.61	.67	1.00		.05
DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, MADISON, PICKAWAY And UNION Counties					
Brush	11.39	.65	.65		.02
Structural Steel	11.69	.65	.65		.02
Spray	11.89	.65	.65		.02
ERIE, HANCOCK, HURON, SANDUSKY, SENECA and WYANDOT Counties					
Brush	10.15	.50	.70		50 00 p/yr
Structural Steel and Bridges	10.60	.50	.70		50.00 p/yr
FULTON, HENRY, LUCAS, OTTAWA and WOOD Counties					
Brush	11.28	1.06	1.10		
Spray	11.83	1.06	1.10		
Structural Steel	11.53	1.06	1.10		
GALLIA, LAWRENCE, MEIGS, and VINTON Counties					
Brush; Roller	10.70			c	
Sandblasting; Spray; Waterblasting	11.00			c	
GUERNSEY County					
Brush; Roller; Sandblasting and Steamcleaning	9.50				
KNOX, LICKING, MUSKINGUM and PERRY COUNTIES:					
Sandblasting; Steel; Bridge	9.00				
Spray	9.45				
LORAIN COUNTY (Remainder of Co.)					
Brush	11.35			d	
Spray; Sandblasting	11.85			d	
Roller	11.60			d	

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS (CONT'D)					
COLUMBIANA, MAHONING & TRUMBULL COS. and the Ravenna Ordnance Depot in PORTAGE County					
Brush	$12.55	.75	1.00		
Spray	13.25	.75	1.00		
ROSS COUNTY					
Brush	10.50				
Spray	10.75				

FOOTNOTES: c. 6 paid holidays: Decoration Day; July 4th; Thanksgiving Day; Christmas Day; New Year's Day; & Veteran's Day
d. 2 paid holidays: Labor Day and July 4th

PLUMBERS & STEAMFITTERS:					
ADAMS, ATHENS, GALLIA, HIGHLAND, JACKSON, LAWRENCE, PIKE, SCIOTO, & VINTON COS.	12.47	.55	.75		
ALLEN, AUGLAIZE, HARDIN, MERCER, SHELBY & VAN WERT COS.	12.80	.50	.75		.05
ASHLAND, CRAWFORD, ERIE, HURON, KNOX, LORAIN, MORROW, RICHLAND & WYANDOT COS.	13.23	.60	.88		.05
ASHTABULA, CUYAHOGA, GEAUGA & LAKE COS., MEDINA CO. N. of RT. 18 & Smith Rd. & SUMMIT CO. N. of Rt. 303					
Plumbers	12.88	.90	1.10		.02
Pipefitters	12.45	1.22	1.30		.05
BELMONT CO. & MONROE CO. South of RT. 78	11.20	.40	9%	10%	.05
BROWN, CLERMONT, HAMILTON & WARREN COS. (N. of Rte. #63 excluding Lebanon and S. Lebanon)					
Plumbers; Gas Fitters	12.82	1.05	1.20		.07
Steamfitters; Pipefitters	13.00	1.025	1.30		.08

DECISION NO. OH79-2043

PLUMBERS & STEAMFITTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUTLER Co. North Half	$13.05	.90	$1.00		.05
BUTLER Co. (South Half) and Warren (S. of Rte. #63 including Lebanon and S. Lebanon) Cos	13.12	.80	1.10		.02
CARROLL Co. (except Twps. of Ross, Monroe, Union, Lee, Orange, Perry & London), STARK & WAYNE COS.	12.12	.50	.70	e	.05
CARROLL (Twps. of Ross, Monroe, Union, Lee, Orange, Perry & London) COSHOCTON, GUERNSEY, HOLMES, MORGAN (South of State Route #78 & from McConnelsville West on State route #37 to the Perry Co. line), MUSKINGUM, NOBLE, & TUSCARAWAS Cos.	12.55	.50	.60		.08
CHAMPAIGN, CLARK & LOGAN COS., GREENE Co. (Twps. of Cedarville, Ceasar Creek, New Jasper, Jefferson, & Ross), MADISON Co. (West of Rt. 38 including the City of London)	12.40	.83	.85		.04
CLINTON, DARKE, FAYETTE, MIAMI, MONTGOMERY, PREBLE & GREENE Co. (Remainder of Co.)	12.46	.80	1.05		.03
COLUMBIANA (excluding Washington & Yellow Creek Twps. & Liverpool Twp. secs. 35 & 36 - West of County Rd. #427), MAHONING Cos. & TRUMBULL Co. (Hubbard & Liberty Twps. Youngstown Municipal Airport & the Filtration Plant of the Mahoning Valley Sanitary District	12.29	1.37	.50		.03
COLUMBIANA (Washington & Yellow Creek Twps., & Liverpool Twp. secs 35 & 36 West of County Rd. #427), HARRISON AND JEFFERSON COUNTIES	12.61	.50	8%	8%	.12

DECISION NO. OH79-2043

PLUMBERS & STEAMFITTERS (CONT'D)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS & WOOD Cos.	$13.13	$ 1.10	$ 1.05		.09
DELAWARE, FAIRFIELD, FRANKLIN, HOCKING, LICKING, MARION, PERRY, PICKAWAY, ROSS & UNION Cos. & MADISON (remainder of Co.)	13.00	.93	.82		.06
MEIGS, MONROE (Rem. of Co.), MORGAN (Remainder of Co.), & WASHINGTON COS.	11.73	.52	.60		.045
PORTAGE Co. & the remainder of MEDINA & SUMMIT Cos.	12.15	.85	1.00		.05
TRUMBULL CO. (Remainder of Co.)	12.60	.97	.90		.03
HARRISON AND JEFFERSON Cos.	12.61	.50	8%	8%	.12

FOOTNOTE:
e. One paid holiday: Labor Day providing employee has worked 5 consecutive days before and after the holiday.

DECISION NO. OH79-2043

LABORERS	ZONE 1	ZONE 2	ZONE 3
	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates
GROUP I	$10.88	$9.85	$9.42
GROUP II	11.005	9.975	9.545
GROUP III	11.08	10.05	9.62
GROUP IV	11.23	10.20	9.77
GROUP V	11.53	10.50	10.07

FRINGE BENEFITS FOR ALL ZONES AND CLASSIFICATIONS
$.80 - Health & Welfare
.80 - Pension
.10 - Education and/or Apprentice Training

GROUP I - Laborers (construction); plant laborers or yardmen; right-of-way laborers; landscape laborer; utility man or handyman; joint setter; flagman; carpenter helper; waterproofing laborer; slurry seal; seal coating surface treatment or road mix laborer; asphalt laborer; Dump man (batch trucks); Sign installer; Guardrail & fence installers; mesh handlers & placers; concrete curing applicator; scaffold erector, Riprap laborer & grouter; grade checker
GROUP II - Asphalt raker; concrete puddler; kettle man (pipeline); machine driven tools; mason tender; mortar mixer; sheeting & shoring man; surface grinder man; power buggy or power wheelbarrow
GROUP III - form setter; bottom man; Welder helper (pipeline); concrete saw man; cutting with burning torch; pipelayer; hand spiker (railroad); car pusher (without air); undergroundman (working in sewer & waterline, cleaning, repairing & reconditioning); Tunnel laborer (without air) and caisson; cofferdam (below 25 feet deep); air track & wagon drill
GROUP IV - blaster; Powder man; muckers; wrencher (mechanical joints & utility pipeline); yarner; top lander
GROUP V - Curb setter & cutter; miner without air; concrete crew in tunnels; utility pipeline tapper; gunnite nozzle man; waterline caulker

ZONE DEFINITIONS

Zone 1 - Cuyahoga, Geauga & Lake Cos.
Zone 2 - Ashtabula, Erie, Huron, Lorain, Lucas, Mahoning, Medina, Ottawa, Portage, Stark, Summit, Trumbull & Wood Cos.
Zone 3 - Remainder of Counties

DECISION NO. OH79-2043

POWER EQUIPMENT OPERATORS ZONE 1 - Columbiana, Mahoning & Trumbull Counties	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	12.01	.65	.80		.14
CLASS II	11.32	.65	.80		.14
CLASS III	10.68	.65	.80		.14
CLASS IV	10.27	.65	.80		.14
CLASS V	10.17	.65	.80		.14
CLASS VI	12.28	.65	.80		.14

CLASS I - Asphalt planer heater; Austin western & similar type; Backhoe; Batch plant-central mix; Batch plant-portable concrete; berm builder-automatic; Backfiller w/drag attachments; Boat derrick; Boat-tug; boring mach. attached to tractor; bullclam; Bulldozer; C.M.I. road builder & similar types; Cable placer & layer; carrier-straddle; Carryall - scraper or scoop; Chicago boom; Compactor w/blade attached; Concrete spreader finisher comb., crane; Crane-stationary or climbing; crane-electric overhead; Crane-side boom; Crane truck; Crane-tower; Derrick-boom; Derrick-car;Diggers-wheel (not trencher or road widener); Double nine; drag line; dredge; drill-Kenny or similar type; electromatic; Fork lift; frankie pile; Gradall; Grader-power; Gurry; Gurry-self-propelled; High lift; Hoist-monorail; Hoist-stationary & mobile tractor; Hoist-2 or 3; Jackall; Jumbo mach.; Kocal or Kuhlman; land-seagoing vehicle; Loader - Elevating; Loader-front end; Locomotive; Mechanic as welder; Metro clip harvester w/boom; Mucking mach.; paver-asphalt finishing mach.; Paver - road concrete; Paver-slipform; Place crete mach; Post driver; Power driven hydraulic pumps & jacks; pump crete machine; Regulator-ballast; Rigs-drilling; shovels; Spikemaster; stonecrusher; Tie puller & Loader; Tie tamper; tractor-double boom; tractor w/attachments; Trucks-boom; truck-tire-assigned to job; Trench mach.; Tunnel machine (Mark 21 Java or similar); Whirley
CLASS II - Asphalt plant; bending machine; Boring mach.; Chip harvester w/o boom; cleaning mach.-pipeline type; Coating Mach-pipeline type; Concrete belt placer; concrete finisher; concrete planer or asphalt; Concrete spreader; Elevator; fork lift walk behind; form line mach.; Grease truck op.; Grout pump; gunnite mach.; Huck bolting Mach.; Hydraulic scaffold; paving breaker; Pipe dream; Pot firemen; Power broom; Refrigeration plant; Sasgen derrick; seeding Mach.; self-propelled mobile vibrator compactor or roller; Hoist-single drum; Soil Stabilizer (pump type); Spray cure Mach.-Self propelled; straw blower mach.; Sub-grader; Tube Finisher or broom C.M.I. or similar type; Tugger Hoist

DECISION NO. OH79-2043

POWER EQUIPMENT OPERATORS
ZONE 1 - Columbiana, Mahoning & Trumbull Counties (Cont'd)

CLASS III - batch plant-job related; boiler op.; Compressor (125 CFM or over); Curb builder (self-propelled); Generator-steam; Jack-hydraulic driven; Mixer-concrete; Mulching Mach.; Pin puller; Pulverizer; Pump; Road finishing mach. (pulltype); roller; Saw-concrete-self-propelled; signal man; spray cure mach.-motor powered; Spreader (side driver shoulder attachment); tractor; Trencher-form; Water Blaster
Class IV - Brake man; compressor under 125 CFM; Conveyor; Conveyor 12 feet or under other than servicing bricklayers; deck hand; Drill wagon; Fireman; Generator sets; heaters-portable power (2 to 5); Helper-mechanic, Jacks Hydraulic (railroad); Ladavator; Roller (walk behind 1 ton or over); Steam jenny; Syphons; Vibrator-gasoline; Welding machines (2) (Fuel burning)
CLASS V - Oiler
CLASS VI - Rigs-pile driving or caisson type

DECISION NO. OH79-2043

POWER EQUIPMENT OPERATORS	ZONE 2 Basic Hourly Rates.	ZONE 3 Basic Hourly Rates	Fringe Benefits Payments H & W	Pensions	Vacation	Educatio and/or Appr. Tr.
CLASS A	$13.58	$12.84	.71	1.00		.15
CLASS B	13.48	12.72	.71	1.00		.15
CLASS C	12.44	11.68	.71	1.00		.15
CLASS D	11.97	11.25	.71	1.00		.15
CLASS E	9.78	8.89	.71	1.00		.15

CLASS A - Air compressor on steel erection; Asphalt plant engineer (Cleveland District Only); Boiler Op.; compressor or generator when mounted on rig; Cableway; combination concrete mixer & tower; Concrete plants (over 4 yds. cap.); Concrete pumps; Cranes (all types incl. A frames, boom trucks, cherry pickers); Derricks; Draglines; Dredge (dipper clam or suction); Elevation grader or euclid loader; Floating equipment (all types); Helicopter crew (hoist or winch); hoes (all types); Hoisting engines (including shaft & tunnel work); Industrial type tractor; Jet engineer dryer (D8 or D9) diesel tractor; Locomotives (standard guage); Maintenance Op. Class A; Mixer (paving single or double drum); Mucking mach.; Multiple scraper; piledriving mach. (all types); power shovel; Quad 9 (double pusher); Refrigerating mach. (Freezer operation); Rotary drill on caisson work; slip form paver; Tower derricks; Tree shredder; Trepch mach (over 24" wide); Truck mounted concrete pump; Tug boat; tunnel mach. and/or mining machine; Wheel excavator
CLASS B - Asphalt paver; Automatic subgrader mach. self propelled (CMI type); Boring mach. Op. (more than 48"); Bulldozers; Endloader; Kolman Loader (production type dirt); Lead grease man; Maintenance Op., Class B (in Zone 2 Portage & Summit Cos. only); Power grader; Power scraper; Push Cat; Trench mach. (24" wide & under)
CLASS C - Air compressor on tunnel work (low pressure); asphalt plant engineer (in Zone 2 Portage & Summit Cos. only); Locomotive (narrow guage); Concrete mixers (more than 1 bag cap.); Mixers (1 bag cap. - side loader); Power boiler over 15 lb. pressure; Pump op. installing & operating well points; Pumps (4" & over discharge); Rollers (asphalt); Utility op. (small equipment); Welding mach. & generators.

DECISION NO. OH79-2043

POWER EQUIPMENT OPERATOR (CONT'D)

CLASS D - Back fillers; Bar (joint & mesh installing mach.); Batch Plant; Boring mach. Op. (48" or less); Bull floats; Burlap & curing mach.; Compressor (portable, sewer, hvy. & hwy.); Concrete plant (4 yd. & under cap.); concrete saw (multiple); Conveyors (hwy.); Crusher,deckhand; drill highway (w. integral power); Farm type tractors w/attachs. (hwy.); Finishing Mach.; Fireman (floating equipment, all types); fork lift (Hwy.); form Trenchers; Hydro hammer; Hydro seeder; Pavement breaker; Plant mixers; Post driver; Post Hole digger (power auger); Power brush burner; Power form handling Equip.; Road widening trencher; Rollers (brick, grade, macadam); self- propelled power spreader ; self-propelled power subgrader; Steam fireman; Tractor (pulling sheepfoot roller or grader); vibratory compactor w/integral power

CLASS E - Drum fireman (asphalt plant); Helpers; Inboard-outboard, motor boat-launch; Oil heaters (asphalt plant); Oilers; Power driven heaters; Pumps (under 4" discharge); Signalmen; Tire repairmen

ZONE DEFINITIONS

ZONE 2 - Ashtabula, Cuyahoga, Erie, Geauga, Lake, Lorain, Medina, Portage & Summit Counties

ZONE 3 - Remainder of Counties

DECISION NO. OH79-2043

TRUCK DRIVERS
ZONE I - CUYAHOGA, LAKE & GEAUGA COUNTIES

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	8.70	26.00a	26.00a	b&c	
CLASS II	8.85	26.00a	26.00a	b&c	
CLASS III	9.20	26.00a	26.00a	b&c	
CLASS IV	9.20	26.00a	26.00a	b&c	

CLASS I - Straight & dumps (including asphalt); Warehousemen; Straight fuel
CLASS II - Semi fuel; semi pole drivers (hauling steel pipe); & semi tractor drivers.
CLASS III - Ready-mix; agitator or bulk concrete drivers; dry batch truck.
CLASS IV - Euclids; darts; tank asphalt spreaders; low boys; carry-all driver; tournarockers; hi-lifts; fork lifts; extra long trailers & semi pole trailers except when hauling steel pipe; double hook-up tractor trailers including team track & railroad siding; semi tractor & tri-axle trailer; tandem tractor, Tandem trailer & tri-axle trailer; tag along trailer, expandable trailers, loads (requiring road permits)

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Per week per employee

b. One week's paid vacation for one year of service; two weeks for five years; three weeks for ten years & four weeks for seventeen years.

c. Seven paid holidays: A through F plus National Election Day.

DECISION NO. OH79-2043

TRUCK DRIVERS ZONE II - Remainder of the State	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$9.12	25.00a	9.00a		.05
CLASS II	9.17	25.00a	9.00a		.05
CLASS III	9.22	25.00a	9.00a		.05
CLASS IV	9.32	25.00a	9.00a		.05
CLASS V	9.42	25.00a	9.00a		.05
CLASS VI	9.59	25.00a	9.00a		.05

CLASS I - 4 wheel service truck; 4-wheel dump trucks; batch trucks; oil distributors; asphalt distributors
CLASS II - Tandems
CLASS III Semi tractor trucks; pole trailers; fuel trucks
CLASS IV - All trucks five axle & over
CLASS V - Asphalt oiler spraybar man when operated from cab
CLASS VI - Euclid wagons; Euclid end dumps; low boys; heavy duty equipment over 12 cu yds capacity when used exclusively for transportation; truck mechanics

FOOTNOTE:
a. Per week Per employee

DECISION NO. OH79-2043

LINE CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ADAMS, ATHENS, GALLIA, LAWRENCE, MEIGS, & SCIOTO COS., JACKSON CO. (except Coal, Jackson, Liberty, Milton & Washington Twps.), PIKE CO. (Twps. of Camp Creek, Marion, Newton, Scioto, Sunfish & Union), & VINTON CO. (E. of Clinton, Elk, & Swan Twps.):					
Cable splicers; Linemen welders	$14.00	.50	3%+.50	1.00	½%
Linemen	12.73	.50	3%+.50	1.00	½%
Operators: All mechanized equipment	10.18	.50	3%+.50	1.00	½%
Groundmen	8.27	.50	3%+.50	1.00	½%
ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY, VAN WERT, & WYANDOT (Twps. of Crawford, Jackson, Marseil, Mifflin, Ridgeland, Ridge & Salem) Cos.:					
Linemen	12.63	.60	3%		½%
Equipment operators	11.37	.60	3%		½%
Groundmen; Truck drivers	8.44	.60	3%		½%
ASHLAND, CRAWFORD, HURON (Twps. of Richmond, New Haven, Ripley & Greenwich), KNOX (Twps. of Liberty, Clinton, Union, Howard, Monroe, Middlesburg, Morris, Wayne, Berlin, Pike, Brown & Jefferson), MARION, MORROW, RICHLAND, & WYANDOT (Twps. of Sycamore, Crane, Eden, Pitt, Antrim & Tymochee) COS.:					
Equipment operators; Linemen	12.30	.45	3%+.50		½%
Line truck driver	8.00	.45	3%+.50		½%
Groundmen	7.38	.45	3%+.50		½%
ASHTABULA, except Twps. of Colebrook, Orville, Wayne, Williamsfield, & Windsor:					
Cable splicers; Equipment ops.; Line truck drivers; & Linemen	13.05	.90	3%+.85		½%
Groundmen:					
0 - 6 mos.	7.20	.90	3%+.85		½%
6 - 12 mos.	8.30	.90	3%+.85		½%
Over 12 mos.	9.80	.90	3%+.85		½%

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASHTABULA (Twps. of Colebrook, Wayne, Williamsfield, Orwell, & Windsor), COLUMBIANA (Twps. of Butler, Fairfield, Perry, Salem, & Unity), GEAUGA (Twps. of Auburn, Middlefield, Parkman, Burton, & Troy), MAHONING (excl. Smith Twp.), PORTAGE (Charleston, Edinburg, Freedom, Hiram, Nelson, Palmyra, Paris, Windom Twps.), & TRUMBULL COS.:					
Cable splicers; Linemen; Operator - poledigging equipment	$14.07	.45	3%		4%
Groundmen:					
1st 6 mos.	7.035	.45	3%		4%
2nd 6 mos.	8.44	.45	3%		4%
2nd yr.	9.85	.45	3%		4%
3rd yr.	10.55	.45	3%		4%
Over 3 yrs.	11.26	.45	3%		4%
BROWN, CLERMONT, & HAMILTON COS.:					
ZONE I: UP to & incl. 18 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine ops.	12.90	.70	3%+.60		4%
Groundmen	9.68	.70	3%+.60		4%
ZONE II: Over 18 mi. radius up to & incl. 21 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine ops.	13.20	.70	3%+.60		4%
Groundmen	9.90	.70	3%+.60		4%
ZONE III: Over 21 mi. radius up to & incl. 25 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine ops.	13.30	.70	3%+.60		4%
Groundmen	9.98	.70	3%+.60		4%
ZONE IV: Over 25 mi. radius from Hamilton Co. Court House, Cincinnati:					
Linemen; Machine ops.	13.45	.70	3%+.60		4%
Groundmen	10.09	.70	3%+.60		4%

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUTLER, WARREN (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union & Washington Twps.) COS.:					
ZONE I: West of Interstate #75:					
Linemen	12.35	.50	3%+.75		4%
Cable splicers	12.85	.50	3%+.75		4%
Groundmen:					
0 - 1 yr.	6.175	.50	3%+.75		4%
1 - 2 yrs.	7.41	.50	3%+.75		4%
Over 2 yrs.	8.645	.50	3%+.75		4%
ZONE II: East of Interstate #75:					
Linemen	12.90	.50	3%+.75		4%
Cable splicers	13.40	.50	3%+.75		4%
Groundmen:					
0 - 1 yr.	6.45	.50	3%+.75		4%
1 - 2 yrs.	7.74	.50	3%+.75		4%
Over 2 yrs.	9.03	.50	3%+.75		4%
CARROLL (N ½ incl. Fox, Harrison, Rose & Washington Twps.), COLUMBIANA (Knox Twp.), HOLMES, MAHONING (Smith Twp.), STARK, TUSCARAWAS (W. of Auburn, Clay, Rush, & York Twps.), & WAYNE (S. of Baughman, Chester, Green & Wayne Twps.) COS.:					
Cable splicers; Linemen	12.60	.50	3%+.50		.3%
Line equipment ops.	11.10	.50	3%+.50		.3%
Groundmen; Truck drivers	7.50	.50	3%+.50		.3%
CARROLL (S. of Fox, Harrison, Rose & Washington Twps.), HARRISON, & JEFFERSON COS.:					
Linemen; Line equipment ops.; Truck drivers	13.50	7%	10%	10%	4%
Groundmen	8.78	7%	10%	10%	4%
Cable splicers	14.00	7%	10%	10%	4%

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHAMPAIGN, CLARK, GEAUGA (Bainbridge, Russell & Chester Twps.), LORAIN (Columbia Twp.), MONROE, MORGAN, NOBLE, & WASHINGTON COS.:					
Cable splicers; Equipment ops.; Linemen	$13.11	.50	3%		½%
Groundmen:					
0 - 6 mos.	6.33	.50	3%		½%
6 - 12 mos.	6.71	.50	3%		½%
12 - 18 mos.	7.13	.50	3%		½%
18 & over mos.	7.52	.50	3%		½%
CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, PREBLE, WARREN (Wayne, Clear Creek, & Franklin Twps.), COS.:					
Cable splicers; Linemen	12.43	.75	3%+1.00		½%
Operators:					
Hole digging equipment, cranes, hydraulic lift or bucket	12.43	.75	3%+1.00		½%
Line truck with winch or pole & steel handling	9.32	.75	3%+1.00		½%
Non-specialized truck & misc. equipment	7.46	.75	3%+1.00		½%
Groundmen - truck driver:					
0 - 1 yr's experience	6.84	.75	3%+1.00		½%
Over 1 yr's experience	7.46	.75	3%+1.00		½%
COLUMBIANA (Center, Elk Run, Franklin, Hanover, Liverpool, Madison, Middleton, St. Clair, Washington, Wayne, West & Yellow Creek Twps.):					
Linemen; Heavy equipment ops.	11.03	8%	7%		½%
Groundmen & truck drivers	9.97	8%	7%		½%
Cable splicers	11.43	8%	7%		½%
COSHOCTON, GUERNSEY, MUSKINGUM, PERRY, & TUSCARAWAS (Rem. of Co.):					
Cable splicers; Equipment ops.; Linemen	12.13	.50	3%		½%
Groundmen:					
Beginning	6.17	.50	3%		½%
After 6 mos.	6.57	.50	3%		½%
After 12 mos.	7.02	.50	3%		½%
After 18 mos.	7.44	.50	3%		½%

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CUYAHOGA CO.:					
Cable splicers; Equipment ops.; & Linemen	$14.28	.50	3%		½%
Advanced truck driver (winch) groundmen	9.28	.50	3%		½%
Beginning truck driver groundmen	7.85	.50	3%		½%
DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS, & WOOD COS.:					
Linemen	14.26	.50	3%	a	½%
Technicians	13.76	.50	3%	a	½%
Cable splicers	14.51	.50	3%	a	½%
Operator Class I	11.36	.50	3%	a	½%
Operator Class II	10.01	.50	3%	a	½%
Groundmen:					
Driver 1st 6 mos.	7.16	.50	3%	a	½%
Driver 2nd 6 mos.	7.77	.50	3%	a	½%
Driver 3rd 6 mos.	8.58	.50	3%	a	½%
DELAWARE, MADISON, PICKAWAY (Twps. of Circleville, Darby, Harrison, Jackson, Madison, Monroe, Muhlenburg, Scioto, Walnut, & Washington), & UNION COS.:					
Cable splicers; Equipment ops.; & Linemen	13.11	.50	3%		½%
Groundmen:					
Beginning	6.17	.50	3%		½%
After 6 mos.	6.57	.50	3%		½%
After 12 mos.	7.02	.50	3%		½%
After 18 mos.	7.44	.50	3%		½%
ERIE, & HURON (Lyme, Ridgefield, Norwalk, Townsend, Wakeman, Sherman, Peru, Bronson, Hartland, Clarksfield, Norwick, Greenfield, Fairfield, Fitchville, & New London Twps.):					
Cable splicers; Equipment ops.; & Linemen	13.05	.73	3%		½%
Beginning truck driver groundman					
Beginning groundman	7.18	.73	3%		½%
Advanced truck driver (winch) groundman; Advanced groundman (over 2 yrs.' experience)	8.48	.73	3%		½%

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
FAIRFIELD, KNOX (Butler, Clay, College, Harrison, Hilliar, Jackson, Morgan, Milford, Miller, & Pleasant), & LICKING COS.:					
Cable splicers; Linemen; Operators: All mechanized equipment	$12.03	.60	3%		½%
Groundmen - truck driver over 1 yr.	9.53	.60	3%		½%
Groundmen - truck driver 0 - 1 yr.	8.51	.60	3%		½%
Groundmen:					
Starting	6.07	.60	3%		½%
6 - 12 mos.	6.49	.60	3%		½%
12 - 18 mos.	6.92	.60	3%		½%
18 mos. & over	7.34	.60	3%		½%
FAYETTE, HIGHLAND, HOCKING, JACKSON (Coal, Jackson, Liberty, Milton, & Washington Twps.), PICKAWAY (Deer Creek, Perry, Pickaway, Salt Creek, & Wayne Twps.), PIKE (excl. Camp Creek, Marion, Newton, Scioto, Sunfish, & Union Twps.), ROSS, VINTON (W. ½ of Co., incl. Clinton, Elk & Swan Twps.) COS.:					
Linemen; Equipment operators	10.95	.28	3%		½%
Truck drivers	6.47	.28	3%		½%
Groundmen	6.17	.28	3%		½%
FRANKLIN CO.:					
Cable splicers; Linemen	10.88	.50	3%		½%
Operators:					
0 - ½ yr.	7.30	.50	3%		½%
½ - 1 yr.	8.52	.50	3%		½%
1 yr. or more	9.81	.50	3%		½%
GEAUGA (excl. Bainbridge, Chester, Russell, Auburn, Middlefield, Parkman & Troy Twps.), & LAKE COS.:					
Cable splicers; Equipment ops.; & Linemen	12.88	.70	3%+.70		½%
Truck drivers	9.02	.70	3%+.70		½%

DECISION NO. OH79-2043

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Groundman more than 2 yrs.' experience	8.37	.70	3%+.70		½%
Groundman less than 2 yrs.' experience	7.08	.70	3%+.70		½%
LORAIN (Exclu. Columbia Twp.), & MEDINA (Litchfield & Liverpool Twps.) COS.:					
Cable splicers; Equipment ops.; & Linemen	13.25	.75	3%+.80		½%
Beginning truck driver groundman; Beginning groundman	7.29	.75	3%+.80		½%
Advanced truck driver (winch) groundman; Advanced groundman (over 2 yrs.' experience)	8.61	.75	3%+.80		½%
MEDINA (Brunswick, Chatham, Granger, Guilford, Harrisville, Hinckley, Homer, Lafayette, Medina, Montville, Sharon, Spencer, Wadsworth, Westfield, & York Twps.), PORTAGE (Atwater, Aurora, Brimfield, Deerfield, Franklin, Mantus, Randolph, Ravenna, Rootstown, Shalersville, Streetsboro & Suffield Twps.), SUMMIT, & WAYNE (Northern ½ of Co.) COS.:					
Linemen	12.81	.74	3%+.65		½%
Cable splicers	13.61	.74	3%+.65		½%
Equipment ops.	9.61	.74	3%+.65		½%
Truck drivers; Groundman	6.41	.74	3%+.65		½%

FOOTNOTE:

a. 10 paid holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; Christmas Eve; Christmas Day; New Year's Eve, & Good Friday

SUPERSEDEAS DECISION

STATE: Pennsylvania

COUNTIES: Bucks, Chester Delaware, Montgomery & Philadelphia

DECISION NO.: PA79-3009

DATE: Date of Publication

Supersedes Decision No.: PA78-3053 dated August 11, 1978 in 43 FR 35871

DESCRIPTION OF WORK: Building Construction, including single family homes and garden type apartments up to including 4 stories Chester County Building Construction Only

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS					
ZONE 1	$12.46	.90	1.05		.08
ZONE 2	11.10	.70	.75		.025

AREA COVERED BY ASBESTOS WORKERS

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia and Remainder of Bucks County

ZONE 2 - Bridgeton, Durham, Lower Makefield, Middletown Falls, Morristown, New Hope, Newton, Noxkamixon, Plumstead Riegelsville, Solebury, Tullytown, Tinicum, Upper Makefield and Yardley Townships in Bucks County

BOILERMAKER	13.775	1.075	1.00		.02
BRICKLAYERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:					
ZONE 1	9.75	.77	.80		.02
New Residential:					
Under 4 stories	10.73	.77	.80		.02
All other Work:					
ZONE 1	11.38	1.10	1.00		.02
ZONE 2	10.96	.87	1.75		.02
ZONE 3	11.46	1.07	.95		.02

AREA COVERED BY BRICKLAYERS ZONES

ZONE 1 - Bucks, Chester, Philadelphia Counties, Radnor and Haverford Township in Delaware County, Lower Marion, Abington, Upper Moreland and Cheltenhan Townships in Montgomery COunty

ZONE 2 - Remainder of Delaware County

ZONE 3 - Remainder of Montgomery County

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS:					
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently resident use	8.77	1.88	1.30		.12
Residential:					
Under 4 stories	8.03	1.03	1.35		.12
All other work	10.27	2.33	1.35		.12
CEMENT MASONS:					
Rehabilitation work to include demolition, on any existing structure of not more than four (4) stories which is intended for predominently residential use:					
ZONE 1	9.00	1.19	1.55		
All other work:					
ZONE 1	10.00	1.74	1.55		
ZONE 2	8.70	.58	.42		
ZONE 3	9.79		1.65		

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Bucks, Delaware and Philadelphia COunties, Remainder of Chester County and Remainder of Montgomery County

ZONE 2 - Oxford, Kenneth Square, Avondale and Longwood Townships in Chester County

ZONE 3 - Pennsburg and Pottstown Townships in Montgomery County

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DRYWALL FINISHERS:					
Rehabilitation work to include demolition, repair and alteration, on any existing structures of not more than four (4) stories which is intended for predominently residential use	8.75	.89	.50		.03
All other work	9.70	1.44	.75	.85	.03
ELECTRICIANS:					
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:					
ZONE 1	12.02	.72	.48		.24
ZONE 2	11.20	.50	.40		.17
ZONE 3	11.34	.50	.37		.06
ELECTRICIANS					
ZONE 1					
Commercial	13.03	.78	3%+.78		.26
Residential up to and including 4 stories	11.77	6%	3%+.71		2%
ZONE 2					
Commercial	13.03	4.75%	8%		1.5%
Residential up to and including 3 stories	10.57	3.4%	1%+2.6%		1.5%
ZONE 3					
Commercial	12.87	6%	3%+10%		1/2 of 1%
Residential up to and including 3 stories	8.725	4.4%	1%+3%		1/2 of 1%
ZONE 4					
Commercial	11.90	9%	9%		1/4 of 1%
ZONE 5					
Commercial	11.59	.78	3%+.30		.03
ZONE 6					
Commercial	11.20	6%	3%+1.00		.02
ZONE 7					
Commercial	11.80	7%	3%+1.00		.02
ZONE 8					
Commercial	13.87	7%	3%+.60		.15

DECISION NO. PA79-3009

AREA COVERED BY ELECTRICIANS ZONES

ZONE 1

Bucks County - starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad bridge to Route 09113, north 09113 to Route 152, north along ROute 152 to the Humeville Road, east on Humeville Road to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113, north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Borough of New Hope is excluded.

starting at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township lines to Route 09064, northwest on 09064 to U.S. Highway 611 south on 611 to the spur of Route 270, northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line.

Delaware County - that portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in a straight line to the Delaware River.

Montgomery County - that portion southeast of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on the Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and Blue Bell Pikes to the Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike to North Lane near Conshohocken Borough, southwest onNorth Lane to Schuylkill River and continuing southeast in a line to the SPring Mill Road and southwest on the Spring Mill Road to Delaware County.

DECISION NO. PA79-3009

Philadelphia County — In its entirety.

ZONE 2

Bucks County - Hilltown and New Britain Townships in their entirety; that portion of telford Borough northeast of County Line Road (Main Street) and bounded by West Rockhill and Hilltown Township; that portion of Dublin Borough west of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough northwest of a line following U.S. Highway 611 south from Route 09064 to the spur of Route 270, and proceeding northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041, southwest on 09041 to the Montgomery County Line.

Chester County - East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charlestown Townships in their entirety, and that portion of Caln, East Caln, West Whiteland, East Whiteland, Tredyffrin, Willstown, Easttown Townships and the Borough of Downingtown north of U. S. Highway 30.

Delaware County - That portion of Radnor Township north of U.S. Highway 30 and west of State Highway 320.

Norristown, Montgomery County - That portion northwest of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and BLue Bell Pikes to Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike, southwest on the Butler Pike,to North Lane near Conshohocken Borough, southeast on North Lane to the Schuylkill River and continuing southeast in a line to the Spring Mill Road, southwest on the Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the

DECISION NO.: PA79-3009

Borough of Pottstown north and west of a line drawn northeast on Keim Street from the Schuylkill River to the Reading Railroad northwest on the railroad to Madison Street, to High Street, east on High Street to Green Street, north on Green Street and northeast on Mintzer Street to the Lower Pottsgrove Township Line, along this township line and the borough line northwest to Adams Street and the Beehive Road, northeast on the Neehive Road to the Township Line at Mervine Street in the State of Pennsylvania.

ZONE 3

Chester County - That portion south of U.S. Highway 30 and north and west of U. S. Highway 1

Delaware County - That portion south of U.S. Highway 30 and north of that part of U.S. Highway 1 between U.S. Highway 202 and the Chester County Line, and east of that part of U.S. Highway 202 between U.S. Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania.

ZONE 4

Chester County - Oxford, Avondale and Kenneth Square Twps.

ZONE 5

Chester County - West Clan, West Brandywine, Honey Brook, Wallace, West Nantmeal, East Nantmeal, Warwick, South Coventry, Valley Twps. and Coatesville.

DECISION NO.: PA79-3009

Montgomery County - West Pottsgrove, Upper Pottsgrove, Douglas Twps. Pottstown.

ZONE 6

Bucks County - Plumstead, Bedminister, Tinicum, Nockomixon, Bridgeton and Durham Townships in their entireties, and that portion of Haycock and Springfield Townships east of a line following State Highway 412, from Northampton County south to Route 09071 to State Highway 212, along highway 212 to Route 09068, and along 09068 to State Highway 313. Also included is that portion of Bublin Borough east of State Highway 313.

ZONE 7

Bucks County - East Rock Hill, West Rock Hill, Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships West of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to State Highway 212, along Highway 212 to Route 09068 and along 09068 to State Highway 313

Montgomery County - Upper Hanover in its entirety

ZONE 8

Bucks County - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmevilla Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252 continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristoe are included.

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELEVATOR CONSTRUCTORS:					
Elevator Constructors	12.815	.895	.69	a+b	.03
Elevator Constructors Helpers	8.97	.895	.69	a+b	.03
Elevator Constructors Helpers (Prob.)	6.41				
GLAZIERS					
ZONE 1	10.53	.50	.30		.01
ZONE 2	9.19	.40	.40		.01

AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Delaware and Philadelphia Counties, Remainder of Bucks, Chester and Montgomery Counties

ZONE 2 - Milford, West Rockville, Rickland, E. Rockville, Haycock, Durham, Springfield, Richlandtown, Sqoherton, Nockamixon Townships in Bucks County, Warwock, S. Coventry, E. Coventry, N. Coventry, Spring City and Royersford Townships in Chester County, Pottstown, Lower Pottsgrove, Limrick, Lower Frederick, Upper Salford, Sounderton, Greeland, Upper Hanover, New Hanover, Douglas, Marlboro Twps. in Mongtomery County

IRONWORKERS:					
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:					
ZONE 1	10.67	2.05			.04
All other work					
ZONE 1	10.36	.79	1.11		.05
ZONE 2	10.53	.79	1.11		.05
ZONE 3					
Structural & Ornamental	12.62	1.14	1.36		.04
Reinforcing	12.07	.84	1.61		.01

DECISION NO. PA79-3009

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Bucks County

ZONE 2 - Chester County

ZONE 3 - Delaware, Montgomery and Philadelphia Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Rigger, machinery mover	12.20	1.14	1.36		
LABORERS:					
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use:					
CLASS I	6.95	.90	.65		
CLASS II	7.05	.90	.65		
CLASS III	7.10	.90	.65		
CLASS IV	7.25	.90	.65		
CLASS V	7.35	.90	.65		
CLASS VI	6.89	.90	.65		

CLASSIFICATIONS DEFINITIONS

CLASS I - Stripping & dismantling concretef orm work, loading, carrying 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all pther pheumatic tools, building scaffolds, raking, shoveling 7 tamping of asphalt, spading & concretepit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts, sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender, power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

CLASS IV - Powdermen, wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard workers

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
New Residential under 4 stories	7.78	.90	.65		.025
All other work					
CLASS I	9.00	.90	.65		
CLASS II	9.10	.90	.65		
CLASS III	9.15	.90	.65		
CLASS IV	9.30	.90	.65		
CLASS V	9.40	.90	.65		
CLASS VI	8.94	.90	.65		

CLASSIFICATIONS DEFINITIONS

CLASS I - Stripping & dismantling concretef orm work, loading, carrying 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all other pheumatic tools, building scaffolds, raking, shoveling 7 tamping of asphalt, spading & concretepit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts, sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender, power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

CLASS IV - Powdermen, wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard Workers

LANDSCAPE LABORERS:					
CLASS I	8.00	.95	.65	c	
CLASS II	8.50	.95	.65	c	

CLASSIFICATIONS DEFINITIONS

CLASS I - Landscape Laborers

CLASS II - Farm tractor driver, hydroseeder nozzle man and mulcher nozzle man

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
ZONE 1	8.61	.225	.10		
ZONE 2	9.15	.50	.15		.01
ZONE 3	7.69	.40	.25		
ZONE 4	7.75	.25	.25		.02

AREA COVERED BY LATHERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Coatesville & lower part of Chester County

ZONE 3 - Milford, Trumbersville, Richland, Quakertown, Springfield, Durham, Riegelsville, Bridgetown, Nockamixon, Tinicum, Plumstead, Dublin, Bedminister, Haycock, East Rockhill, Perkasie, Sellersville, West Rockhill Townships in Bucks County

ZONE 4 - Solebury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown Townships in Bucks County

LEAD BURNERS	10.75	.40	.25	d	.01
LINE CONSTRUCTION					
ZONE 1					
Linemen	14.15	.45	3%		1%
Groundmen	8.49	.45	3%		1%
Winch truck operator	9.91	.45	3%		1%
ZONE 2					
Linemen, cable splicers, heavy equipment operator, truck driver	13.87	7%	3%		
Groundman, winch operator	11.10	7%	3%		

DECISION NO. PA79-3009

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Remainder of Bucks County, Chester, Delaware, Montgomery, Philadelphia Counties

ZONE 2 - Bucks County: That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U. S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to Tr 532, north on Tr 532 to Tr 113, north on Tr 113 to Tr 232 at Anchor Inn, northeast on Tr 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS	12.54	.87	1.07		
MILLWRIGHTS	10.62	2.13	1.30		.12
PAINTERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structures of not more than four (4) stories which is intended for predominently residential use:					
ZONE 1	8.00	.825	.40		.06
All other work:					
ZONE 1					
Brush	10.745	1.125	.40		.06
Spray, steel & swing	10.995	1.125	.40		.06
Roller	10.745	1.125	.40		.06
ZONE 2					
Commercial, brush	10.58	.85	1.00		
Commercial, spray	11.08	.85	1.00		
ZONE 3					
Brush	9.35	.70	.65		
Steel and spray	10.40	.70	.65		
Roller	9.35	.70	.65		
ZONE 4					
Brush	10.54	1.10	1.10	1.00	
Steel	11.29	1.10	1.10	1.00	

DECISION NO. PA79-3009

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Bucks & Philadelphia Counties: Randnor, Haverford, Newton, Maple, Springfield, Upper Darby, Barby, Ridley, Tinicum & Yeondon Townships in Delaware County, Cheltenahm, Abington, Upper and Lower Moreland, Springfield Whitemarsh, Plymouth, Upper Dubling, Horsham, Whitpain, Upper and Lower Gwynodd, Lower Marion, Upper Southampton, Lower Southampton Townships in Montgomery County

ZONE 2 - Chester County and Remainder of Delaware County

ZONE 3 - Pottstown, Pottsgrove, New Hanover and Douglas Townships in Montgomery County

ZONE 4 - Remainder of Montgomery County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAPERHANGERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use	8.54	.55	.35		
PILEDRIVERMEN	11.12	2.33	1.35	g	.12
POINTERS, CAULKERS AND CLEANERS	11.75	.40	.70		
PLASTERERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure or not more than four (4) stories which is intended for predominently residential use:					
ZONE 1	8.825	.78			.01
All other work					
ZONE 1	11.71	.93			.01
ZONE 2	9.81		1.65		.01
ZONE 3	8.97	.65			.01
ZONE 4	9.45				.01

DECISION NO. PA79-3009

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Bucks & Philadelphia Counties; remainder of Cheeter County, Remainder of Montgomery County

ZONE 2 - Pennsburg Township in Mohtgomery County

ZONE 3 - Longwood, Kennett Square, Avondale and Oxford Townships in Chester County

ZONE 4 - Delaware County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure or not more than four (4) stories which is intended for predominently residential use:					
ZONE 1	11.24	.81	1.30		.14
All other work:					
ZONE 1	12.77	.81	1.30		.14
ZONE 2	8.50	.485	.82		.036
ZONE 3	10.02	.57	.92		.08

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County: Tedyffrin, E. Whiteland, W. Whiteland, Easttown, E. Goshen, W. Goshen, W. Chester, E. Bradford, Westown, Birmingham, Twps. & Thornbury City Townships in Chester County, Lower Marion, Horsham, Upper Dublin, Moreland, Lower Moreland, Abington, Springfield and Cheltenham Townships in Montgomery County

ZONE 2 - Remainder of Chester & Montgomery County

ZONE 3 - Milford, Trumbaversville, West Rockhill, Sellerville, Perkasie, East Rockhill, Richland, Quackertown, Haycock, Noxkamixon, Bridgeton, Durham, Riegelsville Townships in Bucks County

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Rehabilitation work to include demolition, repair and alteration, on any existing structure or not more than four (4) stories which in intended for predominently residential use:					
ZONE 1					
Composition, damp and waterproofers	10.17	.70	.60		
All other work:					
ZONE 1					
Commercial					
Composition, damp & waterproofers	12.77	1.40	.95	e	
Roofers Assistant	6.00	1.40	.95	e	
ZONE 2					
Commercial					
Composition & state	8.35	.25	.25		
ZONE 3					
Commercial					
Composition roofers	11.62	1.33	.80		
ZONE 4					
Commercial				f	
Composition, damp & waterproofing	10.60	.45	.25	f	
Slate, tile & asgestos	11.15	.45	.25	f	
Precast Slab	11.40	.45	.25	f	
ZONE 5					
Residential reroofers	9.32	.65	.55		

DECISION NO. PA79-3009

AREA COVERED BY ROOFERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Milford, Trumbbaversville, Richland, Quakertown, Strongfield, Durham, Reigllville Townships in Bucks County

ZONE 3 - Solesbury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown and Bistol Townships in Bucks County

ZONE 4 - Parksbury Township in Chester County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS					
ZONE 1 (Commercial)	13.30	1.02	1.18		.13
ZONE 2 (Residential)	7.15				
ZONE 3 (Commercial)	11.41	1.33	.80		.03

AREA COVERED BY SHEET METAL WORKERS ZONES

ZONE 1 - Remainder of Bucks, Chester, Delaware, Montgomery & Philadelphia Counties

ZONE 2 - Chester, Delaware, Montgomery Counties and Buck's County excluding the Townhsips of Falls, Buckingham, Newton, Upper and Lower Makefield, Solebury, Plumstead and Wrightstown

ZONE 3 - Townships in Bucks County; Plumstead, Solesbury, Buckingham, Wrightstown, Upper and Lower Makefield, Newton and Falls

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SOFT FLOOR LAYERS:					
Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use	7.58	1.58	1.30		.12
All other work	9.43	2.03	1.35		.12
SPRINKLER FITTERS					
ZONE 1	12.31	.75	1.05		.08
ZONE 2	12.04	.60	.90		.10

AREA COVERED BY SPRINKLER FITTERS ZONES

ZONE 1 - Bucks, Chester, Delaware & Montgomery COunties

ZONE 2 - Philadelphia County

STEAMFITTERS					
ZONE 1	12.66	.80	1.45		.11

AREA COVERED BY STEAMFITTERS ZONES

ZONE 1 - Bucks, Delaware, Philadelphia Counties and Reainder of Montgomery County

STONE MASONS					
ZONE 1	10.03	.87	1.07		
ZONE 2	11.46	1.07	.95		.02
ZONE 3	10.75	.95	.78		.01
ZONE 4	9.30	.77	.75		

DECISION NO. PA79-3009

AREA COVERED BY STONE MASONS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County

ZONE 2 - Montgomery County

ZONE 3 - Chester County

ZONE 4 - Bristol Township in Bucks County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TERRAZZO WORKERS	12.19	.87	1.07		
TILE SETTERS					
Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential	9.25	1.10	.90		.14
All other work	9.77	1.35	1.13		.14
WELDERS - rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. PA79-3009

Paid Holidays (Where Applicalbe):
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E- Thanksgiving Day; F- Christmas Day.

Footnotes:

a. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Holidays: A through F, plus the Friday after Thanksgiving Day.

c. Holidays: July 4th; Labor Day and Thanksgiving Day.

d. Holidays, A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the day preceding and following the holiday.

e. Holidays: Election Day

f. Holidays: Labor Day and Election Day

g. Holidays: A through F, Washington's Birthday, Good Friday and Christmas Eve providing the employee has worked 45 full days for the same employer during the 120 calendar days prior to the holiday & is available for work the days preceding & following the holiday.

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS					
CLASS I	12.75	7%	10.3%	a	1.8%
CLASS II	12.34	7%	10.3%	a	1.8%
CLASS III	11.47	7%	10.3%	a	1.8%
CLASS IV	11.26	7%	10.3%	a	1.8%
CLASS V	10.95	7%	10.3%	a	1.8%
CLASS VI	10.78	7%	10.3%	a	1.8%
CLASS VII	10.27	7%	10.3%	a	1.8%
CLASS VIII	9.53	7%	10.3%	a	1.8%

CLASSIFICATIONS DEFINITIONS

CLASS I - Handling steel and stone in connection with erection; cranes doing hook work; any machines handling machinery; cable spinning machines; Helicopters; machines similar to the above

CLASS II - Engineers working with dock builders and pile drivers, all types of cranes, all types of backhoes; cableways; draglines; keystones, all types of shovels; derricks; trench shovels; trenching machines; pippin type backhoes; hoist with two towers; pavers 21E and over; all types overhear cranes; building hoists - double drum (unless used as single drum); mucking machines in tunnel; gradalls; front-end loaders over 3 cu. yd., boat captain; tandem scraper; tower type crane operation, erecting, dismantling, jumping or jacking; drill self-contained (drillmaster type); fork lift (20 ft. and over), mortar patrols (fine grade), batch plant with mixer: Machines similar to the above

CLASS III - Conveyors (except building conveyors), building hoists (single drum), scrapers and tournapulls, asphalt plant engineers, roller (high grade finishing); caterpillar-type tractors with frontend overhead loaders and rubbertired loaders 2 c.y. up to & including 3 c.y., maintenance engineers with tools; spreaders, high or low pressure boilers, concrete pumps, well drillers, forklift trucks of all types; bulldozers D-7 or equivalent and over; ditch witch type trencher, motor patrol; machines similar to the above

CLASS IV - Concrete breaking machines, rollers and machines similar to the above

CLASS V - All bulldozers under D-7, tractors including rubber-tired type with front and overhead loaders under 2 c.y., seaman pulverizing mixer, welders and maintenance engineers, tireman on power equipment, maintenance engineer (Power boat), and machines similar to the above

DECISION NO. PA79-3009

CLASSIFICATIONS DEFINITIONS CONT'D

CLASS VI - Conveyors (building), welding machines, heaters, wellpoints, compressors, farm tractors, form line graders, road finishing machines, pumps, power broom (self contained), seed spreader and machines similar to the above

CLASS VII - Fireman

CLASS VIII - Oilers and deck hand (personnel boats)

FOOTNOTE:

a. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day providing the employee works the day before and after the holiday.

DECISION NO. PA79-3009

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
CLASS I	8.695	.7675	.775	a+b	
CLASS II	8.795	.7675	.775	a+b	
CLASS III	8.995	.7675	.775	a+b	

CLASSIFICATIONS DEFINITIONS

CLASS I - Warehouseman, checker, fork lift driver, stake body truck (single axle), 1½ ton and under vehicles

CLASS II - Truck driver over 1½ tons, dump trucks, tandem and batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

CLASS III - Euclid type, off-highway equipment - back or belly dump trucks and double - hitched equipment straddle (Ross) carrier, lowbed trailers

FOOTNOTES:

a. Employer will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days (40 hours pay) per calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation, employees with five (5) years or more senority shall be eligible for two (2) weeks of vacation.

b. Paid Holidays: Memorial Day; Independence Day; Labor Day; Veterans Day and (5) personal holidays for employees who have worked a minimum of thirty days and are on the employer's senority list, provided he works the schedule work days before and after the said holidays.

SUPERSEDEAS DECISION

STATE: RHODE ISLAND
DECISION NO. RI79-2039
COUNTIES: STATEWIDE
DATE: Date of Publication
Supersedes Decision Nos. RI78-3050, dated July 21, 1978 in 43 FR 31551; RI78-3051, dated July 21, 1978 in 43 FR 31555; and RI78-3052, dated July 21, 1978 in 43 FR 31559
DESCRIPTION OF WORK: Building (including Residential), Heavy, Highway, and Marine Construction Projects

BUILDING CONSTFUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.38	1.25	1.33		
BOILERMAKERS	12.30	1.05	10%		.02
BRICKLAYERS; Stonemasons:					
Cities, Towns or Townships of Charlestown, Hopkinton, Peace Dale, Richmond, South Kingstown, Wakefield, & Westerly	10.35	1.00	1.00		.01
Remainder of State	10.35	1.10	1.15		.01
CARPENTERS; Millwrights; Piledrivermen; & Soft floor layers:					
Cities of Providence, Pawtucket, East Providence, Central Falls, Cranston, Warwick, Woonsocket; Towns of Barrington, Burrillville, Warren, Bristol, West Warwick, East Greenwich, West Greenwich, North Providence, Johnston, Cumberland, Lincoln, Smithfield, North Smithfield, Foster, Scituate, Gloucester, Coventry, North Kingstown, South Kingstown, Exeter, Narragansett, Westerly, & Charlestown:					
Commercial building	10.50	.65	.90		.05
Residential	8.60	.65	.90		.05
Millwrights	10.75	.65	.90		.05
City of Newport; Towns of Middletown, Portsmouth, Jamestown, Tiverton, Little Compton, New Shoreham (Block Island), & Prudence Island:					
Carpenters; Soft floor layers	9.83	.65	.90		.03
Millwrights (except cities of Tiverton & Little Compton); Piledrivermen	10.43	.65	.90		.03
Millwrights (Cities of Tiverton & Little Compton)	11.30	.90	1.00		.10

DECISION NO. RI79-2039

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS; Plasterers:					
Woonsocket, N. Smithfield, Burrillville, Chepachet, Cumberland (N 1/3), & Lincoln	$10.35	1.00	1.00		.01
Remainder of State:					
Cement masons	10.60	.90	.45		
Plasterers	9.80	.90	.45		
ELECTRICIANS:					
Tiverton & Little Compton	10.10	4%+.20	3%+1.00	4%+.20	½%
Westerly Township	11.30	1.50	3%+1.10		½%
Remainder of State	10.50	.73	3%+1.65		.02
ELEVATOR CONSTRUCTORS	10.715	.495	.32	a&b	.02
ELEVATOR CONSTRUCTORS' HELPERS	7.50	.495	.32	a&b	.02
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	5.36				
GLAZIERS	9.65	.62	1.38		.01
IRONWORKERS:					
Ornamental; Reinforcing; & Structural	10.33	1.10	2.10		.05
LABORERS:					
Laborers; Carpenter tenders; Cement finisher tenders; Mason tenders & Wrecking laborers	8.50	.60	.80		.10
Asphalt rakers; Adzemen; Pipe trench bracers; Demolition burners; Chain saw ops.; Fence & guard rail erectors; Setters of metal forms for roadways; Mortar mixers; Pipelayers; Riprap & dry stonewall builders; Highway stone spreaders; Pneumatic tools ops.; Wagon drill ops.; Tree trimmers; Barco type jumping tampers; Mechanical grinder ops.; Plasterers' tenders; Scaffold builders; & Mortar mixers	8.75	.60	.80		.10
Air track ops.; Block pavers; Rammers; & Curb setters	9.00	.60	.80		.10
Blasters; Powderman	9.25	.60	.80		.10

DECISION NO. RI79-2039

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS:					
Newport Co. (Southern ½)	10.05	.65	.55		.01
Remainder of State	10.19	.65	.85		.01
MARBLE SETTERS; Terrazzo workers; & Tile setters	10.25	1.00	1.00		
PAINTERS:					
Adamsville, Compton, Little Compton, North Tiverton, Sakonnet, & Tiverton:					
Brush; Tapers:					
New construction	10.96	.82	1.20		.04
Repaint	9.26	.82	1.20		.04
Sandblasting; Spray:					
New construction	11.96	.82	1.20		.04
Repaint	10.26	.82	1.20		.04
Steel	13.08	.82	1.20		.04
Remainder of State:					
Brush; Roller; Tapers	10.05	.60	.95		
Structural steel; Steamcleaning	10.30	.60	.95		
Air power brush	10.55	.60	.95		
Spray & sand or water blasting	11.05	.60	.95		
PAINTERS, sign:					
Bristol, Kent, & Providence Cos.	7.44	.26	.35	.53+c+d	
PLUMBERS	10.66	.90	1.95		.07
ROOFERS:					
Composition, Waterproofers	10.00	.65	.45		
Slate, Tile, Precast concrete	10.20	.65	.45		
Helpers, Class "A"	9.15	.65	.45		
Helpers, Class "B"	8.60	.65	.45		
SHEET METAL WORKERS	10.28	.96	1.55		.11
SPRINKLER FITTERS	11.56	.75	1.05		.01
STEAMFITTERS	11.35	.83	1.28		.07
HEAVY & HIGHWAY CONSTRUCTION					
BRICKLAYERS; Stonemasons; Catch basins; Manhole builders	10.55	1.00	1.00		.01
CARPENTERS; Piledrivermen:					
Bristol, Kent, Providence & Washington (excluding Block Island) Cos.	10.51	.65	.90		.05

DECISION NO. RI79-2039

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS; Millwrights; Piledrivermen; & Wharf, bridge & dock carpenters:					
Newport County & Block Island	$10.68	.65	.90		.03
CEMENT MASONS & FINISHERS	8.50	.50	.35		
ELECTRICIANS:					
Little Compton & Tiverton	10.10	4%+.20	3%+1.00	4%+.20	½%
Westerly Township	11.30	1.50	3%+1.10		½%
Remainder of State	10.50	.73	3%+1.65		.02
IRONWORKERS:					
Ornamental; Reinforcing; & Structural	10.33	1.10	2.10		.05
LABORERS:					
Laborers; Carpenter & Cement finisher tenders & wrecking laborers	8.50	.60	.80		.10
Adzeman; Asphalt rakers; Barco-type jumping tampers; Chain saw ops.; Concrete & power buggy ops.; Concrete saw ops.; Demolition burners; Fence & guard rail erectors; Highway stone spreaders; Mechanical grinder ops.; Mortar mixers; Pipelayers; Pipe trench bracers; Pneumatic tool ops.; Riprap & dry stonewall builders; Setters of metal forms for roadways; Stumper ops.; Tree toppers; Tree trimmers; Wagon drill ops.; Wood chipper ops.	8.75	.60	.80		.10
Air track drill ops.; Pavers; Rammers; Curb setters	9.00	.60	.80		.10
Blasters & Powdermen	9.25	.60	.80		.10
Open air caisson, Underpinning and boring crew:					
Bottom man	9.25	.60	.80		.10
Laborer, top man	8.50	.60	.80		.10
Driller	9.37	.60	.80		.10

DECISION NO. RI79-2039

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:					
Linemen	$11.48	.70	3%+.50	e	3/8%
Equipment operators	10.36	.70	3%+.50	e	3/8%
Driver groundman	9.70	.70	3%+.50	e	3/8%
Groundman	8.16	.70	3%+.50	e	3/8%
PAINTERS:					
Adamsville, Compton, Little Compton, North Tiverton, Sakonnet, & Tiverton:					
Brush; Tapers:					
New construction	10.96	.82	1.20		.04
Repaint	9.26	.82	1.20		.04
Sandblasting; Spray:					
New construction	11.96	.82	1.20		.04
Repaint	10.26	.82	1.20		.04
Steel	13.08	.82	1.20		.04
Remainder of State:					
Brush; Roller; Tapers	10.05	.60	.95		
Structural steel; Steamcleaning	10.30	.60	.95		
Air power brush	10.55	.60	.95		
Spray & sand or water blasting	11.05	.60	.95		
PAINTERS, sign:					
Bristol, Kent, & Providence Cos.	7.44	.26	.35	.53~~1cld~~	
PLUMBERS	10.66	.90	1.95		.07
WELDERS receive rate prescribed for craft performing operation to which welding is incidental.					

DECISION NO. RI79-2039

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; & F-Christmas Day

FOOTNOTES:
a. 7 paid holidays: A through F, plus Day after Thanksgiving
b. Employer contributes 8% basic hourly rate for 5 years or more of service; 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.
c. 9 paid holidays: A through F, plus V. J. Day; Columbus Day; & Veterans Day
d. One year's seniority - one week's paid vacation; 2 years' seniority - 2 weeks' paid vacation
e. 7 paid holidays: A through F; plus Columbus Day provided employee has been employed 5 working days prior to the holiday and provided the employee works the scheduled work days immediately preceding and following the holiday.

POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Digging Machines; Ross Carriers; Cranes; Pile Drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; and Front End Loaders 3 yds. and over	$11.265	.95	$ 1.15		.10
Economobile type equipment	11.04	.95	1.15		.10
Fork Lift	10.84	.95	1.15		.10
Firemen and Oilers	8.79	.95	1.15		.10
Bulldozers; Graders; Spreaders; Tractors; Scrapers and Rollers	9.84	.95	1.15		.10
Front-end Loaders less than 3 yards	10.09	.95	1.15		.10
Pippin type backhoes	10.19	.95	1.15		.10
Maintenance Engineers	9.79	.95	1.15		.10
Well-point Installation	9.915	.95	1.15		.10
Gas or electric driven pumps; heater; Concrete Mixers; Concrete Pumps; Stone Crushers; Air Compressors; Welding Machines and Generators for light plants	9.34	.95	1.15		.10
BRIDGES, CAISSONS, DOCKS, MARINES PIERS, SUB-BASEMENT SUBTERRANEAN, TUNNELS, and HEAVY CONSTRUCTION					
Digging Machines; Cranes; Pile-drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; & Front end loaders, 3 yds. & over	11.99	.95	1.15		.10
Firemen and Oilers	9.365	.95	1.15		.10
Bulldozers; Graders; Spreaders; Scrapers; Rollers	10.54	.95	1.15		.10
Front-end Loaders, less than 3 yds.	10.79	.95	1.15		.10
Maintenance Engineers	10.69	.95	1.15		.10

POWER EQUIPMENT OPERATORS (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Well-point Installation Crews	$10.715	.95	$ 1.15		.10
Gas or electric driven pumps; Heaters; Concrete Mixers; Concrete Pumps; Stone Crushers; Air Comprssors; Welding Machines; and Generators for light plants	9.79	.95	1.15		.10
Boat and Tug Operators	11.615	.95	.15		.10
Deckhands	10.015	.95	1.15		.10

POWER EQUIPMENT OPERATORS WATER and SEWERLINE PROJECTS, HIGHWAY and BRIDGE INCIDENTAL TO HIGHWAY CONSTRUCTION PROJECTS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$11.595	.95	$ 1.15		.10
CLASS 2	10.745	.95	1.15		.10
CLASS 3	10.125	.95	1.15		.10
CLASS 4	8.375	.95	1.15		.10
CLASS 5	10.075	.95	1.15		.10
CLASS 6	10.575	.95	1.15		.10
CLASS 7	10.195	.95	1.15		.10
CLASS 8	10.175	.95	1.15		.10
CLASS 9	9.825	.95	1.15		.10
CLASS 10	9.195	.95	1.15		.10
CLASS 11	9.175	.95	1.15		.10
CLASS 12	8.975	.95	1.15		.10
CLASS 13	9.645	.95	1.15		.10
CLASS 14	8.975	.95	1.15		.10
CLASS 15	10.025	.95	1.15		.10

CLASS 1: Digging Machines; Cranes; Pile Drivers; Lighters; Locomotives; Derricks; Hoists; Pavers; Front End Loaders (3 to 4 yds.); Economobiles; and Ross Carriers

CLASS 2: Forklifts

CLASS 3: Firemen

CLASS 4: Oilers

CLASS 5: Bulldozers; Spreaders; Rollers; Tractors

CLASS 6: Front End Loaders, less than 3 yards

CLASS 7: Scrapers; Graders; Dozer Pusher Operators

CLASS 8: Pipping type Backhoe Operators

CLASS 9: Maintenance Engineers

CLASS 10: Gas and Electric driven heaters; Pumps; Concrete Mixers; Stone Crushers; Air Compressors; Light Plants; Welding Machines; Concrete Pumps

CLASS 11: Mechanics and Welders (inside)

CLASS 12: Bulldozers in Pits

CLASS 13: Shovel Operators; Front End Loaders, 3 cu. yds. and over; Dragline and Crane Operators in material yards

CLASS 14: Test Boring Machine Operators

CLASS 15: Well Point Installation Crews

TRUCK DRIVERS HEAVY and HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$ 7.62	.7425	.80	a+b	
CLASS II	7.77	.7425	.80	a+b	
CLASS III	7.82	.7425	.80	a+b	
CLASS IV	7.92	.7425	.80	a+b	
CLASS V	8.02	.7425	.80	a+b	
CLASS VI	8.27	.7425	.80	a+b	
CLASS VII	8.52	.7425	.80	a+b	

CLASS I: Pick-up Trucks; Station Wagons and Panel Trucks

CLASS II: Two axle, helpers on low beds

CLASS III: Three axle equipment

CLASS IV: Four and five axle equipment

CLASS V: Low Bed Trailers; Special Earth Moving Equipment under 35 tons, Mechanics; Paving Restoration vehicle and Vac Haul

CLASS VI: Special Earth Moving Equipment over 35 tons

CLASS VII: Trailers when used on a double hook-up (pulling 2 trailers)

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; Washington's Birthday, Columbus Day, Veteran's Day, V-J Day, providing employee has worked at least one day in the calendar week in which the holiday falls.

b. Employee who has been on the payroll for 1 year or more but less than 5 years and has worked 150 days during the last year of employment shall receive 1 week's paid vacation; 5 years or more - 2 weeks' paid vacation.

STATE: South Dakota COUNTIES: Meade & Pennington
DECISION NUMBER: SD79-5121 DATE: Date of Publication
Supersedes Decision No. SD78-5126 dated September 8, 1978, in 43 FR 40189
DESCRIPTION OF WORK: Building projects (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$11.44	.50	1.00		
Boilermakers	12.30	.85	1.00		.02
Bricklayers, Stonemasons	10.90		.30		
Carpenters:					
Carpenters, Acoustical Drywall Applicators	10.81	.30			.05
Piledrivermen	11.06	.30			.05
Millwrights	11.31	.30			.05
Cement Masons	9.50	.35	.40		
Electricians:					
Within 15 miles radius of Rapid City Post Office					
Electricians	10.65	.40	3%	6%	4%
Cable Splicers	11.20	.40	3%	6%	4%
Within 15 to 35 miles radius of Rapid City Post Office					
Electricians	11.05	.40	3%	6%	4%
Cable Splicers	11.60	.40	3%	6%	
Outside 35 miles radius of Rapid City Post Office					
Electricians	12.15	.40	3%	6%	4%
Cable Splicers	12.70	.40	3%	6%	4%
Ironworkers	11.05	.70	1.25		.25
Laborers:					
Laborers; Power tool operator (all mechanical, air, gas, or electric tools, including self-propelled buggies, wagon and air track drills); Pipelayer (nonmetallic); Sandblasting	6.62	.50	.15		
Mortar Mixer, Mason tender, Plaster tender	6.77	.50	.15		
Gunnite nozzleman, Powderman, Miner, Timberman	7.12	.50	.15		
Painters:					
Brush	7.79				
Spray	8.29				
Tapers	8.04				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plasterers	$ 9.85				
Plumbers, Steamfitters	11.04	.75	.60		.03
Sheet Metal Workers	11.35				.005
Sprinkler Fitters	10.55	.75	1.05		.08
Welders, Riggers: Receive rate prescribed for craft performing operation to which welding or rigging is incidental					

SUPERSEDEAS DECISION

STATE: South Dakota COUNTY: Minnehaha
DECISION NUMBER: SD79-5122 DATE: Date of Publication
Supersedes Decision No. SD78-5102 dated June 9, 1978, in 43 FR 25278
DESCRIPTION OF WORK: Building projects (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	$11.44	.50	1.00		
Boilermakers	12.30	.85	1.00		.02
Bricklayers, Stonemasons	11.35	.45	.40		.05
Carpenters:					
Carpenters, Piledrivers, Drywall, and Acoustical	10.21		.20		.05
Millwrights	11.17		.20		.05
Cement Masons	10.10				
Electricians:					
Electricians	10.40	.40	3% + .50		1/2%
Cable Splicers	11.44	.40	3% + .50		1/2%
Glaziers	8.14				
Laborers:					
Labors	4.35				
Mortar Mixers, Paving Breakers, Jack Hammer Operator					
Nozzleman (gunnite, sandblast and shotcrete)	4.60				
Lathers	9.96				.01
Painters:					
Brush	8.40				
Spray	8.90				
Tapers	8.65				
Plasterers	9.36				.01
Plumbers, Steamfitters	10.00	.55	.45	.43	.03
Sheet Metal Workers	9.97		.35	1.00	
Sprinkler Fitters	10.55	.75	1.05		.08
Welders:					
Receive rate prescribed for craft performing operation to which welding is incidental.					

SUPERSEDEAS DECISION

STATE: Texas COUNTIES: Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise
DECISION NO.: TX79-4051 DATE: Date of Publication
Supersedes Decision No. TX78-4115, dated December 1, 1978, in 43 FR 56408.
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes & garden type apartments up to & including 4 stories). (Use current heavy & highway general wage determination for Paving Incidental to Building Construction in Tarrant Co. and for Paving & Utilities Incidental to Building Construction in remaining Cos.)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$11.13	.50	.76		.03
BOILERMAKERS	11.05	.80	1.00		.02
BRICKLAYERS & STONEMASONS:					
ZONE 1 - Grayson County	10.10				
ZONE 2 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	10.88	.45	.50		.07
ZONE 3 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	10.88	.45	.50		.04
CARPENTERS:					
ZONE 1 - Grayson County:					
Carpenters	10.43	.55	.40		.005
Millwrights	10.83	.55	.40		.005
Piledrivermen	10.93	.55	.40		.005
ZONE 2 - Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties:					
Carpenters	10.60	.55	.45		.07
Millwrights	11.50	.55			.07
CEMENT MASONS:					
ZONE 1 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	9.645	.40	.60		
ZONE 2 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	9.485	.55	.60		.01
ELECTRICIANS:					
ZONE 1 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.:					
Electricians	11.13	.60	7%		7/10%
Cable splicers	11.38	.60	7%		7/10%
ZONE 2 - Collin, Dallas, Ellis, Grayson, Hunt, Kaufman & Rockwall Cos.:					
Electricians	11.03	.60	7%		1%
Cable splicers	12.13	.60	7%		1%
ELEVATOR CONSTRUCTORS:					
Mechanics	10.09	.895	.56	4%+a+b	.025
Helpers	70%JR	.895	.56	4%+a+b	.025
Helpers (Probationary)	50%JR				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GLAZIERS:					
Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties	$ 9.59	.40	.55		.025
IRONWORKERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto (excluding northwest corner), Rockwall, Tarrant & Wise (excluding northwest 1/2) Cos.	9.93	.55	1.15		.07
ZONE 2 - Palo Pinto (northwest corner) & Wise (northwest 1/2)	9.525	.55	1.00		.10
LABORERS:					
ZONE 1 - Grayson County:					
GROUP 1 - Unskilled laborers	6.42	.275	.30		
GROUP 2 - Air tool operator (jackhammer, vibrator), mason tenders & mortar mixers, pipelayers	6.67	.275	.30		
ZONE 2 - Collin, Dallas, Denton, Ellis, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Cos.:					
GROUP 1	6.32	.275	.40		.02
GROUP 2	6.47	.275	.40		.02
GROUP 3	6.57	.275	.40		.02
GROUP 4	6.72	.275	.40		.02

LABORERS CLASSIFICATION DEFINITIONS

GROUP 1 - All hand digging dirt work and backfilling; firing of salamanders, loading and unloading of materials to and from hoist or cages; loading and unloading of tools and equipment; wheeling, placing and pouring of concrete; all excavation; handling of lumber, steel, cement; distribution of all materials; flagging trucks; miscellaneous job clean-up; wrecking and razing of buildings and all structures; cleaning and clearing of all debris; handling of broken concrete or other damaged or undamaged materials; removing, moving, handling and greasing of forms, wrecking forms; storing materials to storage place; slip form jacks, scaffold buildiers, checking materials and tools in and out of receiving lots and sheds; tool house men; landscaper; asphalt ironer and raker; waterproofing tender; dumper; spotter; concrete pumpcrete pipe (handling and laying); carpenter tender

GROUP 2 - All power tool and equipment operators (gas, electric or air); cutting torch man; concrete grademan; power buggy operator; wagon drill operator, well driller, drilling rig tender; cement finisher tender; metal pan and steel form men; handling creosoted materials; liquid acids or like materials when injurious to health, eyes, skin or clothes; all newly developed equipment which replaces wheelbarrows or buggies previously used by laborers, scale men on batch plants; concrete flagman

GROUP 3 - Concrete & clay pipe (handling & laying); mason handler; scaffold builder; mason tender; hod carriers mortar mixers; lather tenders, plaster tenders; water pump operators up to 4 inches; cement mason tenders; mortar mixers; hod carriers; dry mixers; tank cleaning; all pipe doping, treating & wrapping, including all men working with dope, mortar & plaster mixing machines, grout machines; pump crete machines, gunite mixing machines, including placing & cleaning of pipe & conduits used in placing of concrete, handling & placing of gunite materials from stockpiles, screening sand, running sand dryer & loading & operating sand blaster, except nozzle, conveying, stocking & handling of all materials for brick masons, lathers, cement finishers, plasterers; ditch work over 6 ft. & cleaning out drill piers

GROUP 4 - Sand blaster, blaster powderman; Gunite worker; gunite worker; gunite nozzleman & terrazzo grinder

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	$11.28				.04
LINE CONSTRUCTION:					
Linemen; Linemen operators	12.15		3%		1/2%
Cable splicers	13.37		3%		1/2%
Groundman, 1st 6 months	7.29		3%		1/2%
Groundman, 2nd 6 months	7.90		3%		1/2%
Groundman, 1 year & over	8.51		3%		1/2%
MARBLE, TILE & TERRAZZO WORKERS:					
Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties	9.95		.30		
MARBLE & TILE FINISHERS:					
Collin, Dallas, Denton, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties	7.40				
PAINTERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hunt, Kaufman & Rockwall Counties:					
GROUP 1 - Brush	9.905	.45	.50		.07
GROUP 2 - All wall covering work: Paper, fabric, sheeting, flexwood, etc.	10.155	.45	.50		.07
GROUP 3 - Ames tools operator	10.03	.45	.50		.07
GROUP 4 - Structural steel, stage work, bosun chair, spray gun, sandblasting & window jacks, fire escapes	10.28	.45	.50		.07
ZONE 2 - Hood, Johnson, Palo Pinto, Tarrant & Wise Counties:					
GROUP 1	10.805		.20		.12
GROUP 2	11.055		.20		.12
GROUP 3	12.055		.20		.12

DECISION NO. TX79-4051

GROUP 1 - Brush
GROUP 2 - Spray, Wallcovering; Pressure roller; Sandblasting; Structural steel; Bosun Chair, Window jack & window sill; stage; fire escape; steel storage tanks; stilts; mittens; ames tools, drywall finishing
GROUP 3 - Steeple jack (radio and TV towers, smoke stacks, chimneys and water towers, and similar facilities and flag poles atop buildings located closer to the edge of the building than the height of the pole); Toxic material rate (creosote, coal tar products or similar materials injurious to the skin)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLASTERERS:					
ZONE 1 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	$ 9.44	.45		.50	.03
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	10.41				.01
PLUMBERS & STEAMFITTERS	10.52	.43	1.00		.10
ROOFERS:					
ZONE 1 - Collin, Dallas, Ellis, Grayson, Hunt, Kaufman & Rockwall Counties:					
GROUP 1 - Slate & tile	9.435				
GROUP 2 - Composition and built-up roofing, dampproofing & bituminous waterproofing	9.285				
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.:					
GROUP 1 - Slate, tile, asbestos roofing & siding	9.385				.05
GROUP 2 - Composition, built-up, damp & water proofing, kettlemen	9.235				.05
SHEET METAL WORKERS:					
ZONE 1 - Collin, Dallas, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Rockwall, Tarrant & Wise Cos.	10.71	.50	.66		.13
ZONE 2 - Palo Pinto Co.	10.88				.07
SOFT FLOOR LAYERS	9.84	.40	.40		.03
SPRINKLER FITTERS	11.60	.75	1.05		.08
TRUCK DRIVERS:					
ZONE 1 - Collin, Dallas, Ellis, Hunt, Kaufman & Rockwall Cos.	4.25				
ZONE 2 - Denton, Hood, Johnson, Palo Pinto, Tarrant & Wise Cos.	4.00				
WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.					

FOOTNOTES FOR ELEVATOR CONSTRUCTORS:
a - 1st 6 months - none; 6 months to 5 years - 2%; over 5 years - 4% of basic hourly rate
b - Paid Holidays A thru G

PAID HOLIDAYS FOR ELEVATOR CONSTRUCTORS:
A-New Years' Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-the Friday after Thanksgiving Day; G-Christmas Day

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ZONE 1 - Dallas County:					
GROUP 1	$ 8.015	.65	.90		
GROUP 2	9.63	.65	.90		
GROUP 3	10.03	.65	.90		

POWER EQUIPMENT OPERATORS (ZONE 1) CLASSIFICATION DEFINITIONS

GROUP 1 - Oilers
GROUP 2 - Air compressor, water pumps, welding machines (2 to 6 machines) & generators; Blade grader, towed; Flex plane; Form grader; Concrete mixer, less than 14 cu. ft.; Pulsometer; Wagon drill operator; Conveyor; Hoist, single drum; Scraper, 3 cu. yd. or less; Bob cat with loader; All other equipment of similar nature coming under the light equipment class, when power operated
GROUP 3 - Heavy duty mechanic; Asphalt mixer operator on job; Blade grader, self-propelled; Bull clam; Backfiller; Bulldozer & all cat type tractors; Backhoe; Concrete mixers, over 14 cu. ft.; Crusher operator on job; Concrete batch plant operator; Clam shell; Cranes (all types); Truck mounted or crawler requires oiler including groves (hydraulic) or similar type over 12½ ton capacity; Escalated rate on crane and derricks booms: .01c per hour, per foot over 90' including jib; draglines; derricks, power operated (all types); DW-10 caterpillar, S-8 Euclid and similar tractors; Elevating grader, self-propelled; Foundation drilling machines (all); Forklifts, used in handling machinery on construction; Gradeall; Hoist, motor driven, 2 drums or more; Locomotive crane; Mixmobile; Paving mixers (all types); Pile drivers; Pumcrete machines; Pneumatic rollers, self-propelled; Shovels, power operated; Scrapers, over 3 cu. yds.; Scoopmobile; Trenching machine, all types; Winch trucks, when pole and winch is used; Water well drilling machines, used on construction; Well point pump; Welding machines (7 to 13 machines); All other equipment of similar nature coming under heavy equipment class, when power operated

DECISION NO. TX79-4051

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (CONT'D):					
ZONE 2 - Collin, Denton, Ellis, Grayson, Hood, Hunt, Johnson, Kaufman, Palo Pinto, Rockwall, Tarrant & Wise Counties:					
GROUP 1	$7.815	.65	1.00		.10
GROUP 2	9.43	.65	1.00		.10
GROUP 3	9.83	.65	1.00		.10

POWER EQUIPMENT OPERATORS (ZONE 2) CLASSIFICATION DEFINITIONS

GROUP 1 - Oiler-Fireman

GROUP 2 - Air Compressors, Pumps, Welding Machines, Throttle Valves, Light Plants; Conveyor; Wagon Drill; Elevators Building; Form Graders; Hoist, Single Drum; Ford Tractor including blade and mower on rear; Mixers less than 14 cubic feet; Screening Plants; Crushing Plants; Fork Lifts (short, under 25 feet); Concrete Pumps (all types); Bobcat type equipment; All other equipment of similar nature coming under the Light Equipment Classification, when power operated

GROUP 3 - Ford Tractor or like with any attachments (except blade and mower on rear); Drilling Machines (all types); Scoopmobiles; Hoists, two drums or more; Forklifts (over 25 ft.); Winch Truck; Six Wheel Truck, when used continuously for 5 days; Mixermobile; Locomotives; Mixers, 14 cubic ft. or over; Blade Graders, self-propelled; Cableways; Cranes-power operated to 100 ft.; Derricks, power operated (all types); Gradall; Hy-Ho; Hop-To; Paving Mixers (all types); Pile Drivers; Mobile Concrete Mixers over 14 cu. ft.; Bulldozers, Loaders, Tractovators; Scrapers and Pulls; Welders; Trenching Machines; Roller, ten tons or over; Air Compressor & Air Tugger; Boilers, two or more fired by one man; Heavy Duty Mechanic; All other equipment of similar nature coming under the Heavy Equipment Classification, when power operated

[FR Doc. 79-13638 Filed 5-3-79; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
May 4, 1979

Part IV

Department of Justice

U.S. Parole Commission

Paroling, Recommitting and Supervising Federal Prisoners

DEPARTMENT OF JUSTICE

U.S. Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervising Federal Prisoners

AGENCY: United States Parole Commission.

ACTION: Final rules.

SUMMARY: The Commission has adopted a number of substantive revisions to its Paroling Policy Guidelines. These revisions include revisions of the offense severity table, time ranges, and policy statements. In addition, the Commission has expanded the coverage of its Youth Guidelines to include any prisoner under the age of 22 at the time of his offense, and has made certain revisions in the guidelines that govern decisions to re-parole after parole has been granted and revoked. In general these changes reflect a decrease in expected terms of incarceration and constitute an explicit statement of the Parole Commission's views regarding the use of imprisonment as a criminal sanction.

EFFECTIVE DATE: June 4, 1979 (see section entitled Implementation).

FOR FURTHER INFORMATION CONTACT: Barbara Meierhoefer, Research Unit, United States Parole Commission, 320 First Street, NW., Washington, D.C. 20537 Tel: (202) 724-3095.

SUPPLEMENTARY INFORMATION:

The Proposal and its Purpose

On October 11, 1978, the U.S. Parole Commission published in the **Federal Register** (43 FR 46859) a proposal to revise the offense severity table and policy instructions contained in the Commission's Paroling Policy Guidelines at 28 CFR 2.20. As a supplement to this proposal, the Commission also published a proposed rule on December 4, 1978 (43 FR 56681) under which all prisoners under 22 years of age at the time of conviction would be considered under the Youth Guidelines regardless of the type of sentence imposed.

Though the initial proposal related specifically to revising the definitions and relative severity rankings of the offense examples at § 2.20, it was recognized that this extremely complex area would, of necessity, bring up collateral issues. Therefore, the proposal allowed for an extended period of public comment, and expressly solicited views on any aspect of the offense severity table or the guidelines themselves.

The purpose of the proposal was threefold. First, it was in attempt to clarify some of the abiguities inherent in the existing severity table. There were offense behavior examples which needed to be added to the table because the Commission was encountering such cases more frequently than before.

Second, there were certain listed offenses which needed to be defined more specifically. These modifications reflected a clarification of existing Commission policy.

Third, there were modifications that represented an actual change of Commission policy. In response to continuing feedback from both Commission personnel and others, certain offense behaviors were moved from one severity category to another for the reason that the behavior in question was considered to be either more or less serious than the other offenses with which it was grouped. In some instances, an offense behavior example was simply transferred to a new category. In other cases, an already existing example was divided into two examples to distinguish certain aggravating or mitigating circumstances, with these more specific, newly defined examples then placed in different severity categories.

Public Comment

To insure a broad range of public comment, the Commission, in addition to the usual publication and posting of the proposal, sent copies of the proposal to a mailing list composed of over 1,000 interested persons, and also announced its intention to hold public hearings. A series of hearings were conducted by the Commission in Atlanta, Georgia (December 4 & 5, 1978), Denver, Colorado (December 7 & 8, 1978) and Washington, D.C. (December 14-16, 1978). Included were hearings conducted at the Bureau of Prisons' Atlanta and Englewood facilities. Testimony was received from 69 witnesses, generating over 3,000 pages of transcript. Those giving their views included federal inmates, defense and prosecution attorneys, representatives from the judiciary, enforcement agencies, the Bureau of Prisons, the Probation Service, and state correctional systems, and scholars in the field.

In addition to the hearings, the Commission received 52 letters from members of the public representing the same range of interests.

As the providers of the comment came from a variety of backgrounds, their viewpoints were likewise varied. A 36 page summary of all comments received is available in the Commission's Public Reading Room and through the contact person noted above.

Five of the most common subjects of concern, which are addressed by this final rule, were: (1) The appropriateness of the ranking and/or division of offense behavior examples, particularly drug offenses; (2) the necessity to reexamine the reparole guidelines; (3) the appropriateness of the time ranges for both parole and reparole guidelines; (4) the treatment of youthful offenders; and (5) the salient factor score. Some of the information received was used in the following revisions and additions to the proposal. Other information is being considered for inclusion in the examples of aggravating and mitigating offense circumstances in the Commission's Guideline Application Manual.

Changes from the Proposal

1. *Property Offenses*—(a) The ceiling for low and low moderate severity property offenses has been raised from $1,000 to $2,000 in response to public comment pointing out the effects of inflation.

(b) A minimum rating of moderate severity has been established for automobile thefts involving three or fewer cars, and a minimum rating of high severity for automobile thefts involving more than three cars. An exception (low severity rating) is provided for car thefts where there was no damage, the car was kept for a short duration, and the theft was not for resale. On the basis of testimony received regarding current prosecutorial practices, the Commission expects to see these latter cases primarily on parole violation.

2. *Counterfeiting Offenses*—(a) The ceiling for low and low moderate severity counterfeiting offenses has likewise been raised from $1,000 to $2,000.

(b) The table now specifies that these offenses refer to the counterfeiting of both currency and other media of exchange.

3. *Breaking and Entering*—(a) The specific listing for "bank or post office" has been deleted. Breaking and entering of these establishments will now be treated the same as other commercial establishments. [See footnote #(2)].

(b) Breaking and entering/burglary—residence (unoccupied) has been deleted from the high severity category. Comment expressed disapproval of the distinction in severity on the basis of whether or not the residence was occupied. There was a feeling that this condition was largely a matter of chance. Any invasion of an inhabited residence (whether or not the owner

was actually present) was felt to be a very high severity offense because of its implied disregard of the possibility that some occupant might be present or might soon return.

4. *Gambling Law Violations*—(a) In response to comment received from prosecutors, gambling offenses in which the offender had no proprietary or managerial interest were placed in the low severity category.

(b) In the examples used to define small, medium and large scale gambling operations, it was pointed out during the hearings that different types of gambling operations have different levels of profitability. Therefore, the "daily gross" levels for different types of gambling offenses have been varied within each severity category. The profitability of the operation was calculated on the following approximations: Sports books: 5% of gross wagers accepted; Horse books: 20% of gross wagers accepted; and Numbers bankers: 40% of gross wagers accepted. It is to be noted that these "daily gross" dollar figures are only examples to help the Commission determine the scale of the operation (i.e., small, medium or large scale).

(c) Small, medium and large scale gambling operations were each lowered one category in severity from the proposal.

5. *Violent Crimes*—No change has been made from the proposal.

6. *Extortion, Threatening Communictions, and Robberies by Threat*—(a) Threatening communications (e.g., mail/phone)—not for purposes of extortion and no other overt act, was raised from the moderate to the high severity category.

(b) One or two instances of robbery are now included in the very high category and three or four instances are listed in the Greatest I category.

7. *Bribery*—(a) In response to extensive comment from a variety of sources, the footnote dealing with bribery was altered somewhat to make it clear that the Commission does not consider this offense to be merely equivalent with other property offenses. Bribery offenses are tied to the value of the bribe or favor only to insure that it is never treated as *less* serious than a property offense. The aggravating feature of breach of the public trust is made explicit.

8. *Drug Law Violations*—(a) These offense behaviors received more comment than any other. The bulk of the comment indicated that the proposed time to be served for small sales of non-opiates were still too long. These offenses have been further broken down to differentiate between very small/small/medium/and large scale offenders.

(b) An offense example to cover the opiate addict selling very small quantities of opiates has been added to the moderate severity category.

(c) In response to comments that the Commission was not dealing adequately with the organizational role that the offender may have played in drug offenses, the Commission added a condition of "proprietary or managerial interest" (in addition to the large scale nature of the offense) for an offense to be placed in the Greatest I category.

(d) The Commission has done away with the label "soft drugs", and substituted "drugs, other than specifically categorized".

(e) It is to be noted that the "weight/purity/dosage" figures are only examples to help the Commission determine the seriousness of the crime, a determination that may ultimately depend on other relevant factors.

9. *Alcohol Law Violations*—(a) Testimony received indicated the necessity of adding "cigarette law violations" (e.g., evaded tax or interstate transportation) to this category, and to make it clear that if the violation involved tax evasion, the offense was then to be rated under the appropriate property offense category.

10. *Possession and Transportation of Explosives*—No change has been made from the proposal.

11. *Obstruction of Justice*—(a) Numerous comments indicated that this term actually covered a number of different criminal acts, some of which are more serious than others. Thus, the category was differentiated into: (1) obstructing justice or perjury; (2) misprision of felony and (3) harboring a fugitive.

(b) It was felt that obstructing justice; and perjury constitute such a deliberate assault upon the machinery of justice that the offender assumes the equivalent culpability of the person who committed the underlying offense, and should be rated accordingly.

(c) The offense behaviors of misprision and harboring were divided into the low and moderate severity categories according to the severity of the underlying offense.

12. *Selective Service Act Violators*—No change has been made from the proposal.

13. Escape offenses were deleted from the offense table because they are now included in the Commission's new rescission guidelines.

14. In addition to these substantive changes, certain editorial revisions were also made. For example, the marihuana and hashish offense categories were combined, the footnotes have been rearranged to increase readability, and certain redundant definitional phrases were deleted.

15. The December proposal pertaining to offenders under 22 years of age being considered under the youth guidelines was added to the rules as part of § 2.20(h) rather than as a footnote. Also, the wording was changed to indicate that the age at the time of the offense was controlling for these purposes rather than the age at the time of conviction. This change was made to conform to the treatment of age in other portions of our regulations.

ADDITIONS TO THE PROPOSAL

1. *Other changes in the offense severity table at § 2.20 were as follows*—(a) The offense of Carnal Knowledge has been added to the severity table as follows:

High	
	Carnal Knowledge

NOTE.—Except that carnal knowledge in which the relationship is clearly voluntary, the victim is not less than 14 years old, and the age difference between offender and victim is less than four years shall be rated as a low severity offense.

(b) The offense of Mann Act—force (now listed in the very high severity category) has been raised to the Greatest I category as follows:

Greatest I	
	Sex Act—force [e.g., forcible rape or Mann Act (use of force)]

2. *Modification of the Reparole Guidelines [§ 2.21]*—(a) The customary term for administrative violations has been reduced to conform to the general reduction in customary terms for low severity offenses (see below).

(b) The employment/school record criterion for distinguishing between positive and negative supervision history has been eliminated because, in practice, these were rarely cited as reasons for classifying a releasee as having "negative history".

(c) The Commission will now recalculate the salient factor score in revocation cases involving new criminal conduct rather than automatically applying the "poor" risk category for determining the appropriate guideline range. A number of those commenting felt that the reparole guidelines were too harsh and that there remained "risk" differences between violators which should be taken into account. Reanalysis of the revised April 1, 1977 Salient Factor Score gives support to this suggestion. Since each parole violator would lose at least three points

(Items A, B, E) on the salient factor score, total scores could fall into the poor, fair, or good risk categories only.

(d) It is specified that the original *guideline* type (rather than sentence type) is controlling in the determination of the applicable reparole guidelines, except that a parole violator who has been committed with a new federal sentence in excess of one year shall be considered under the guideline type applicable to the new sentence.

(e) If a change in Commission policy concerning applicable guideline type results in a more favorable guideline range than the original guideline type, the more favorable guideline range will apply to the violator term.

3. *Parole Guideline Time Ranges [§ 2.20].*—(a) The Commission received a great deal of comment suggesting modification of the time ranges, particularly for the two lowest offense severity categories, the two highest severity categories, and for the very good risk prognosis categories. In response, the Commission has adjusted these ranges slightly, with the result likely to be less time served in prison for those offenders.

4. *Treatment of Youthful Offenders [§ 2.20(h)].*—(a) The comment indicated that there was some concern over the treatment of extremely youthful offenders. The Commission has specified that the factor of extreme youthfulness (i.e., less than 18 years old) shall be considered a mitigating factor in setting the release date. It is noted that the Commission sees very few of these cases.

5. *Salient Factor Score.*—Though there have been numerous suggestions regarding the salient factor score—particularly the "employment" item—it is felt that it would be premature to revise the score at this time. There are currently two studies (one in-house and one external) to evaluate the salient factor score, and the Commission will await the results of these studies before assessing revision of the salient factor score.

However, there have been minor modifications to the score sheet which serve to clarify Commission policy. Item C was modified to read "Age at behavior leading to First Commitment", and a note was added regarding the Commission's policy on counting findings of guilt which do not result in actual convictions under Item A. In addition, the wording on Item B was changed from "incarcerations" to "commitments" to conform to the wording on the other items on the scale. None of these changes represent a departure from prior Commission policy.

Implementation

1. These guidelines will be applied to all prisoners sentenced on or after June 4, 1979; and to all prisoners sentenced prior to June 4, 1979 who receive their initial parole hearing on or after June 4, 1979.

2. If these guideline revisions result in a guideline range *more favorable* to a prisoner who has already had a parole hearing, such prisoner shall have the guideline range recalculated at his or her next regularly scheduled hearing, and his or her case reconsidered pursuant to the revised guideline range.

3. Workload considerations prohibit the Commission from reviewing every case prior to the next regularly scheduled parole consideration. However, the following procedures have been established whereby certain prisoners who are favorably affected may apply for a special record review.

(a) Restrictions: A record review will *not* be conducted in the following cases:

1. Prisoners with effective parole dates;

2. Prisoners with regularly scheduled parole hearings prior to December 1, 1979;

3. Prisoners with a mandatory release date prior to December 1, 1979;

4. Prisoners with a presumptive parole date prior to December 1, 1979; or

5. Prisoners whose newly calculated guideline range does not have either a minimum or maximum limit at least six months more favorable than the previously calculated guideline range.

(b) The following procedures will be employed for special record reviews:

1. The prisoner must apply for a special record review on the forms to be provided the institution. Applications will be accepted beginning July 15, 1979.

2. A regional examiner panel will first determine whether or not the applicant is eligible for a special record review.

3. If the case is found not eligible due to the above restrictions, the prisoner will be sent a rejection. This, of course does not preclude calculation and consideration under the new guidelines at the next regularly scheduled parole consideration.

4. If the case is found eligible, a new decision will be entered, provided that any decision which is above the recalculated guidelines shall be referred to the National Commissioners under the procedures of § 2.24(a).

5. As these reviews are considered in the nature of a "reopen", a finding of noneligibility will not be appealable.

Conclusion

Accordingly, pursuant to the provisions of 18 U.S.C. 4203 (a)(1) and 4204 (a)(6), 28 CFR Chapter I, Part 2, is amended as set forth below to become effective in the manner described above.

Dated: April 27, 1979.

Cecil C. McCall,
Chairman, U.S. Parole Commission.

Sections 2.20 and 2.21 are revised to read as follows:

§ 2.20 Paroling policy guidelines; statement of general policy.

(a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the United States Parole Commission has adopted guidelines for parole release consideration.

(b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.

(c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.

(d) The guidelines contain examples of offense behaviors for each severity level. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.

(e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.

(f) Guidelines for reparole consideration are set forth at § 2.21.

(g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.

(h)(1) The Adult Guidelines shall apply to all offenders except as specified in paragraph (h)(2) of this section.

(2) The Youth/NARA Guidelines will apply to any offender sentenced under the Youth Corrections Act, the Narcotic Rehabilitation Act, or the Juvenile Justice Act, and to any other offender who was less than 22 years of age at the

time the current offense was committed, regardless of sentence type. If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.

ADULT GUIDELINES FOR PAROLE DECISIONMAKING

Offense characteristics-severity of offense behavior (examples)	Offender characteristics-parole prognosis (salient factor score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
Low				
Alcohol or cigarette law violations, including tax evasion (amount of tax evaded less than $2,000) [1]. Gambling law violations (no managerial or proprietary interest). Illicit drugs, simple possession. Marihuana/hashish, possession with intent to distribute/sale [very small scale (e.g., less than 10 lbs. of marihuana/less than 1 lb. of hashish/less than .01 liter of hash oil)]. Property offenses (theft, income tax evasion, or simple possession of stolen property) less than $2,000.	≦6 mo.	6 to 9 mo.	9 to 12 mo.	12 to 16 mo.
Low Moderate				
Counterfeit currency or other medium of exchange [(passing/possession) less than $2,000]. Drugs (other than specifically categorized), possession with intent to distribute/sale [very small scale (e.g., less than 200 doses)]. Marihuana/hashish, possession with intent to distribute/sale [small scale (e.g., 10-49 lbs. of marihuana/1-4.9 lbs. hashish/.01-04 liters of hash oil)]. Cocaine, possession with intent to distribute/sale [very small scale (e.g., less than 1 gram of 100% purity, or equivalent amount)]. Gambling law violations—managerial or proprietary interest in small scale operation [e.g., Sports books (estimated daily gross less than $5,000; Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750)]. Immigration law violations. Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $2,000.	≦8 mo.	8 to 12 mo.	12 to 16 mo.	16 to 22 mo.
Moderate				
Automobile theft (3 cars or less involved and total value does not exceed $19,999) [1]. Counterfeit currency or other medium of exchange [(passing/possession) $2,000-$19,999]. Drugs (other than specifically categorized), possession with intent to distribute/sale [small scale (e.g., 200-999 doses)]. Marihuana/hashish, possession with intent to distribute/sale [medium scale (e.g., 50-199 lbs. of marihuana/5-19.9 lbs. of hashish/.05-19 liters of hash oil)]. Cocaine, possession with intent to distribute/sale [small scale (e.g., 1.0-4.9 grams of 100% purity, or equivalent amount)]. Opiates, possession with intent to distribute/sale [evidence of opiate addiction and very small scale (e.g., less than 1.0 grams of 100% pure heroin, or equivalent amount)]. Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun). Gambling law violations—managerial or proprietary interest in medium scale operation [e.g., Sports books (estimated daily gross $5,000-$15,000); Horse books (estimated daily gross $1,500-$4,000); Numbers bankers (estimated daily gross $750-$2,000)]. Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $2,000-$19,999. Smuggling/transporting of alien(s).	10 to 14 mo.	14 to 18 mo.	18 to 24 mo.	24 to 32 mo.

ADULT GUIDELINES FOR PAROLE DECISIONMAKING—Continued

Offense characteristics-severity of offense behavior (examples)	Offender characteristics-parole prognosis (salient factor score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
High				
Carnal knowledge [3] Counterfeit currency or other medium of exchange [(passing/possession) $20,000-$100,000]. Counterfeiting [manufacturing (amount of counterfeit currency or other medium of exchange involved not exceeding $100,000)]. Drugs (other than specifically listed), possession with intent to distribute/sale [medium scale (e.g., 1,000-19,999 doses)]. Marihuana/hashish, possession with intent to distribute/sale [large scale (e.g., 200-1,999 lbs. of marihuana/20-199 lbs. of hashish/.20-1.99 liters of hash oil)]. Cocaine, possession with intent to distribute/sale [medium scale (e.g., 5-99 grams of 100% purity, or equivalent amount)]. Opiates, possession with intent to distribute/sale [small scale (e.g., less than 5 grams of 100% pure heroin, or equivalent amount) except as described in moderate]. Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons). Gambling law violations—managerial or proprietary interest in large scale operation [e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Numbers bankers (estimated daily gross more than $2,000)]. Involuntary manslaughter (e.g., negligent homicide) Mann Act (no force—commercial purposes) Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $20,000-$100,000. Threatening communications (e.g., mail/phone)—not for purposes of extortion and no other overt act.	14 to 20 mo...	20 to 26 mo...	26 to 34 mo...	34 to 44 mo.
Very High				
Robbery—(1 or 2 instances) Breaking and entering—armory with intent to steal weapons Breaking and entering/burglary—residence; or breaking and entering of other premises with hostile confrontation with victim. Counterfeit currency or other medium of exchange [(passing/possession)—more than $100,000 but not exceeding $500,000. Drugs (other than specifically listed), possession with intent to distribute/sale [large scale (e.g., 20,000 or more doses) except as described in Greatest I]. Marihuana/hashish, possession with intent to distribute/sale [very large scale (e.g., 2,000 lbs. or more of marihuana/200 lbs. or more of hashish/2 liters or more of hash oil)]. Cocaine, possession with intent to distribute/sale [large scale (e.g., 100 grams or more of 100% purity, or equivalent amount) except as described in Greatest I]. Opiates, possession with intent to distribute/sale [medium scale or more (e.g., 5 grams or more of 100% pure heroin, or equivalent amount) except as described in Greatest I]. Extortion [threat of physical harm (to person or property)] Explosives, possession/transportation Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) more than $100,000 but not exceeding $500,000.	24 to 36 mo...	36 to 48 mo...	48 to 60 mo...	60 to 72 mo.
Greatest I				
Aggravated felony (e.g., robbery: weapon fired or injury of a type normally requiring medical attention). Arson or explosive detonation [involving potential risk of physical injury to person(s) (e.g., premises occupied or likely to be occupied)—no serious injury occurred]. Drugs (other then specifically listed), possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 200,000 doses)]. Cocaine, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram of 100% purity, or equivalent amount)]. Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 50 grams of 100% pure heroin, or equivalent amount)]. Kidnaping [other than listed in Greatest II; limited duration; and no harm to victim (e.g., kidnaping the driver of a truck during a hijacking, driving him to a secluded location, and releasing victim unharmed)]. Robbery (3 or 4 instances) Sex act—force [e.g., forcible rape or Mann Act (force)] Voluntary manslaughter (unlawful killing of a human being without malice; sudden quarrel or heat of passion).	40 to 52 mo...	52 to 64 mo...	64 to 78 mo...	78 to 100 mo.

ADULT GUIDELINES FOR PAROLE DECISIONMAKING—Continued

Offense characteristics-severity of offense behavior (examples)	Offender characteristics-parole prognosis (salient factor score)			
	Very good (11–9)	Good (8–6)	Fair (5–4)	Poor (3–0)
Greatest II				
Murder: Aggravated felony—serious injury (e.g., robbery: injury involving substantial risk of death, or protracted disability, or disfigurement) or extreme cruelty/brutality toward victim. Aircraft hijacking Espionage Kidnaping (for ransom or terrorism; as hostage; or harm to victim) Treason	52+mo	64+mo	78+mo	100+mo. Specific upper limits are not provided due to the limited number of cases and the extreme variation possible within category.

YOUTH/NARA GUIDELINES FOR DECISIONMAKING

Low				
Alcohol or cigarette law violations, including tax evasion (amount of tax evaded less than $2,000) [1]. Gambling law violations (no managerial or proprietary interest) Illicit drugs, simple possession Marihuana/hashish, possession with intent to distribute/sale [very small scale (e.g., less than 10 lbs. of marihuana/less than 1 lb. of hashish/less than .01 liter of hash oil)]. Property offenses (theft, income tax evasion, or simple possession of stolen property) less than $2,000.	≦6 mo	6 to 9 mo	9 to 12 mo	12 to 16 mo.
Low Moderate				
Counterfeit currency or other medium of exchange [(passing/possession) less than $2,000]. Drugs (other than specifically categorized), possession with intent to distribute/sale [very small scale (e.g., less than 200 doses)]. Marihuana/hashish, possession with intent to distribute/sale [small scale (e.g., 10–49 lbs. of marihuana/1–4.9 lbs. hashish/.01–.04 liters of hash oil)]. Cocaine, possession with intent to distribute/sale [very small scale (e.g., less than 1 gram of 100% purity, or equivalent amount)]. Gambling law violations—managerial or proprietary interest in small scale operation [e.g., Sports books (estimated daily gross less than $5,000; Horse books (estimated daily gross less than $1,500); Numbers bankers (estimated daily gross less than $750)]. Immigration law violations Property offenses (forgery/fraud/theft from mail/embezzlement/interstate transportation of stolen or forged securities/receiving stolen property with intent to resell) less than $2,000.	≦8 mo	8 to 12 mo	12 to 16 mo	16 to 20 mo.
Moderate:				
Automobile theft (3 cars or less involved and total value does not exceed $19,999) G22. Counterfeit currency or other medium of exchange [(passing/possession) $2,000–$19,999]. Drugs (other than specifically categorized), possession with intent to distribute/sale [small scale (e.g., 200–999 doses)]. Marihuana/hashish, possession with intent to distribute/sale [medium scale (e.g., 50–199 lbs. of marihuana/5–19.9 lbs. of hashish/.05–.19 liters of hash oil)]. Cocaine, possession with intent to distribute/sale [small scale (e.g., 1.0–4.9 grams of 100% purity, or equivalent amount)]. Opiates, possession with intent to distribute/sale [evidence of opiate addiction and very small scale (e.g., less than 1.0 grams of 100% pure heroin, or equivalent amount)]. Firearms Act, possession/purchase/sale (single weapon: not sawed-off shotgun or machine gun). Gambling law violations—managerial or proprietary interest in medium scale operation [e.g., Sports books (estimated daily gross $5,000–$15,000); Horse books (estimated daily gross $1,500–$4,000); Numbers bankers (estimated daily gross $750–$2,000)]. Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $2,000–$19,999. Smuggling/transporting of alien(s)	8 to 12 mo	12 to 16 mo	16 to 20 mo	20 to 26 mo.

YOUTH/NARA GUIDELINES FOR DECISIONMAKING—Continued

Offense characteristics-severity of offense behavior (examples)	Offender characteristics-parole prognosis (salient factor score)			
	Very good (11-9)	Good (8-6)	Fair (5-4)	Poor (3-0)
High				
Carnal Knowledge [3] Counterfeit currency or other medium of exchange [(passing/possession) $20,000-$100,000]. Counterfeiting [manufacturing (amount of counterfeit currency or other medium of exchange involved not exceeding $100,000)]. Drugs (other than specifically listed), possession with intent to distribute/sale [medium scale (e.g., 1,000-19,999 doses)]. Marihuana/hashish, possession with intent to distribute/sale [large scale (e.g., 200-1,999 lbs. of marihuana/20-199 lbs. of hashish/.20-1.99 liters of hash oil)]. Cocaine, possession with intent to distribute/sale [medium scale (e.g., 5-99 grams of 100% purity, or equivalent amount)]. Opiates, possession with intent to distribute/sale [small scale (e.g., less than 5 grams of 100% pure heroin, or equivalent amount) except as described in moderate]. Firearms Act, possession/purchase/sale (sawed-off shotgun(s), machine gun(s), or multiple weapons). Gambling law violations—managerial or proprietary interest in large scale operation [e.g., Sports books (estimated daily gross more than $15,000); Horse books (estimated daily gross more than $4,000); Number bankers (estimated daily gross more than $2,000)]. Involuntary manslaughter (e.g., negligent homicide) Mann Act (no force-commercial purposes) Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) $20,000-$100,000. Threatening communications (e.g., mail/phone)—not for purposes of extortion and no other overt act.	12 to 16 mo...	16 to 20 mo...	20 to 26 mo...	26 to 32 mo.
Very High				
Robbery—1 or 2 instances Breaking and entering—armory with intent to steal weapons Breaking and entering/burglary—residence; or breaking and entering of other premises with hostile confrontation with victim. Counterfeit currency or other medium of exchange [(passing/possession)—more than $100,000 but not exceeding $500,000] [Drugs (other than specifically listed), possession with intent to distribute/sale [large scale (e.g., 20,000 or more doses) except as described in Greatest I]. Marihuana/hashish, possession with intent to distribute/sale [very large scale (e.g., 2,000 lbs. or more of marihuana/200 lbs. or more of hashish/2 liters or more of hash oil)]. Cocaine, possession with intent to distribute/sale [large scale (e.g., 100 grams or more of 100% purity, or equivalent amount) except as described in Greatest I]. Opiates, possession with intent to distribute/sale [medium scale or more (e.g., 5 grams or more of 100% pure heroin, or equivalent amount) except as described in Greatest I]. Extortion [threat of physical harm (to person or property)] Explosives, possession/transportation Property offenses (theft/forgery/fraud/embezzlement/interstate transportation of stolen or forged securities/income tax evasion/receiving stolen property) more than $100,000 but not exceeding $500,000.	20 to 26 mo...	26 to 32 mo...	32 to 40 mo...	40 to 48 mo.
Greatest I				
Aggravated felony (e.g., robbery: weapon fired or injury of a type normally requiring medical attention). Arson or explosive detonation [involving potential risk of physical injury to person(s) (e.g., premises occupied or likely to be occupied)—no serious injury occurred]. Drugs (other then specifically listed), possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving over 200,000 doses)]. Cocaine, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 1 kilogram of 100% purity, or equivalent amount)]. Opiates, possession with intent to distribute/sale [managerial or proprietary interest and very large scale (e.g., offense involving more than 50 grams of 100% pure heroin, or equivalent amount)]. Kidnaping [other than listed in Greatest II; limited duration; and no harm to victim (e.g., kidnaping the driver of a truck during a hijacking, driving him to a secluded location, and releasing victim unharmed)]. Robbery (3 or 4 instances) Sex act—force [e.g., forcible rape or Mann Act (force)] Voluntary manslaughter (unlawful killing of a human being without malice; sudden quarrel or heat of passion).	30 to 40 mo...	40 to 50 mo...	50 to 60 mo...	60 to 76 mo.

YOUTH/NARA GUIDELINES FOR DECISIONMAKING—Continued

Offense characteristics-severity of offense behavior (examples)	Offender characteristics-parole prognosis (salient factor score)			
	Very good (11–9)	Good (8–6)	Fair (5–4)	Poor (3–0)
Greatest II				
Murder: Aggravated felony—serious injury (e.g., robbery: injury involving substantial risk of death, or protracted disability, or disfigurement) or extreme cruelty/brutality toward victim. Aircraft hijacking Espionage Kidnaping (for ransom or terrorism; as hostage; or harm to victim) Treason	40+mo	50+mo	60+mo	76+mo.
	Specific upper limits are not provided due to the limited number of cases and the extreme variation possible within category.			

[1] Alcohol or cigarette tax law violations involving $2,000 or more of evaded tax shall be treated as a property offense (tax evasion)

[2] Except that automobile theft (not kept more than 72 hours; no substantial damage; and not theft for resale) shall be rated as low severity. Automobile theft involving a value of more than $19,999 shall be treated as a property offense. In addition, automobile theft involving more than 3 cars, regardless of value, shall be treated as no less than high severity

[3] Except that carnal knowledge in which the relationship is clearly voluntary, the victim is not less than 14 years old, and the age difference between offender and victim is less than four years shall be rated as a low severity offense

General Notes

A. These guidelines are predicated upon good institutional conduct and program performance.

B. If an offense behavior is not listed above, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed.

C. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

D. If an offense behavior involved multiple separate offenses, the severity level may be increased.

Other Offenses

(1) Conspiracy shall be rated for guideline purposes according to the underlying offense behavior if such behavior was consummated. If the offense is unconsummated, the conspiracy will be rated one step below the consummated offense. A consummated offense includes one in which the offender is prevented from completion only because of the intervention of law enforcement officials.

(2) Breaking and entering not specifically listed above shall normally be treated as a low moderate severity offense; however, if the monetary loss amounts to $2,000 or more, the applicable property offense category shall be used. Similarly, if the monetary loss involved in a burglary or breaking and entering (that is listed) constitutes a more serious property offense than the burglary or breaking and entering itself, the appropriate property offense category shall be used.

(3) Manufacturing of synthetic drugs for sale shall be rated as not less than very high severity.

(4) Bribery of a public official (offering/accepting/soliciting) or extortion (use of official position) shall be rated as no less than moderate severity for those instances limited in scope (e.g., single instance and amount of bribe/demand less than $20,000 in value); and shall be rated as no less than high severity in any other case. In the case of a bribe/demand with a value in excess of $100,000, the applicable property offense category shall apply. The extent to which the criminal conduct involves a breach of the public trust, therefore causing injury beyond that describable by monetary gain, shall be considered as an aggravating factor.

(5) Obstructing justice (no physical threat)/perjury (in a criminal proceeding) shall be rated in the category of the underlying offense concerned, except that obstructing justice (threat of physical harm) shall be rated as no less than very high severity.

(6) Misprision of felony shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

(7) Harboring a fugitive shall be rated as moderate severity if the underlying offense is high severity or above. If the underlying offense is moderate severity or less, it shall be rated as low severity.

Definitions

a. "Other media of exchange" include, but are not limited to, postage stamps, money orders, or coupons redeemable for cash or goods.

b. "Drugs, other than specifically categorized" include, but are not limited to, the following, listed in ascending order of their perceived severity: amphetamines, hallucinogens, barbiturates, methamphetamines, phencyclidine (PCP). This ordering shall be used as a guide to decision placement within the applicable guideline range (i.e., other aspects being equal, amphetamines will normally be rated toward the bottom of the guideline range and PCP will normally be rated toward the top).

c. "Equivalent amounts" for the cocaine and opiate categories may be computed as follows: 1 gm. of 100% pure is equivalent to 2 gms. of 50% pure and 10 gms. of 10% pure, etc.

d. The "opiate" category includes heroin, morphine, opiate derivatives, and synthethic opiate substitutes.

Salient Factor Score

Register Number.....

Name.....

Item A.....☐
- No prior convictions (adult or juvenile) = 3
- One prior conviction = 2
- Two or three prior convictions = 1
- Four or more prior convictions = 0

Item B.....☐
- No prior commitments (adult or juvenile) = 2
- One or two prior commitments = 1
- Three or more prior commitments = 0

Item C.....☐
- Age at behavior leading to first commitment (adult or juvenile):
  - 26 or older = 2
  - 18–25 = 1
  - 17 or younger = 0

Item D.....☐
- Commitment offense did not involve auto theft or check(s) (forgery/larcency) = 1
- Commitment offense involved auto theft [X], or check(s) [Y], or both [Z] = 0

Item E.....☐
- Never had parole revoked or been committed for a new offense while on parole, and not a probation violator this time = 1
- Has had parole revoked or been committed for a new offense while on parole [X], or is a probation violator this time [Y], or both [Z] = 0

Item F.....☐
- No history of heroin or opiate dependence = 1
- Otherwise = 0

Item G.....☐
- Verified employment (or full-time school attendance) for a total of at least 6 months during the last 2 years in the community = 1
- Otherwise = 0

Total Score.....☐

NOTE: For purposes of the Salient Factor Score, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be treated as if a conviction, even if a conviction is not formally entered.

§ 2.21 Reparole consideration guidelines.

(a) If revocation is based upon administrative violations only [i.e., violations other than new criminal conduct] the following guidelines shall apply.

Positive Supervision History (Examples)	*Customary Time To Be Served Before Rerelease*
a. No serious alcohol/drug abuse and no possession of weapon(s) [and].	6 months.
b. At least 8 months from date of release to date of violation behavior [and].	Do.
c. Present violation represents first instance of failure to comply with parole regulations of this term.	Do.
Negative Supervision History (Examples)	
a. Serious alcohol/drug abuse (e.g., readdiction to opiates) or possession of weapon(s) [or].	6–9 months.
b. Less than 8 months from date of release to date of violation behavior [or].	Do.
c. Repetitious or persistent violations	Do.

(b)(1) If a finding is made that the prisoner has engaged in behavior constituting new criminal conduct, the appropriate severity rating for the new criminal behavior shall be calculated. New criminal conduct may be determined either by a new federal, state, or local conviction or by an independent finding by the Commission at revocation hearing. As violations may be for state or local offenses, the appropriate severity level may be determined by analogy with listed federal offense behaviors.

(2) The guidelines for parole consideration specified at 28 CFR 2.20 shall then be applied. The original guideline type (e.g., adult, youth) shall determine the applicable guidelines for the parole violator term, except that a violator committed with a new federal sentence of more than one year shall be treated under the guideline type applicable to the new sentence.

(3) Time served on a new state or federal sentence shall be counted as time in custody for reparole guideline purposes. This does not affect the computation of the expiration date of the violator term as provided by §§ 2.47(b) and 2.52 (c) and (d).

(c) The above are merely guidelines. A decision outside these guidelines (either above or below) may be made when circumstances warrant. For example, violations of an assaultive nature or by a person with a history of repeated parole failure may warrant a decision above the guidelines. Minor offense(s) (e.g., minor traffic offenses, vagrancy, public intoxication) shall normally be treated under administrative violations.

[FR Doc. 79-13877 Filed 5-3-79; 8:45 am]

BILLING CODE 4410-01-M

28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The U.S. Parole Commission is adopting the "preponderance of the evidence" standard to govern the resolution of disputed factual issues at parole determination proceedings. This rule extends to parole proceedings the standard of persuasion presently applicable by statute in parole revocation proceedings.

EFFECTIVE DATE: This rule will be effective beginning with parole hearings held on June 4, 1979.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Office of the General Counsel, United States Parole Commission, 320 First Street, N.W., Washington, D.C. 20537; telephone 202–724–3092.

SUPPLEMENTARY INFORMATION: On Thursday, March 8, 1979, the U.S. Parole Commission invited public comment on a proposed addition to 28 CFR 2.19 that would require the Commission to resolve disputes of fact in parole determination pleadings by a preponderance of the evidence. See 44 FR 12692 (March 3, 1979).

Such disputes may range from questions about the prisoner's past employment history to questions about the prisoner's relative culpability with regard to co-defendants or the extent of loss suffered by the victims of the crime. Whenever disputes of fact that are critical to the parole decision-making process have not been settled at trial, the Commission must exercise its independent fact-finding authority. See *Rosati* v. *Haran*, 459 F. Supp. 1148, 1160 (E.D. N.Y. 1977).

Selection of a Standard of Persuasion

The Commission's principal intent in adopting the preponderance standard is to ensure that parole decisions are based on information that the Commission has concluded, at a minimum, to be more likely true than not. The Commission believes that the mere possibility that an allegation is

true, even if the possibility is a substantial one, is not sufficient as a reason to deny parole.

The Commission concluded that the preponderance standard strikes an appropriate balance between the competing interests of society, which is concerned that offenders be held accountable for their crimes and that release will not jeopardize the public safety, and the prisoner, who has an important stake in a reasonable and fair parole decision. See 18 U.S.C. 4206. Under this standard, the Commission will be able to consider enough information for it to meet these important societal concerns, while affording a sufficient degree of protection to the prisoner in conjunction with the various procedural guarantees already afforded by statute and the Commission's regulations.[1]

The Problem of Unadjudicated Offenses

Some comments raised the issue of whether the Commission should, under any standard, consider aggravating circumstances about the prisoner's offense behavior when such circumstances may be legally defined as separate criminal offenses.

This situation occurs because prosecutors do not always obtain convictions upon all or the most serious offenses disclosed by the facts. This happens primarily because of plea bargaining. An average of 85 percent of all federal convictions are obtained by pleas, rather than by trials, and many of these pleas result in the dismissal of charges that are nonetheless supported by persuasive evidence.

Another reason for failure to convict on the most serious offense disclosed by the facts is jurisdictional; state charges are frequently dropped when federal prosecution is commenced for a less serious federal offense.

The problem is so common that the question is not simply whether the Commission should consider unadjudicated offense information in its decisions, but whether the Commission could afford to ignore such information and still fulfill the functions required of it by its enabling statute.

In the Commission's view, consideration of a wide scope of reliable information about the actual criminal transaction underlying the conviction is essential to a responsible paroling practice. Without such information, parole decisions would not reflect a realistic understanding either of the seriousness of the offense or of the relative danger that the offender's release may pose to the public safety. Moreover, serious disparities inherent in prosecutorial decisions would be unavoidably magnified by intolerably disparate parole decisions.

(a) *The Concern for Realism.*—If the Commission were to restrict its consideration to pleaded counts alone, it would frequently lack critical explanatory information about the "nature and circumstances of the offense," a consideration required by law: 18 U.S.C. 4206(a).

One frequently occurring prosecutorial practice is that of taking a plea to a lesser included charge, a practice that results in convicting the defendant for what is really a hypothetical behavior. A bank robber who kidnapped a teller may plead guilty to attempted robbery or bank larceny. See *Bistram* v. *U.S. Board of Parole*, 535 F.2d 329, 330 (5th Cir. 1976). An extortionist may plead guilty to a conspiracy to commit extortion. See *Billiteri* v. *U.S. Board of Parole*, 541 F.2d 438 (2d Cir. 1976). The Commission could not begin to treat such a plea as if it described a real event, for any available explanatory information would relate to the transaction that actually occurred.

In such cases as white collar crimes, the pleaded counts usually do not reflect anything near the actual dollar amounts involved, even though the nature of the unlawful behavior is established. Thus, in order to answer essential questions as to the amount of harm done and the scale of the offense, the Commission must look to information that was reflected in the dismissed counts. See *Manos* v. *U.S. Board of Parole*, 399 F. Supp. 1103 (M.D. Pa. 1975). These were obviously questions that the Congress thought proper for the Commission to ask. See 2 U.S. Code Cong. & Ad. News at 359 (1976).

(b) *The Concern for the Public Safety.*—Another consideration is what the offense behavior reveals about the offender himself, i.e., his likely motivation and characteristics. The need for realism in this regard is especially important in considering the degree to which the offender has shown himself capable of violent or dangerous behavior. One example of this would be a case in which the prisoner had been convicted of interstate transportation of stolen goods, not a particularly threatening type of behavior. However, the prisoner had originally been charged by local authorities with being the perpetrator of a robbery in which those goods were stolen. The robbery charge was dropped when the Federal conviction was obtained, even though there was "strongly probative" evidence of guilt. See *Lupo* v. *Norton*, 371 F. Supp. 156 (D. Conn. 1974). Likewise in *Narvaiz* v. *Day*, 444 F. Supp. 36 (W.D. Okla. 1977), information explaining the circumstances underlying a Firearms Act conviction disclosed behavior that amounted to extortion and kidnapping. The Commission could not conceivably ignore persuasive evidence that shows the prisoner to be a very different sort of release risk from that indicated by his plea.[2]

(c) *The Concern for Avoiding Disparity.*—Parole decision-making in both the federal and state systems also serves the function of preventing disparities in prosecutorial practices from being transferred to the highly visibly point at which the offender is finally released from prison.

It is unquestionable that significant disparities exist in the treatment of different types of offenders. For example, white collar offenders are more likely to strike a bargain to a lesser charge than bank robbers. Disparities also exist in the handling of similarly situated offenders. Depending upon local prosecutorial practices and caseloads, some offenders will be able to strike a favorable bargain while others will be brought to trial on all charges.

The criminal justice system has become dependent upon the sentencing judge and the parole authority to bring some measure of realism and consistency to criminal punishments. If they were not able to do so, the terms of the plea agreement would to a great extent predetermine the sentence. This would place in the hands of prosecutors a far greater degree of influence over sentencing and parole choices than they now possess, a transfer of discretionary authority that would not be acceptable. (Guidelines for prosecutorial discretion may be one way of ameliorating the present situation, if such guidelines made it more difficult for prosecutors to drop serious charges unless they had genuine doubts about the supporting evidence.)

Changes From the Proposal

The rule as adopted carries an additional statement clarifying the Commission's previous policy that if the Government has presented its evidence

[1] For example, a parole applicant is given the right to be heard in person, pre-hearing disclosure of the information to be considered, the right to present evidence, the right to have a representative, written reasons for parole denial, and the right to take an administrative appeal. See 18 U.S.C. 4206, 4208 and 4215.

[2] The Commission agrees with the reasoning of the Supreme Court in *Williams* v. *New York*, 337 U.S. 241 (1949), in which the Court permitted sentencing judges to consider unadjudicated offense information.

at trial and the defendant has been found not guilty, the Commission will not consider such evidence.

Implementation

The revised rule set forth below will be effective at all initial hearings beginning June 4, 1979. It is the general consensus of the Commission that its present practice [under a "persuasiveness" test adapted from *United States* v. *Weston*, 448 F. 2d 626, 633 (9th Cir. 1971)] has in the past afforded prisoners sufficient protection against reliance upon inaccurate allegations that the reopening of cases heard prior to June 4, 1979 would not be likely to change any decision and would be administratively unfeasible in any event.

Accordingly, pursuant to the provisions of 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR, Chapter I, Part 2, § 2.19, is amended to include a new paragraph (c) as set forth below:

§ 2.19 Information considered.

* * * * *

(c) The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the Prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability. However, the Commission shall not consider in any determination, charges upon which a prisoner was found not guilty after trial unless reliable information is presented that was not introduced into evidence at such trial (e.g., a subsequent admission or other clear indication of guilt).

(18 U.S.C. 4201–4218)

Dated: May 1, 1979.

Cecil C. McCall,

Chairman, United States Parole Commission.

[FR Doc. 79-14041 Filed 5-3-79; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final Rule.

SUMMARY: From time to time sentencing judges, defense attorneys, prosecutors, and other interested persons make written recommendations to the Parole Commission concerning the parole of a federal prisoner. This rule will clarify the factors that a recommendation for or against parole should address in order to be of greatest possible usefulness in the Commission's decision-making process.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, Office of the General Counsel, United States Parole Commission, 320 First Street, NW., Washington, D.C. 20537; telephone 202/724–3092.

SUPPLEMENTARY INFORMATION: On September 20, 1978, the U.S. Parole Commission published for public comment a proposed rule clarifying its position with regard to recommendations for and against the release on parole of particular prisoners. While this proposal was addressed generally to sentencing judges, defense attorneys, prosecutors, and other interested persons who may from time to time make recommendations concerning the parole of a prisoner, the Commission was especially desirous of addressing the concerns expressed by some federal judges that their recommendations concerning parole were not being followed by the Commission.

The point that the Commission wished to stress in this rule was that a recommendation for parole can be given weight in the parole determination only to the extent it supplies information which the Commission can use in framing a set of reasons for parole release that satisfies the statutory criteria for parole at 18 U.S.C. 4206. This section requires the Commission to consider whether release of the prisoner would depreciate the seriousness of the offense or promote disrespect for the law, and whether release of the prisoner would jeopardize the public welfare. These are the considerations that are critical to a parole release decision, and if they are to be satisfied, the statute requires that the Commission furnish specific information in its reasons, and in particular its reasons for any decision above or below the guidelines at 28 CFR 2.20. The Commission's expectation is that once this restriction on its discretion is better understood, judges and others will be better able to express their opinions to the Parole Commission in a way that the Parole Commission can respond to.

On January 29, 1979, a letter was sent to all United States District Judges enclosing a copy of the proposed rule requesting their comments. Replies were received from approximately 20 judges. Most letters expressed approval of the proposed rule, and all were appreciative of the Commission's continuing efforts to improve communication between it and the federal judiciary.

The rule also clarifies the Commission's present practice that no recommendation pursuant to a plea agreement by a federal prosecutor may be considered as binding the Commission to make any parole decision other than that which it will reach by its independent exercise of discretion. It is also important that defense attorneys be aware that prosecutors do not have authority to promise any particular parole result in the context of a negotiated plea.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(6), 28 CFR, Chapter I, Part 2, § 2.19 is amended to include a new paragraph (d) as set forth below:

§ 2.19 Information considered.

* * * * *

(c) Recommendations and information from sentencing judges, defense attorneys, prosecutors, and other interested parties are welcomed by the Commission. In evaluating a recommendation concerning parole, the Commission must consider the degree to which such recommendation provides the Commission with specific facts and reasoning relevant to the statutory criteria for parole (18 U.S.C. 4206) and the application of the Commission's guidelines (including reasons for departure therefrom). Thus, to be most helpful, a recommendation must state its underlying factual basis and reasoning. However, no recommendation (including a prosecutorial recommendation pursuant to a plea agreement) may be considered as binding upon the Commission's discretionary authority to grant or deny parole.

(18 U.S.C. 4201–4218)

Dated: May 1, 1979.

Cecil C. McCall,

Chairman, United States Parole Commission.

[FR Doc. 79-14042 Filed 5-3-79; 8:45 am]

BILLING CODE 4410-01-M

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28 CFR Part 2

Paroling, Recommitting, and Supervising Federal Prisoners

AGENCY: United States Parole Commission, Justice.

ACTION: Final rule.

SUMMARY: The Parole Commission is publishing new rules governing the disclosure of documents. These rules reconcile the different sets of exemptions to disclosure that are contained in the Parole Commission and Reorganization Act of 1976 and the Privacy Act of 1974, by making the Parole Commission Act exemptions apply to all disclosure requests for Commission documents. This simplification reflects the fact that there has been no significant difference in actual disclosure practice resulting from the different standards. In addition, the rules for the first time set forth the Commission's procedural rules for handling disclosure requests under the Privacy Act of 1974.

EFFECTIVE DATE: June 4, 1979.

FOR FURTHER INFORMATION CONTACT: Herman Levy, Office of the General Counsel, United States Parole Commission, 320 First Street NW., Washington, D.C. 20537; telephone 202–724–3092.

SUPPLEMENTARY INFORMATION: On August 17, 1977, the U.S. Parole Commission published a proposed set of disclosure rules that had the principal purpose of consolidating the exemptions to disclosure in the Privacy Act of 1974 with those of the Parole Commission and Reorganization Act: see 18 U.S.C. 4208(c). The proposal was a response to the problem of two separate sets of disclosure exemptions (with little or no substantive distinction in the material that could actually be withheld) applying to the same documents. The Commission determined that the Parole Commission Act exemptions were the more suitable ones, partly because of their simplicity and applicability in the context of parole documentation, and partly because they are the same exemptions that appear in Rule 32, F.R. Crim. P.

After approval of the Department of Justice, and after considerable revision in the light of public comment and meetings between Parole Commission staff and prisoners' representatives, the Commission finally approved the set of rules set forth below.

The rule represents a significant change from the original proposal in the following areas:

(1) The final rule requires institution staff to provide prisoners with notice of initial hearings and interim review hearings 60 days in advance of such hearing. This procedure will resolve the question raised in public comment as to whether 18 U.S.C. 4208(b) requires the Commission to afford the prisoner only notice, or an opportunity for actual disclosure, at the statutory thirty day mark.

(2) The language at § 2.55(d) explaining the summarization requirement of 18 U.S.C. 4208(c) has been revised to meet concerns that summaries of exempted information might not be specific enough to give the prisoner a sufficient understanding as to the nature of the exempted material (i.e., the assertions about the prisoner).

However, the rule recognizes that there may be some cases in which very little or no factual precision can be conveyed in a summary, for example, where the disclosure of any factual details would enable the prisoner to discover the identity of a confidential source. The Commission could not disregard relevant information of this nature, especially if it concerns the prisoner's potential for dangerous future behavior. See 18 U.S.C. 4206(a)(2). The rule is designed to ensure that such general summaries are not given unless clearly necessary.

(3) A section has been added to cover document disclosure when cases are reopened under 28 CFR 2.28. The sixty day notice rule would not apply in these instances (except when a new initial hearing is ordered) because such hearings are ordered in circumstances in which expeditious action is desired by both the prisoner and the Commission.

Some of the public comments urged the Commission not to exempt the presentence investigation report from the reach of disclosure under § 2.56. However, this document is viewed by the Commission as a court document that cannot be disclosed without the express permission of the court. This view is in conformity with the legal opinion of the General Counsel of the Administrative Office of the United States Courts. Since the judiciary has by no means adopted a uniform approach to disclosure of the presentence investigation report, the Commission's only option is to permit as much disclosure as the courts generally approve (review of the report prior to the parole hearing and discussion of its disclosable contents at the hearing) and to require that the prisoner obtain any further disclosure (i.e., copies of the report) directly from the sentencing court. The Commission also suggests that prisoner representatives who wish to obtain a copy of the presentence investigation report contact the sentencing court to arrange for direct disclosure from the court or for express permission for the Bureau of Prisons to copy the report for the prisoner. The sixty day advance notice period should be more than adequate for this purpose.

Accordingly, pursuant to 18 U.S.C. 4203(a)(1) and 4204(a)(b), 28 CFR, Chapter I, Part 2, § 2.55 is revised to read as follows; present § 2.56 through § 2.58 are redesignated as §§ 2.57 through 2.59 respectively, and a new § 2.56 is added as follows.

Dated: May 1, 1979.

Cecil C. McCall,

Chairman, United States Parole Commission.

§ 2.55 Disclosure of file prior to parole hearings: Prehearing review.

(a) *Procedure.* (1) At least 60 days prior to a scheduled hearing pursuant to §§ 2.12 or 2.14, each prisoner shall be furnished a notice of his right to request disclosure of the reports and other documents that may be relied upon by the Commission in making its determination.

(2) Upon request by the prisoner, review of disclosable documents in the institution file will be permitted by the Bureau of Prisons, pursuant to its regulations, within fifteen days of the request. Such review may be requested prior to the hearing, or at any other time thereafter.

(3) The prisoner shall be permitted to obtain, prior to a parole hearing, copies of any disclosable documents within the scope of this section that may have been retained in the Commission's regional office file, provided that the regional office receives such request at least thirty days in advance of such hearing to allow for processing.

(b) *Scope of disclosure.* The scope of disclosure under this section shall be limited to the following reports and other documents which the Commission utilizes in making its parole determinations:

(1) At initial hearings and reconsideration hearings, official reports and other documents conveying relevant information concerning the prisoner's offense behavior, prior record, history and characteristics, institutional performance, and parole release plan.

(2) At interim review hearings pursuant to § 2.14 of these rules, official reports and other documents informing the Commission of factors which have changed, or which may have changed, since the date of the last hearing.

(c) *Exemptions to disclosure.*—A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions, which if known to the prisoner could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise to any person. (18 U.S.C. 4208(c)).

(d) *Summarization of material withheld.* (1) If any document, or portion thereof, is deemed by the originating agency to fall within an exemption to disclosure, and non-disclosure appears warranted, such agency shall identify the material to be withheld and the basis for withholding under paragraph (b) of this section, and shall furnish for disclosure to the prisoner a summary conveying the general nature of the assertion(s) contained in the document withheld, with as much specificity as circumstances will permit. However, such summary should not be so specific that the protected items of information would be subject to identification.

(2) All official reports bearing upon the parole determination should be sent to the institution in which the prisoner is confined. Preparation for disclosure (including any necessary summarizing) must be completed prior to the submission of the report.

(3) Documents which have not been cleared for disclosure or summarized may not be considered by the Commission in its determination, without a signed waiver of disclosure from the prisoner.

(e) *Waivers of disclosure.* If any document relevant to the parole determination has not been disclosed to the prisoner within the time limits specified in this rule, the prisoner shall be offered the opportunity to waive prehearing disclosure of such document without prejudice to the prisoner's right to review the document (or a summary thereof) at any time thereafter. If the prisoner chooses not to sign a waiver, the examiner panel shall continue the hearing to the end of the docket, or to the next docket, in order to permit adequate disclosure. A continuance for the purpose of permitting disclosure may not be extended beyond the next hearing docket.

(f) *Late-received documents.* In the event an official report or other document is received following the parole hearing but during the pendency of the parole determination proceeding, and such document contains new and significant adverse information, the prisoner shall be placed on the next docket for a re-hearing and the document shall be promptly forwarded for inclusion in the prisoner's institutional file. The Commission shall notify the prisoner of such hearing and of his right to request disclosure of the document pursuant to the provisions of this section. If such document is determined not to contain new and significant information, it shall not be considered in the parole determination.

(g) *Reopened cases.* Whenever a case is reopened for a new hearing under § 2.28 or related sections, the relevant supporting document(s) shall be sent to the institution wherein the prisoner is confined and the prisoner shall be informed of his right to request disclosure of such documents.

(18 U.S.C. 4208)

§ 2.56 Disclosure of Parole Commission regional office file (Privacy Act disclosure).

(a) *Procedure.* Copies of disclosable documents pertaining to a prisoner or parolee which are contained in the Regional Office files of the Commission may be obtained at any time by that prisoner or parolee upon written request pursuant to the Privacy Act of 1974. Such request shall be answered within forty business days of its receipt, absent an emergency. Other persons may obtain copies of such documents only upon proof of authorization from the prisoner or parolee concerned.

(b) *Scope of disclosure.* Disclosure under the Privacy Act of 1974 shall extend to Commission documents concerning the prisoner or parolee making the request. Documents which are contained in the regional file and which are prepared by agencies other than the Commission shall be referred to the appropriate agency for a response pursuant to its regulations, unless such document has previously been prepared for disclosure pursuant to § 2.55 or is fully disclosable on its face. Any request for copies of court documents (including the presentence investigation report) must be directed to the appropriate court.

(c) *Exemptions to disclosure.* A document may be withheld from disclosure to the extent it contains:

(1) Diagnostic opinions, which if known to the prisoner could lead to a serious disruption of his institutional program;

(2) Material which would reveal a source of information obtained upon a promise of confidentiality; or

(3) Any other information, which if disclosed, might result in harm, physical or otherwise, to any person.

(d) *Specification of documents withheld.* Documents that are withheld pursuant to paragraph (c) of this section shall be identified for the requester together with the applicable exemption for withholding each document or portion thereof. In addition, the requester must be informed of his or her right to appeal any non-disclosure to the Office of Privacy and Information Appeals (Associate Attorney General).

(e) *Hearing record.* Upon request by the prisoner or parolee concerned, the Commission shall promptly make available a copy of any verbatim record (e.g. tape recording) which it has retained of a hearing, pursuant to 18 U.S.C. 4208(f).

(f) *Costs.* In any case in which reproduction costs exceed three dollars (e.g. reproduction of over thirty pages or of one cassette and twenty-four pages), prisoners will be notified that they will be required to reimburse the United States for such reproduction costs. The Regional Commissioner may waive such reimbursement upon a showing of the prisoner's inability to pay. The Regional Commissioner may require payment in advance of making a disclosure in circumstances where deemed necessary.

(g) *Cross References.* The Commission's authority to promulgate rules governing disclosure pursuant to the Privacy Act of 1974 may be found at 28 CFR 16.85.

(5 U.S.C. 552(a)(j)(2))

§§ 2.57 through 2.59 [Redesignated from §§ 2.56 through 2.58]

[FR Doc. 79-14043 Filed 5-3-79; 8:45 am]

BILLING CODE 4410-01-M

Federal Register

Friday
May 4, 1979

Part V

Department of Agriculture

Forest Service

Proposed Guidelines for Land and Resource Management Planning in the National Forest System

DEPARTMENT OF AGRICULTURE

Forest Service

[36 CFR Part 219]

National Forest System Land and Resource Management Planning

AGENCY: Forest Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department of Agriculture proposes to issue regulations to guide land and resource management planning in the National Forest System. These rules require an integration of planning for National Forests and Grasslands, including the timber, range, fish and wildlife, water, wilderness, and recreation resources, together with resource protection activities and coordinated with fire management and the use of other resources, such as minerals. The proposed rules will implement provisions of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976.

DATE: Comments should pertain to the Secretary of Agriculture's proposed regulations and should cite the specific section and **Federal Register** page number. Comments must be submitted on or before July 3, 1979.

ADDRESSES: Send comments to Chief, Forest Service, USDA, P.O. Box 2417, Washington, D.C. 20013. All written submissions will be available for public review in room 4021, South Agriculture Building, 12th and Independence Avenue SW, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Charles R. Hartgraves, Director, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013, 202–447–6697.

1. Purpose

The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (88 Stat. 476, et seq.), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949, et seq.) (16 U.S.C. 1601–1614), specifies that an interdisciplinary approach will be used in land and resource management planning and that there will be a periodic review of the planning process, followed by any necessary amendments, to keep it current with statutory requirements. These statutes also provide for the establishment and revision of national, regional and local resource goals and objectives which are based on a periodic assessment of the future supply and demand of renewable resources from public and private forest and range lands. Achievement of these goals and objectives is the purpose of the planning process provided in these regulations. These acts also require public participation in the development, review and revision of land and resource management plans, and the coordination of such plans with State and local units of government and other Federal agencies.

These rules apply to all land and resources management plans developed hereafter for the National Forest System.

These rules require an integration of planning for national forests and grasslands, including the timber, range, fish and wildlife, water, wilderness, and recreation resources, together with resource protection activities and coordinated with fire management and the use of other resources, such as minerals. By October 1985, plans required by these regulations should be developed for all National Forest System lands.

2. Introduction

The first draft of the proposed rules was published in the August 31, 1978, **Federal Register** (43 FR 39046). The public was invited to comment on the proposed rules through October 30, 1978. However, as a result of numerous requests, the comment period was extended until December 16, 1978. From August 1978 until the present time, the Department has not only received written submissions, the forest Service and Department have maintained an "open door" policy with the public and interest groups to obtain new input and keep the public aware of current events. The Committee of Scientists has continued to conduct public meetings during this time to complete its report to the Secretary and also receive additional input. The Committee's final report was submitted to the Secretary of Agriculture on February 22, 1979 and is printed at the end of these proposed regulations. In addition, two public meetings were held to discuss the August 31, 1978 draft rules. The Department has received letters from members of Congress, Federal and State agencies, representatives of various interests groups, as well as the general public. Individual letters and a Public Comment Analysis are available for review in the office of Land Management Planning, Forest Service, Washington, D.C. and offices of the Regional Forester, located in Albuquerque, New Mexico; Atlanta, Georgia, Denver, Colorado; Juneau, Alaska; Milwaukee, Wisconsin; Missoula, Montana; Ogden, Utah; Portland, Oregon; and San Francisco, California. As a consequence of this public input and related activities, it was decided to revise the draft and resubmit the regulations to the public in draft form accompanied by a draft environmental impact statement (DEIS). The DEIS documents and explains the significant differences between the August 31, 1978 draft and this revised draft, discusses and evaluates other alternatives, and contains a summary analysis of public comments. The DEIS has been published with these proposed regulations and follows the Summary of Public Comment Analysis. Additional copies of the DEIS are available upon request from the office of Land Management Planning, Forest Service, Washington, D.C.

3. Summary of Public Comment Analysis

A total of 737 individual responses were received containing 5,373 individual references to various sections of the proposed rules. Forty-two percent of the 5,373 comments were general in nature; that is, they addressed broad overall issues (relating to, for example, recreation, wildlife, and wilderness) and 58 percent contained specific references.

Approximately 52 percent of the comments were from local organizations and individuals; 44 percent were from national organizations (e.g., Sierra Club, National Forest Products Association), 3 percent from government agencies (Federal, State and local); less than 1 percent of the replies were in other forms, such as petitions.

The greatest interest was expressed in the Resource Management and Guidelines section (219.10), particularly § 219.10(d) Timber Resource, which accounted for 56 percent of all specific comments. The next largest group of comments related to § 219.9 Forest Planning Process, followed § 219.8 Forest Planning Procedures.

The **Federal Register** of August 31, 1978 also contained two alterate versions proposed by environmental and industry groups, specifically § 219.10(d)(2) Timber Producing Lands and 219.10(d)(4) Determination of the Allowable Sale Quantity. Comments on these alternatives were considered in redrafting these sections.

It was evident from the interpretations made by the public that the proposed rules needed clarification. For example, the proposed rules allow for "consideration" of a departure from nondeclining yield; comments received indicated many people felt that departures would be considered "routine." The regulations require that

alternatives (departures) to the base timber harvest schedule be formulated and considered when certain specific conditions exist in the forest unit or local area. All harvest schedules, including proposed departures from the base schedule, must be calculated under the constraint that long-term sustained-yield capacity can be achieved at the end of the planning period.

Outline

The basic outline of the regulations in this draft has been restructured for clarity. Sections have been added in an attempt to improve ease of understanding.

Changes in format are illustrated below:

New Outline	*August 31, 1978 Outline*
219.1 Purpose	219.1 Purpose
219.2 Scope and Applicability	219.2 Scope and Applicability
219.3 Definitions	219.3 Definitions
219.4 Planning Levels	219.4 Planning Levels
219.5 Planning Process	
219.6 Interdisciplinary Approach	219.5 Interdisciplinary Approach
219.7 Public Participation	219.6 Public Participation
219.8 Coordination of Public Planning Efforts	219.7 Coordination of Public Planning Efforts
219.9 Regional Planning Procedure	
219.10 Criteria for Regional Planning Actions	
219.11 Forest Planning Procedure	219.8 Forest Planning Procedure
219.12 Criteria for Forest Planning Actions	219.9 Forest Planning Process
219.13 Management Standards and Guidelines	219.10 Resource Management Standards and Guidelines
219.14 Research	219.11 Research
219.15 Revision of Regulations	
219.16 Transition Period	219.12 Transition Period

Summary Analysis of Public Comments

219.1 Purpose. In response to limited public comments that this section is somewhat unclear and confusing, the set of principles for all levels of planning was expanded to reflect (1) protection and improvement of the quality of all renewable resources, not limited only to soil, air, and water; (2) the inclusion of pest management practices into land and resource management planning; (3) clarification of the purpose of an interdisciplinary approach to planning activities; and (4) the inclusion of the desire to coordinate Forest Service planning efforts with adjacent private landowners.

One of the previous principles, "balanced consideration of all renewable resources and their various uses" was reworded. The statement was criticized because various resource values cannot be adequately measured to permit marginal comparisons.

219.2 Scope and Applicability. It was suggested that regulations and agreements executed pursuant to the legislative acts specifically named in § 219.2, as well as other major legislation and direction, should be added. The comments showed the meaning of this section was not fully understood. The proposed regulations concern planning, and this section addresses the scope of the planning regulations and their applicability to the lands being administered. It recognizes that there are other more specific planning requirements which may apply to certain lands. This section is not meant to identify every statute which may need to be considered and implemented through the planning process. The section has been rewritten to make clear that it relates to planning requirements. It was also suggested that a provision be added that all plans adopted since the passage of the National Forest Management Act (October 1976) would be brought into conformity with the proposed rules. This subject is covered in § 219.16 Transition Period.

219.3 Definitions. Terms such as "economic efficiency," "diversity," "environmental assessment," and "capability" were considered unclear or confusing. Most of the definitions were restated more clearly, and several new terms suggested by the public and the Committee of Scientists were defined: integrated pest management, standards, guidelines, policy, Program, Assessment, real dollar value, multiple use, management direction, management practices, environmental documents, and sustained yield of the several products and services.

The definitions included in the original § 219.10(d) Resource Management Standards and Guidelines for the timber resource were modified and moved to § 219.3 for organizational conformity.

219.4 Planning Levels. Originally § 219.4 attempted to describe the flow of information and management direction among the national, regional and forest levels of planning. Public response indicated that the linkage between the 3–tiered planning process of the Forest Service was unclear and, therefore, weakened accountability. It also appeared to be "top/down planning" without the benefit of forest capability information being available at the national level. This section has been rewritten to clarify the iterative nature of the three levels of planning.

The public is shown how planning criteria govern the planning process and how management standards and guidelines govern management practices, including monitoring practices. Procedural standards are addressed separately in detail in the new § 219.9 Regional Planning Procedure and § 219.11 Forest Planning Procedure. Planning criteria for regional and forest planning in compliance with NEPA are included in § 219.10 and 219.12, respectively. The revised regulations contain an expanded and more detailed role and function of national, regional and forest planning. Management standards and guidelines are detailed in the new § 219.13 Management Standards and Guidelines.

219.5 Interdisciplinary Approach. This section is renumbered § 219.6. Most of the Committee of Scientists proposed language has been adopted in the revised version. The role and responsibilities of the team have been more clearly specified. The revision includes requirements for composition of the team and for qualifications for team members.

The public's request for greater interagency cooperation and coordination is specifically addressed as one of five specific functions to be performed by the interdisciplinary team to achieve integration in planning. This topic is further addressed in § 219.8 Coordination of Public Planning Efforts.

Concern was expressed that the responsible Forest Service official has "too much power over the team." The interdisciplinary team will prepare all land and resource management plans. The regional forester will be responsible for preparation and implementation of the regional plan and approval of forest plans, while the Chief, Forest Service, will have responsibility for approval of regional plans. The forest supervisor will be responsible for preparation and implementation of the forest plan. The forest supervisor will also appoint and supervise the interdisciplinary team, which will develop the forest plan under the NEPA process. After consideration of this concern, the Department has determined that the responsible Forest Service official (regional forester or forest supervisor) is obligated to guide and manage the team which will be composed of various disciplines.

219.6 Public Participation. This section became § 219.7 in the new outline. Comments suggested that this section was not specific enough and, therefore, weakened the public participation process.

In response to the public and the Committee of Scientists' report, the

proposed rules state the intent to public participation, and encourage participation throughout the planning process.

Another topic of concern was how public participation would be evaluated, summarized, and used by the Forest Service. A paragraph was developed specifically stating how public participation input would be analyzed and evaluated (219.7(e)).

Respondents indicated that the amount of time allowed for public response to planning activities was unrealistic. The Department agreed this was a valid concern, and increased the amount of time allowed for written comments on national and regional planning from 60 days to 90 days.

The subject of scheduling public participation activities at specific points in the planning process is addressed in the new § 219.7(b). Section 219.7(c) requires that public participation will begin with publication of a notice in the media. All public participation will be coordinated with the National Environmental Policy Act requirements and its regulations.

The request for greater Federal, State and local agency participation is addressed in specific detail in new § 219.8 Coordination of Public Planning Efforts.

219.7 Coordination of Public Planning Efforts. This section has been renumbered § 219.8, and considerably expanded. Public comments suggested that this section lacked specific guidelines for coordinating public planning efforts, thereby leaving decisions entirely to the discretion of the responsible Forest Service official. An interdisciplinary team will prepare all plans under the direction of a Forest Service official. The proposed rules require that planning be thoroughly coordinated among all levels of government to promote efficient management of the resources from the National Forest System.

The comments indicated that greater attention should be given to coordinating planning efforts with adjacent private landowners. This was considered a valid concern which was not adequately addressed in the August 31, 1978 proposed rules, and the new draft specifically requires this coordination (219.8(b)(1)).

Criteria are specified pertaining to coordination of planning efforts at each level of the Forest Service. An entire new subsection is devoted to better facilitation of State and local government participation through the requested appointment of an official by each Governor to work closely with the Forest Service.

219.8 Forest Planning Procedure. Significant revisions of the second draft are reflected in the new §§ 219.5 Planning Process, § 219.9 Regional Planning Procedure, § 219.10 Criteria for Regional Planning Actions, § 219.11 Forest Planning Procedure, and § 219.12 Criteria for Forest Planning Actions. These revisions attempted to resolve areas of confusion, such as:

1. Specific responsibilities and accountability of Forest Service officials. This subject is now addressed in § 219.5, 219.9, and 219.11.

2. The administrative appeal procedures for regional and forest plans.

These have been changed due to conflicts with amendment and revision provisions of the NFMA, which require that significant changes in plans be made in accordance with the planning process. Under new § 219.7 Public Participation, paragraph (o), the administrative appeal procedure is addressed; i.e., planning decisions pursuant to the NFMA regulations will be excluded from review under 36 CFR 211.19 and any other administrative appeal procedures. The development of land management plan under section 6 of the National Forest Management Act and these regulations is more like a rulemaking process than an adjudicatory process. Anticipated grievances should be addressed during the planning process. A proposed plan could not be significantly changed without complying with planning process requirements, such as public participation; therefore, any decision on appeal would be limited to remanding the plan to the interdisciplinary team for reconsideration. Since there is ample opportunity during plan development for public involvement and coordination, administrative appeals would only prolong the resolution of controversial issues. After final plan approval, a management decision may be appealed on the grounds of nonconformity or because a decision otherwise constitutes an appealable grievance. The Chief's decision regarding the selected harvest schedule under § 219.12(d)(2) may be appealed to the Secretary of Agriculture.

3. Strong public support for availability of copies of plans upon request.

The new draft regulations remain unchanged regarding the various locations where plans must be available. The Federal Government cannot require county courthouses or State offices to maintain copies of the plans, as requested by some respondents and the Committee of Scientists. Copies of environmental impact statements and land and resource management plans will be available upon request.

4. The relationship between national, regional and forest planning.

As previously discussed, a significant revision is reflected in § 219.4 Planning Levels, as well as the development of separate sections on forest and regional planning.

5. Expansion of requirements for documentation of the planning procedures and process followed.

A system must be maintained that records decisions made and actions followed in the development, revision, and amendment of regional and forest plans. The planning process records are detailed in new §§ 219.9 and 219.11.

6. The relationship between scheduling of activities and associated budget levels.

This is addressed in new § 219.5 Planning Process under (j) Plan Implementation, where basic minimum requirements are stated.

7. The revision of a forest plan every 15 years was considered too lenghty.

A revision of the forest plan is mandatory every 10 years, or earlier if significant changes have occurred. The conditions on the land covered by the forest plan must be reviewed every 5 years in conjunction with the Program to determine if management direction, conditions, or public demands have changed significantly.

8. Economic analysis comments.

Economic efficiency was thought by some respondents to be the major criteria for development of a plan. In § 219.1 Purpose, the Department stated its policy for management of National Forest System lands; i.e., they will be managed in a manner sensitive to economic efficiency standards.

The public suggested detailed requirements for determining irretrievable resource commitments, opportunity costs and assessment of benefits and costs.

Additional requirements have been provided under new § 219.5(e), (f), (g), and (h) of the planning process.

9. Formulation of alternatives.

Some respondents suggested the development of a "no-change" rather than "no-action" alternative. This is basically a misunderstanding of terminology. Language in the proposed rules now follow Council on Environmental Quality regulations. Refer to new § 219.5(f) Planning Process.

219.9 Forest Planning Process. The public asked that specific methods and

procedures applied during the planning process be clearly stated.

The planning process is the same for all land and resource management planning and was moved to the new § 219.5. The forest planning process is detailed in new § 219.12 Criteria for Forest Planning Actions. Criteria specific to regional planning was placed in new § 219.19.

The public comments on § 219.9 Forest Planning Process centered particularly on the relationships between national and forest planning process. This particular concern necessitated the developent of § 219.9 and 219.10, which depict the linkage between the national and forest levels; i.e., the regional plan. This linkage and flow of information is also further discussed in § 219.4 Planning Levels. Procedural standards are described for the forest plan in § 219.11 and for the regional plan in § 219.9. Management standards and guidelines are detailed in § 219.13.

219.10 Resource Management Standards and Guidelines. A change in the format of this section has been made and the section renumbered § 219.13 Management Standards and Guidelines. All headings designating functional resources have been deleted to reflect the integrated planning process. Planning criteria previously contained in § 219.10 are contained in § 219.12 Criteria for Forest Planning Actions.

Major resource issues and concerns identified by the public and the Committee of Scientists have been addressed in § 219.12, Criteria for Forest Planning Actions. Standards and guidelines applicable to all resources and management practices are stated in the new § 219.13(b). The Forest Service Manual contains additional standards and guidelines for management of resources and are referenced in the regulations.

The following concerns were addressed in the new § 219.12 and 219.13. Committee of Scentists' recommendations were used in revising these sections. The following describes the Department's rationale for dealing with the identified issues and concerns:

219.10(a) Fish and Wildlife. Material which was addressed in this section has been moved to § 219.12(g).

Species selected as indicators should include invertebrates. If invertebrates were included, the situation would be unmanageable because of the large number of species. Therefore, it was concluded, and agreed to by the Committee of Scientists, that invertebrate life forms should not be included.

Effects of proposed changes in diversity on fish and wildlife should be evaluated. All managment practices must provide for and maintain diversity of plant and animal communities to meet the multiple-use objectives of the planning area. There will be evaluations conducted regarding prior and present conditions. Populaion trends will be monitored. Diversity is covered in new § 219.13(g).

Measures should be prescribed to promote conservation of threatened and endangered species. The forest plan will give direction to prescribe management practices which protect and enhance critical habitat of threatened and endangered species. Refer to § 219.12(g).

219.10(b) Range Resource—Determination of present and potential grazing and range development opportunities. The forest plan will contain an estimate of the capability of the rangelands to produce food and cover for wildlife, as well as estimates of the potential forage for livestock. Data will be collected on rangeland conditions and trends.

Establishment of measures to prevent overgrazing. The forest plan, in accordance with criteria established in the Forest Service Manual, will analyze the capability of the land to produce forage without permanent impairment of rangelands. Grazing management systems will be established through direction in the Manual.

Application of economic analysis to range management. Economic analysis is addressed in § 219.5 for all resources.

219.10(c) Recreation Resource. Planning criteria for recreation are now in the new § 219.12(i).

Public comment indicated this section was conceptually sound, but additional language is needed to ensure implementation. In addition to the goals established in the regional plan and requirements of the Forest Service Manual, implementation is ensured through the direction, in regulations, of specific requirements that must be accomplished to meet the demands for recreation opportunities.

Additional items suggested for inclusion were: Trail development and maintenance, recreaction standards for transportation, guidelines for recreation development, guidelines for recreation development and use to protect resources, coordination with State outdoor recreation plans, wilderness recreation planning, evaluation of econimic and environmental impacts of recreation activities, and the adverse effects or recreation on other management activities with plans for mitigation. These items will be dealt with in the planning process with specific guidelines provided through Forest Service Manual direction. Site-specific development standards will be provided in the forest plan. Project implementation will be within standards set by the forest plan.

Direction should be provided on how recreation data will be used in the planning process. Recreation data will be used to help identify lands suitable for recreation opportunities, assess the need for future recreation facilities, and develop alternatives. Data needs vary according to planning problems. Data will be periodically evaluated for accuracy and reliability.

219.10(d) Timber Resource. This material is now included in §§ 219.12 and 219.13. Due to the large number of comments, the following discussion is presented by subparagraphs.

219 10(d) Definitions. The main concern expressed was that the definitions for timber could not be easily understood. The definitions have been rewritten for clarity and moved to § 219.3 Definitions to achieve continuity.

219.10(d)(2) Timber Producing Lands. The idenitfication of lands not suited for timber production received considerable attention and the comments can be divided into three classes. The August 31 draft was: (1) Too restrictive; (2) adequate because it provides management flexibility; or (3) in need of more explicit standards.

A major area of conflict involved the establishment of specific national biologic standards for classifying lands as suitable for timber production rather than allowing regional establishment of such a standard. Another was the need for an economic analysis to determine suitablility. The proposed rules have been revised to improve clarity and to give direction regarding relative economic sutiablility of lands for timber production. The minimum biological growth standard will be established by the regional plan. The function of this standard is to remove from consideration, and therefore analysis, those lands that are clearly unable to produce timber. This will provide a cost savings in the analysis that follows. Refer to § 219.12(b)(2).

219.10(d)(3) Silvicultural Systems. Comments centered around the need to clarify: (1) The criteria for the selection of the silvicultrual system and cutting method, (2) how criteria are established for the maximum size of forest openings, and (3) requirements for diversity of plant and animal communities.

Information on the selection of silvicultural systems and cutting methods was consolidated and moved

to § 219.13(c) and (d) in order to emphasize that the selection affects all resources, not just timber. These criteria require that all silvicultrual systems and cutting methods be the best suited for the multiple-use objectives of the area, based upon an interdisciplinary evaluation.

The Department has determined that limits on the size of openings will be established through the regional planning and the NEPA process. Criteria are contained in §§ 219.10(d) and 219.12(c); management standards and guidelines are in § 219.13(d).

The background statements and the legislative history indicated that a primary concern was the rate of conversion of hardwoods to conifers. The Proposed standards for diversity and conversion of forest types have been expanded with more emphasis on type conversions. Additional requirements have been specified to ensure coordination with other Federal, State and local agencies. Specific requirements for designation and management of special interest areas and research natural areas have been added in the revised regulations.

219.10(d)(4) Determination of the Allowable Sale Quantity. Departures from the base timber harvest schedule received a great deal of comment. The comments suggested the need to: (1) Define approval authority for departures, (2) provide detailed criteria to ensure that departures are based on truly exceptional circumstances, and (3) question validity of local economic stability as a departure criterion.

With the exception of specifying that the Chief, Forest Service, must approve departures, the revised regulations are similar to the original draft concerning this issue. The Department has determined that consideration of local economic disruptions should be maintained.

219.10(d)(5) Harvest Schedule Selection. There were relatively few comments on this section and revisions reflect suggestions by the Committee of Scientists. The requirements remain essentially unchanged from the original draft and have been incorporated into several sections.

219.10(d)(6) Control Measures and 219.10(d)(7) Monitoring. Many commentors suggested that control measures and monitoring requirements should be integrated in the regulations. This recommendation has been adopted in the revised draft.

The major concern was that specific control measures for timber harvest activities are lacking. Material on control measures has been incorporated into several sections. For controls on timber harvest activities, see § 219.13(i). Additional monitoring and control measures are required to be established in regional and forest planning. See §§ 219.5(k), 219.9(i) and 219.11(i).

219.10(e) Water and Soil Resource. This material is now contained in § 219.12(k). *Include evaluation of effects of changes in sediment output.* All plans must comply with requirements of Federal, State and local governments. Watershed conditions which will affect water pollution will be evaluated. Instream flow requirements are determined by standards in the Forest Service Manual. New § 219.13(e) states that "Special attention shall be given to land and vegetation along both sides of all perennial streams, lakes, and other bodies of water. No management practices will be permitted which seriously and adversely affect water conditions or fish habitat."

Consideration of increasing water yield through manipulation of vegetative cover. Any management practice that involves manipulation of vegetative cover must assure conservation of soil and water resources. Watershed conditions that influence water yield also must be evaluated.

Identification of impacts of impoundments upon fish, wildlife, and water resources. The regulations specifically state that impacts of impoundment must be identified. Guidelines for identification are contained in the Forest Service Manual.

Clarify direction for floodplains and wetlands protection. The regulations specifically state measures, in accordance with applicable Executive Orders, that will be adopted with respect to the restoration and preservation of floodplain values and protection of wetlands.

Forest Service should meet minimum water quality standards and follow a policy of improvement of water quality. All management practices will conserve water resources and meet requirements of other legislation with respect to water quality standards. Instructions will be contained in technical Forest Service Handbooks.

219.10(f) Wilderness Resource. This material is now contained in §§ 219.12(e) and 219.12(f).

Modified management on lands adjacent to wilderness. The effects of management of lands adjacent to wilderness will be evaluated using criteria developed by the interdisciplinary team.

Evaluation of plant diversity and rare and endangered species. When an area is considered for potential wilderness, the effects of long-term changes in plant (and animal) species will be considered.

The interdisciplinary team should propose eligible lands for wilderness use, based on current resource analysis. Lands suited for wilderness will be considered as a normal part of the planning process by the interdisciplinary team. The forest supervisor has authority to recommend an area for wilderness consideration in the forest plan. (The Congress has approval authority for wilderness designation pusuant to the National Wilderness Preservation Act.)

All areas should be considered for wilderness designation in the "first generation" of forest plans. The Department has determined that areas identified for uses other than wilderness during RARE II need not be re-evaluated for wilderness until the first revision of the forest plan. This is addressed in detail in § 219.12(e).

Section 219.10(f)(2), which deals with revision of forest plans, is unclear and confusing in the following area: "How do contiguous lands become available for uses other than wilderness?" All lands are evaluated for multiple use during the planning process. An area contiguous to existing wilderness will be evaluated for its wilderness potential through the process, and can become available for uses other than wilderness.

Section 219.10(f)(3) is in conflict with 219.10(f)(1) and could be legally challenged. These sections were not in conflict and have been clarified in the revised regulations.

It is inappropriate to focus only on limiting visitor use in wilderness management. Direction for limiting visitor use is provided in the forest plan, in accordance with periodic estimates of the maximum levels of use that will not impair the wilderness values. Additional management direction, such as dispersal of use by trail location management, will be addressed in the forest plan.

Consideration of non-renewable resources is lacking. A new subsection on minerals has been added to the forest plan criteria under § 219.12(j).

219.11 Research. This material is now contained in § 219.16. *Establishment of Research Natural Areas through the planning process.* A new subsection is devoted to this subject (219.12(m)) in response to public request and the Committee of Scientists' recommendation.

Emphasize cooperative research efforts with other public and private research activities. Research needs will be identified during the monitoring and evaluation described in § 219.5 Planning

Process, and continually reviewed. These needs are addressed in the formulation of overall programs, and include private lands as well as public lands.

Basic research should be mandated by proposed rules rather than the planning process. The rules are process oriented to identify research needs. Basic research is an integral part of the research program and will continue.

219.12 Transition Period. This material is now contained in § 219.17.

Will proposed regulations be applicable to existing management practices? Until development of a forest plan under the promulgated NFMA regulations, land may be managed under existing plans.

Will plans developed between the passage of NFMA and final regulations have priority for being brought into conformity with NFMA? These plans have attempted to incorporate as much of the provisions of NFMA as possible.

4. Record of Decision

The Draft Environmental Impact Statement (DEIS) analyzes alternative regulations for National Forest System resource planning. Based on the analysis, I have decided to propose that Alternative No. 6 be considered as the preferred Alternative. The proposed regulations are printed in this issue of the **Federal Register** and follow this DEIS. The public review and comment period expires 60 days following the date of this Record of Decision, or the date of publication in the **Federal Register** whichever is later.

The National Forest Management Act has directed the development of the proposed regulations by identifying standards and guidelines to be addressed and by establishing a Committee of Scientists to review and advise on this effort. The Act reduced the range of alternatives available for development of the regulations. Nevertheless, alternatives of terminology, planning processes, regulation language, etc., have been developed through extensive public involvement, by the Committee of Scientists, and evaluated during this process, including preparation of this DEIS.

Implementation of the proposed regulations may take place after publication of a Final Environmental Statement, and final printing of the regulations in the **Federal Register** following initial public review and comment. Questions regarding this Draft Environmental Statement should be sent to the USDA Forest Service, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013.

This Draft Environmental Statement was filed with the Environmental Protection Agency.

Dated: April 16, 1979.

Bob Bergland,
Secretary.

5. Draft Environmental Impact Statement

Proposed Regulations for National Forest System Planning

1920 Land Management Planning

Forest Service, USDA

Lead Agency: United States Department of Agriculture, Washington, D.C. 20013.

Responsible Official: Bob Bergland, Secretary of Agriculture, Washington, D.C. 20013.

For Further Information Contact: Charles R. Hartgraves, Director, Land Management Planning, P.O. Box 2417, Washington, D.C. 20013. (202–447–6697).

Absract:

This Draft Environmental Impact Statement (DEIS) analyzes and evaluates alternative sets of proposed regulations developed in response to Section 6 of the National Forest Management Act. The regulations prescribe the process for preparation of all land and resource management plans developed hereafter for each administrative unit of the National Forest System. Also prescribed, and integrated into the planning process, are a number of technical standards which govern the conduct of management practices. The DEIS describes the conceptual basis for the planning process described in the proposed regulations, and the issues central to their need.

The alternative regulations are procedural. Though their promulgation has only indirect effects on the quality of the human environment, there are important policy matters to consider in the use and application of a given alternative. This is especially true in the application of technical standards (specified management standards and guidelines) whose impacts are variable depending upon where they are applied. The qualitative nature of effects is addressed in this Draft Environmental Impact Statement. Specific impacts will be discussed in detail and in quantitative terms in regional and forest level plans prepared under these proposed regulations. An environmental impact statement will be prepared for such plans pursuant to Council on Environmental Quality and Forest Service National Environmental Policy Act regulations.

Summary

Draft Environmental Impact Statement

Proposed Regulations for National Forest

System Resource Planning

1920 Land Management Planning

Forest Service, USDA

Responsible Federal Agency: United States Department of Agriculture, Washington, D.C. 20013.

Responsible Official: Bob Bergland, Secretary of Agriculture, Washington, D.C.

For Information Contact: Charles R. Hartgraves, Director, Land Management Planning, USDA Forest Service, P.O. Box 2417, Washington, D.C. 20013. (202–447–6697).

Date of Transmission to EPA and to the public: Draft: May 4, 1979.

Summary

I. The Department of Agriculture proposes to issue regulations to guide land and resource management planning for the National Forest System. This Draft Environmental Impact Statement analyzes and evaluates alternative sets of proposed regulations developed in response to the Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA). The latter statute requires that regulations be issued which describe the process for developing and revising land management plans for administrative units of the 187 million-acre National Forest System. The regulations explain the process and contain management guidelines and standards which relate to the national, regional, and local resource goals established by the Forest Service Renewable Resources (RPA) Program. This insures that economic, environmental, and ecological aspects are consistent with the RPA, Multiple Use-Sustained Yield Act, and other statutes which affect Forest Service activities. The regulations require integrated planning throughout the NFS for the management, protection, and use of timber, range, fish and wildlife, water, recreation, and wilderness resources. The required integration is accomplished with the aid of interdisciplinary teams, public participation, and is coordinated with the land management planning processes of States and local government's and other Federal agencies.

The NFMA was enacted to resolve long-standing issues about managing National Forest resources. The central or primary issues and concerns which are discussed in this DEIS and which the proposed regulations address are:

—The conceptual framework for the integrated planning process

—The interdisciplinary approach to planning

—Diversity of tree species and plant and animal communities

—The role of economic analysis

—The determination of lands not suited for timber production

—Departures (limitations on timber removal)

—Size of openings created by harvest cutting

—Public participation

—Management of wilderness areas, and disposition of roadless areas.

—Coordination in planning between Federal, State, and local governments

—Buffer strips in riparian zones.

II. Alternatives Considered In This Draft Environmental Impact Statement.

An infinite variety exists of ways for language to capture the intent of NFMA in process, management standards, and guidelines. Alternatives presented in this DEIS cover language to address the central issues and concerns mentioned above. Since NFMA mandates development of regulations, a "no change" alternative was not created for presentation, discussion, and evaluation in the DEIS.

The seven alternatives are:

1. Forest Service Draft Regulations as published in the **Federal Register**, Vol. 43, No. 170, august 31, 1978, as further explained and evaluated in a published Environmental Assessment Report, and Supplement, dated August 24, and September 12, 1978, respectively.

2. Environmental Group's proposals for § 219.10(d), as published in the **Federal Register**, August 31, 1978.

3. Timber Group's proposals for § 219.10(d), as published in the **Federal Register**, August 31, 1978.

4. Committee of Scientists Final Report to the Secretary of Agriculture (2–22–79), and recommended regulations attached thereto.

5. Public comment; the summary or consensus view for several of the issues which represents the wishes or suggestions of the "Public at large".

6. The Preferred Alternative: Revised draft regulations, with provisions for nationally established standards for buffer strips and harvest cut openings.

7. Revised draft regulations identical in all respects to Alternative No. 6 EXCEPT that standards for riparian buffer zones and harvest cut opening sizes will be established through the regional planning process.

III. NFMA requires an integrated plan for each administrative unit of the NFS. The planning process prescribed establishes an interdependency of land management and resource planning.

It is virtually impossible to quantify the specific effects of implementing any of the alternative regulation proposals. The regulations direct the process of preparing and revising plans, and have no direct effect on the human environment, nor do they commit land or resources. The regulations only establish procedures for planning future commitments.

Effects on the production of goods and services are conjectural and cannot be verified until the planning is completed. Anticipated impacts will be identified in plans prepared pursuant to the regulations and to the NEPA process.

Some general qualified effects or impacts of the alternatives are presented in table form by issues. Foe example, each alternative enhances plant and animal diversity, protects soil and water values and the visual resource, and ensures long term productivity. The relative contribution toward enhancement of each alternative is illustrated in the appropriate tables. The actual results, quantitatively, will not be known until individual plans are completed.

IV. Consultation with others, including the public, was extensive and was a major factor in developing the proposed action discussed in this DEIS. The public was invited to comment on the first draft of the regulations which appeared in the **Federal Register** August 31, 1978. Two public hearings were also conducted specifically to obtain views. From the initial inception of work to develop the regulations through to the present time, the Forest Service and the Department have maintained an open door policy with the public and interest groups to obtain information as well as to explain work and progress. Seventeen Committee of Scientists meetings were opened to the public, and a total of 737 individual responses containing 5,373 distinct references to various parts of the draft regulations were received, a substantial number of which were elaborate, detailed, and explicit. Included were letters from memers of Congress, Federal and State Agencies, representatives of various interest groups, as well as the general public. As a consequence it was decided to revise the draft regulations and to republish them accompanied by an environmental impact statement.

Following is a list of Federal agencies, State governments, national organizations from which written comments were received following publication of the draft regulations on August 31, 1978. Comments from individuals were too numerous to list here, but these names will be published in the Final Environmental Statement. All respondents (737) will be sent a copy of the DEIS as published in this issue of the **Federal Register.**

Federal Agencies

Library of Congress, Environment and Natural Resources, Congressional Research Service, Washington, D.C. 20540.
U.S. Environmental Protection Agency, Office of Federal Activities, Washington, D.C.
U.S. Department of Interior, Bureau of Reclamation.
U.S. Department of Interior, Heritage Conservation and Recreation Service.
Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service.
Department of Transportation, Federal Highway Administration, Highway Planning Office.
U.S. Department of Interior, Bureau of Land Management, Washington, D.C. 20240.
Executive Office of the President, Council on Environmental Quality, Washington, D.C.

State and Local Government

(Senator) Ivan M. Mathison, Utah State Senate, Salt Lake City, Utah.
State Planning Coordinator's Office, State of Utah, Salt Lake City, Utah.
Colorado Division of Wildlife, Department of Natural Resources, Denver, Colorado.
Denver Water Department, Denver, Colorado.
Conservation Division, Arizona State Land Department, Phoenix, Arizona.
State of Alaska, Office of the Governor, Director of Policy, Development, and Planning, Juneau, Alaska.
Montana Department of Fish and Game, Wildlife Division, Helena, Montana.
Placer County, Conservation Task Force, Aubum, California.
Council of State Governments, Lexington, Kentucky.
Western States Legislative Forestry Task Force, Sacramento, California.
Commissioner of Public Lands, State of Washington, Department of Natural Resources, Olympia, Washington.
Office of State Forester, Forestry Department, Salem, Oregon.
Department of Natural Resources, Atlanta, Georgia.
Department of Natural Resources, Denver, Colorado.
State of Washington, Department of Game, Olympia, Washington.
Council of State Planning Agencies, National Governor's Association, Washington, D.C.
Wildlife and Fisheries Commission, State of Louisiana, New Orleans, LA.
Idaho Department of Fish and Game, Boise, Idaho.
Dixie Lee Ray, Governor, Office of the Governor, Olympia, Washington.

Nevada Department of Fish and Game, Reno, Nevada.
Minnesota State Legislature (Senator Bob Lessard), St. Paul, Minnesota.
Elko County, Elko, Nevada.
East Central Planning and Development Region, Comprehensive Studies Division, Saginaw, Michigan.
Placer County, Conservation Task Force, Auburn, California.
Buncombe City Soil and Water Conservation District, Asheville, North Carolina.
East Central Idaho, Planning and Development Association, Rexburg, Idaho.
State Planning Coordinator, Governor's Office, Carson City, Nevada.
State Conservationist, Idaho, U.S. Department of Agriculture, Boise, Idaho.

Organizations

Tennessee Citizens for Wilderness, League of Women Voters, Simpson Timber Company, Sierra Club (including many local Chapters), Texas Committee on Natural Resources, Ozark—Mahoning Company, Citizens Committee to Save our Public Lands, Ohode, Defenders of Wildlife.
Animal Protection Institute of America, Kern Plateau Association, Group Against Smog and Pollution, Cascade Holistic Economic Consultants, The Wilderness Society, Northwest Pine Association, Atlantic Richfield Company, Appalachian Mountain Club, National Catholic Rural Life Conference, Hammermill Paper Company, Idaho Mining Association, Idaho Environmental Council, MECCA.
Friday Harbor Laboratories, Edward Hines Lumber Company, MAPC, East Central Idaho Planning and Development Association.
Audubon Society (including State Chapters), The Headwaters Association, The Conservation Foundation, Western Forestry and Conservation Association, Western Timber Association.
Paul Bunyan Lumber Company, The Bunker Hill Company, Arcata Redwood, American Forestry Association, The Dawes Arboretum, Boise Cascade Corporation, Timber Products Company.
Colorado Mining Association, M. L. King Co., The Mountaineers, Alaska Lumber and Pulp Co., Inc., Isaak Walton League (including local Chapters), Wyoming Sawmills, Inc., True Oil Co.
Southern Idaho Forestry Association, Fourply, Inc., Helena Environmental Information Center, Environmental Action of Michigan, Inc., Idaho Conservation League, Brookings Plywood Corp., Idaho Pole Co., International Ecology Society, Hitchcock and Pinkstaff.
Cheveron U.S.A., Inc., Aspen Wilderness Workshop, Inc., New England Trail Rider Association, The Annaconda Co., Texaco, Inc., Friends of the Earth, Far West Ski Association, St. Regis Lumber Co.
California Association of 4-Wheel Drive Clubs, Inc., Wildlife Management Institute, Sun Studs, Inc., Boatman Industry Association, Day Mines, Inc., Wyoming Mineral Corp.
Louisiana-Pacific Corp., Evansville Veneer and Lumber Co., Industrial Forestry Association, Owens-Illinois, Inc., Headwaters, The Ptarmigans, Michigan United Conservation Clubs, Resources for the Future.

Hampton Tree Farms, Inc., SWF Plywood Co., American Hardwood Industries, Inc., International Paper Co., The Robert Dollar Co., Potlalch Corp.
The Northcoast Environmental Center, Greater Snake River Land Use Congress, Forest Land Services, Inc., National Forest Product's Association, National Wildlife Federation, Sierra Club Legal Defense Fund, Inc.
Lake Pleasant Forest Products Corp., Ellinson Lumber Co., American Plywood Association, Federation of Western Outdoor Clubs, Alaska Loggers Association, Outdoors Unlimited, Inc., Wausau Papers, The Gila Wilderness Committee, John Muir Institute.
South Carolina Enviromental Coalition, The Nature Conservancy, Federal Timber Purchasers Association, Minnesota Forest Industries, Tennessee Forestry Association, OSPRIG.
Oregon Wilderness Coalition, L. D. McFarland Co., Weyerhauser Co., American Petroleum Institute, Gulf Lumber Co. Inc., SE Lumber Manufactures Association, Appalachian Hardwood Manufacturers, Inc.
Rocky Mountain Oil and Gas Association, SE Alaska Conservation Council, Inc., Herbert Lumber Co., Independent Petroleum Association, Allied Timber Co., Mauk Forest Products, Inc., Arroyo Grande Resource Conservation District, Alpine Lakes Protection Society, Seaboard Lumber Co., Scott Paper Co.
Burrill Lumber Co., Westvaco, Rocky Mountain Energy Co., Champion Timberlands, Endangered Species Committee of California, Elsa Wild Animal Appeal, Forest Engineers, Inc.
Packaging Corporation of America, A.C. Dutton Lumber Co., Protection of New Hampshire Forests, Citizens for Northern Idaho Wilderness, Diamond International Corp.
Umpqua Wilderness Defenders, Champion International Corp., The Anschutz Corp., Alaska Women for Timber, Freinds of Wildlife, Bohemia, Inc., Puget Sound Plywood, Inc., Society of American Foresters, Western Wood Products Association.
Brady, Blackwell Associates, P.C., New Mexico Wilderness Study Committee, M.A. Rigoni, Inc., Tennessee River Pulp and Paper Co., Bell-Gates Lumber Corp., Central Cascades Conservation Council, Burlington Northern, Buse Timber and Sales, Inc.
Boyd Lumber Co., Brunswick Pulp Land Co., Kogap Lumber Industries, Mead-World, Tenneco Inc., Canal Wood Corp., National Resources Defense Council, Shell Oil Co.
Clearwater Forest Industries, Montana Pole and Treating Plant, Schnabel Lumber Co., Consolidated Papers, Inc., Idaho Stud Mill.
Motocycle Industry Council, Inc., Finch, Pruyn and Co., Inc., NLBMBA, Kinzia Corp., U.S. Ski Association, Brown-Bledsoe Lumber Co., J. Gibson McIlvain Co., The Brazier Co., Williamette Industries, Inc., Merrill and Ring, Inc., The McGinnis Lumber Co., Inc., Hoking Valley Rock Shop, Bowater.

Table of Contents

I. Introduction
—Legislative Development Background
—Management of the National Forest System
—Evaluation of the National Forest System Planning Process
—Description of Central Issues and Concerns Addressed by the Alternatives Considered
—List of Preparers of the DEIS
II. The Affected Environment
III. Evaluation Criteria
IV. Alternatives Considered
—Planning Process Framework
—Language to Address Issues
V. Implementation Effects
VI. Evaluation of Alternatives
VII. Consultation with Others
VIII. Appendix

I. Introduction

Development Background

The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA), as amended by the National Forest Management Act of 1976 (NFMA), is a comprehensive framework and primary source of direction to the Forest Service to fulfill its mandate to manage the National Forest System (NFS). The central element of the Act is the institution of land and resource management planning as a basic means to achieve effective use and protection of renewable resources and a proper balance of the use of NFS lands.

The Act sets forth under Section 6 that the Secretary of Agriculture must prescribe NFS land and resource management planning regulations. The standards and guidelines in these new regulations must be incorporated into NFS land and resource management plans and every effort is to be made to complete such plans by September 30, 1985.

A draft of the proposed regulations was published in the **Federal Register**, Vol. 43, No. 170, August 31, 1978 (pp. 39046–39059) for public review and comment. An Environmental Assessment Report and Supplement were also prepared dated August 24, and September 13, 1978, respectively. These draft regulations had been under preparation since the spring of 1977, when the Secretary of Agriculture appointed a Committee of Scientists to provide advice and counsel on the development of the regulations required by Section 6 of NFMA. Publication of the draft regulations prompted

substantial comments, suggestions, and recommendations from the general public, and various resource and environmental groups. It was, therefore, decided to revise the August 31, 1978 draft regulations and to resubmit regulations to the public in draft form to be accompanied by a draft environmental impact statement (DEIS). These revised draft regulations and alternatives thereto are presented in this draft environmental impact statement for public review and comment.

Management of the National Forest System (NFS)

The Forest Service administers 187 million acres of Federal land located in 44 States, Puerto Rico, and the Virgin Islands. Except where special, restricted uses are prescribed by law, this land is managed under the concept of multiple use (as defined by the Multiple Use-Sustained Yield Act of 1960) for a variety of products and services including wood, water, wildlife and fish, forage, wilderness, and outdoor recreation. The enduring resource of the National Forest System is its capability to meet a wide variety of public needs. Multiple-use management provides the architecture for harmoniously nurturing the balance between productive ecosystem longevity and societal desires. Careful analysis of use relationships and available opportunities within a context of equitable distribution and just compensation are required to meet the goals embodied in the Multiple Use Sustained Yield Act of 1960. So that the various uses are harmonized to minimize conflicts and adverse impacts on the land, the relative values of the different resources are considered in determining forest and rangeland resource use patterns that will meet the needs of the American people.

Evolution of National Forest System Planning

During the early 1900's, most National Forest System lands were inaccessible, public demands for goods and services were low, and conflicts among resource uses were minor. Priority was given to protecting these pubic lands from fires, damaging insects and diseases, and unauthorized use. Resource production and use served local rather than regional or national needs. Most Forest Service planning in that era centered on specific work plans for forest land rehabilitation, protection and reforestation.

By the late 1930's, however, there existed a general public awareness that more intensive management of the National Forests—and the utilization of their various renewable resources on a sustained-yield basis—should also serve the national interest. This prevalent philosophy, coupled with a need for vital timber during World War II, spawned a dramatic expansion of National Forest resource management and utilization in the 1940's and 1950's.

Although early laws governing the establishment and administration of the National Forests referred only to timber and water resources, the other resources—wildlife, forage, and outdoor recreation—have always been protected and managed. By 1939, the Forest Service had made clear its policy to administer the National Forests on multiple-use principles.

Following World War II, the agency completed an appraisal of the Nation's forest situation and developed the concept of composite resource planning. The various resources were inventoried, and a composite plan prepared that described types of vegetation, location of streams and other bodies of water, areas requiring special management, planned recreation areas, primary transportation routes, and other pertinent factors.

Recognizing the lack of specific statutory direction to manage all the resources of the National Forests under multiple-use principles, the Forest Service proposed a multiple-use act in the late 1950's. Passage of the Multiple Use-Sustained Yield Act of 1960 provided congressional endorsement of the Forest Service policy and practice of equal consideration of all National Forest renewable resources.

Land management planning was formalized into a distinct process upon passage of the Multiple-Use Sustained-Yield Act. Until shortly after passage of the National Environmental Policy Act of 1969, this process was commonly referred to as "multiple-use planning," and the basic documents that described how the various resource uses would be coordinated were called "multiple-use plans." Separate plans were made for each National Forest Ranger District.

These multiple-use plans usually zoned National Forest System land and included specific coordinating requirements to ensure compatability of resource uses. They did not set resource development goals. Such goals were established by separate resource development plans prepared for each National Forest. The Ranger District multiple-use plans were used to coordinate the actions taken to achieve the objectives of the National Forest System resource development plans.

District Rangers were also required to prepare a special impact analysis before undertaking any significant resource development project. The analysis contained a statement on the nature and scope of the project, the expected impact the project would have on each resource, and how the project would be carried out to conform to the multiple-use plan requirements. The format of these reports was similar to that of present-day environmental impact statements.

In the early 1960's, another factor had also entered the resource picture—intensified public concern for environmental policy. Suddenly, it seemed, the Nation realized that clean air, clean water, and natural beauty were just as important to its standard of living as industrial products. Increased concern for the Nation's forest lands was part of this awakening environmental consciousness. Many Americans became aware of the National Forest System and realized that although these public lands contained most of the Nation's remaining natural resources, there were limits to their uses.

The desire for a quality environment, however, did not lessen the need for forest products and services from the National Forests. On the contrary, while concern for the environment reached new heights, so did the demand for products and services. One result of this was the passage of the 1964 Wilderness Act. Since the 1920's, the Forest Service has identified and designated areas of high wilderness value on the National Forests. Development of these areas was precluded under direction by the Secretary of Agriculture or the Chief, Forest Service. The Wilderness Act created the National Wilderness Preservation System and provided for the designation of Federal land to be preserved in their natural state.

By the mid-1960's, the Forest Service was caught in a dilemma. On one hand, conficting demands for forestry resources were increasing rapidly; on the other hand, the renewable resource base was perceived as shrinking with the implementation of the Wilderness Act. Some critics claimed that management of the National Forest System was out of balance, that some uses were being increased at the expense of others, and that the Forest Service was ignoring its mandate to manage the National Forest System for multiple uses. And, seemingly, the public wasn't being given a chance to formally influence the Forest Service decisionmaking process. The Forest Service land management planning

process changed in three major aspects in response to these public concerns and to the National Environmental Policy Act (NEPA) of 1969.

The first change converted Ranger District multiple-use plans to land management unit plans. (Unit plans are considerably more detailed. They apply to geographic areas containing similar social and physical resources and land characteristics rather than to Ranger Districts, and they are accompanied by environmental impact statements.)

The second change incorporated more strict interdisciplinary analyses into the planning process. (Before NEPA, multiple-use plans received multidisciplinary review. After NEPA review was accomplished through interdisciplinary interaction.)

The third change formally involved the public in forming and reviewing unit plans.

In August 1974, Congress enacted the Forest and Rangeland Renewable Resources Planning Act (RPA). Although it did not significantly change existing Forest Service land managment planning procedures, it made the development and maintenance of National Forest System land and resource management unit plans statutory requirements. It re-emphasized that an interdisciplinary approach be used in the development and maintenance of land management plans. It required that periodic comprehensive programs be developed that would integrate all Forest Service activities. And it more directly involved Congress in evaluating Forest Service programs and in assigning priorities. The RPA also provided for an assessment of the Nation's renewable resources, including those of the National Forest System. This Assessment provides the basic information for planning.

The National Forest Management Act of 1976 amended RPA to provide additional statutory direction on the preparation and revision of National Forest System land and resource management plans.

Major highlights of NFMA are land management planning, timber management actions, and public participation in Forest Service decisionmaking. Also featured are requirements for coordination with planning processes of State and local governments and other Federal agencies, and an interdisciplinary approach to plan developent and maintenance. It reaches beyond the 187 million acres of the National Forest System to recognize the importance of scientific research and cooperation with State and local governments and private landowners. So, in effect, it addresses all three major areas of Forest Service operations in carrying out its national forestry leadership role—management of the National Forest System, natural resources research, and cooperative forestry assistance to State and private landowners.

A major part of the NFMA is devoted to strengthening the Forest and Rangeland Renewable Resources Planning Act (RPA). All but one of the first 12 sections are amendments to it, nearly tripling the length of the Resources Planning Act. Some of these amendments include requirements for recommendations in the RPA Program which evaluate major Forest Service program objectives; explain opportunities for all forest and rangeland owners to improve their lands; recognize the need to improve and protect soil, water and air; and state national goals relating to all renewable resources.

Land management planning direction is the core of the Act. Regulations will be issued describing the process for development and revision of land management plans. Management guidelines will deal with overall NFS land management and require that lands be identified according to their suitability for resource management.

These guidelines will relate to the RPA Program goals to ensure that economic, environental, and ecological aspects are consistent with the Multiple-Use Sustained-Yield Act and RPA.

They will provide for the diversity of tree species and plant and animal communities, with research and management evaluation to prevent impairment of the land's productivity.

Each National Forest System unit will prepare, through an interdisciplinary team approach and with the aid of public participation, an integrated, comprehensive land management plan to be revised at least every 15 years. The land management plan and supporting functional plans must be integrated.

NFMA Act contains direction on harvest scheduling practices followed by the Forest Service. The annual allowable harvest sale quantity from each National Forest will generally be limited to a quantity equal to or less than a quantity which can be removed annually on a sustained-yield basis. The Act gives the flexibility to depart from this policy through land managment planning, including public participation. Departures from the standard policy must be in harmony with multiple-use objectives of the land management plan.

Land areas not suitable for timber production will be identitied in land management plans considering physical, economic and other factors. They are not to be harvested for 10 years except for salvage sales or sales to protect other multiple-use values. Such lands will be reviewed every 10 years thereafter and may be returned to production if appropriate.

Silvicultural standards will insure that, generally, stands of trees shall be harvested when mature (culmination of mean annual increment of growth). However, timber stand improvement measures, salvage operations and removal of trees for multiple-use purposes are not precluded. This means that stands of trees within the National Forests in general shall be sawtimber rather than pulpwood size before harvesting. The Act also directs that diversity of plant and animal species should be provided for and appropriate tree species diversity maintained. In brief, there should be no large-scale conversions of National Forest lands to a single-tree species.

The Act incorporates into law the substance of the so-called "Church Guidelines." These guidelines include the caution that clearcutting should only be used where it is the optimum method.

Public participation in development and revision of land and resource management planning was a prime priority in congressional thinking. The phrases "public participation" or "public involvement" are used 11 times in the Act and are clearly indicated in other sections.

A Committee of Scientists—composed of non-Forest Service personnel—was established to help develop regulations for all land management planning, including timber and other resource plans, by providing scientific advice and counsel, and to insure that the planning process is interdisciplinary.

Regulations must be written to carry out the public participation aspects of the law. Not only has Congress ordered fuller public participation in the decisionmaking process, but it also made rules so the public can participate with relative ease.

Direction for Planning and Management

Planning for resource allocation and the conduct of subsequent management activities require (1) the best available resource data and information, including the views of citizens and special interest groups, other Federal, State and local agencies, and (2) the synthesis and evaluation of such data and information utilizing professional and administrative judgments as to how best to meet statutory goals and objectives and achieve the interests and expectations

of the public. To accomodate these requirements, all Forest Service activities are grouped into 12 program elements comprised of eight resource elements (recreation, wilderness, wildlife and fish, range, timber, water, minerals, and human and community development) and four support elements (protection, lands, soils, and facilities).

Resource program elements are defined as major Forest Service mission-oriented endeavors that fulfill statutory or executive requirements and indicate a collection of activities from the various operating programs required to accomplish the agency mission.

Support program elements are activities and costs that do not primarily benefit a single resource element. However, these elements encompass the activities that are necessary to maintain and facilitate outputs of several or all resource elements.

The mission elements that follow for each program element provide overall national direction for the activities within that element. Land managment planning is the prinicpal device for conveying management direction to an from the national level to National Forest planning areas.

Resource Program Elements—1. *Recreation.* The primary mission of this element is to provide outdoor recreation opportunities for the Nation. This includes all activities necessary to protect, administer, and develop outdoor recreational opportunities within the National Forest System so that they meet their appropriate share of the Nation's existing and anticipated demand compatible with other resource values; protect, manage, and provide trails and other access to the scenic and cultural resources within the National Forest System; conduct research to improve the effectiveness of providing and managing outdoor recreational opportunities; and provide technical assistance and advice to non-Federal landowners for dispersed recreation.

2. *Wilderness.* The primary mission of this element is to secure the benefits of an enduring resource of wilderness by assuring that suitable, needed, and available National Forest System lands will be designated for preservation and protection in their natural condition. National Forest System wildernesses are administered for the use and enjoyment of the American people so as to leave the resource unimpaired for future use and enjoyment, to preserve their wilderness character, and to provide for the gathering and disseminating of information regarding their use.

The classification and study of National Forest System areas for possible wilderness designation are included in the Lands support element, while the management of such areas is included in the Recreation resource element. Wilderness research is related to recreation research to provide knowledge to manage and protect wildernesses and unique ecological features.

3. *Wildlife and Fish.* The primary mission of this element is to provide productive wildlife and fish habitats, with special emphasis on threatened and endangered species. Management of wildlife and fish habitats is closely coordinated with the States, because States have prime responsibility for management of wildlife and fish populations. This coordination includes maintaining close working relations among National Forest System units and other Federal, State, and private land managers. The element includes activities necessary to protect, administer and develop National Forest System wildlife and fish habitats; assist non-Federal land managers through coopertive forestry programs; and develop new knowledge through research on the environmental requirements of wildlife and fish and attainable management alternatives under these requirements.

4. *Range.* The primary mission of this element is to provide for efficient ways of livestock grazing on forest and rangelands commensurate with other commodity, environmental, social, and aesthetic needs. Ecological and management information about range ecosystems is provided for non-livestock purposes, such as endangered plants and wild free-roaming horses and burros. This element includes all those activities that bear directly upon management, use, and protection of National Forest System range resources; cooperative activities for the use and improvement of non-Federal forested ranges; and research to provide a sound technical and ecological base for range management, use and protection.

5. *Timber.* The primary mission of this element is to enhance the growth, utilization, and utility of wood and wood products to help meet the Nation's short- and long-term needs. It includes management activities in the National Forest System and on non-Federal lands, as well as research activities that contribute to the improvement, growth, and timely and efficient harvests of timber from forest land, consistent with other resource values; the efficient processing and utilization of wood and wood-related products; and the development of better management methods.

6. *Water.* The primary mission of this element is to protect, conserve, and enhance water resources within the National Forest System consistent with other resource values. This element also includes watershed and river basin planning and development, in cooperation with States and other agencies, designed to increase knowledge about the water resource. Included are research and cooperative activities to meet water quality and quantity standards onsite and offsite to reduce pollution and to improve water resource features.

7. *Minerals.* The primary mission of this element is to integrate the exploration and development of mineral resources within the National Forest System, with the use and protection other of resource values. Research and cooperative activities related to the reclamation of mined lands are also included.

8. *Human and Community Development.* The primary mission of this element is to help people and communities to help themselves. The element includes activities that provide: Youth development through resource conservation work and learning experiences; adult employment and training opportunities through various Federal human resource programs; rural community planning development information and services; and technical forestry assistance and research for urban areas in the establishment, management, and protection of open space and the use of trees and woody shrubs.

Support Program Elements—1. *Protection.* The primary mission of this element is to protect and maintain forest and rangelands. It includes insect and disease control, fire protection, law enforcement, development of knowledge through research, and the technical assistance needed for National Forest System and other public and private forest and rangelands.

2. *Lands.* The primary mission of this element is to assist in land management planning and provide special land-use administration, landownership adjustment, multiresource studies, and new knowledge through research which primarily benefits multiple resource element outputs. These activities cover technical assistance and cooperation on non-Federal lands as well as within the National Forest System.

3. *Soils.* The primary mission of this element is to protect, conserve, and enhance the soil productivity of forest and rangelands. It includes the

development of new knowledge through research, surveys, protection, rehabilitation, and improvement activities directed toward non-Federal lands as well as within the National Forest System.

4. *Facilities.* The primary mission of this element is to provide and maintain capital improvements such as buildings, roads, fences, bridges, dams, and airfields.

Central Issues and Concerns Addressed by Alternative Regulations

The NFMA was enacted to resolve long-standing issues concerning the management of National Forest resources. It clarified rules about the use of silvicultural practices and required that certain land and resource management planning practices be developed and used. The proposed regulations respond to the NFMA by prescribing a planning process and technical standards and guidelines to govern planning and management activities. The central or primary issues and concerns which the proposed regulations attempt to address are described as follows:

1. *The Conceptual Framework for The Integrated Planning Process.* There are many major proven conceptual models for planning-decisionmaking policy formulation. Which model or combination is best suited to congressional direction that the Forest Service define a unified planning process with supporting guidelines and standards to implement on each administrative unit of the National Forest System? Should emphasis be on process or on prescription? To what extent and detail should the relationships among and between planning levels and resource management functions be defined?

2. *The Interdisciplinary Approach to Planning.* The primary concerns are the purpose of the interdisciplinary team, who and what disciplines should be represented on the terms, what should be the professional and technical qualifications of team members, and what are the responsibilities of team leaders?

3. *Diversity of Tree Species and Plant and Animal Communities.* Congressional intent concerning "diversity" seems clear: It will be considered in planning, and it is to be provided and maintained by management. The basic issue is whether the regulations should be very specific or provide discretionary authority in providing diversity through management practices and activities. Of further concern is whether to prescribe by regulation how to measure diversity, and should existing diversity be maintained and reduced only to achieve necessary multiple-use objectives.

4. *The Role of Economic Analysis.* NFMA requires economic analysis of management program alternatives to determine economic consequences, and that economic analysis will be undertaken at all appropriate places throughout the planning process. At issue is the nature of economic tests which might be made, and whether Congress intended that benefits must exceed costs for each and every proposed management practice.

5. *Determination of Lands Not Suited for Timber Production.* At issue is the role that economics should exert in determining lands not suited for timber production. Some critics argue that NFMA prohibits management practices where costs exceed benefits and that, as a consequence, timber harvesting may not occur where benefits are less than costs. Another interpretation is that a strict economic test is not required, but rather that economics be one of several criteria used to determine suitability for harvest.

6. *Departures (Limitations on Timber Removal).* The National Forest Management Act limits the sale of timber from each National Forest to a quantity which can be removed annually in perpetuity on a sustained-yield basis with discretion to depart from this policy in order to meet overall multiple-use objectives. This provision to depart is not in Section 6, but in Section 11 (or Section 13 of the amended RPA). This separation has raised the issue of whether the determination of the timber allowable sale quantity and departures should be handled outside of the forest planning process or as a separate and distinct step after the forest plan has been completed.

7. *Size of Openings Created by Harvest Cutting.* Controversy over timber harvest methods on National Forest lands sparked the NFMA legislation. Congress debated whether to mandate strict nondiscretionary precriptions for the management of National Forest lands and resources, or to require development of regulations to guide a planning process which would incorporate certain technical standards and guidelines to govern management activities. The latter course was taken, but the issue of prescription vs. planning process continued during development of the proposed regulations. The crucial issue is how specific should be the standards and guidelines for planning and managing each of the resources, for example, to prescribe in regulations the maximum size of openings created by harvest cuts, or instead describe the process by which the size of such openings would be determined on the basis of more site specific information.

8. *Public Participation.* The minimal elements of adequate public involvement are mentioned in the NFMA: the public must be adequately informed throughout the planning process; plans must be available in convenient locations; documents forming a plan must be integrated and located together to facilitate public review; and procedures for public participation must be identified in regulations covering the planning process.

The issues are the adequacy provided within the regulations for allowing the public to influence the decision process. Should the scope and level of public involvement be in regulations or discretionary? Should regulations define the agency as an active participant in representative democracy? In the past this role has been reserved for elected officials. Should public participation be required in certain steps of the planning process?

9. *Management of Wilderness Areas and Disposition of Roadless Areas.* NFMA provides little guidance about wilderness resource planning. Issues to resolve through the proposed regulations are the need to identify and appraise additional candidate areas and whether to establish maximum allowable levels of use.

10. *Coordination in Land Use Planning between Federal, State and Local Governments.* Planning by different entities that does not consider mutual goals and policies can frustrate National Forest management. The issues are the need to be aware of, evaluate, and consider the plans and policies of other planning bodies, and to involve appropriate representatives from them in National Forest planning activities.

11. *Buffer Strips in Riparian Zones.* At issue is the question of whether regulations should prescriptively designate a uniform protective strip around water bodies or provide criteria for protection that allows for local management variability.

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II. The Affected Environment

The affected environment is the entire National Forest System, approximately 187 million acres of Federal land administered by the Forest Service. The System consists of 154 National Forests totalling 183.4 million acres, 19 National Grasslands with 3.8 milion acres, and about 0.5 million acres of smaller purchase units, land utilization projects, and research areas. Initial reservation of public domain land contributed 160 million acres to the system with the remaining 28 million acres acquired by purchase, exchange, transfer, or other forms of acquisition.

The majority of land, 163.8 million acres, is located in the western portion of the United States, including Alaska. Approximately 23.9 million acres are located in the East. Although the land base is not evenly distributed throughout the country, National Forests and Grasslands provide an opportunity for all people to enjoy the many goods and services they offer. Lands within the NFS span a broad range of land forms and environment. For a discussion of land surface divisions, the reader is referred to work by Edwin H. Hammond.[1]

Vegetation. The vegetation of the National Forest System is as diverse as the plains, valleys, and mountains on which it grows.

For a thorough discussion about the relationship of vegetation to various generalized ecosystems in this Nation, the reader is referred to work by Robert G. Bailey.[2] Potential natural vegetation of the United States was mapped by A. W. Kuchler in 1966.[3] This mapping represents vegetation that would occur naturally in a given area if succession were not interrupted.

Air. The Nation's air quality is mandated by the Clean Air Act (Pub. L. 88–206) and its amendments. the 1977 amendments (Pub. L. 95–95) specified, among other things, certain Federal areas, such as national parks, wilderness, national monuments, national seashores, and other areas of special national or regional values, be designated for air quality protection.

The amendment adopted a system by which the entire nation would be designated specific air quality classes. Three categories were established—Class I, Class II, and Class III. Presently, each class represents a defined, allowable increase in particulate matter and sulfur dioxide. Class I allows the smallest pollution increment.

Clean Air Act Amendments initially classified all lands. Mandatory Class I status was given to international parks, national wilderness areas over 5,000 acres in size, national memorial parks that exceed 5,000 acres, and national parks that exceed 6,000 acres and were in existence on the date of enactment of the 1977 Clean Air Act Amendments. All other areas, (except those redesignated Class I by regulation prior to August 7, 1977) were designated Class II.

Section 164 of the Act gives State and federally recognized Indian Tribes authority to redesignate classifications for areas within their geographic boundaries. This authority was constrained to the extent that mandatory Class I areas could not be redesignated and certain other areas may be redesignated only as Class I or II.

Environmental Amenities. Perception of our environment is primarily a visual experience, but our senses of smell, taste, touch, and hearing contribute to complete our perception of environmental amenities. Maintenance of air quality provides environments pleasant to our senses of smell and enhances opportunities to enjoy expanded views and vistas.

The landscape character of this Nation can be described in terms of land and rock forms (topography), waterbodies, and vegetative patterns. These are components of the visual resource that, when seen in varying combinations, can be used to evaluate the visual quality of an area. Maintenance and protection of the visual resource is an important factor for the millions of people who view National Forests, and management of this resource is an important part of total land and resource management within the National Forest System.

Noise, or more precisely the lack of it, is an amenity savored by the American public. Complete solitude may usually be obtained within wilderness and more remote roadless areas. A quite, relaxed environment can be found throughout most National Forests and Grasslands. But other users often prefer noise and bustle. The management challenge for the National Forest System is to provide a cross-section of environments the many publics wish to use.

Resource Use. Management of the lands and renewable surface resources of the National Forest System emphasizes the continuous production of all their values for the American people. In contrast, management emphasis for lands administered by the National Park Service is preservation of areas of natural, historical, recreational, or scenic attractions. The National Wildlife Refuges are managed to protect various wildlife species.

For a more complete description of the resource uses made of an planned for on the National Forest System, the reader is urged to review the Draft Environmental Impact Statement for the 1980 Update of the Forest Service RPA Program. This document, released for public review on March 27, 1979, is available from Forest Service Regional Offices and headquarters in Washington, D.C.

Cultural Resource. Development of this Nation can be traced through many remaining archeological and historical sites, an invaluable asset for study of

[1] Hammond, Edwin H. 1964. Analysis of Properties in Land Form Geography: An application to Broad Scale Land Form Mapping. Annals of the Association of American Geographer. Volume 54:11–23.

[2] Bailey, Robert G. 1976. Ecoregions to the United States. U.S. Department of Agriculture, Forest Service. Map and Discussion.

[3] Kuchler, A. W. 1966. Potential Natural Vegetation Map. U.S. Department of Interior, Geological Survey. Map and Discussion.

what has preceded us. However, the cultural resource on National Forests and Grasslands is neither fully discovered nor totally understood. Historical sites are being discovered as we continue to know more of this land. Though the resource has not been completely inventoried, it is protected by law and is recognized as an integral part of the total Forest Service land and resource management program.

Socio-economic Environment. This is related to population and demand for goods and services. Our 220 million residents rely upon the wealth of natural resources this country can provide for food, shelter, and employment. In addition, many seek escape from normal activities that surround them and find relief in natural attractions that abound in mountains, lakes, and valleys of this diverse land. The National Forest System provides both physical needs essential for comfort and diversified environments that promote quality of life.

Direct cash receipts from the National Forest System in fiscal year 1977 totaled a little more than $691.5 million. Timber receipts were by far the largest source, with receipts from mineral leases and royalties second. Fees from grazing and other permits were third. Twenty-five percent of the receipts received were returned to counties and States where the revenue originated for the purpose of funding schools and developing secondary roads. Additional receipts in the form of deposits and value added bring the total to more than $1 billion.

Total dollar reciepts are not a large factor when compared to the Nation's income, but they do represent much more than returns to the U.S. Treasury. The direct benefit created by the sale and use of National Forest and Grassland resources accounts for more than 180,000 person-years of employment. Indirect benefits from supporting industries add additional employment and dollar incomes to this total. Investments in transportation systems, cooperative assistance, and other non-qualifiable factors are also positive benefits derived from the National Forest System.

For many, the National Forest System is a special place remembered because of a recreational experience. It has symbolic meaning for those living within its shadows or concern for management of this Federal land, whether they depend upon it, have intimate knowledge of it, or only recogize it as "being there."

Land use decisions can affect each and every individual. Those with an economic or specialized recreation interest can be affected if areas are identified for wilderness use. Others with more of a preservation orientation may be disturbed if a favorite roadless area becomes available for use of its commodity resources, and roads are built into the area. Various uses of land are complex in nature and at times conflicting. What is ideal for one group of individuals may adversely affect others. Within this framework, the process for planning and managing the National Forest System must occur.

III. Evaluation Criteria

Criteria for evaluating alternative regulations are based primarily on the specific guidelines and standards identified in the National Forest Management Act. The options for developing the regulations are evaluated on the basis of their relative effectiveness in carrying out the intent of the law. This requirement not only narrows the range of available alternatives but also reduces the degree of evaluation required in proposing the regulations. The following evaluation criteria will be applied:

1. *NFMA Requirements.* Alternatives will be evaluated on the basis of how well they achieve the specific requirements of the National Forest Management Act. In some instances it may be necessary to interpret the "intent" of the Act in order to make this evaluation.

2. *Scientific and Technical Adequacy.* A number of issues contained in the proposed regulations relate to scientific and highly technical aspects of natural resource management. While there may be general agreement among the scientific community on most of these issues, some disagreement does exist and much political controversy has surrounded these technical aspects of management. The scientific and technical aspects of various alternatives must be separated from the political controversies which surround them, and evaluated solely on the basis of generally accepted scientific knowledge.

3. *Acceptability to Diverse Publics.* General acceptance of the regulations is essential if the planning process is to be responsive to the specific concerns identified during the legislative history of the Act. Alternatives will be evaluated on the basis of input from public participation. Acceptability will continue to be determined as the preferred alternative regulations are published in the **Federal Register** for public review and comment.

4. *Environmental Protection.* The Act specifically requires that certain environmental protection standards be established. Alternatives will be judged on the basis of the adequacy of the environmental protection afforded by the standards. This will be expressed in terms of how the alternatives affect overall environmental quality.

5. *Timber Supply.* The RPA requires development of a Program which is to provide for the protection, management, and development of the NFS. This program and alternatives, if any, shall include specific identification of outputs and benefits, and recommendations which recognize the need to protect and improve soil, water and air quality; and which state national goals in recognition of the interrelationships between and interdependence within the renewable resources managed and produced in the NFS. The NFMA provides for a planning process as part of the RPA Program, and requires guidelines or standards to govern management activities which affect commodity production, particularly timber. Alternatives for planning discussed in this DEIS affect timber production and hence supply in various ways. Alternatives will be judged on the basis of their tendency to maintain or increase supply goals consistent with the current RPA Program.

6. *Administrative Requirements*—(a) *Compliance with Executive Order No. 12044.* Alternatives will be evaluated against direction that regulations be as simple and clear as possible; that regulations shall achieve legislative goals effectively and efficiently; that regulations shall not impose unnecessary burdens on the economy, on individuals, on public or private or organizations, or on State and local governments.

(b) *Accountability.* Evaluation will be made as to how visible accountability is made through regulation in terms of who is responsible for actions and decisions.

(c) *Capability to Implement.* Forest Service programs and personnel requirements are subject to constraints set by Congress and the Executive branch. Alternatives will be evaluated in light of personnel and skill requirements, and time required to undertake and complete planning actions specified.

(d) *Flexibility.* In the application of resource management standards and guidelines, it must be recognized that local resource conditions vary considerably, thus necessitating special requirements or exceptions. Alternatives must be evaluated on the basis of the extent to which they provide adequate safeguards against resource damage or abuse and the extent to which they permit local management discretion.

Procedural standards necessary to address special needs and exceptions must be judged on the basis of their ability to maintain quality, conformity, and adequate review of management actions while not burdening the entire management system with truly trivial details.

IV. Alternatives Considered

A variety of approaches could be used to develop regulations in response to Section 6 of the NFMA. Variations within the actual planning process, the definitions of specific terms, and establishment of various standards could be developed in numerous ways.

There are at least two sets of alternatives to develop and consider. One set concerns planning process. The other concerns regulatory language, style, and structure in terms of describing the rules which are to be applied through the planning process to management of National Forest System lands and resources.

The Planning Process Framework. The Forest Service has been involved since its creation in the development of a land management process. This process for allocating resources, determining outputs, and measuring impacts and tradeoffs has evolved from practical application mostly at the forest level. Intense public interest in management of the National Forests has produced modifications in the evolving planning process. This public interest culminated in passage of the NFMA which requires the Forest Service to define, through rulemaking, a unified planning process with supporting guidelines and standards to be implemented on every administrative unit of the National Forest System. NFMA thus created the need to evaluate current planning and decisionmaking in detail and set the stage for developing the function and content of land management plans. If the present planning system is to be improved, as NFMA strongly implies, then knowledge is needed about general planning theory. This would provide a conceptual basis for developing operational planning process alternatives.

The advantages and limitations of varous planning process concepts and approach possibilities are described in material appended to and made part of the minutes of the May 24–26, 1977.

Committee of Scientists Meeting. A brief description of planning concepts and approaches appears in the Appendix of this DEIS.

The alternative regulations presented in this DEIS are a composite structure of mixed scanning and the systems theory and mutual causal approach. This selection best provides for the interdisciplinary approach to integrated planning mandated by NFMA.

Alternatives for Regulation Language to Address Central Issues: NFMA mandates development of regulations to set forth a process for the development, adoption and revision of National Forest System land and resource management plans. The regulations are also to contain standards and guidelines to govern the conduct of management activities. As a consequence of this mandate, a "no change" alternative was not created for presentation, discussion, and evaluation in this DEIS. The only realistic "no change" alternative might have been planning as currently practiced according to direction in Forest Service Manual 8200. The continuation of this direction is clearly not what Congress intended by enacting NFMA.

There are an infinite variety of ways for language to capture the intent of NFMA in management guidelines and standards. The alternatives presented in this statement cover language to address the central issues and concerns presented in Section 1.

The various alternative language sets proposed are described below and are arranged by source in the order corresponding to the eleven central issues identified in Section I. However, in the interest of brevity, and to facilitate analysis, some of the language presented is in summary form. All of the original material is available for review in its original form at Forest Service Headquarters, in Room 4021 South Agriculture Building, Washington, D.C. Except for the text of the Committee of Scientists Report and comments received from the pubic, this material is reproduced in the Appendix of this DEIS. The reader is urged to refer to it simultaneously with the study and review of this statement. There are seven alternatives. Each is briefly described or characterized as follows:

Alternative 1—Forest Service Draft Regulations (**Federal Register**, August 31, 1978)

The original draft regulations are largely procedural in nature. The process which is to be followed in making land management decisions is outlined with greatest emphasis upon planning at the forest level. National, regional, and forest levels of planning are implied; however, the draft contains very little detail for regional planning. For the most part, the resource standards and guidelines which appear in the draft can be characterized as broad statements of concerns which must be addressed throughout the planning process. For several issues, the draft language is merely a restatement of the NFMA requirements. The management standards for determining lands not suitable for timber production are among the most detailed of all the standards presented. the draft requires both biological growth minimums and economic efficiency considerations. The biological growth minimums are not specified nationally, but are required to be stated in the regional plans. Protection standards for streams and lakes are not specified, but are required to be stated in the forest plans. Standards for selection of silvicultural systems and for size limits for openings created by cutting are to be determined by the regional planning process. Departures would be handled at the forest planning level. Throughout the draft, the primary emphasis is upon procedures to be followed and concerns to be addressed, all within a highly flexible framework which would permit a great deal of local (forest level) management discretion. It is functional in its approach to formulating standards and guidelines, and not specific that the determinations of localized standards and guidelines is part of, and as a consequence a result of, the planning process.

Alternative 2—Environmental Groups' Proposals for § 219.10(d) (**Federal Register** August 31, 1978)

This alternative addresses only two issues; the determination of lands not suitable for timber production, and procedures for allowing departures from nondeclining yield. This proposal specifies a national minimum biological growth potential for timber production. Under the requirements of this alternative, no timber harvesting would occur for at least 10 years on National Forest System lands on which the biological growth potential is below 50 cubic feet per acre per year growth of industrial wood in natural stands. There are several other factors to be used in the determination, including size and location of isolated tracts, nonmarketable species, slope and soil stability. In addition to these constraints, an economic efficiency test is required for the determination. Lands are not to be harvested for at least 10 years if direct benefits from growing and harvesting timber are less than the anticipated direct costs to the government, including interest on capital investments. Direct costs and direct benefits are defined. This alternative stipulates that departures may be considered only after the forest plan has been approved. In other words.

departure determinations would not be permitted as part of the Forest land and resource management planning process. All proposed departures are submitted to the Chief, Forest Service, via the Regional Forester. If approved, the Chief would then direct the forest supervisor to prepare the proposals and a draft and final EIS. Final approval for all departures rests with the Secretary.

Alternative 3—Timber Groups' Proposals for § 219.10(d) (Federal Register August 31, 1978)

This alternative addresses two issues; determination of lands not suitable for timber production, and departures from nondeclining yield. This proposal emphasizes the role of timber production targets assigned to the forests through the RPA Program. Consequently, suitability determination (as opposed to nonsuitability) is stressed and is recognized as being largely dependent upon the ability of the forests to meet the assigned targets. A minimum biological growth potential is to be specified by the regional plan, and economic analysis is required to determine if lands are efficient for producing timber. Lands would not be used for timber production if those lands were not needed to meet the assigned targets and they were not efficient for producing timber. Departures would be considered and formulated if no timber harvest alternatives could achieve the assigned goals, or if implementation of the alternatives would result in local economic instability or inadequately maintain local or national supply needs. Departures would not require approval above the forest planning level.

Alternative 4—Committee of Scientists Final Report to the Secretary (February 9, 1979), and Recommended Regulations attached thereto.

The Committee of Scientists reviewed the original draft regulations and recommended alternative language and, in some instances, completely new material for inclusion in the regulations Generally, the Committee's proposals expand and add specific detail to the original draft (August 31, 1978) regulation. A number of organizational changes for regulation material are also suggested. The Committee's revisions include the addition of considerably more detail to the relationship among planning levels (national, regional, and forest), specifications for the inderdisciplinary planning approach, rationale and requirements for public participation, more substantial requirements for coordination, and more specific requirements for resource standards and guidelines, including wilderness management, riparian zones, fish and wildlife, and diversity. The Committee has proposed a new and detailed treatment of regional planning similar to forest planning. The Committee's recommendations for lands not suited for timber and for departures, similar to those of the August 31, 1978 draft, are more specific and clear. An added requirement for departures specifies that each must be approved by the Chief, Forest Service. Though the Committee recommends a 30-meter buffer strip for riparian zones, it agrees with the August 31, 1978 draft that the maximum size for openings created by timber cutting be set by regional plans or regional silvicultural guides, not be set as a national standard.

Alternative 5—Public Comment.

Many of the public comments represent extreme differences of opinion as well as broad philosophical differences for many issues. The number of detailed comments offered and the wide-ranging scope of many do not lend themselves to a systematic description. The interdisciplinary team has conducted a thorough review of all public comments received, both from hearings and from written responses. It is important to note that there does appear to be consensus for several broad issues. These include the value of an interdisciplinary approach, the inadequacy of the minimum of two specialists for the interdisciplinary team, the inadequate treatment of regional planning, and the value of public participation and coordination requirements. Most disagreement among the public appears to be centered around the lands not suitable issue, procedures for allowing departures, the question of whether or not maximum size openings should be set by national regulations or by the regional or forest plan, and the issue of determining protection standards for streams and lakes. On balance, the public comments reflect one common theme: both the general public and special interest groups consistently expressed the opinion that the regulations should include more specific, detailed requirements for planning and management. This concern is found throughout the comments and applies equally to those commentors who agreed and to those who disagreed with different points raised by the August 31, 1978 draft. This concern was not confined to the consideration of individual issues, nor was it directed solely at the resource management standards and guidelines. Comments which reflect this theme were directed toward almost every major issue, including many of the purely procedural requirements specified in the original draft.

Alternative 6—The Preferred Alternative: Revised draft regulations, with provisions for nationally established standards for buffer strips and harvest cut openings.

This alterntive is the end result of public involvement and work by the Committee of Scientists with the Forest Service in the process of developing the regulations required by NFMA. A number of organizational changes, the incorporation of new material, and more specific direction have considerably changed the alternative compared to the original draft of August 31, 1978. Most of the Committee of Scientists recommendations are reflected in this alternative. It is important to point out here that these recommendations were also strongly influenced by interactions of interest groups with the Committee. Key substantive coverage by this alternative includes the following: More detail concerning the relationships among planning levels; detailed provisions for the conduct of regional planning; more thorough treatment and clarity of purpose concerning public participation and coordination activities; more specific concerning determinations of lands not suited for timber production with the direction that biological growth potential minimums be set in regional plans, and lands be ranked for their economic efficiency for producing timber; requirements that departures from non-declining yield be analyzed through the NEPA environmental assessment process and be approved by the Chief; setting of maximum size of harvest cut openings (40-, 60-, or 100-acre maximums depending on geographic location) with exceptions provided for through regional plans where larger openings will produce more desirable combinations of benefits; and special protection of streams and lakes by requiring special attention to strips 100 feet along both sides of perennial streams, lakes and other bodies of water. Organizational changes include addition of material concerning regional planning, and separation of planning process criteria from resource management standards and guidelines. The planning process has been clarified and expanded explicitly to cover national and regional, as well as forest level planning.

Alternative 7—Revised draft regulations identical in all respects to Alternative No. 6 except that standards for riparian buffer zones and harvest cut opeing sizes will be established through regional planning process.

Alternatives by Issues: Regulatory language sets follow for the eleven selected issues discussed in Section I. Since Alternatives 6 and 7 are idential except for issues 7 and 11, Alternatives No. 7 is discussed only for these two issues.

Issue No. 1—Conceptual Framework for an Integrated Planning Process.

Alternative 1: The August 31, 1978 draft regulations are a mix of approaches with emphasis given to a "process" oriented approach. Three levels of planning (forest, regional, and national) are described in terms of information flows. However, the planning process is described only in terms of forest level planning and is not related to the other two levels.

Alternative 2: This issue is not addressed.

Alternative 3: This issue is not addressed.

Alternative 4: The Committee of Scientists endorses the "process" approach as opposed to a "prescriptive approach." It is recommended that the important interactive nature of the three levels of planning be conveyed in the regulations, and that the regulations also specify procedures for developing the regional plan and its content similar to requirements specified for forest plans.

Alternative 5: Most comments relating to this issue concerned the relationship between national and other plans. Many commenters objected to what they considered to be planning from the "top/down" to the forests. A number of commenters pointed out that more specific language was needed to insure that local activities are based upon local capability and not simply assigned targets from the regional plan or the RPA national Program. The treatment of regional planning in the draft regulations was considered to be grossly deficient. It was suggested a complete revision be made to include this issue and be mandatory that an environmental impact statement be prepared for each regional plan.

Several commenters proposed that more specific language be included to ensure that timber plans would be integrated with other planning efforts.

Alternative 6: The recommendations of the Committee of Scientists have been adopted in the preferred alternative. In addition, a great deal more detail has been added to planning criteria and requirements throughout the entire planning process. Although the revised regulations contain many more "prescriptive" requirements than the earlier draft, the revised version is more "process" oriented than the original draft. A completely new section devoted entirely to a description of the "planning process" has been added. There is also an expanded, much more detailed treatment of the role and function of national, regional, and forest level planning. The interrelationships among the planning levels have been outlined. There are two new separate sections devoted to regional planning. One describes in detail the regional planning procedure and the other establishes criteria for regional planning actions. The requirements for forest planning have been expanded and are detailed in the same manner as those for regional planning. Provisions are made through regional planning to provide a range of objectives which forest plans must address through the planning process.

Issue No. 2—The Interdisciplinary Approach to Planning.

Alternative 1: The August 31, 1978 draft states that an interdisciplinary approach shall be followed. With the exception of a requirement for two or more specialties to be represented, no specific requirements for team make-up or qualifications are given. Complete discretion is given to the forest supervisor for deciding both composition and qualifications.

Alternative 2: This issue is not addressed.

Alternative 3: Proposal does not address this issue.

Alternative 4: The Committee recommends more specific language on:

1. Description of interdisciplinary process;

2. Actual philosophy that is to guide the team; and

3. Requirements for composition of team and for qualifications of members.

Alternative 5: There was general agreement that an interdisciplinary approach was needed throughout the planning process. A frequent criticism of the draft regulations with respect to this issue was there were too few specific guidelines for composition of the team and qualifications for team members. There was almost universal agreement that the minimum of the two disciplines was inadequate. The comments contained some disagreement concerning the degree of authority that the "responsible Forest Service official" could or should have over the interdisciplinary team. It was suggested that the regulations should include some means to encourage outside consultation and use of non-Forest Service expertise, as well as more coordination with State and local resource specialists. Some commenters suggested that State and local government representation on the interdisciplinary team should be required.

Alternative 6: Most of the Committee of Scientists' proposed language has been adopted. The role and responsibilities of the team have been more clearly specified. This includes requirements for composition of the team and for qualifications for team members.

Issue No. 3—Diversity.

Alternative 1: The August 31, 1978 draft requires that inventory information include quantitative data for determining species and community diversity. The forest planning section also specifies that each management alternative include provisions for diversity and that effects of each alternative on diversity be estimated. There is also a specific requirement to estimate diversity effects for fish and wildlife. Methods or measures of diversity are unspecified.

Alternative 2: This issue is not addressed.

Alternative 3: Proposal does not address this issue.

Alternative 4: The Committee generally supports treatment of diversity in the regulations. Recommendations for clarifying and strengthening the language in a number of places are included. The Committee recommends against requiring the use of quantitative diversity indices. In addition, the Committee adds to the regulations specific language to ensure that planned type conversions must be justified by detailed analysis showing biological, economic, and social consequences.

Alternative 5: Some commenters suggested that the draft regulations were not specific enough and that the requirements did not meet the intent of the NFMA. The concern was voiced that the regulations should have dealt more specifically with forest-type conversions (i.e., conversion of Eastern hardwood forests to softwoods). It was suggested that, with few exceptions, the regulations should prohibit forest-type conversions. Some commenters stressed the need for closer State and local cooperation on the general issue of diversity. The need for designating "research natural areas" and other types of preservation areas was noted.

Alternative 6: The Committee of Scientists' recommendations for clarifying language and establishing criteria have been adopted for this alternative. Management standards and guidelines for diversity have been expanded with more emphasis on type conversions. Additional requirements have been specified to ensure coordination with other Federal, State, and local agencies. Specific requirements for designation and

management of special interest areas and research natural areas have been added.

Issue No. 4—The Role of Economic Analysis.

Alternative 1: The August 31, 1978 draft regulations suggest that population and employment data be collected, that demand projections be used, and require that expected benefits be included in this analysis. Specific requirements for analysis include effects on distribution of goods, services and uses, changes in payments to local governments, income, employment, and economic efficiency. Direct and indirect benefits and costs are to be estimated using standards and practices to be established later by the Chief, Forest Service. Economic impact estimates of different range management alternatives on local livestock industry are also required. It is required that lands be classified as not suitable for timber production if "an economic analysis reveals that the lands are not efficient for producing timber."

Alternative 2: The overall issue of economic analysis is not addressed. Economic efficiency analysis for the classification of lands suitable for timber would be provided for in this alternative as part of the regulation recommended under Issue No. 5 (See Issue No. 5, Alternative No. 2.)

Alternative 3: The proposal does not address the general issue of economic analysis. Some economic evaluation requirements are included in "suitable lands" requirements. (See Issue No. 5, Alternative No. 3.)

Alternative 4: The Committee concludes that language in the draft regulations dealing with economic analysis is often vague and must be improved if direction is to be clear. The Committee has proposed more specific direction for ensuring that competent economic analysis occurs in all appropriate places in the planning process and are displayed for consideration of the economic consequences of alternatives.

Alternative 5: Some commenters who addressed this issue declared that the draft regulations were seriously deficient with regard to analysis requirements and specific standards. It was suggested that some type of economic efficiency analysis should be required to ensure that all activities would yield the maximum net public benefits possible. Many of the suggested revisions to the regulations would require the Forest Service to conduct rather detailed analysis of benfits and costs for all planning activities, including evaluation of both market and non-market goods. Some disagreement was expressed regarding the importance of local economic stability concerns. Many felt that local enconmic impacts should be a prime consideration in the evaluation of plans while others considered this to be an inappropriate function of Forest Service planning. It was suggested that, in addition to an "environmentally preferable" alternative, the plans should include an "economically preferable" alternative. Some commenters stressed the need for detailed economic analysis for potential wilderness areas and for present and potential mineral and energy development areas. The need for a more thorough treatment of present and future "demand assessment" for both market and non-market goods was also noted.

Alternative 6: Substantial requirements relating to economic efficiency analysis, evaluation criteria, and guiding principles for management have been added in this alternative. Additional analysis requirements have been spedified for regional and forest planning, including supply and demand assessments and economic impact evaluation for alternatives considered. The role of economic analysis in the determination of lands not suitable for timber production and consideration of community stability objectives have been clarified. Requirements have been specified for economic evaluation of values foregone by wilderness designation.

Issue No. 5—Determination of Lands Not Suited for Timber Production.

Alternative 1: The August 31, 1978 draft regulations outline a process for determining lands not suited:

1. Lands are considered "not capable" if biological growth potential is below a minimum set by the regional plan.

2. Lands are "not available" if they have already been designated from some other use.

3. Lands are "not suited" if timber production would result in adverse impacts upon soils, productivity, watershed, threatened or endangered species, or cannot be restocked in 5 years.

4. Lands that have been classified as "capable, available, and suitable" are to be further reviewed during the formulation of alternatives stage of planning and are classed as "not available" if management objectives for the area preclude timber production or limit production to the point where silvicultural standards cannot be met.

5. Lands that are classed as "capable, available, and sutiable" may be classified as "not suited" if an economic analysis reveals that these lands are not efficient for producing timber.

6. No timber harvesting can occur for at least 10 hears on lands "not suitable."

Alternative 2: This alternative includes the following limits for identifying timber producing lands:

1. Lands are "not capable" if biological growth potential is below 50 cubic feet per acre per year of industrial wood in natural stands (higher standard may be established by regional plan).

2. "Not available" if lands are administratively or legislatively withdrawn.

3. Lands are "not suited" if:

A. They consist of isolated tracts of commerical forest land (stringers) such that organizing and scheduling periodic harvest is impractical;

B. They contain non-marketable timber species;

C. Slope is equal to or greater than the angle of repose of the soil, or the critical angle for slope stability;

D. Lands have soild types for which erosion rates during the first 10 years following logging would cause loss of soil greater than the amount that would be generated naturally through periodic weathering during one period of rotations; or

E. No technology has been developed or is expected to be developed in the next 10 years, that is or will be available and feasible for use in the forest during such period, that will enable timber production from the land without significant or long-lasting resource damage to soil, productivity, or watershed conditions; without significant adverse impact on threatened or endangered species; and with assurance that such lands can be adequately restocked within 5 years after final harvest.

4. Lands classified as "capable, available, and suited" for timber production are further identified as:

A. "Not available" for timber production if those lands will be managed to meet objectives of the forest plan that either preclude timber production or limit timber production to the point where silvicultural systems and resources could not be employed within the standards and guidelines for silvicultural systems and resources protection contained in these regulations and in the forest plan;

B. "Not suited" for timber production if the anticipated direct benefits from growing and harvesting timber are less than the anticipated direct costs to the government, including interest on capital investments required by timber production activities. Specific standards and practices for making the economic analysis required by this section are to be established by the Chief, Forest

Service in regulations which shall be effective on the same date as these regulations, and shall be applied uniformly and nationally, provided that in determining net benefits from timber production the following principles shall be followed:

(1) Direct benefits include the anticipated revenue from harvesting timber crops, and any benefits that can be reasonably attributed to increased production of other services such as forage, water flows, and wildlife;

(2) Direct costs include the anticipated investments, maintenance, and operating management and planning costs attributable to timber production activities, and any costs that can be reasonably attributed to decreased production of other services and to mitigation measures necessitated by the impacts of timber production. In the case of roads, only the additional investments in the road system required by timber growth and harvesting activities are to be included in direct costs; and

(3) The rate of interest used to discount future benefits and costs shall be equal to the rate expected for alternative uses of Federal funds, as set by the Office of Management and Budget.

5. No timber harvesting shall occur on lands classified as "not capable" or "not available," for timber harvesting and for 10 years on lands "not suited," excluding salvage sales and other special circumstances.

Alternative 3: The alternative makes a key factor upon which suitability determinations will be made on the production goals assigned to the forest through the regional plan from the RPA Program. The proposal requires that timber producing lands be identified in the following manner:

1. "Not capable" if biological growth potential is below minimum standard defined by the regional plan.

2. "Not available" if the land is legislatively or administratively withdrawn from timber production.

3. "Not suited" if technology is not now available or none is expected to be developed within the next 10 years that would permit harvesting which meets silvicultural guidelines.

4. Lands classified as "capable, available, and suited" will be further reviewed and identified as "not suited" if those lands are not needed to meet production goals from the regional plan and "lands are not efficient for producing timber." Additional economic analysis requirements for this determination include: "Any economic analysis will be based on the assumptions that the lands are managed primarily for timber production and are in fully regulated condition; that technically feasible management practices are applied which have a net economic benefit given anticipated future price levels and cost levels reasonable and directly related to efficient and prudent timber management; and that the cost of administration, protection, and access are borne proportionately by those other resource values produced while the land is under primary management for timber."

Alternative 4: The August 31, 1978 draft provides for a 5-step process for identifying lands not suited. The Committee does not consider this adequate and recommends the following procedure:

1. Lands are screened to determine if they are "available" for (i.e., not already designated for other use) timber production;

2. "Available" lands are then screened to identify areas that are "not suitable" for timber production because of physical, technical, biological (including a minimum productivity standard), or environmental factors;

3. Lands passing these tests are then subjected to economic analysis and ranked to determine their relative economic efficiency for commercial timber production; and

4. Alternative land management plans are formulated, lands are allocated to timber harvest on a cost-effective basis, and these allocations then may be adjusted and revised on the basis of multiple-use considerations.

Alternative 5: There was a great deal of disagreement in the public comments regarding this issue. Some felt the draft regulations were too restrictive while many others considered the regulations far too open-ended. A number of comments suggested that more specific requirements for economic efficiency criteria for suitable lands be included. Some commenters stated that the Environmental Groups' proposal would fulfill the requirements of NFMA, but that this proposal was unrealistic and too inflexible. It was suggested that this determination should consider factors such as slope, angle of repose of the soil, soil stability, areas of isolated tracts and non-marketable species. The biological growth standard for determining suitable lands was a major area of conflict. A number of possible revisions were suggested including regulation requirements for minimum growth standards. A minimum standard of 20 cubic feet acre per year was frequently mentioned. Other proposed limits were 50 cubic feet per acre per year, 50–60 in undeveloped areas and, 25–30 in developed areas. Other commenters proposed that standards not be set in regulations, but in either the regional plan or forest plans.

Alternative 6: The treatment of this issue in this alternative is based upon the Committee of Scientists' recommended language and organization. Minimum biological growth standards to be used in the determination of timber production capability will be established by the regional plan using the criteria specified in the regulations. Lands with potential for commercial timber production will be evaluated using the assumptions and criteria in the regulations to determine their relative economic efficiency for this use. Lands which are more "efficient" (relative to other lands) will be allocated for timber production before less "efficient" lands are used. There is no minimum economic return specified in the regulations, nor is there a firm requirement that net benefits must exceed costs for this use.

Issue No. 6—Departures.

Alternative 1: The August 31, 1978 draft requires that the allowable sale quantity be determined on the principle of sustained yield and only based on lands "capable, available and suitable." The following requirements for all alternatives are specified:

1. For the base harvest schedule the planned sale and harvest for any future decade must be equal to or greater than the planned sale and harvest for the preceding decade, providing that the planned harvest is not greater than long-term sustained yield capacity (non-declining flow).

2. Long-term sustained-yield, base timber harvest schedules, and departures are subject to the following guidelines:

A. "For the long-term sustained-yield capacity and the base harvest degree of timber utilization consistent with the goals, assumptions and standards contained in or used in preparation of the current Renewable Resource Program and regional plan. For the long-term sustained-yield capacity, the management and utilization assumptions must reflect those projected for the fourth decade of the regional plan. For the base harvest schedule, the management and utilization assumptions must reflect the projected changes in practices for the four decades of the regional plan. Beyond the fourth decade, the assumptions must reflect those projected for the fourth decade of the regional plan."

B. "For departure alternatives to the base harvest schedule which provide outputs above the current regional plan, assume an appropriate management intensity."

C. "In accordance with the established standards, assure that all even-aged stands scheduled to be harvested during the planning period shall generally have reached the culmination of mean annual increment of growth. Mean annual increment must be based on management intensities and utilization standards expressed as units of measure consistent with the regional plan. Exceptions to those standards are permitted for the use of sound silvicultural practices, such as thinning or other stand improvement measures; for salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack; for the improvement of age-class distribution; or for the removal of particular species of trees after consideration has been given to the multiple uses of the area being planned and after completion of the public participation process applicable to the preparation of the forest plan."

D. "For all harvest schedules, achieve a forest structure by the conclusion of the scheduling period that will enable perpetual timber harvest thereafter at the long-term sustained-yield capacity, consistent with the long-range multiple-use objectives of the alternatives."

3. Departures should be considered under any of the following conditions:

A. "None of the timber harvest alternatives formulated has the capacity to produce the goods, services, or uses to meet objectives specifed for the area by the regional plan."

B. "Attainment of the multiple-use objectives of the forest plan will be enhanced by more rapid and efficient achievement of the long-term sustained-yield capacity of the forest owing to present forest structure or by reducing high mortality losses."

C. "Implementation of the base harvest schedule would cause instability or dislocation in the economic area in which the forest is located."

4. The proposal also specifies how the harvest schedule is to be selected:

A. "Selection of a harvest schedule must be made following a comparison of management alternatives * * * This comparison must include an evaluation of the sustained-yield goals, silvicultural standards and guidelines, and the effects of timber removal on other resources * * * The selected harvest schedule provides the allowable sale quantity, or the quantity of timber that may be sold from the area of land covered by the forest plan for the plan period. Within the planning period, the volume of timber to be sold in any one year may exceed the average annual allowable sale quantity so long as the total amount sold for the planned period does not exceed the allowable sale quantity."

Alternative 2: The proposal would not permit departures within the regular planning process, but specifies that a forest plan may be amended to increase or decrease the allowable sale in the following manner:

1. Regional Forester may ask the Chief, Forest Service to "consider" departure if departure would "enhance" multiple use objectives by:

A. Improving age-class distribution;

B. Reducing high mortality losses; or

C. Reducing conflicts.

2. The Regional Forester must submit a report giving information to support recommended departure.

3. The Chief may agree to "consider" departures and direct the Forest Supervisor to prepare proposals, and draft and final EIS's are required for proposals.

4. In formulating proposed departures, the following is required:

A. Each departure proposed shall reflect management direction established in the forest plan regarding constraints on harvest, type of silvicultural systems to be used, and silvicultural standards and guidelines. Lands that would be affected by the increase or decrease in harvest level shall be specifically identified;

B. Each departure shall assume a degree of timber utilization and management intensities consistent with those assumed in the preparation of the base timber harvest schedule and demonstrate that forest structure by the end of the planning horizon would enable perpetual harvest thereafter at the long-term sustained-yield capacity; and

C. Each departure shall be evaluated in accordance with regulations covering estimated effects of alternatives and compared with the forest plan. Such comparison shall include an evaluation of the consistency of the departure with the multiple-use objectives of the forest plan.

5. The Secretary, after review of the final EIS, must approval all departure proposals.

Alternative 3: The proposed alternative altered the provisions set out in Alternative No. 1 in the following ways:

1. For base timber harvest schedule(s) "the planned sale and harvest for any future decade must be equal to or less than the long-term sustained-yield capacity" rather than the preceding decade and "the total harvest must also be the maximum achievable from the forest during the first rotation."

2. Add an exception to the standards for assuring that all even-aged stands scheduled to be harvested generally have reached the culmination of mean annual increment of growth—"for the improvement of age-class distribution."

3. "For all harvest schedules, other than the base harvest schedule, achieve a forest structure by the conclusion of the forest rotation that will enable sustained-yield capacity, consistent with the long-range multiple-use objectives of the alternatives."

4. An additional condition for departure was added. "Implementation of an alternative plan would provide greater public benefits, including, but not limited to a combined flow of public and private timber that better meets local and national demands or achieving to the extent possible a better balance between expenditures for timber management and the return to the Federal Government from the sale of timber and the value of other related uses."

5. Additional factors were added in the step for selecting the harvest schedule:

A. "Selection of harvest schedule must be made following a comparison of management alternative and the public benefit to be achieved from each."

B. "The responsible Forest Service official shall describe in writing the justification for the selection made and the standards used."

Alternative 4: The Committee recommends adoption of the principles in the August 31, 1978 draft with the addition of:

1. Statement of basic policy with regard to timber harvest scheduling;

2. Language to make clear that departures from the base harvest schedule and the planning required for departures is discretionary; and

3. Authority for approving any departure above the base timber schedule should lie with the Chief.

Alternative 5: A number of commenters stated that the regulations should simply prohibit departures. Others suggested that very detailed criteria should be provided to ensure that departures are only allowed under truly exceptional circumstances. Some commenters stated that detailed criteria would be impractical. There was a good deal of conflict regarding the issue of

whether or not local economic conditions should be considered as a justification for departures.

Alternative 6: The Committee of Scientists' proposals have been adopted. With the exception of specifying that the Chief, Forest Service, must approve departures, this alternative for the regulations is similar to the original draft requirement concerning this issue. Consideration of local economic disruptions has been maintained.

Issue No. 7—Size of Openings Created by Harvest Cutting

Alternative 1: The August 31, 1978 draft requires that maximum size limits for clearcutting will be determined through the regional planning process.

Alternative 2: This issue is not addressed.

Alternative 3: The proposal does not address the issue.

Alternative 4: The Committee alternative agrees with the August 31, 1978 draft that maximum size limits be set regionally.

Alternative 5: A number of commenters have asserted that the draft regulations lack the degree of specificity required by NFMA. There is major public conflict regarding the issue of whether or not the regulations should set size limits for harvest openings throughout the National Forest System. Some commenters have strongly criticized the draft regulations for the absence of nationwide standards for size and spacing of harvest openings. Others have emphasized that the regulations should not set national standards but rather these standards should be set by the forest or the region, by species or forest type, and justified, in an environmental impact statement.

Alternative 6: This alternative for the regulations establishes the maximum size for openings created by timber cutting. These maximum sizes are: 60 acres for the Douglas fir forest type of California, Oregon, and Washington; 100 acres of the hemlock-Sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types. There are provisions for exceptions to these size limits. These are:

1. Regional plans may specify smaller maximum sizes for geographic areas or forest types based upon the factors detailed in the revised regulations.

2. Regional plans will include provisions for exceptions that will permit larger size openings than those specified in the regulations. The minimum set of factors to be considered for exceptions is outlined in the revised regulations. Forest plans must conform to the size limitations established by the regional plan. Any exceptions (except catastrophic losses) to exceed the 60-100- or 40-acre maximum size limits must be approved by the Chief, Forest Service. At least 30 days public notice must be given before the size limits may be exceeded.

Alternative 7: This alternative requires that maximum size limit for harvest cut openings will be determined through the regional planning process.

Issue No. 8—Public Participation.

Alternative 1: The August 31, 1978 draft regulations use a theme of criteria to achieve compliance and uniformity. This concept of rulemaking provides latitude for adaptation to future social changes, but does not specifically state standards on the role the public may exercise the decision process. Standards are established for the availability of documents and their required residence. Criteria for the type of meetings to be held and where in the process they are to take place are discretionary in this version of the regulations.

Alternative 2: The proposal does not address this issue.

Alternative 3: The proposal does not address this issue.

Alternative 4: The Committee of Scientists' version of the regulations contain more specific requirements in several areas. The Committee felt that the vague and broad discretion in the August 31, 1978 draft regulations "lead to discontent and an unhappy, uninformed public."

The more specific areas recommended by the Committee of Scientists are:

1. A general policy statement and objectives of public participation.

2. Provide for a mutual program of information and educational exchange.

3. Provide explicitly for public participation at: the beginning of the process, after conclusion of inventories and assessment, and before a preferred alternative is chosen.

4. The responsible official should show evidence that all public input to the plan has been analyzed, evaluated and considered.

5. More specific language on the kind of places to meet such as county courthouses in affected counties.

6. The nature of public participation be made more explicit by:

A. Stressing that informal activities are to be encouraged for information exchange.

B. Stating that notifications shall be made highly visible.

C. Officials responsible shall continue to meet all other obligations for carrying out public participation requirements.

7. The public should be made aware of the kinds of informational materials that will be available. In summary, the Committee of Scientists' version of the regulations on public participation in the planning process proposes more prescriptive rules than the August 31, 1978 draft regulations.

Alternative 5: It was suggested that the regulations should include detailed statements specifying how public participation will be evaluated, summarized and used throughout the planning process. Many felt that the time limits set out for public review and comment upon plans were too short. The question was that the proposed regulations required little coordination with State and local planning agencies. It was suggested that a requirement be added to include public input priorities in national and regional plans, as well as local plans.

Alternative 6: Much of the language and organization recommended by the Committee of Scientists has been adopted in this alternative. As a result, this version is significantly more detailed than the original draft. This revision includes explicit material on the purpose of public participation, required public notices, and the manner in which public input will be used in the planning process. In addition, the public participation responsibilities of the interdisciplinary team have been clarified. One important change has been made to the limitation for public comments. This alternative provides for 90 days for written responses for national and regional planning comments (original draft specified 60 days).

Issue No. 9—Management of Wilderness Areas and Disposition of Roadless Areas.

Alternative 1: The August 31, 1978 draft regulations require that:

1. Lands designated by Congress or the Forest Service as suitable for wilderness will be studied for possible inclusion in the Wilderness System; lands designated to be managed for non-wilderness will not be considered for possible wilderness in the first generation of forest plans.

2. During the 15th-year revision (second generation) of forest plans, other areas will be evaluated for possible wilderness designation.

3. The "appropriateness" of designating the lands under 2 above will be considered.

4. Forest plans must provide direction for management of designated Wilderness and Primitive Areas.

Alternative 2: This issue is not addressed.

Alternative 3: The proposal does not address this issue.

Alternative 4: Committee recommends clarifying language to address two issues: Identifying and appraising additional candidate areas, and establishing maximum allowable levels of use. Key provisions include:

1. Forest plans will include an evaluation of the wilderness resource present and provide management planning for it.

2. All potentially eligible lands should be considered at each revision of the forest plan.

3. Costs and benefits should be considered in the same way as are other resources in considering wilderness status.

4. Criteria for designation should be evaluated continuously as experience dictates; and

5. Determination of "carrying capacity" should be made for each area.

Alternative 5: Several commenters pointed out that the regulations should include more specific considerations of standards and guidelines for management of lands adjacent to designated Wilderness and roadless areas. It was suggested that the regulations be revised to make it clear that the Forest Service would evaluate the wilderness potential for areas not included in the RARE II inventory. It was felt that some regulation guidelines were needed to specify how wilderness potential would be determined. The need for a requirement for detailed economic analysis for trade-offs relating to wilderness designation was also noted. The draft regulations were criticized for the absence of minerals development considerations for roadless areas. Some commenters suggested that it was inappropriate to focus only upon limiting visitor use in Wilderness Areas and that some consideration should be given to use impacts from adjacent areas.

Alternative 6: The proposals recommended by the Committee of Scientists have been adopted in this alternative. In addition, the language of the original draft has been altered in order to clarify the factors to be considered in evaluating wilderness potential and wilderness area management. Minerals development considerations are not addressed specifically in regard to wilderness issues; however, provisions for these concerns are included elsewhere in the revised regulations. Requirements are specified to ensure that levels and kinds of wilderness use are evaluated and considered in wilderness management. Special attention is also required for off-site impacts and adjacent area management.

Issue No. 10—Coordination.

Alternative 1: The August 31, 1978 draft requires coordination with "other affected public entities and Indian tribes." Notice of preparation or revision of forest plans must be given to State agencies, Indian tribes, and heads of county boards affected. Documentation of all consultation is required.

Alternative 2: This issue is not addressed.

Alternative 3: The proposal does not address the issue.

Alternative 4: Committee proposes substitute language to assure that other governmental units understand how they can be involved in Forest Service planning, that the Forest Service make real efforts at coordination, and that Forest Service planners will evaluate and consider the plans of other governmental units as they develop plans. Specifically, recommendations include requirements that:

1. The responsible Forest Service officals be aware of the plans and policies of other units of government;

2. Appropriate State and local government representatives be involved and consulted;

3. A request be made of each State for appointment of a person to coordinate State involvement;

4. The forest plan document that plans, programs and policies of other units of government have been analyzed;

5. Coordination take place at crucial times in the planning process;

6. An attempt to be made to identify goals and plans of owners of intermingled private lands; and

7. That there be coordination within the Forest Service in the designation of special purpose areas.

Alternative 5: Most commenters stated that the regulations lacked specific guidelines and were not sufficient to ensure coordination. There were suggestions indicating the need for closer cooperation between Forest Service activities and State and local governments. Some commenters felt that the regulations should allow for more State or local control over Forest Service activities. It was suggested that the regulations should include provisions for other Federal agencies and State and local government representatives to serve on the interdisciplinary team. It was proposed that coordination with affected private landowners also be required.

Alternative 6: With some minor modifications, the Committee of Scientists' detailed proposals have been adopted.

Issue No. 11—Buffer Strips in Riparian Zones.

Alternative 1: This version of the regulations speaks indirectly to management of the riparian zone under water and soil resources. These regulations direct that existing or potential watershed conditions that will influence soil productivity, water yield, water pollution or hazardous events will be evaluated.

Alternative 2: Not addressed.

Alternative 3: Not addressed.

Alternative 4: This alternative provides prescriptive regulatory language as protection for the riparian zone. It provides for special attention to be given to a strip zone approximately 30 meters wide along both sides of all perennial streams, lakes and other bodies of water. Any activities conducted in this zone would be carried out so as not to result in detrimental change and only carried out if multiple-use benefits exceed costs.

Alternative 5: Many of the commenters stated that the draft regulations did not provide adequate safeguards for water quality and habitat protection. It was suggested that control be established for all activities along lakes and streams. Proposed control measures ranged from prohibiting activities in these areas (various distances were suggested, from 50 feet either side to 600 feet) to a requirement that controls be established in the regional plan. These regional controls would include standards for streamflow, sedimentation, and water temperature. The public comment on the August 31, 1978 draft regulations were in summary, all more concerned with the need for more prescriptive language.

Alternative 6: The treatment of this issue in this alternative is based primarily upon the recommendations of the Committee of Scientists. This alternative proposes that special attention be given to lands and vegetation for approximately 100 feet along both sides of all perennial streams, lakes, and other bodies of water. All management activities which seriously and adversely affect water conditions or fish habitat will be permitted only if conducted so as to protect these waters from detrimental change. Interdisciplinary teams will determine constraints to be placed on management activities in the zone to assure protection of water quality and other multiple-use values.

Alternative 7: This alternative requires that special attention be given to riparian zones (perennial streams, lakes and other bodies of water). The

zone will be identified using criteria established in regional plans.

V. Effects of Implementation

A major effect of the alternative regulations proposed—if adopted—will be to integrate land management planning and functional (resource) planning. Planning of lands and resources of the National Forest System will be conducted by interdisciplinary teams rather than by individual resource or functional staff units.

In many cases the same people and skills will be involved but in a different way. Some additional personnel ceilings will be required because of new skill requirements such as analysts, economists, biologists and writers.

Although resource management planning has always been a major responsiblity in the Forest Service, the emphasis has primarily been on functional planning rather than on integrated resource planning (called multiple-use planning, unit planning, multi-disciplinary planning, etc.). In most instances functional planning remained a separate activity. Functional planning and land management planning often were carried out relatively independently, and budgeting was still along functional lines; the outcome was inevitable: land management planning became in itself a function, much like range management, timber management, and engineering. NFMA requires an integrated plan for each unit of the National Forest System. The planning process prescribed in the alternatives establishes an interdependency of land management and resource planning.

The specific effects of implementing any of the alternative regulation proposals are virtually impossible to quantify. Regulations developed to direct the process of preparation and revision of land management plans have no direct effect on the human environment. The regulations do not commit land or resources. They only establish procedures, and standards and guidelines for planning future commitments. Some general qualified effects or impacts of alternatives are presented below in table form by issues.

Actual effects on the production of goods and services will be determined and verified when the planning is completed. Impacts will be identified in regional or in individual forest plans. These plans are subject to a complete environmental assessment with maximum public participation. Effects generated by the land and resource management alternatives will be analyzed in the environmental impact statement prepared during the actual planning effort.

There are several provisions within each alternative that affect the output of goods and services, particularly timber production. The determination of the allowable sale quantity will directly affect the level of timber available from the National Forests. This is particularly true if departures from non-declining flow are considered and selected. The identification of lands not suited for timber production may reduce the commercial forest land base, particularly where the minumum biological growth potential standard is set above the current minimum of 20 cubic feet per acre per year. Also, establishment of the maximum size of harvest cut opening and riparian zone buffer areas will affect the overall cost of timber production or the total level of supply.

Generally, some outputs will decline temporarily. However, the capacity exists to expand activities with higher level investments so that most outputs could be increased in the long run.

The increased requirements imposed by the NFMA and regulation will increase costs through 1985 or until all plans are developed. This would be primarily due to establishment of the new procedures, requisite training needs, and the variations anticipated between the various National Forests and Grasslands in terms of planning already accomplished or in progress. As the Forest Service becomes more familiar with the new process, the cost should decline. There should be no significant difference between alternatives in long-term costs to the Forest Service as any particular alternative regulation might be promulgated. The integration of all planning efforts into one process should eventually reduce the costs.

Land management planning in the recent past cost about $14 million annually. The anticipated annual costs and additional man years through 1984 are shown in the following table. The table reflects plans as currently scheduled. Costs include planning at all three levels, forest, regional and national

	Number of forest plans	Annual costs	Increased man years	Man years
Fiscal year:				
1979	10	$19,860,000	60	60
1980	30	21,100,000	60	120
1981	30	22,500,000	60	180
1982	30	22,800,000	60	240
1983	30	23,200,000	40	280
1984	20	14,700,000	10	290
1985	4	12,000,000		

These costs reflect an increase for what has been land use or land management planning historically. New skill requirements, the need for additional personnel ceilings, and the uncertainty of the availability of the skills could require more contracting and resultant higher costs. Monitoring requirements may also add significantly to costs.

The effects of implementing alternative regulations on the physical and biological environment are not measurable except qualitatively. Each alternative set of regulations enhances plant and animal diversity, protects soil and water values and the visual resource, and insures long-term productivity. The actual results will be known after the individual forest or regional plans are completed.

The alternative regulations require that a monitoring and evaluation process be identified and adhered to as a part of plan implementation. This process will: reveal how well the objectives of the forest plan have been met; quantify the effects of management activities upon the physical and biological environment; and develop a data basis for plan updating.

There is no reliable way to estimate quantitatively the effect on the economic environment of promulgating any of the alternative regulations. It is assumed that better management decisions will result from improved economic analysis, because these decisions will be based on cost effectiveness data. Overall management of the NFS should become more cost effective and efficient.

Effects upon the social environment are difficult to quantify. No significant impacts or differences between alternatives are anticipated. The social environment is defined as the composit of social variables likely to be affected

by planning for management of the NFS: Population dynamics, community economy, educational quality, health and environment, housing quality, leisure opportunities, community identity, minorities, and land use and tenure. Specific social effects will be determined and evaluated through the planning process for the appropriate level of planning. Public participation is required throughout the development and revision of all plans, resulting in more public awareness and understanding of National Forest System management. This particular requirement is responsive to the concerns expressed before the NFMA was passed and specifically to Section 6(d) of the Act.

Relative Effects of Alternatives by Issues:

To establish a basis for measuring anticipated implementation effects of each alternative, an independent set of key variables was identified by the interdisciplinary team for each issue. These variables are the factors affected by alternatives. The tables show in relative terms how the alternatives impact the factors listed. Language for Alternative No. 6 and 7 is the same for all issues except 7 and 11. Therefore, impacts for Alternative 7 are shown only for these two issues.

Issue No. 1—The conceptual framework for an integrated planning process. As discussed earlier there are a number of different conceptual frameworks for attempting both vertical and horizontal integration of the planning process. Integration requires a link vertically between the organizational hierarchy of national, regional and local levels, and a merging functionally at the local level the planning of range, wildlife and fish, recreation, timber, water, minerals, and other resources. Therefore, the conceptual method chosen has a significant effect on further options for resolving other issued. For example the incremental approach limits public participation in long-range decisions, while mixed scanning framework tends to enhance this option. (See appendix A)

The practical concerns surrounding this choice relate to such basic items as public participation, the decision process, and agency responsiveness. The alternative choice for how the regulations are to be promulgated under a given conceptual framework may have long reaching effects on how the integrated planning process will be carried out.

Issue No. 1.—*Relative Effect of Alternatives*

Impact of alternative on	Alternative No.					
	1	2	3	4	5	6
Public Perception of Process [1]	2	N/A	N/A	4	4	5
Agency Responsiveness to deal with Issues [2]	L	N/A	N/A	M	H	M+
Planning and Decisionmaking Process [3]	2	N/A	N/A	4	5	4

[1] On a continuum of increasing understanding from 1 to 5, with 5 high.
[2] Response to external stimuli as low, moderate or high.
[3] On a continuum of increasing complexity from 1 to 5, with 5 high.

Issue No. 2—Interdisciplinary Approach. The major debates over regulations on the interdisciplinary teams and approach have focused on technical more than behavioral characteristics. Team composition and leadership have been discussed from differing viewpoints, as well as individual qualifications necessary for legitimate memberships. In addition there has been continuing concern over the role the interdisciplinary team will play in the decisionmaking process. The key effects evaluated for this issue are team formation, duties and qualifications.

Issue No. 2.—*Relative Effect of Alternatives*

Impact of alternative on	Alternative No.					
	1	2	3	4	5	6
Team Formation [1]	1	N/A	N/A	3	4	4
Team Duties [2]	2	N/A	N/A	4	4	4
Team Member Qualifications [3]	1	N/A	N/A	4	3	4

[1] Continuum from (1) discretionary to (5) specific composition.
[2] Continuum from (1) weak to (5) strong direction given.
[3] Continuum from (1) discretionary to (5) specific requirements.

Issue No. 3—Diversity. Diversity is the condition of being different. The classification, measurement and control of the elements which make up diversity of forests and ranges are activities associated with managing renewable resources. It is the proportional distribution of diverse situations, such as different habitats, that determines the availability of timber, wildlife, range production, recreation, streamflow, aesthetics and other benefits. Therefore, diversity determinations have important implications in terms of opportunities for resource planning and management options.

Issue No. 3.—*Relative Effects of Alternatives*

Impacts of alternative on	Alternative No.					
	1	2	3	4	5	6
Genetic variability [1]	No change	N/A	N/A	No change	Increase	Increase
Timber Supply [1]	No change	N/A	N/A	No change	Decrease	No change
Planning Process [2]	2	N/A	N/A	2	3	2

[1] Relative to current situation.
[2] Continuum from (1) to (5) toward increasing complexity.

Issue No. 4—Role of Economic Analysis. Analysis for determination of both efficiency and impact has generated considerable debate. Much of it centers on the "state of the art" and

the possibilities of a given technique being universally practical for nationwide implementation. The nature of economic tests to be made and whether Congress intended that benefits must exceed costs for proposed management practices are the key considerations for measuring effects of alternatives in the issue.

Issue No. 4.—*Relative Effects of Alternatives*

Impact of alternatives on	Alternative No.					
	1	2	3	4	5	6
Planning Process [1]	2	2	2	4	4	3
Nature of Analysis Required [2]	2	4	3	4	5	3
Capability of Forest Service to Implement Direction [3]	4	3	3	2	1	3
Timber Supply [4]	3 F	1	4	3	2	3

[1] Increasing complexity on a scale of (1) to (5).
[2] Continuum from (1) none specified to (5) specific processes in terms of complexity or rigor.
[3] Low to High on a scale of (1) to (5).
[4] Relative to current situation where 3 is the current situation; below 3 indicates reduced supply, and above 3 indicates an increase.

Issue No. 5—Lands not Suited for Timber Production. The issue in the "lands not suited for timber production" question appears to be a means, not ends, question. There is little disagreement over the desired results that there should be identified in the land management planning process lands not suited for timber production. The debate focuses on where in the process this identification should occur and how prescriptive the analysis screens should be in the regulations.

Issue No. 5.—*Relative Effects of Alternatives*

Impact of alternatives on	Alternative No.					
	1	2	3	4	5	6
Regulated Commerical Timber Base and Supply [1]	No change	Decrease	No change	No change	N/A	No change
Total Commerical Timber Base and Supply [2]	3	5	2	2	N/A	3
Wildlife Habitat Abundance/Diversity [3]	3/3	4/3	2/3	3/3	N/A	3/3
Planning Process [4]	2	5	2	4	N/A	4
Amenities [5]	4	4	3	4	N/A	4

[1] Compared to current situation.
[2] Compared to current situation on a scale of (1) least to (5) most reduction excluding consideration of the role of economics issue.
[3] In terms of increasing abundance and diversity on a scale of (1) to (5), 5 high.
[4] Increasing complexity on a scale of (1) to (5).
[5] In terms of tendency to improve overall quality of water and visual resources, scale (1) to (5), 5 high.

Issue No. 6—Departures. The National Forest Management Act requires as a general policy that the Secretary limit the sale of timber from each National Forest to quantity which can be removed annually in perpetuity on a sustained-yield basis with the discretion to depart from this policy in order to meet overall multiple-use objections. This provision is found in a separate section of the Act (Section 11, or Section 13 of the amended RPA) from the Land Management Planning provisions (Section 6). This separation has caused some interests to believe that the determination of the timber allowable sale quantity should be handled either outside of the land management planning process or as a separate and distinct step after the land management plan has been completed.

Provisions within Section 6 clearly provide that decisions on the level of timber harvest be made within the integrated land management planning process.

Issue No. 6.—*Relative Effects of Alternatives*

Impacts on alternatives on	Alternative No.					
	1	2	3	4	5	6
Planning Process [1]	2	5	2	3	N/A	3
Opportunity to change Short Term Timber Supply [2]	4	1	5	3	N/A	3

[1] On a scale of (1) low to (5) high toward increasing difficulty to implement the process.
[2] On a scale of (1) to (5) toward increasing agency flexibility to make determinations.

Issue No. 7—Size of Openings. At debate is the issue of the size of harvest cut opening to be allowed within a given silvicultural system. Should size standards be stated prescriptively or should size be determined through the planning process on a regional or site specific basis?

Issue No. 7.—*Relative Effects of Alternatives*

Impacts of alternatives on	Alternative No.						
	1	2	3	4	5	6	7
Discretion to Manipulate Vegetation including Wildlife Habitat [1]	4	N/A	N/A	4	2	3	4
Per Acre Harvest Costs [2]	No change	N/A	N/A	No change	Increase	Increase	No change
Water Quality [3]	2	N/A	N/A	2	4	3	2
Timber Supply [4]	No change	N/A	N/A	No change	Decrease	Decrease	No change

[1] In terms of improving habitat quality, scale of (1) to (5), 5 high.
[2] Relative to current situation.
[3] On a scale of (1) to (5) toward increasing sedimentation.
[4] Relative to current situation. Increase harvest costs means some marginal sales become unavailable, thus reducing harvests in some areas.

Issue No. 8—Public Participation. Public participation in Forest Service decisionmaking has been an issue of considerable experimentation and debate since the passage of the National Environmental Policy Act in 1969. Central to the issue is the openness that shall be maintained by the agency so that the public may become informed about National Forest matters and, if sufficiently interested, to participate through various forums in the development, review and revision of land management plans.

Issue No. 8.—*Relative Effects of Alternatives*

Impacts of alternatives on	Alternative No.					
	1	2	3	4	5	6
Planning Process [1]	2	N/A	N/A	4	4	4
Public's Awareness and Understanding [2]	2	N/A	N/A	4	4	5

[1] Increasing complexity on a scale of (1) to (5).
[2] Increasing improvement on a scale of (1) to (5).

Issued No. 9—Management of Wilderness Areas and Disposition of Roadless Areas. How often and to what extent shall wilderness values be considered? At issue is the question of whether undeveloped areas should be considered for wilderness during each major plan revision if they are still in an essentially natural state, and should maximum levels of use be deferred through regulations?

Issue No. 9.—*Relative Effects of Alternatives*

Impacts of alternatives on	Alternative No.					
	1	2	3	4	5	6
Disposition of RARE II Areas [1]	No	N/A	N/A	Yes	Yes	No
Use of Areas [2]	2	N/A	N/A	4	5	4

[1] To consider in land and resource management plan before 1985.
[2] Process for determining potentials of areas and limitations to be placed on them is from (1) discretionary and unspecified to (5) required and specific.

Issue No. 10—Coordination. At issue is the amount and level of coordination that should be required during land and resource management planning between the Forest Service and other planning entities. Whether prescriptive requirements or process direction for achieving desired end results is the matter to be evaluated.

Issue No. 10.—*Relative Effects of Alternatives*

Impact of alternative on	Alternative No.					
	1	2	3	4	5	6
Planning Process [1]	2	N/A	N/A	4	5	3
Levels of Awareness and [2]	2	N/A	N/A	4	5	3

[1] Increasing complexity on a scale of (1) to (5).
[2] Increasing improvement on a scale of (1) to (5).

Issue No. 11—Buffer Strips in Riparian Zones. The riparian ecosystem represents one of the richest areas in terms of flora and fauna within the Forest System. The scientific community is divided on whether this ecosystem is fragile or resilient. There are many demands in this zone; for aesthetics, water quality considerations, recreation opportunities, road construction opportunities, wood, forage and wildlife opportunities. It's also a nice place to eat your lunch.

Conflicting demands for uses in these areas are escalated in the more arid parts of the West where this ecosystem is more scarce. The principal issue is the degree to which the regulations prescribe the protection standards for riparian areas.

Issue No. 11.—*Relative Effects of Alternatives*

Impacts of alternative on	Alternative No.						
	1	2	3	4	5	6	7
Planning Process [1]	1	N/A	N/A	5	3	5	4
Per Acre Harvest Costs [2]	No change	N/A	N/A	Increase	Increase	Increase	No change
Amenity Values [3]	No change	N/A	N/A	Increase	Increase	Increase	No change
Timber Supply [4]	1	N/A	N/A	2	3	2	1

[1] Increasing complexity on a scale of (1) to (5).
[2] Relative to current situation.
[3] Water and scenic quality.
[4] Relative to current situation on a scale of (0) no reduction to (3) most reduction.

VI. Evaluation of the Alternatives

Various approaches for planning, numerous definitions of terms, and a variety of alternative descriptions and language for management standards and guidelines were analyzed and evaluated almost continuously throughout the development of the proposed regulations. The following is an evaluation of how the alternative sets of regulations meet the evaluation criteria described in Section III.

Between Alternative Evaluation

Selection Criteria [1]	Alternative No.						
	1	2	3	4	5	6	7
Effectiveness of Meeting Congressional Intent on NFMA	3	2	2	4	4	4	3
Basis in Technical and Scientific Principle	3	2	3	5	2	4	5
Acceptable to Public	1	2	1	4	N/A	5	4
Environmental Protection Adequacy	2	3	2	4	3	5	4
Timber Supply	3	1	5	2	1	2	4
Conformity with Executive Order #12044 Concerning Regulations Simplicity-Clarity/ Economic Burden [2]	3/2	3/5	3/2	2/3	N/A	5/3	5/2
Establishing Accountability	2	4	2	4	4	4	4
Capability to Implement	5	4	5	3	3	3	3
Flexibility Provided	4	2	5	4	2	3	4

[1] Ratings are on a scale of (1) low to (5) high in terms of how the alternative regulation sets meet the criteria listed. See Section III for a full description of each criteria.
[2] Higher number indicates greater burden.

Rationale for Rating Alternatives and for the Selection of the Preferred Alternative:

The alternative planning processes and language sets described to address the central issues have been analyzed and evaluated in this statement. The NFMA established bounds within which to develop the regulations. It required that a Committee of Scientists assist in the development of guidelines and procedures. By utilizing this prescribed method, including provisions for public participation, the range of alternatives for consideration narrowed to the preferred alternative proposed for adoption. This set of regulations will be published in the **Federal Register** for further public comment before final adoption. It also appears with the other alternatives in the Appendix of this DEIS.

Meeting Congressional Intent on NFMA:

NFMA presents congressional policy concerning the balance between protection of the environment and the need to provide adequate supplies of wood products. With this policy direction, Congress endorsed the concept that silvicultural prescription should be determined by the professional resource manager, not the legislator. Congress expects, however, that the regulations called for in NFMA will provide better controls on management planning and decisionmaking and that these controls will be influenced by interdisciplinary planning, and substantial public participation throughout the planning process.

The August 31, 1978 draft regulations met the intent of NFMA, but provided more discretion in the selection and use of guidelines and standards governing management activities. The revised draft (the preferred alternative) represents a sensible compromise between discretionary management and management by inflexible rules. The alternative retains the option for more explicit management controls and direction if future management under the proposed regulations fails to meet congressional expectations.

Basis in Technical and Scientific Principles:

There are substantial differences of opinion on many of the issues for which direction is provided in the alternative regulations. Congress, recognizing these differences, directed the Secretary to appoint a Committee of Scientists for advice in the preparation of these regulations. The interdisciplinary team that prepared this statement believes that the Committee of Scientists' version of the regulations represents the state of the art in technical and scientific areas. In most instances, alternatives 6 and 7 are based upon the Committee's technical and scientific recommendations. The August 31, 1978 draft, and the Environmental and Timber groups' proposals do not contain the same level of prescribed precision as the aforementioned two versions because they dealt only with two specific issues. There was wide variation in the public comments. Issues raised by the public were also reviewed by the Committee of Scientists.

It is possible, as the state-of-the-art evolves in such areas as resource valuation, diversity measurements, etc., that direction will have to be modified to accommodate new techniques and approaches.

Acceptability to the Public:

In evaluating public reaction to alternative regulations, more than 5,300 separate comments, as well as the texts of specific proposals from the general public and Environmental and Timber groups, were reviewed. In addition, the Committee of Scientists proposals were examined in depth. All of the above information was used in alternative evaluation. While none of the alternative regulation sets will be acceptable to all interested groups, the interdisciplinary team concludes that the Preferred Alternative incorporates the most acceptable version to all publics. This is because this version expresses the most acceptable regulation in that it describes in more specific language the actions to be taken by the Forest Service during the land management planning process. This factors, coupled with the degree of environmental protection, weighed heavily in selecting Alternative 6 as the Preferred Alternative.

Adequacy of Protection Afforded the Environment:

Public concern about environmental protection helped secure passage of the National Forest Management Act. The alternatives considered ranged from considerable flexibility at the national forest level in the August 31, 1978 version, to a more detailed approach to environmental protection proposed by the Committee of Scientists. Some of the key elements between alternatives were size of openings, riparian zone protection, determination of lands not suited for timber management, diversity, public participation, coordination with other planning units and interdisciplinary teams.

The August 31, 1978 regulations provided considerable discretion in riparian zone protection, and provisions for diversity, but so do the revised regulations. The detail and clarity of requirements mandated in the Preferred Alternative should, however, result in more complete, balanced consideration for environmental protection during the land management planning process.

Timber Supply.

Many of the provisions of NFMA directly affect timber supply, while others such as diversity and buffers have an indirect affect though the cost of producing and/or harvesting timber. It is difficult to separate other events and factors affecting timber supply from these regulations.

The NFMA provisions and the implementing regulations were also influenced by other laws such as the Endangered Species Act or events such as RARE II.

Some issues assessed affect timber supply in different ways. Several issues such as lands not suited affect the land base available. Others, the size of opening for example, affects the cost of harvesting timber, because marginal timber from smaller areas may be excluded from harvesting. Thus, the supply could be reduced, incurring higher costs.

The August 31, 1978 version provided more discretion to the land manager in selecting and using guidelines and criteria that affect timber supply. Four of the other alternatives reduce that discretion and are expected to reduce supply to varying degrees or increase the costs of maintaining or increasing supply. In balance with the other criteria, while a greater supply of timber would be available under the timber industry alternative, overall RPA objectives including an increased supply of timber through more intensive management from the national forests can be achieved with the Preferred Alternative.

Comformity with Executive Order No. 12044:

Executive Order No. 12044 directs that regulations prepared be as simple and as clear as possible. An evaluation of alternative language sets for regulations display a considerable range from simple to complex descriptions of direction and intent. The August 31, 1978 version of the regulations reflects a rather informal process-oriented approach while other versions, such as the Committee of Scientists and the Preferred Alternative are more explicit.

While the President's Executive Order prescribes simplicity and a reduction in implementation and economic burdens, it also requires the agency to be responsive to public comment. Public comment on the original draft regulations addressed the need to provide more specific and prescriptive language. The dichotomy of this evaluation results in ranking two different regulation language sets high for different reasons, i.e., the draft regulations, because of their simple language, and the Preferred Alternative because of their response to public comments. The interdisciplinary team carrying out this evaluation felt that the need to respond to public comment was an important factor to be considered. Nevertheless all alternatives tend to be slightly inflationary because of their overall tendency to increase costs to manage the National Forest System as well as to slightly reduce the supply of timber.

Accountability:

The regulations must clearly state who is responsible for certain actions, the nature and extent of responsibilities delegated, and clearly describe the appeal mechanisms in terms of substance and procedures.

Relative to the other alternatives, the August 31, 1978 draft regulations are considered to be weak in this respect. The principal reasons for this low ranking are:

1. August 31, 1978 draft implies that a great many decisions will be made during the regional planning process, but does not specify what the regional plan is, or how it will be done, or who is responsible for it.

2. Draft does not clearly define the role and responsibility of the interdisciplinary team.

3. With the exception of the regional planning shortcoming, the appeal procedures are adequate.

The Environmental Groups' proposal addresses accountability in the departures issue. Both the Chief and Secretary are identified as responsible for approving departures. There is, therefore, a high degree of accountability for this issue. The Timber Groups' alternative does not alter the draft with respect to this point. The Committee of Scientists' proposals add specifications and requirements for regional planning, interdisciplinary approach and clarifying details to the appeals process. This alternative is considered to possess a higher degree of accountability than does the August 31, 1978 draft or the Timber Groups' proposals. The public comments stressed the need for more details on regional planning and the interdisciplinary approach. Suggested revisions were similar to those of the Committee of Scientists' alternative. The Preferred Alternative has incorporated the concerns voiced by the Committee of Scientists and the public comments.

Capability to Implement:

The evaluation of feasibility is related to personnel and skill requirements, and the time required to undertake and complete planning actions specified. Neither the August 31, 1978 draft regulations nor the Timber Groups' proposal would significantly affect either of these factors. The Environmental Groups' alternative would require more detailed economic evaluation for lands not suitable for timber harvest, and a more detailed, time consuming procedure for departures. The Environmental Groups' alternative is, therefore, considered to be somewhat more demanding than the August 31, 1978 draft and Timber Groups' proposal. The Committee of Scientists alternative is extremely demanding as a result of suggested revisions to the interdisciplinary team approach, economic analysis requirements, diversity provisions, public participation requirements, coordination, and required riparian buffer zones. Public comments indicate the need for more expanded interdisciplinary teams, greater public participation and coordination, more detailed economic analysis, and longer time limits for public review of plans. The public comments can be considered somewhat less demanding than the Committee of Scientists' alternative, but more demanding than the August 31, 1978 draft or Environmental or Timber Groups' proposals. Since the Preferred Alternative largely reflects the Committee of Scientists' proposals, the feasibility of this alternative is considered to be the same as for the Committee of Scientists' alternative.

Flexibility:

Flexibility is related to the degree to which regulations permit site-specific management discretion and allowance for exceptional circumstances. Both the August 31, 1978 draft and the Timber Groups' alternatives are considered to be highly flexible, especially with regard to openings created by cutting, biological growth minimums for timber, and protection standards for streams and lakes. The Environmental Groups' alternative is highly inflexible with regard to minimum biological growth stands. The Committee of Scientists proposal would result in somewhat less flexibility than the draft, primarily as a result of the riparian buffer zone requirements. The Committee's proposals to determine size opening standards at the regional level are identical to those of the August 31, 1978 draft. Many public comments were directed toward site specific concerns and were, therefore, highly inflexible when considered from the viewpoint of national regulations. The revised regulations are based primarily upon the revisions suggested by the Committee of Scientists and the concerns voiced throughout the public comments. While the revised regulations do not include a

national biological growth minimum for timber harvest, they do include a number of detailed standards including maximum size for openings created by cutting; riparian buffer zone; more detailed requirements for coordination, public participation, diversity and forest type conversions; wilderness management and roadless area evaluation. As a result of these requirements, the Preferred Alternative provides compromise flexibility.

VII. Consultation with Others

Opportunities for public involvement in the development of the regulations have been made available beginning with the enactment of the NFMA in 1976. The Work Plan Outline was made available on March 5, 1977. It identified the tasks to be completed in the development of the regulation including the opportunity for public participation in the effort.

A Committee of Scientists (see Appendix H) was appointed by the Secretary of Agriculture in response to Section 6(h) of the Act, which charged the Committee to "provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach is proposed and adopted." However, the Secretary broadened this charter to include advice and counsel on all parts of Section 6 of the Act. The Committee met many times in various locations (see Appendix G). Its work was conducted in two phases. The first was to work with Forest Service personnel to consider and prepare language for the regulations. This phase terminated upon publication of the draft regulations which appeared in the August 31, 1978 **Federal Register**. The second phase of the Committee's work was to evaluate the draft regulations and to prepare a report to the Secretary. This phase was completed when the Committee submitted its report to the Secretary on February 22, 1979. This report, together with the Committee's proposed regulations, is the basis for the Committee of Scientists' alternative discussed in the DEIS.

The public, (State, local officials, interest group representatives and others) was given the opportunity to attend the Committee of Scientists meetings and frequently participated in the discussions. The complete minutes of all these meetings are available for review in the Forest Service Headquarters, Land Management Planning, Room 4021, South Agriculture Building, 12th and Independence Ave, SW, Washington, D.C., and in the Library of Congress, and in Forest Service Regional Office headquarters.

The public was also given the opportunity to attend other meetings convened especially to obtain comments on the August 31, 1978 draft regulations. The proceedings of those meetings were published and are also available for review at Forest Service headquarters.

The Forest Service received 737 letters containing 5,373 identifiable comments concerning the August 31, 1978 draft regulations. These letters and comments are available for review along with the report and its summary of the analysis of this public comment. These comments, the suggestions received through meetings open to the public, the work of the Committee of Scientists, and the technical reports prepared by the Forest Service staff, form the basis of the alternatives discussed in this statement, and all influenced the development of the revised draft regulations, and the preferred alternative. The public will have an additional opportunity to review and comment on this draft environmental statement before the proposed regulations are finalized. Comments must be received within 60 days after the draft environmental statement is published.

Appendix

A. Summary of Theories, Concepts, and Approaches to Planning

B. Forest Service Draft Regulations, **Federal Register**, Vol. 43, No. 170, August 31, 1978

C. Environmental Groups' Proposals for Section 219.10(d), **Federal Register**, August 31, 1978

D. Timber Groups' Proposals for section 219.10(d), **Federal Register**, August 31, 1978

E. Committee of Scientists' Recommended Regulations, February 22, 1979, attachment to Committee's Report to the Secretary of Agriculture

F. Forest Service Revised Draft Regulations, the Preferred Alternative Recommended for Adoption

G. Dates and Locations of Committee of Scientists' Meetings, and other Public Meetings.

H. Names and Affiliations of the Committee of Scientists Appointed by the Secretary of Agriculture, pursuant to Section 6(h) of the National Forest Management Act.

I. Text of Forest and Rangeland Renewable Resources Planning Act of 1974, as amended by the National Forest Management Act of 1976.

Note.—Only Appendix material F, G, and H is included with this DEIS as published in this issue of the **Federal Register**. Item E follows the regulations as published herein.

Appendix A

Planning Process or System Alternatives which were considered are described below. For a more complete discussion, the reader is referred to the minutes of the May 24–26, 1977 Committee of Scientists' meeting.

1. Incrementalism: Policy of decisionmaking as variations on the past. The land manager views public policy and decisionmaking as a continuation of the past government activities with only incremental modifications. This process is based on the successive comparison of a limited array of policies or decision alternatives.

2. Rationalism: Policy or decisionmaking as efficient goal achievement. A rational policy or decision is one that is correctly designed to maximize or minimize net value achievement. Policy and decisionmaking is approached through means-ends analysis. First, the desired ends are determined, then the alternative means to achieve them are designed.

3. Mixed Scanning: Policy and decisionmaking as variations on the past in line with modified efficient goal achievement. This process is a mixture of Incrementalism and Rationalism. It attempts to limit the details and explores longer run alternatives.

4. System Theory: Policy and decisions as rational system output. This theory is an extension of the scientific method. The problem is defined, objectives set, alternatives developed and evaluated, and a decision made as to the preferred course of action. A mechanism of monitoring and updating is needed.

5. Group Theory: Policy and decisionmaking as a group equilibrium. This is based on the belief that interaction among groups is the central fact of political decisionmaking. Groups struggle: Policy and decisions result when equilibrium between groups is reached.

6. Game Theory: Policy as rational choice in competitive situations. This is the making of rational decisions in situations where participants have choices to make and the outcome depends on the choices made by each of them. There is no independently best choice. This theory provides a way of thinking clearly about policy or decision choices in conflict situations.

7. Institutionalism Theory: Policy and decisionmaking as inherent institutional

activity. The activities of individuals and groups are generally directed toward governmental institutions. Public policy and decisions are authoritatively determined, implemented, and enforced by governmental institutions.

8. Elite Theory: Policy or decision as the preference of an elite. Elites shape mass opinion on policy or decision questions more than do the masses because the latter are apathetic and ill-informed. In other words, policies flow from elites to the masses: they do not arise from the masses.

9. Anti-Planning: Policy and decisionmaking as output of an individual decisionmaker. This is a common form of planning. A system or problem exists which needs to be managed. The manager studies aspects of the problem he deems important, utilizes data from staff, and decides what to do.

Major problems outside the planning realm itself greatly constrain the type of planning procedure which can be used. Two concepts of considerable importance are "paradigm" and "people". A "paradigm" is a set of conceptual constructs which govern the viewpoints of people involved in a planning process. The people are referred to as "hierarchists," "individualists," and "mutualists," who use different paradigms, respectively "one way causal," "random process," and "mutual causal." These notions were also considered and used as part of the conceptual basis for designing the planning process.

Appendix G

Committee of Scientists and other Meeting Dates and Locations:

May 24–26, 1977—Washington, D.C.
June 19–21, 1977—Boise, Idaho
July 27–28, 1977—Juneau, Alaska
August 29–30, 1977—Denver, Colorado
September 21–23, 1977—Minneapolis, Minnesota
October 27–18, 1977—San Francisco, California
December 1–2, 1977—Atlanta, Georgia
January 16–18, 1978—Phoenix, Arizona
February 23–24, 1978—Biloxi, Mississippi
March 29–30, 1978—Dallas, Texas
April 17–18, 1978—Washington, D.C.
July 14, 1978—Washington, D.C.
September 28–29, 1978—Denver, Colorado
November 1–2, 1978—Seattle, Washington
December 7–8, 1978—Sacramento, California
January 8–9, 1979—Houston, Texas
January 26, 1979—Washington, D.C.

Public Meetings on the National Forest Management Act Regulations:

September 15, 1978—Washington, D.C.
November 27, 1978—Washington, D.C.

Appendix H

Members of the Committee of Scientists appointed by the Secretary of Agriculture, pursuant to Section 6(h) of NFMA:

Dr. Arthur W. Cooper, Committee Chairman, Botanist and Professor, School of Natural Resources, North Carolina State University, Raleigh, North Carolina.
Dr. Thadis W. Box, Dean, College of Natural Resources and Professor of Range Science, Utah State University, Logan, Utah.
Dr. R. Rodney Foil, Mississippi Agricultural and Forestry Experiment Station, Mississippi State, Mississippi, and specialist in forest resource management.
Dr. Ronald W. Stark, Forest Entomologist and Coordinator of Research, University of Idaho, Moscow, Idaho.
Dr. Earl L. Stone, Jr., Soil Scientist and Professor, Department of Agronomy, Cornell University, Ithaca, New York.
Dr. Dennis E. Teeguarden, Professor of Forestry Economics, College of Natural Resources, University of California, Berkeley, California, and specialist in applying operations research to forest resource allocation problems.
Dr. William Webb, Wildlife Biologist, formerly Professor in Wildlife Management, State University of New York, Syracuse, New York, now retired.

It is proposed to amend 36 CFR by adding a new Part 219, Consisting of Subpart A to read as follows:

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

Sec.
219.1 Purpose.
219.2 Scope and Applicability.
219.3 Definitions.
219.4 Planning Levels.
219.5 Planning Process.
219.6 Interdisciplinary Approach.
219.7 Public Participation.
219.8 Coordination of Public Planning Efforts.
219.9 Regional Planning Procedure.
219.10 Criteria for Regional Planning Actions.
219.11 Forest Planning Procedure.
219.12 Criteria for Forest Planning Actions.
219.13 Management Standards and Guidelines.
219.14 Research.
219.15 Revision of Regulations.
219.16 Transition Period.

Authority.—Sec. 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613); and 5 U.S.C. 301.

Subpart A—National Forest System Land and Resource Management Planning

§ 219.1 Purpose.

(a) The regulations in this subpart set forth a process for developing, adopting, and revising land and resource management plans for the National Forest System. The purpose of the planning process is to meet the requirements of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended, (hereafter RPA) including procedures established by the National Environmental Policy Act of 1969 (hereafter NEPA) for assessing environmental impacts. These regulations prescribe how land and resource management planning shall be conducted on National Forest System lands. The resulting plans will provide for multiple use and sustained yield of products and services from the National Forest System.

(b) Plans guide all natural resource management activities and establish management standards and guidelines for the National Forest System. They determine resource management practices, harvesting levels and procedures under the principles of multiple use and sustained yield and the availability and suitability of lands for resource management. All levels of planning will be based on the following principles:

(1) Consideration of the relative values of all renewable resources;

(2) Establishment of goals and objectives for the sustained yield of products and services resulting from multiple-use management without impairment of the productivity of the land;

(3) Protection and, where appropriate, improvement of the quality of renewable resources;

(4) Preservation of important historic, cultural and natural aspects of our national heritage;

(5) Provision for the safe use and enjoyment of the forest resources by the public;

(6) Protection of all forest and rangeland resources from depredations by the forest pests, using ecologically compatible means;

(7) Coordination with the land and resource planning efforts of other Federal agencies, State and local governments, Indian tribes, and adjacent private landowners;

(8) A systematic, interdisciplinary approach to ensure coordination and integration of planning activities for multiple-use management;

(9) Early and frequent public participation;

(10) Establishment of quantitative and qualitative standards and guidelines for land and resource planning and management;

(11) Management of National Forest System lands in a manner that is sensitive to economic efficiency; and

(12) Responsiveness to changing conditions in the land and preferences of the American people.

§ 219.2 Scope and applicability.

These regulations apply to all lands in the National Forest System. Planning requirements for managing special areas, such as wilderness, wild and scenic rivers, national recreation areas, and national trails, shall be included in land and resource management planning pursuant to these regulations. Whenever the special area authorities require additional planning, those authorities shall control in implementing the planning process under these regulations.

§ 219.3 Defintions.

For purposes of this subpart the following words shall have these meanings:

(a) "Allowable sale quantity": The quantity of timber that may be sold from the area of land covered by the forest plan for a time period specified by the plan. This quantity is usually expressed on an annual basis as the average annual allowable sale quantity.

(b) "Assessment": The Renewable Resource Assessment required by the RPA.

(c) "Capability": A measure of the potential of a unit of land to produce resources, supply goods and services, and allow resource uses under an assumed set of management practices and at a given level of management intensity. Capability depends upon current conditions and site conditions such as climate, slope, landform, soils and geology, as well as the application of management practices, such as silviculture or protection from fire, insects, and disease.

(d) "Corridor": A linear strip of land which has ecological, technical, economic, social, or similar advantages over other areas for the present or future location of transportation or utility rights-of-way within its boundaries.

(e) "Diversity": The number of different plant an animal species and each species' abundance, and the distribution and abundance of different natural plant and animal communities within the area covered by a land and resource management plan.

(f) "Economic efficiency analysis": A comparison of the values of resource inputs (costs) required for a possible course of action with the values of resource outputs (benefits) resulting from such action. In this analysis, incremental market and nonmarket benefits are compared with investment and physical resource inputs.

(g) "Environmental assessment": An analysis of alternative actions and their predictable short- and long-term environmental effects, which include physical, biological, economic and social factors and their interactions. It also means the concise public document required by the regulations for implementing the procedural requirements of NEPA, (40 CFR 1508.9).

(h) "Environmental documents": A set of concise documents meeting the requirements of the regulations meeting the procedural provisions of NEPA, (40 CFR 1508.10).

(i) "Even-aged silviculture": The combination of actions that results in the creation of stands in which trees of essentially the same age grow together. Managed even-aged forests are characterized by a distribution of stands of varying ages (and therefore tree sizes) throughout the forest area. Regeneration in a particular stand is obtained during a short period at or near the time that the stand has reached the desired age or size and is harvested. Clearcutting, shelterwood cutting, seed tree cutting, and their many variations are the cutting methods used to harvest the existing stand and regenerate a new one. In even-aged stands, thinnings, weedings, cleanings, and other cultural treatments between regeneration cuts are often beneficial. Cutting is normally regulated by scheduling the area of harvest cutting to provide for a forest that contains stands having a planned distribution of age classes.

(j) "Goal": A concise statement of the state or condition that a land and resource management plan is designed to achieve. A goal is usually not quantifiable and may not have a specific date for completion.

(k) "Guidelines": An indication or outline of policy or conduct.

(l) "Integrated pest management": A process in which all aspects of a pest-host system are studied and weighed to provide the resource manager with information for decisionmaking. Integrated pest management is, therefore, a part of forest or resource management. The information provided includes the impact of the unregulated pest population on various resources values, alternative regulatory tactics and strategies, and benefit/cost estimates for these alternative strategies. Regulatory strategies are based on sound silvicultural practices and ecology of the pest-host system. Strategies consist of a combination of tactics such as stand improvement plus selected use of pesticides. The overriding principle in the choice of strategy is that it is ecologically compatible or acceptable.

(m) "Long-term sustained yield capacity": The highest uniform wood yield from lands being managed for timber production that may be sustained under a specified intensity of management consistent with multiple-use objectives.

(n) "Management concern": An issue or problem requiring resolution, or condition constraining management practices identified by the interdisciplinary team.

(o) "Management direction": A statement of goals and objectives and management practices for attaining them.

(p) "Management intensity": The relative cost of a possible management direction and/or management practice.

(p) "Management practice": A specific action, measure, or treatment applied to a planning area or part thereof.

(r) "Multiple use": "The management of all the various renewable surface resources of the national forests so that they are utilized in the combination that will best meet the needs of the American people; making the most judicious use of the land for some or all of these resources or related services over areas large enough to provide sufficient latitude for periodic adjustments in use to conform to changing needs and conditions; that some lands will be used for less than all of the resources; and harmonious and coordinated management of the various resources, each with the other, without impairmant of the productivity of the land, with consideration being given to the relative values of the various resources, and not necessarily the combination of uses that will give the greatest dollar return or the greatest unit output." (16 U.S.C. 531(a))

(s) "Objective": A specific statement of measurable results to be achieved within a stated time period. Objectives reflect alternative mixes of all outputs or achievements which can be attained at a given budget level. Objectives may be expressed as a range of outputs.

(t) "Policy": A guiding principle upon which is based a specific decision or set of decisions.

(u) "Program": The Renewable Resource Program required by the RPA.

(v) "Public issue": A subject or question of widespread public interest relating to management of National Forest System lands identified through public participation.

(w) "Public participation activities": Meetings, conferences, seminars, workshops, tours, written comments, response to survey questionnaires, and

similar activities designed and held to obtain comments from the general public and specific publics about National Forest System land management planning.

(x) "Real dollar value": A value from which the effect of change in the purchasing power of the dollar has been removed.

(y) "Responsible Forest Service official": The individual who has been delegated the authority to carry out a specific action.

(z) "Silvicultural system": A combination of interrelated actions whereby forests are tended, harvested, and replaced. The combination of management practices used to manipulate the vegetation results in forests of distinctive form and character, and this determines the combination of multiple resource benefits that can be obtained. Systems are classified as even-aged and uneven-aged.

(aa) "Standards": A principle requiring a specific level of attainment.

(bb) "Suitability": The appropriateness of applying certain resource management practices to a particular unit of land, as determined by an analysis of the economic and evironmental consequences and the alternative uses foregone. A unit of land may be suitable for a variety of individual or combined management practices.

(cc) "Sustained-yield of the several products and services": "The achievement and maintenance in perpetuity of a high-level annual or regular periodic output of the various renewable resources of the national forest without impairment of the productivity of the land." (16 U.S.C. 531(b))

(dd) "Timber harvest schedule": The quantity of timber planned for sale and harvest, by time period, from the area of land covered by the forest plan. The first period, usually a decade, of the selected harvest schedule provides the allowable sale quantity. Future periods are shown to establish that sustained yield will be achieved and maintained.

(ee) "Timber production": The growing, tending, harvesting and regeneration of regulated crops of industrial wood. Industrial wood includes logs, bolts or other round sections cut from trees for industrial or consumer use, except fuelwood.

(ff) "Uneven-aged silviculture": The combination of actions that result in the creation of forests in which trees of several or many ages may grow together. Managed uneven-aged forests may take several forms depending upon the particular cutting methods used. In some cases, the forest is essentially similar throughout, with individual trees of many ages and sizes growing in close association. In other cases, small groups of trees of similar age may be intermingled with similar groups of different ages; although the groups are even aged, they are not recorded separately. Finally, an uneven-aged forest may contain two or three distinct age classes on the same area, creating a storied forest. Under uneven-aged silviculture, regeneration is obtained several or many times during the period required to grow an individual tree ot maturity. Single-tree selection cutting, group selection cutting, and other forms of partial cutting are used to harvest trees, obtain regeneration, and provide appropriate intermediate culture. Cutting is usually regulated by specifying the number of proportion of trees of particular sizes to retain within each area, thereby maintaining a planned distribution of size classes. Scheduling by area harvest is often used as well.

§ 219.4 Planning levels.

(a) The planning process requires a continuous flow of information and management direction among the three Forest Service administrative levels: national, regional, and designated forest planning area. Management direction shall: be based principally upon locally derived information about production capabilities; reflect conditions and circumstances observed at all levels; and become increasingly specific as one moves from the national to regional level, and from the regional to designated forest planning area. In this structure, regional planning is the principal device for conveying management direction from the national level to designated forest planning areas and for conveying information from such areas to the national level.

(b) Planning levals and relationships are set forth in paragraphs (b)(1) through (3) of this section

(1) *National.* The Chief, Forest Service, shall develop the Assessment which will analyze the present and future demands for and supplies of the Nation's forest and rangeland renewable resources. Where possible,demands shall be assessed over a range of prices. The Chief shall also analyze opportunities to improve or extend the uses of the Nation's forest and rangeland renewable resources. The assessment of supply will indicate the feasible range of alternative mixes of outputs which may be forthcoming at each of various reasonable cost levels. This estimate will be based on the capabilities for each planning area. Through the planning process described in § 219.5 and based on the Assessment, the Chief shall develop a recommended Program. In formulating this Program, the costs of supply and the relative values of both market and non-market outputs will be considered. The Program shall include national renewable resource goals and quantified objectives based upon various budget location priorities and under various reasonable and estimated total budget levels. A protion of each national goal and objective, expressed as a range of outputs, shall be assigned to each region and shall be incorporated into each regional plan. The objectives assigned to each region will be based on local supply capabilities and market conditions. Economic efficiency and potential environmental effects will be considered in these assignments.

(2) *Regional.* Each regional forester shall develop a regional plan in accordance with the procedures, standards, and guidelines specified in this subpart. The required planning process is established in § 219.5. Procedural requirements for regional plans are established in §§ 219.9 and 219.10, and resource management standards and guidelines are set forth in § 219.13. The regional planning process will respond to and incorporate the program direction established by the Chief, Forest Service, under paragraph (b)(1) of this section. Regional objectives shall be assgned to designated forest planning areas. These assignments will be based upon: supply capabilities, socio-economic assessments, potential environmental effects, economic efficiency criteria, community stability objectives, and resource management standards and guidelines which have been established by the planning process. The regional forester may request adjustment of assigned regional objectives prior to their incorporation into the plan. Any adjustment will require the approval of the Chief, Forest Service.

(3) *Forest.* Forest plans shall be developed for all lands in the National Forest System in accordance with the procedures, standards, and guidelines specified in this subpart. The planning process is established in § 219.5, and procedures are set forth in § 219.11. Resource management standards and guidelines are established in § 219.13. One forest plan ma be prepared for all lands for which a forest supervisor has responsibility, or separate forest plans may be prepared for each national forest, or combination of national forests, within the jurisdiction of a single

forest supervisor. These forest plans will constitute the land and resource management plans developed in accordance with section 6 of the RPA and will include all resources management planning. Forest plans will address the goals and objectives established by the regional plan. The objectives assigned to each forest will be evaluated in order to assure that they are compatible with local supply and demand, economic efficiency, community stability, and potential environmental effects. Based upon this evaluation, the forest supervisor may request adjustment of assigned objectives prior to their incorporation into the forest plan. Any such adjustment will require the approval of the regional forester.

(c) The transfer of information among planning levels is particularly important for the process actions in paragraphs (c)(1) through (4) of this section. Process actions are further described in § 219.5.

(1) *Public issues and management concerns.* The Assessment is dependent upon the identification of issues and concerns which are national in scope and significance. Information on these national issues and concerns, along with issues and concerns which are regional or local in nature, should be maintained at the regional or forest level and provided to the Assessment. Consitency regarding the location, nature, and importance of national issues and concerns should be maintained among the three levels.

(2) *Analysis of the management situation.* The Assessment is heavily dependent on both supply and demand information pertaining to each of the resources. This information pertains to existing and future conditions. Resource supply potentials and use opportunities will be surveyed and maintained at the Forest or State level and summarized for use at the regional or national level. Assumptions and methodology for projecting regional, or national resource demands will be compatible.

(3) *Proposed Program alternatives.* The Program is formulated from the Assessment analysis of policy issues, and from alternative program objectives prepared at the national level and reviewed and evaluated at the regional and forest levels for feasibility and compatibility with regional and forest plans.

(4) *Final Program direction.* After finalization of the Program, objectives are distributed to the regions, which in turn distribute regional objectives to each of the designated forest planning areas. State and Private Forestry program levels are coordinated with each of the states in the region. Research proposed programs and objectives are coordinated with the primary research station(s) in the region, although research activities in the region may be carried out by other research stations.

(d) Although no separate statement will be prepared, the Program will contain the elements included in an environmental impact statement pursuant to section 102(2)(C) of NEPA, as provided in §§ 1502.14–1502.16 of Title 40. An environmental impact statement will be prepared for each regional plan, forest plan, revision, and significant amendment.

§ 219.5 Planning Process.

(a) *General planning approach.* The NEPA environmental assessment process will be included in the process for development of a plan. Except where the planning process requires additional action, a single process will be used to meet the planning requirements and the NEPA process. The planning process adapts to changing conditions by identifying public issues, management concerns, and use and development opportunities. It shall consist of a systematic set of interrelated actions which include at least those set forth in paragraphs (b) through (k), of this section that lead to management direction. Planning actions, in addition to those in this section may be necessary in particular situations. Some actions may occur simultaneously, and it may be necessary to repeat an action as additional information becomes available.

(b) The interdisciplinary team will identify and evaluate public issues, management concerns, and resource use and development opportunities, including those identified through public participation activities and coordination with other Federal agencies, State and local governments, and Indian tribes throughout the planning process. All public issues and management concerns are investigated and evaluated in order of their apparent importance. The responsible Forest Service official shall determine the major public issues, management concerns, and use and development opportunities to be addressed in the planning process.

(c) *Planning criteria.* Criteria will be prepared to guide the planning process and to guide management direction. Planning criteria may apply to collection and use of inventory data and information, analysis of the management situation, and the design and formulation of alternatives. Decision criteria will be developed and used to evaluate alternatives and to select one alternative to serve as the proposed plan. All criteria shall be developed by the interdisciplinary team and approved by the responsible Forest Service official, who shall also approve any revisions to these criteria. Generally, criteria will be based on:

(1) Laws, executive orders, regulations, and Forest Service Manual policy;

(2) Goals and objectives in the Program and regional plans;

(3) Recommendations and assumptions developed from public issues, management concens, and resource use and development opportunities;

(4) The plans and programs of other Federal agencies, State and local governments and Indian tribes;

(5) Ecological, technical and economic factors;

(6) Guidelines for economic analysis practices established by the Chief, Forest Service, that will become effective within one year after final publication of these planning rules in the **Federal Register**; and

(7) The resource management standards and guidelines in § 219.13.

(d) *Inventory data and information collection.* Each responsible Forest Service official shall obtain and keep current inventory data appropriate for planning and managing the resources under his administrative responsibility, and shall assure that the interdisciplinary team has access to the best available data, which may require that special inventories or studies be prepared. The interdisciplinary team will collect, assemble, and use data, maps, graphic material, and explanatory aids, to the degree necessary to plan effectively and execute the environmental assessment. Existing data will be used in planning unless such data is inadequate. Data and information needs may vary as planning problems develop from identification of public issues, management concerns, and resource use and development opportunities. Methods used to gather data will be consistent with those used to monitor consequences of activities resulting from planning and management. Data will be stored for ready retrieval and comparison and periodically will be evaluated for accuracy and effectiveness.

(e) *Analysis of the management situation.* The analysis of the management situation is an assessment of the ability of the planning area to supply goods and services in response to society's demand for those goods and services. The analysis will display the

capability and suitability of the forest to supply outputs and uses, and projected demands for the outputs or uses over time. It will identify any special conditions or situations which involve hazards to the resources of the planning area and their relationship to proposed and possible actions being considered. The analysis will determine:

(1) Ranges of various goods, services and uses that are feasible under existing conditions at various levels of expenditure;

(2) Projections of demand, using best available techniques, with both price and non-price information which, in conjunction with supply cost information, will be used to evaluate the level of demand that maximizes net public benefits; to the extent possible, demand will be assesed as a price-quantity relationship;

(3) Potential to resolve public issues and management concerns;

(4) Technical and economic feasibility of providing the levels of goods, services, and uses resulting from assigned goals and objectives; and

(5) The need, as a result of this analysis, to establish or change management direction.

(f) *Formulation of alternatives.* A reasonable range of practical alternatives as provided in paragraphs (f) (1) and (2) of this section will be formulated by the interdisciplinary team. Alternatives shall be described in draft and final environmental impact statements. The purpose of the management practices proposed will be clearly stated for each alternative.

(1) Initial analysis will include alternatives representative of the range of possible outputs of resources available at each of several expenditure levels. Alternatives chosen for evaluation will be presented in detail in the environmental impact statement. In formulating these alternatives, the following criteria will be met:

(i) Each alternative will be capable of being achieved;

(ii) An alternative representing no change in existing resource outputs, the no-action alternative, will be included;

(iii) All alternatives will provide the treatments neeeded to restore renewable resources;

(iv) Each identified major public issue and management concern will be addressed in an alternative; and

(v) Each alternative will represent the most cost-effective combination of management practices that can meet the objectives established in the alternative.

(2) Each alternative will state at least:

(i) The conditions and uses that will result from long-term application of the alternative;

(ii) The goods and services to be produced, and the timing and flow of these resource outputs; and

(iii) Resource management standards and guidelines.

(g) *Estimated effects of alternatives.* The interdisciplinary team shall estimate and display the physical, biological, economic, and social effects of implementing each alternative. These effects will include at least the following:

(1) The expected outputs for the planning periods, including appropriate marketable goods and services, as well as non-market items, such as protection and enhancement of soil, water and air, and preservation of aesthetic and cultural resource values;

(2) The relationship between local, short-term uses of the renewable resources and the maintenance and enhancement of long-term productivity;

(3) The adverse environmental effects which cannot be avoided;

(4) Resource commitments that are irreversible;

(5) Direct and indirect benefits and costs, estimated in accordance with paragraph (c)(6) of this section will be detailed enough to:

(i) Determine the expected administrative costs of implementing the plan;

(ii) Estimate the real dollar value of all outputs attributable to each plan alternative to the extent that dollar values can be assigned to nonmarket goods and services, using physical outputs or relative indices of value when such values may not be reasonably assigned;

(iii) Estimate real-dollar investments and operating costs;

(iv) Estimate which alternative comes nearest to maximizing net public benefits using a comparison of discounted benefits to discounted cost; and

(v) Evaluate the economic effects of alternatives, including the distribution of goods and services, the payment of taxes and charges, receipt shares, payments to local government, and income and employment in all affected communities, including but not limited to the local community.

(6) Estimate effects on minority groups and civil rights; and

(7) Determine effects on prime farmlands, wetlands and flood plains.

(h) *Evaluation of alternatives.* The interdisciplinary team will evaluate the significant physical, biological, economic and social effects of each management alternative according to the planning decision criteria. The evaluation will include a comparative analysis of all management alternatives and will compare economic efficiency and distributional aspects, outputs of goods and services, and protection and enhancement of environmental resources. The responsible Forest Service official will review the interdisciplinary team's evaluation, will recommend a preferred alternative or alternatives to be identified in the draft environmental impact statement.

(i) *Selection of alternative.* After publication of the draft environmental impact statement, the interdisciplinary team will evaluate public comments and, as necessary, revise the appropriate alternative. The responsible Forest Service official will recommend the selected alternative for the final environmental impact statement using the decision criteria developed pursuant to § 219.5(c). The official shall document the selection with a description of the benefits, relative to other alternatives as described in paragraph (h) of this section.

(j) *Plan implementation.* Implementation of the plan (selected alternative) is a continuous activity composed of three annual processes: program budget proposals, program budget allocations, and project implementation. During the implementation of each plan the following requirements, as a minimum, will be met:

(1) The responsible Forest Service official shall assure that annual program proposals and implemented projects are in compliance with the plan;

(2) Program budget allocations meet the objectives and are consistent with all applicable standards and guidelines specified in the plan; and

(3) Plan implementation is in compliance with §§ 219.9(c) and 219.11(d).

(k) *Monitoring and evaluation.* At intervals established in the plan, management activities will be evaluated on a sample basis to determine how well objectives have been met and how closely management standards and guidelines have been applied. The results of monitoring and evaluation may be used to analyze the management situation during revision of the plan as provided in paragraphs (k) (1), (2) and (3) of this section.

(1) The plan will describe the following monitoring activities:

(i) The actions, effects, or resources to be measured, and the frequency of measurements;

(ii) Expected precision and reliability of the monitoring process; and

(iii) The time when evaluation will be reported.

(2) Evaluation reports will contain for each monitored management activity at least a quantitative estimate of performance comparing outputs and services and their costs with those projected by the plan and documentation of evaluated measured effects.

(3) Based upon the evaluation reports, the responsible Forest Service official will make changes in management direction, or revise or amend the plan as necessary to meet the goals and objectives.

§ 219.6 Interdisciplinary Approach.

(a) A team representing several disciplines shall be used at each level of planning. The purpose of such a team is to coordinate and integrate planning activities. Through interactions among its members, the team will integrate knowledge of the physical, biological, economic and social sciences, and design arts into the planning process. Team functions include, but are not limited to:

(1) Assessing the problems and resource use and development opportunities associated with the production of goods and services;

(2) Obtaining the public's views about possible decisions;

(3) Coordinating planning activities within the Forest Service and with local, State and other Federal agencies;

(4) Developing the land and resource management plan and associated environmental impact statement pursuant to the planning process;

(5) Giving the responsible Forest Service official an integrated perspective on land and resource management planning; and

(6) Establishing monitoring and evaluation standards and requirements for planning and management activities.

(b) The team shall be composed of Forest Service personnel who collectively represent specialized areas of technical knowledge about natural resource management applicable to the area being planned. The team will consider problems collectively, rather than separating them along disciplinary lines. The team may consult persons other than Forest Service employees when required specialized knowledge does not exist within the team itself.

(c) The responsible Forest Service official, in appointing team members, shall determine and consider the qualifications of each team member on the basis of the complexity of the planning problem. Each team member shall, as a minimum, either have successfully completed a course of study in an accredited college or university leading to a bachelor's or degree in one or more specialized areas of assignment or have recognized expertise and experience in professional investigative, scientific, or other responsible work in specialities which members represent. In addition to technical knowledge in one or more resource specialities, members should possess other attributes which enhance the interdisciplinary process that, as a minimum, should include:

(1) An ability to solve complex problems;

(2) Skills in communication and group interaction;

(3) Basic understanding of land and natural resource planning concepts, processes, and analysis techniques; and

(4) The ability to conceptualize planning problems and feasible solutions.

(d) The responsible Forest Service official shall appoint a leader of the inderdisciplinary team. Team leadership should be assigned to individuals possessing both a working knowledge of the planning process and the ability to communicate effectively with team members. The team leader shall coordinate the array of specialists, focusing their attention on team goals.

§ 219.7 Public Participation.

(a) The land and resource management planning process determines how the lands of the National Forest System are to be managed. The public shall be encouraged to participate throughout the planning process. The intent of public participation is to:

(1) Inform the public of Forest Service land and resource planning activities;

(2) Provide the public with an understanding of Forest Service programs and proposed actions;

(3) Ensure that the Forest Service understands the needs and concerns of the public;

(4) Broaden the information base upon which land and resource management planning decisions are made; and

(5) Demonstrate, to the extent practicable, the use of public input in reaching planning decisions.

(b) Public participation in the preparation of draft environmental statements for planning shall begin with the publication of a notice of intent in the **Federal Register.** After this publication, all public participation for land and resource management planning shall be coordinated with that required by the NEPA and its implementing regulations.

(c) Public participation, as deemed appropriate by the responsible Forest Service official, will be used early and often throughout the development, revision, and significant amendment of plans. Public participation shall begin with a media notice, which includes the following information:

(1) The description of the proposed planning action;

(2) The description and map of the geographic area affected;

(3) The issues expected to be discussed;

(4) The kind, extent, and method(s) of public participation to be used;

(5) The times, dates, and locations scheduled or anticipated, for public meetings;

(6) The name, title, address, and telephone number of the Forest Service official who may be contacted for further information; and

(7) The location and availability of documents relevant to the planning process.

(d) Public participation activities should be appropriate to the area and people involved. Means of notification should be appropriate to the level of planning. Public participation activities may include, but are not limited to, requests for written comments, meetings, conferences, seminars, workshops, tours, and similar events designed to foster public review and comment. To ensure effective public participation, the objectives of participation activities will be defined beforehand by the interdisciplinary team. The Forest Service shall state the objectives of each participation activity to assure that the public understands what type of information is needed and how this information relates to the planning process.

(e) Public comments will be analyzed individually, and by type of group and organization to determine common areas of concern and geographic distribution. The results of this analysis will be evaluated to determine the variety and intensity of viewpoints about ongoing and proposed planning, and management standards and guidelines. Conclusions about comments will be used to the extent practicable in decisions that are made.

(f) The primary purpose of public participation is to broaden the information base upon which planning decisions are made. Public participation activities also will help in monitoring and evaluation of implemented plans. Suitable public participation formats, requirements, and activities will be

determined by the responsible Forest Service official.

(g) All scheduled public participation activities will be documented by a summary of the principal issues discussed, comments made, and a register of participants.

(h) At least 30 days' public notice will be given for public participation activities associated with the development of national or regional plans. At least 15 days' public notice will be given for activities associated with forest plans. Any notice requesting written comments on national and regional planning will allow at least 90 calendar days for responses. A similar request about forest planning will allow at least 30 calendar days for responses.

(i) A list of individuals and groups known to be interested in or affected by the plan shall be maintained. They shall be notified of public participation activities.

(j) The responsible Forest Service official, or his representative, shall attend all Forest Service public participation activities.

(k) Copies of approved plans will be available for public review, as follows:

(1) The Assessment and the Program will be available at national headquarters, each regional office, each forest supervisor's office, and each district ranger's office;

(2) The regional plan will be available at national headquarters, that regional office and regional offices of contiguous regions, each forest supervisor's office of forests within and contiguous to that region, and each district ranger's office in that region;

(3) The forest plan will be available at the regional office for that forest, that forest supervisor's office and forest supervisors' offices contiguous to that forest, each district ranger's office in that forest, those district rangers' offices in other forests that are contiguous to that forest, and at least one additional location determined by the forest supervisor, which will offer convenient access to the public; and

(4) The above plans may be made available at other locations convenient to the public.

(l) Supporting documents to plans will be available at the office where the plan was developed.

(m) Upon issuance of a draft environmental impact statement on a plan, revision, or significant amendment, and concurrent with the public participation activities of this section, the public shall have a 3-month period to review the statement for the proposed plan, revision, or significant amendment. During that time, additional public participation activities will take place to review the actions proposed in the draft environmental impact statement.

(n) Fees for reproducing requested documents will be charged according to the Forest Service schedule for Freedom of Information Act request (7 CFR 1.1 et seq., Appendix A).

(o) Public participation activities set forth in this section are designed to accomodate all public input, including objections to any aspect of planning under this regulation. Therefore, objections to planning decisions pursuant to this regulation are excluded from review under § 211.19 and any other administrative appeal procedure. This exclusion does not affect the right to appeal decision implementation, after final plan approval, on the grounds of nonconformity with the plan or because a decision otherwise constitutes an appealable grievance. This exclusion also does not affect the right to appeal the Chief's decision under § 219.12(d)(2).

§ 219.8 Coodination of Public Planning Efforts.

(a) Efficient management of the resources of the National Forest System benefits from planning that is thoroughly coordinated among all levels of government, including other Federal agencies, State and local governments, and Indian tribes. Such coordination ensures that government objectives, policies, and programs for resource management are compatible to the extent possible. Therefore, the Forest Service shall coordinate its national, regional, and forest planning with the equivalent and related planning efforts of other Federal agencies, State and local governments, and Indian tribes.

(b) The responsible Forest Service official, through the interdisciplinary team, shall coordinate Forest Service planning with land and resource management planning of other affected government entities and Indian tribes to ensure that planning includes:

(1) Recognition of the objectives of other Federal, State and local governments, and owners of intermingled and adjacent private lands, as expressed in their plans and policies;

(2) An assessment of the interrelated impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the impacts identified; and

(4) Where conflicts are identified, consideration of alternatives for their resolution.

(c) The responsible Forest Service official shall give notice of the preparation, revision, or significant amendment of a land and resource management plan, along with a general schedule of anticipated planning actions, to the State Clearinghouse (OMB Circular A-95) for circulation among State agencies. The same notice will be mailed to all Tribal or Alaska Native leaders whose tribal lands may be impacted, and to the heads of county boards for the counties that are involved. These notices shall be issued simultaneously with the public notice required in § 219.7(b).

(d) To facilitate coordination with State governments, regional foresters will seek agreements with Governors or their designated representatives on procedural measures such as exchanging information, providing advice and participation, and time frames for receiving State government input and review. If an agreement is not reached, the regional forester will provide an opportunity for Governor and State agency review, advice, and suggestion on guidance that the regional forester believes could affect or influence State government programs.

(e) The responsible Forest Service official and the interdisciplinary team, in developing land and resource plans, shall meet with the designated State official (or designee), advisory persons, representatives of other Federal agencies and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, such conferences shall also be held after public issues and management concerns have been identified and prior to recommending the selected alternative. Such conferences may be held in conjunction with other public participation activities, provided that the opportunity for government officials to participate in the planning process is not thereby reduced.

(f) The responsible Forest Service official shall conduct, during the planning process, an appraisal of the planning and land use policies of other Federal agencies, State and local governments and Indian tribes. The appraisal intensity will be appropriate to the planning level and requirements of the envisioned plan. This appraisal will include, but not be limited to, plans affecting renewable natural resources and minerals, recreation, community and economic development, land use, transportation, wildlife, water and air pollution control, cultural resources, and energy. The interdisciplinary team will document this appraisal in the planning process records.

(g) The responsible Forest Service official, in the development of forest plans and to the extent feasible, shall notify the owners of lands that are

intermingled with, or dependent for access upon, national forest lands, and on which management is being practiced similar in character to that being practiced on adjacent national forest lands. Planning activities should then be coordinated to the extent feasible with these owners. The results of this coordination shall be included in the plan as part of the appraisal required in paragraph (f) of this section.

(h) The responsible Forest Service official, in developing the forest plan, shall seek input from other Federal, State and local governments, universities, and private research organizations in resolving management concerns in the planning process and in identifying areas where additional research is needed. This input should be included in the discussion of the research needs of the designated forest planning area.

§ 219.9 Regional Planning Procedure.

(a) *Regional plan.* Regional planning will provide forest planning areas with goals and objectives, regional issue resolution, and program coordination for National Forest System, State and Private Forestry, and Research. A plan will be developed for each administratively designated region in the National Forest System. The preparation of a regional plan, revision, or significant amendment will comply with the requirements of the planning process established in §§ 219.5 and 219.10 and this section.

(b) *Responsibilities.* The Chief, Forest Service, shall establish agency-wide policy for regional planning and approve all regional plans, revisions, or significant amendments. The regional forester shall be responsible for the preparation of a regional plan, and revisions or significant amendments to the regional plan. The regional interdisciplinary team shall develop a regional plan using the process established in § 219.5 which shall include the steps in paragraphs (b) (1) and (2) of this section.

(1) A draft environmental impact statement will be prepared, describing the proposed plan, revision, or significant amendment. A notice of intent to prepare this statement will be issued in the **Federal Register.** The draft statement will identify a preferred alternative. Beginning at the time of notification in the **Federal Register,** the statement will be available for public comment for 90 days or 3 months, whichever is longer, at convenient locations in the vicinity of the lands covered by the plan, revision, or significant amendment. During this period, and in accordance with the provisions in § 219.7, the responsible Forest Service official shall publicize and hold public participation activities as deemed appropriate for adequate public input.

(2) A final environmental impact statement will be prepared, and after the regional forester has reviewed and concurred in the statement, the regional forester shall recommend to the Chief that it be filed with the Environmental Protection Agency. At least 30 days are required between the date of notice of filing of the final environmental impact statement and the decision fo implement actions specified in the plan, revision, or significant amendment. The plan, revision, or significant amendment shall be based on the selected alternative.

(c) Plan approval. The Chief, Forest Service, shall review the proposed plan, revision, or significant amendment and the final environmental impact statement and take either of the actions in paragraphs (c)(1) and (2) of this section.

(1) Approve the proposal and the environmental impact statement. If approved, the proposal will not become effective until at least 30 days after publication of the notice of the filing of the final environmental impact statement. After such 30-day period, the Chief shall, in compliance with § 1505.2 of Title 40, attach to the proposal a concise public record of decision which documents the approval. The record of decision will accomplish the following:

(i) State the decision;

(ii) Identify all alternatives considered in making the decision on the plan, revision, or significant amendment;

(iii) Specify the preferred alternative or alternatives;

(iv) Identify and discuss all factors considered by the Forest Service in making the planning decision, including how such factors entered into its decision; and

(v) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adapted, and, if not, why they were not.

(2) Disapprove the proposal or the environmental impact statement, which shall be returned to the regional forester with a written statement of the reasons for disapproval. The Chief may also specify a course of action to be undertaken by the regional forester in order to remedy the deficiencies, errors, or omissions of the proposal or environmental impact statement.

(d) *Conformity.* The regional forester shall manage the national forest lands under his jurisdiction in accordance with the regional plan. The regional forester or area director shall assure that all State and Private Forestry programs planned with the States or other governmental agencies are coordinated with the regional plan. The research station director shall use the regional plan to identify research needs for National Forest System lands. Differences between annual budget proposals and actual funding allocations may require the regional forester to make changes in scheduling. When each regional plan is approved, each forest plan in that region will be revised or amended to bring it into conformity as soon as practicable. When each regional plan is revised or amended the affected forest plans will be revised or amended to conform as soon as practicable.

(e) *Amendment.* The regional forester may amend the regional plan through an environmental assessment which will be used to determine the significance of proposed amendments. Where significance indicates the preparation of an environmental impact statement is necessary, the amending process will follow the same procedure as used in the preparation of the plan. If the amendment is determined not to be significant, it may be implemented by the responsible official after public notice. The regional plan will be reviewed for possible amendment in conjunction with the development of the Assessment and Program or whenever the funded and implemented program deviates significantly from the 5-year levels specified in the regional plan.

(f) *Revision.* The regional forester shall determine by an analysis of the management situation whether a revision is necessary because conditions or the demands of the public in the region have changed significantly. Revision will not become effective until considered and approved in accordance with the requirements for the development and approval of a regional plan.

(g) *Planning records.* The regional forester and the interdisciplinary team will develop and maintain a system that records decisions and activities that result from the process of developing a regional plan, revision or significant amendment. This system will contain all planning records including a work plan to guide and manage planning, the precedures which were used in completing each planning action and the results of those actions. These records document the accomplishment of legal and administrative planning requirements. They include at least the draft environmental impact statement, final environmental impact statement,

regional plan, and record of decision. The adequacy of the record system will be approved by the regional forester.

(h) *Regional plan content.* The following general format and content outline is required for all regional plans. In addition, the regional forester may specify formats and require further content within the following outline appropriate to the planning needs of that region:

(1) A brief description of the major public issues and management concerns which are pertinent to the region, indicating the disposition of each issue or concern;

(2) A summary of the analysis of the regional management situation, including a brief description of the existing management situation, demand and supply projections for resource commodities and services, production potentials, and resource use and development opportunities;

(3) Description of management direction including programs, goals and objectives;

(4) A distribution of regional objectives to each of the forest planning areas, and additional objectives added to reflect specific regional needs;

(5) Management standards and guidelines and those specific standards and guidelines listed in paragraph (d) of § 219.10;

(6) Description of the monitoring and evaluation necessary to determine and report achievements and effects;

(7) Appropriate references to information used in development of the regional plan; and

(8) The names of interdisciplinary planning team members, together with a summary of each member's qualifications and areas of expertise;

(i) *Monitoring and evaluation.* Monitoring and evaluation of planned actions and effects will be carried out in compliance with § 219.5(k). Monitoring and evaluation will include, but is not limited to:

(1) Management practices relating to regional or subregional programs;

(2) State and Private Forestry programs carried out in conjunction with states or other governmental agencies;

(3) Economic and social impact on regional public;

(4) Resource outputs or environmental impacts which relate to areas more widespread than national forests or States;

(5) Research programs which are related to other research activities or ongoing management practices on a regional scale; and

(6) National System programs.

§ 219.10 Criteria for Regional Planning Actions.

(a) The regional interdisciplinary team, as directed by the regional forester, shall follow the process and procedures established in §§ 219.5 through 219.9 in preparing the regional plan, revision, or significant amendment. The appropriate planning actions of the regional planning process will be guided by at least the criteria provided in paragraphs (b) through (g) of this section. Additional planning criteria may be found in the guidelines for managing specific renewable resources set forth in the Forest Service Manual.

(b) In addition to public issues and management concerns identified through public participation and coordination, each regional plan shall address issues and concerns referred from national or forest planning. Some management concerns that should be considered in regional and in forest planning are the needs to:

(1) Provide goods and services efficiently;

(2) Produce timber and wood fiber;

(3) Manage and utilize range resources and improve range grazing;

(4) Manage fire to improve and protect resources;

(5) Protect resources from disease, pests and similar threats;

(6) Enhance water quality and quantity, soil productivity, and restore watershed conditions;

(7) Adjust landownership as needed to support resource management goals;

(8) Provide various recreation options;

(9) Maintain or improve fish and wildlife habitats;

(10) Improve critical and essential habitats of threatened or endangered plant and animal species;

(11) Assess probabilities of mineral exploration and development for immediate and future needs, and consider non-renewable resources in the mangement of renewable natural resources;

(12) Construct, operate, and maintain transportation facilities;

(13) Identify, protect, and enhance the visual quality;

(14) Require corridors to the extent practicable, to minimize adverse environmental impacts caused by the proliferation of separate rights-of-way;

(15) Discover, manage, protect, and interpret cultural resource values which are qualified or many qualify for inclusion in the National Register of Historic Places; and

(16) Identify typical examples of important botanic, aquatic, and geologic types, and protect them through establishment of research natural areas.

(c) Regional plans will contribute and respond to the Assessment and Program by providing long-range policies, goals, and objectives contained in the Program; resource production objectives for each forest plan; and guidelines to resolve public issues and management concerns identified through public participation and coordination activities.

(d) Each regional plan will establish standards and guidelines for:

(1) The maximum size, dispersal, and size variation of tree openings created by the application of even-aged managment and the state of vegetation that will be reached before a cutover area is no longer considered an opening, using factors enumerated in § 219.13(d);

(2) The biological growth potential to be used in determining the capability of land for timber production as required in § 219.12(b)(1)(ii);

(3) Recommended transportation corridors and associated standards for forest planning, such as standards for corridors, for transmission lines, pipelines, and water canals. The designation of corridors shall not preclude the granting of separate rights-of-way over, upon, under, or through the public lands where the authorized official determines that confinement to a corridor is not appropriate;

(4) Identify potential uses of available air quality increments (42 U.S.C. 7473(b)) and protect the portion of the increment needed to implement forest plans; and

(5) The unit of measure for expressing mean annual increment as required in § 219.12(d)(1)(ii)(C).

(e) Public participation and coordination activities will be adapted to the circumstances of regional planning. Particular efforts will be made to involve regional and national representatives of interest groups. Coordination will stress involvement with appropriate Federal agencies, State and local governments, and Indian tribes. Regional foresters will seek agreements with Governors, or their designated representatives, on procedures for coordination in accordance with section 219.8(d).

(f) Data for regional planning will be based principally on information from forest planning, with other data provided by the States, other Federal agencies, and private sources. Very little new data will be gathered through land and resource inventories. Data and information standards and guidelines established nationally will be followed in structuring and maintaining required data.

(g) The regional analysis of the management situation will, as appropriate, consider results of each

forest's analysis of the management situation.

§ 219.11 Forest Planning Procedure.

(a) *Forest Plan.* The preparation of a forest plan, revision, or significant amendment will comply with the requirements of the planning process established in §§ 219.5 and 219.12 and this section.

(b) *Responsibilities.* The forest supervisor and the interdisciplinary team shall have the responsibilities set forth in paragraphs (b) (1) and (2) of this section.

(1) *Forest supervisor.* The forest supervisor shall have overall responsibility for the preparation and implementation of the forest plan and shall appoint and supervise the interdisciplinary team.

(2) *Interdisciplinary team.* The team shall implement the public participation and coordination activities. The team shall continue to function even though membership may change, and shall monitor and evaluate planning results and recommended revisions and amendments. The interdisciplinary team shall develop a forest plan, revision, or significant amendment using the planning process established in § 219.5, including the steps in paragraphs (b)(2)(i) and (ii) of this section.

(i) A draft environmental impact statement will be prepared, describing the proposed plan, revision, or significant amendment. A notice of intent to prepare this statement will be issued in the **Federal Register.** The draft statement will identify a preferred alternative. Beginning at the time of notification in the **Federal Register,** the statement will be available for public comment for 90 days or 3 months, whichever is longer, at convenient locations in the vicinity of the lands covered by the plan, revision, or significant amendment. During this period, and in accordance with the provisions in § 219.7, the responsible Forest Service official shall publicize and hold public participation activities as deemed appropriate for adequate public input.

(ii) A final environmental impact statement will be prepared, and after the forest supervisor has reviewed and concurred in the statement, the forest supervisor shall recommend to the regional forester that it be filed with the Environmental Protection Agency. At least 30 days are required between the date of notice of filing of the final environmental impact statement and the decision to implement actions specified in the plan, revision, or significant amendment. The plan, revision, or significant amendment shall be based on the selected alternative.

(c) *Approval process.* The regional forester shall review the proposed plan, revision, or significant amendment and the final environmental impact statement and take one of the actions in paragraphs (c)(1) through (3) of this section.

(1) Approve the proposal and the environmental impact statement. If approved, the proposal will not become effective until at least 30 days after publication of the notice of the filing of the final environmental impact statement. After such 30-day period, the regional forester shall, in compliance with § 1505.2 of Title 40, attach to the proposal a concise public record of decision which documents the approval. The record of decision will accomplish the following:

(i) State the decision;

(ii) Identify all alternatives considered in making the decision on the plan, revision, or significant amendment;

(iii) Specify the preferred alternative or alternatives;

(iv) Identify and discuss all factors considered by the Forest Service in making the planning decision, including how such factors entered into its decisions; and

(v) State whether all practicable means to avoid or minimize environmental harm from the alternative selected have been adopted, and, if not, why they were not.

(2) Disapprove the proposal or the environmental impact statement, which shall be returned to the forest supervisor with a written statement of the reasons for disapproval. The regional forester may also specify a course of action to be undertaken by the forest supervisor in order to remedy the deficiencies, errors, or omissions of the proposal or impact statement.

(3) Transmit to the Chief, Forest Service, for approval or disapproval, if the selected harvest schedule is not the base timber harvest schedule for the designated forest planning area as required in § 219.12(d)(2).

(d) *Conformity.* As soon as practicable after approval of the plan, revision, or significant amendment, the forest supervisor shall ensure that, subject to valid existing rights, all outstanding and future permits, contracts, cooperative agreements, and other instruments for occupancy and use of affected lands are in conformity with the plan. All subsequent administrative activities affecting such lands, including budget proposals, will be in compliance with the plan. The forest supervisor may change proposed scheduling to respond to minor differences between planned annual budgets and appropriated funds. Such scheduled changes will be considered an amendment to the forest plan, but shall not require preparation of an environmental impact statement unless the changes significantly alter the relationship between levels of multiple-use goods and services projected under planned budget proposals as compared to those levels projected with actual appropriations. An environmental impact statement will be prepared if the scheduling changes will result in significant adverse environmental impacts not taken into account in an existing environmental impact statement.

(e) *Amendment.* The responsible Forest Service official may amend a plan through an environmental assessment or through the procedures established for the preparation and approval of the forest plan. Such an amendment will be deemed significant if the assessment indicates the need to prepare an environmental process will follow the same procedure as in the preparation of the plan. If, based on the environmental assessment, the amendment is determined not to be significant, it may be implemented by the forest supervisor following appropriate public notification.

(f) *Revision.* A forest plan will be revised at least every 10 years, or more frequently whenever the forest supervisor determines that conditions or the demands of the public in the area covered by the plan have changed significantly. The interdisciplinary team may, through the monitoring and evaluation process, recommend a revision of the forest plan at any time. Revisions are not effective until considered and approved in accordance with the requirements for the development and approval of a forest plan. The forest supervisor shall review the conditions on the land covered by the plan at least every 5 years to determine whether conditions or demands of the public have changed significantly.

(g) *Planning records.* The forest supervisor and interdisciplinary team will develop and maintain a system that records decisions and activities that result from the process of developing a forest plan, revision, or significant amendment. Records will be maintained that support analytical conclusions and alternative plans made by the team and approved by the forest supervisor throughout the planning process. Such supporting records provide the basis for the development of, revision, or significant amendment to the forest plan

and associated environmental documents.

(h) *Forest plan content.* The forest plan will contain the following:

(1) A brief description of the major public issues and management concerns which are pertinent to the forest, indicating the disposition of each issue or concern;

(2) A summary of the analysis of the management situation, including a brief description of existing management situations, demand and supply conditions for resource commodities and services, production potentials, and use and development opportunities;

(3) Long-range policies, goals, and objectives, and the specific management direction and practices to achieve the goals and objectives of the plan;

(4) Proposed vicinity, timing, standards and guidelines for proposed and probable management practices;

(5) Monitoring and evaluation requirements which are pertinent at the forest level;

(6) Appropriate references to information used in development of the forest plan; and

(7) Names of the interdisciplinary planning team members, together with a summary of each member's qualifications and primary responsibilities or contributions to the forest planning effort.

(i) *Monitoring and evaluation.* Monitoring and evaluation of planned actions and effects will be carried out in compliance with § 219.5(k) and paragraphs (i) (1) through (3) of this section. In addition, management practices associated with each of the resources planned will be evaluated with reference to the standards and guidelines contained in the forest plan through monitoring on an appropriate sample basis. Methods used to monitor consequences of activities resulting from planning and management practices will be consistent with those used to gather data and information.

(1) Monitoring requirements in the forest plan will include descriptions of:

(i) Activities, practices and effects that will be measured and the frequency of measurements;

(ii) Expected precision and reliability of the monitoring process; and

(iii) The time at which evaluation reports will be prepared.

(2) An evaluation report will be prepared for management practices monitored and will contain at least the following:

(i) A quantitative estimate of performance comparing outputs and services with those projected by the forest plan;

(ii) Documentation of measured effects, including any change in productivity of the land;

(iii) Recommendations for changes;

(iv) A list of needs for continuing evaluation of management systems and for alternative methods of management; and

(v) Unit costs associated with carrying out the planned activities as compared with unit costs estimated in the forest plan.

(3) Based upon the evaluation reports, the interdisciplinary team shall recommend to the forest supervisor such changes in management direction, revisions, or amendments to the forest plan as deemed necessary.

§ 219.12 Criteria for Forest Planning Actions.

(a) In the preparation of the proposed forest plan, revision, or significant amendment, the interdisciplinary team, as directed by the forest supervisor, shall follow the planning process established in §§ 219.5 through 219.8, 219.11, and in this section. The criteria in paragraphs (b) through (m) of this section provide the minimum requirements to be considered if appropriate for the forest being planned. Additional planning criteria may be found in the guidelines for managing specific renewable resources set forth in the Forest Service Manual.

(b) Each forest plan will identify lands available, capable, and suitable for timber production and harvesting during the planning process in accordance with the planning criteria in paragraphs (b) (1) through (5) of this section.

(1) During the analysis of the management situation, data on all National Forest System lands will be reviewed and those lands meet all of the requirements of paragraphs (b)(1) (i) through (iv) of this section will be tentatively identified as available, capable and suitable for timber production. Those lands that fail to meet any of these requirements will be designated as not suited for timber production.

(i) The land has not been legislatively or administratively withdrawn from timber production.

(ii) The biological growth potential for the land is equal to or exceeds the minimum standard for timber production defined in the regional plan.

(iii) Technology is available that will ensure timber production from the land without irreversible resource damage to soils, productivity, and watershed conditions, or without significant adverse impact on threatened or endangered species.

(iv) There is reasonable assurance that such lands can be adequately restocked within 5 years after final harvest as provided in § 219.13(h)(3).

(2) Lands that have been tentatively identified as available, capable, and suitable for timber production in paragraph (b)(1) of this section will be further reviewed and assessed prior to the formulation of alternatives to determine their potential economic efficiency in commercial timber production. On the basis of this assessment lands will be ranked by appropriate benefit-cost criteria to establish relative potential economic efficiency in meeting the timber production goals for the planning area. This assessment will compare the anticipated direct benefits of growing and harvesting trees to the anticipated direct costs to the governement, including capital expenditures required by timber production and the interest on those expenditures, in accordance with § 219.5 and in paragraphs (b)(2) (i) through (iii) of this section.

(i) Direct benefits are expressed by expected future stumpage prices.

(ii) Direct costs include the anticipated investments, maintenance, operating, and management and planning costs attributable to timber production activities, and any costs that may be reasonably attributed to mitigation measures necessitated by the impacts of timber production. Only the additional expenditures required for timber growing and harvesting activities, including the cost of the road system apportioned to timber are to be included in direct costs.

(iii) Economic efficiency analysis is to be based on the assumption that the lands are managed primarily for timber production and the intensity of management and degree of timber utilization are determined in accordance with paragraph (d)(1)(ii)(A) of this section. Rotation periods will be consistent with those assumed for purposes of determining the long-term sustained-yield capacity as provided in paragraph (d)(1)(ii)(C) of this section. Economic analysis must consider costs and returns from conversion of existing timber inventory in addition to long-term potential yield.

(3) During the formulation of each alternative, combinations of resource activities will be defined to meet management objectives. These combinations of resource activities shall consider the relative potential economic efficiency of lands for timber production as determined in paragraph (b)(2) of this section.

(4) During the evaluation of each alternative, lands shall be tentatively identified as not suited for timber production if:

(i) Based on a consideration of multiple-use objectives for the planning area, the land is determined suitable for resource uses that preclude timber production;

(ii) Other multiple uses of the area limit timber production activities to the point where the silvicultural standards and guidelines set forth in section 219.13 cannot be met; or

(iii) The lands are not cost-effective in meeting forest objectives which require vegetation manipulation for the alternative under consideration.

(5) Selection among alternatives shall be done in accordance with § 219.5(i). Lands identified as tentatively not suited in paragraph (b)(4) will be designated as not suited for timber production in the selected alternative.

(c) When vegetation is altered by management, the methods, timing, and intensity of the practices determine the level of benefits that can be obtained from the affected resources. The vegetation management practices chosen for each vegetation type and circumstance will be defined in the forest plan with applicable standards and guidelines and the reasons for the choices. Where more than one vegetation management practice will be used in a vegetation type, the conditions under which each will be used will be clearly defined. The choices will be based upon thorough reviews of technical and scientific literature and practical experience, with appropriate evaluation of this knowledge for relevance to the specific vegetation and site conditions. On National Forerst System land, the vegetation management practice chosen will comply with the management standards and guidelines specified in § 219.13(c).

(d) The forest plan will provide the determination of the allowable sale quantity and the corresponding timber harvest schedule. Planning criteria for scheduling and consideration of departures from the base harvest schedule will be addressed in § 219.5(f) and include the criteria in paragraphs (d) (1) and (2) of this section.

(1) Alternatives shall be formulated that include determinations of the quantity of the timber that may be sold during the planning period. These determinations will be based on the principle of sustained yield and consider only those lands currently identified as capable, available and suitable, for timber production which meet the constraints set out in § 219.13. For each managment alternative, the determination will include a calculation of the long-term sustained-yield capacity and the base harvest schedule and when appropriate, a calculation of timber harvest alternatives that may depart from the base harvest schedule as provided in paragraph (d)(1) (i) through (iii) of this section.

(i) For the base harvest schedule the planned sale and harvest for any future decade will be equal to or greater than the planned sale and harvest for the preceding decade provided that the planned harvest is not greater than the long-term sustained-yield capacity.

(ii) The determinations of the long-term sustained-yield capacity, base harvest schedules, and departure alternatives to the base harvest schedule will be made on the basis of the guidelines which follows:

(A) For the long-term sustained-yield capacity and the base harvest schedule, assume an intensity of management and degree of timber utilization consistent with the goals, assumptions, and standards contained in, or used in the preparation of the current Program and regional plan. For the base harvest schedule, the management and utilization assumptions will reflect the projected changes in practices for the four decades of the regional plan. Beyond the fourth decade, the assumptions will reflect those projected for the fourth decade of the regional plan;

(B) For departure alternatives to the base harvest schedule which provide outputs above the current regional plan, assume an appropriate management intensity;

(C) In accordance with the established standards, assure that all even-aged stands scheduled to be harvested during the planning period shall generally have reached the culmination of mean annual increment of growth. Mean annual increment will be based on management intensities and utilization standards assumed in paragraphs (d)(1)(ii)(A) and (B) of this section and expressed as units of measure consistent with the regional plan. Exceptions to these standards are permitted for the use of sound silvicultural practices, such as thinning or other stand improvement measures; for salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack; or for the removal of particular species of trees after consideration has been given to the multiple uses of the area being planned and after completion of the public participation process applicable to the preparation of a forest plan; and

(D) For all harvest schedules, achieve a forest structure by the conclusion of the scheduling period that will enable perpetual timber harvest thereafter at the long-term sustained-yield capacity, consistent with the long-range multiple-use objectives of the alternative.

(iii) An alternative providing for departures from the base harvest schedules will be considered and formulated when any of the following conditions occur:

(A) Attainment of the multiple-use objectives of the forest plan can be enhanced by more rapid and efficient achievement of the long-term sustained-yield capacity of the forest owing to present forest structure or by preventing and reducing high mortality losses from any cause;

(B) Implementation of the base harvest schedule would cause instability or dislocation in the economic area in which the forest is located; or

(C) None of the alternatives already formulated provide a timber harvest schedule that meets the goals and objectives of the Program as provided in § 219.4(b)(3).

(2) The selected harvest schedule provides the allowable sale quantity (the quantity of timber that may be sold from the area of land covered by the forest plan) for the plan period. If the selected harvest schedule is not the base timber harvest schedule for the designated forest planning area, the forest plan will be transmitted to the Chief, Forest Service, for approval. The decision of the Chief may be appealed to the secretary pursuant to the procedures in § 219.11.

(e) Lands identified in the second roadless area review and evaluation process (RARE II) as lands to be managed for purposes other than wilderness need not be assessed for wilderness in development of the initial generation of forest plans prepared under this subpart. When revising the forest plan, roadless areas within an adjacent to the forest, will be evaluated and considered for recommendation as potential wilderness areas, as provided in paragraphs (e) (1) and (2) of this section

(1) During analysis of the management situation the following areas will be evaluated:

(i) All previously inventoried wilderness resources not yet designated;

(ii) Areas contiguous to existing wilderness, primitive areas, or administratively proposed wildernesses, regardless of agency jurisdiction;

(iii) Areas, regardless of size, that are contiguous to roadless and undeveloped areas in other Federal ownership that have identified wilderness potential; and

(iv) Areas designated by Congress for wilderness study, administrative proposals pending before Congress, and other legislative proposals pending which have been endorsed by the administration.

(2) Each area designated for evaluation under paragraph (e)(1) of this section will be evaluated in terms of current national guidelines or, in their absence, by criteria developed by the interdisciplinary team with public participation. In the latter case, the criteria will include as a minimum:

(i) The values of the area as wilderness;

(ii) The values foregone and effects on management of adjacent lands as a consequence of wilderness designation;

(iii) Feasibility of management as wilderness, in respect to size, non-conforming use, land ownership patterns, and existing contractual agreements or statutory rights;

(iv) Proximity to other designated wilderness, and relative contribution to the National Wilderness Preservation System; and

(v) The anticipated long-term changes in plant and animal species diversity, including the diversity of natural plant and animal communities of the forest planning area and the effects of such changes on the values for which wilderness areas were created.

(f) The forest plan will provide direction for the management of designated wilderness and primitive areas in accordance with the provisions of Part 293. In particular, it will:

(1) Provide for limiting and distributing visitor use of specific portions in accord with periodic estimates of the maximum levels of use that allow natural processes to operate freely and that do not impair the values for which wilderness areas were created; and

(2) By evaluating the extent to which wildfire, insect, and disease control measures may be desirable for protection of either the wilderness or adjacent areas, provide for such measures when appropriate.

(g) Fish and wildlife habitats will be managed to maintain viable populations of all existing native vertebrate species in the planning area and to maintain and improve habitat of management indicator species. To meet this goal, management planning for the fish and wildlife resource will meet the requirements set forth in paragraph (g)(1) through (7) of this section and the guidelines in Chapter 2620, Forest Service Manual.

(1) The desired future condition of fish and wildlife, where technically possible, will be stated in terms both of animal population trends and of amount and quality of habitat.

(2) Management indicator species will be identified for planning, and the reasons for their selection will be given. The species considered shall include at least: Endangered and threatened plant and animal species identified on State and Federal lists for the planning area; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; and additional plant or animal species selected because their population changes are believed to indicate effects of management activities on other species of a major biological community or on water quality. On the basis of available scientific information, the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species will be estimated. Where appropriate, measures to mitigate adverse effects will be prescribed.

(3) Biologists from State fish and wildlife agencies and other Federal agencies shall be consulted by the interdisciplinary team in order to coordinate planning with State plans for fish and wildlife.

(4) Access and dispersal problems of hunting, fishing, and other visitor uses will be considered.

(5) The effects of pest and fire management on fish and wildlife populations will be considered.

(6) Population trends of the management indicator species shall be monitored and relationships to habitat changes determined. This monitoring shall be done in cooperation with State fish and wildlife agencies, to the extent practicable.

(7) Critical habitat for threatened and endangered species will be determined, and measures shall be prescribed to prevent the destruction or adverse modification of such habitat. Objectives will be determined for threatened and endangered species that will provide for, where possible, their removal from listing as threatened and endangered species through appropriate conservation measures, including the designation of special areas to meet the protection and management needs of such species.

(b) Identify lands suitable for grazing and browzing in accordance with criteria in paragraphs (h) (1) through (3) of this section and guidelines established in Forest Service Manual 2210.

(1) The procedures used and data obtained will include, but not be limited to, the following:

(i) Range condition and trend studies;

(ii) Records of actual use by domestic livestock, feral estimated percentage utilization of key forage species;

(iii) An estimate of the capability of the rangelands to produce suitable food and cover for the management indicator species of wildlife; and

(iv) An estimate of the present and potential supply of forage for sheep, cattle, and feral animals.

(2) In the analysis of management situation, assess the capability of the planning area to produce forage without permanent impairment of the resources, considering the condition of the vegetation, statutory, and administrative withdrawals, characteristics of soil and slope, and accessibility to grazing and browsing animals.

(3) Alternative range management practices will consider:

(i) Grazing management systems;

(ii) Methods of altering successional stages for range management objectives, including vegetation manipulation as described in § 219.13(c);

(iii) Evaluation of pest problems, and availability of integrated pest management systems;

(iv) Possible conflicts or beneficial interactions among domestic, feral, and wild animal populations, and methods of regulating these;

(v) Physical facilities such as fences, water development, and corrals, necessary for efficient management;

(vi) Existing permits, cooperative agreements, and related obligations; and

(vii) Measures to protect, manage, and control wild free-roaming horses and burros as provided in Part 222, Subpart B. (i) A broad spectrum of dispersed and developed recreation opportunities in accord with identified needs and demands will be provided. Planning to achieve this will be governed by the goals of the regional plan, the requirements of paragraph (i) (1) through (8) of this section, and the guidelines in Chapter 2310, Forest Service Manual.

(1) Forest planning will identify:

(i) The physical and biological characteristics that make land suitable for recreation activities;

(ii) The recreational preferences of user groups; and

(iii) Recreation opportunities on the National Forest System lands.

(2) The supply of recreational facilities to meet present and future needs in the area surrounding the forest will be appraised.

(3) Alternatives will include consideration of establishment of physical facilities, regulation of use, and recreation opportunities responsive to current and anticipated user demands.

(4) In formulation and analysis of alternatives as specified in § 219.5 (f) and (g), interactions among recreation activities and other multiple uses shall be examined. This examination shall consider the impacts of the proposed recreation activities on other uses and values and the impacts of other uses and activities associated with them on recreation opportunities, activities, and quality of experience.

(5) Development and evaluation of alternatives under paragraphs (i) (3) and (4) of this section will be coordinated to the extent feasible with present and proposed recreation activities of local and State land use or outdoor recreation plans, particularly the State Comprehensive Outdoor Recreation Plan and recreation opportunities already present and available on other public and private lands, with the aim of reducing duplication in meeting recreation demands.

(6) Modification of land ownership patterns to meet present and future recreation needs will be considered.

(7) Off-road vehicle use will be planned and implemented to minimize adverse effects on the land and resources, promote public safety, and minimize conflicts with other uses of the National Forest System lands. Forest planning will evaluate the potential effects of vehicle use off-roads and, on the basis of the requirements of Part 295, and the guidelines in Chapter 2355, Forest Service Manual, classify areas and trails of National Forest System lands as to whether or not off-road vehicle use may be permitted.

(j) The effects of mineral exploration and development in the planning area will be considered in the management of renewable resources. When available, the following will be recognized in the forest plan:

(1) Active mines within the area of land covered by the forest plan;

(2) Outstanding or reserved mineral rights;

(3) The probable occurrence of various minerals, including locatable, leasable, and common variety;

(4) The potential for future mineral development; and

(5) The probable effect of renewable resource allocations and management on mineral resources and activities, including exploration and development.

(k) The water and soil management guidelines set forth in Chapter 2510, Forest Service Manual and paragraph (k) (1) through (6) of this section will be followed in planning the management of the water and soil resources.

(1) Current water uses, both consumptive and non-consumptive, within the area of land covered by the forest plan, including instream flow requirements, will be determined.

(2) Existing impoundments, transmission facilities, wells, and other man-made developments on the area of land covered by the forest plan will be identified.

(3) The probable occurrence of various levels of water volumes, including extreme events which would have a major impact on the planning area, will be estimated.

(4) Plans shall comply with the requirements of the Federal Water Pollution Control Act, as amended by the Clean Water of 1977, the Safe Drinking Water act, and all substantive and procedural requirements of Federal, State, and local governmental bodies with respect to the provision of public water systems and the disposal of waste water.

(5) Existing or potential watershed conditions that will influence soil productivity, water yield, water pollution, or hazardous events, will be evaluated.

(6) Measures, as directed in applicable Executive Orders, to minimize risk of flood loss and to restore and preserve floodplain values, and to protect wetlands, will be adopted.

(l) Forest planning will provide for the indentification, protection, interpretation and management of cultural resources on National Forest System lands. Planning for the resource will be governed by the requirements of Federal laws pertaining to historic preservation, the guidelines in Chapter 2360, Forest Service Manual, and the criteria in paragraphs (l) (1) through (3) of this section:

(1) Forest planning will:

(i) Provide an overview of known data relevant to history, ethnography, and prehistory of the area under consideration, including known cultural resource sites;

(ii) Identify areas requiring more intensive inventory;

(iii) Provide for evaluation and identification of sites for the National Register of Historic Places;

(iv) Provide measures for the protection of cultural resources from vandalism and other human depredation, and natural destruction;

(v) Identify the need for maintenance of historic sites on, or eligible for inclusion in, the National register of Historic Places; and

(vi) Identify opportunities for interpretation of cultural resources for the education and enjoyment of the American public.

(2) In the formulation and analysis of alternatives, interactions among cultural resources and other multiple uses shall be examined. This examination shall consider impacts of the management of cultural resources on other uses and activities and impacts of other uses and activities on cultural resource management.

(3) Development and evaluation of program alternatives will be coordinated to the extent feasible with the State cultural resource plan and planning activities of the State Historic Preservation Office and State Archaeologist and with other State and Federal agencies.

(m) Forest planning will provide for the establishment of Research Natural Areas (RNA's). Each plan will make provision for the identification of examples of important forest, shrubland, grassland, alpine, aquatic, and geologic types that have special or unique characteristics of scientific interest and importance and that are needed to complete the national network of RNA's. Biotic, aquatic, and geologic types needed for the network will be identified using a list provided by the Chief, Forest Service. Authority to establish RNA's is delegated to the Chief in § 2.60(a) of Title 7 and in § 251.23. The plan will recommend establishment of areas. Guidance for the selection of areas suitable for RNA's and for the preparation of establishment reports is provided in section 4063, Forest Service Manual.

§ 219.13 Management standards and guidelines.

(a) Management of National Forest System lands requires adherence to the planning principles stated in § 219.1. specific management requirements to be met in accomplishing goals and objectives include, as a minimum, those in paragraphs (b) through (i) of this section.

(b) All management practices will:

(1) Conserve soil and water resources, and not allow significant or permanent impairment of the productivity of the land;

(2) Minimize serious or long-lasting hazards from flood, wind, wildfire, erosion, or other natural physical forces.

except as these are specifically accepted, as in Wilderness;

(3) Prevent or reduce serious, long-lasting hazards from pest organisms under the principles of integrated pest management;

(4) Protect streams, streambanks, shorelines, lakes, wetlands, and other bodies of water as provided under paragraphs (e) and (f) of this section;

(5) Provide for and maintain diversity of plant and animal communities to meet overall multiple-use objectives, including, where appropriate and to the degree practicable, management practices to preserve endemic and desirable naturalized plant and animal species similar to those existing in the planning area;

(6) Be monitored and evaluated as required in § 219.5(k) to assure that practices preserve critical soil, watershed, fish, wildlife, recreation, and aesthetic values; maintain vegetative productivity; and reduce hazards from insects, disease, weed species, and fire;

(7) Prior to project implementation, the potential physical, biological, aesthetic, cultural, engineering, and economic impacts, will be assessed in addition to the consistency of the project with the multiple uses planned for the general area;

(8) Ensure that fish and wildlife habitats are managed to maintain viable populations of all existing native vertebrate species and to improve habitat of selected species, coordinated with appropriate State fish and wildlife agencies and monitored in cooperation with these agencies, to the extent practicable;

(9) Include measures for preventing the destruction or adverse modification of critical habitat for threatened and endangered species;

(10) Provide that any existing transportation and utility corridor, and any right-of-way that is capable of accommodating the facility or use from an additional compatible right-of-way, be designated as a right-of-way corridor. Subsequent right-of-way grants shall, to the extent practicable, and as determined by the authorized official, be confined to designated corridors;

(11) Ensure that any roads constructed through contracts, permits, or leases are designed according to standards appropriate to the planned uses, considering safety, cost of transportation, and effects upon lands and resources;

(12) Provide that all roads are planned and designed to re-establish vegatative cover on the total disturbed area within a reasonable period of time, not to exceed 10 years after the termination of a contract, lease or permit, unless the road is determined necessary as a permanent addition to the National Forest Transportation System; and

(13) Maintain air quality at a level that is adequate for the protection and use of National Forest System resources and that meets or exceeds applicable Federal, State and/or local standards or regulations, as required by the guidelines in Chapter 2120, Forest Service Manual.

(c) Management practices that involve vegetation manipulation of tree cover for any purpose will:

(1) Be best suited to the multiple-use goals established for the area with all potential environmental, biological, cultural resource, aesthetic, engineering, and economic impacts, as stated in the regional and forest plans, being considered in this determination;

(2) Assure that lands can be adequately restocked within 5 years after final harvest as provided in paragraph (h)(3) of this section, except where permanent openings are created for wildlife habitat improvement, vistas, recreation uses and similar practices;

(3) Not be chosen primarily because it will give the greatest dollar return or the greatest output of timber, although these factors shall be considered, with long-term costs and benefits rather than immediate or short-term returns being used in economic analysis;

(4) Be chosen after considering potential effects on residual trees and adjacent stands;

(5) Avoid permanent impairment of site productivity and assure conservation of soil and water resources;

(6) Provide the desired effects on water quantity and quality, wildlife and fish habitat, regeneration of desired tree species, recreation uses, aesthetic values, and resource yields; and

(7) Be practical in terms of transportation and harvesting requirements, and total costs of preparation, logging, and administration.

(d) When tree openings are created by the application of even-aged management, the provisions of paragraphs (d)(1) and (2) of this section apply.

(1) The blocks or strips cut shall be shaped and blended with the natural terrain to achive aesthetic and wildlife habitat objectives to the extent practicable. Openings will be located to achieve the desired combination of multiple objectives. Regional plans will provide guidance on the dispersion of openings, and size variations of openings, in relation to topography, climate, geography, local land use patterns, forest type and other factors. The regional plan will specify the state of vegetation to be reached before a cutover is no longer considered an opening.

(2) Individual cut blocks, patches, or strips will conform to the maximum size limits for areas to be cut in one harvest operation established by the regional plan according to geographic areas and forest types. This limit may be less than, but shall not exceed, 60 acres for the Douglas-fir forest type of California, Oregon, and Washington; 100 acres for the hemlock-sitka spruce forest type of coastal Alaska; and 40 acres for all other forest types except as provided in paragraphs (d)(2) (i) through (iii) of this section:

(i) Cut openings larger than those specified may be permitted where larger units will produce a more desirable combination of benefits. Such exceptions will be provided for in regional plans. The following factors will be considered in determining size limits by geographic areas and forest types: Topography; relationship of units to other natural or man-made openings and proximity of units; coordination and consistency with adjacent forests and regions; effect on water quality and quantity; effect on scenic values; effects on wildlife and fish habitat; regeneration requirements for desirable tree species based upon the latest research findings; transportation and harvesting system requirements; natural and biological hazards to survival of residual trees and surrounding stands; and relative total costs of preparation, logging, and administration of harvest cuts of various sizes. Specifications for such exception will include the particular conditions under which the larger size is permitted and set a new maximum size permitted under those conditions.

(ii) The size limits may be exceeded on an individual timber sale basis after 60 days public notice and review by the regional forester.

(iii) The established limit shall not apply to the size of areas harvested as a result of natural catastrophic condition such as fire, insect and disease attack, or windstorm.

(e) Special attention shall be given to land and vegetation for approximately 100 feet along both sides of all perennial streams, lakes, and other bodies of water. No management practices will be permitted which seriously and adversely affect water conditions or fish habitat. Such changes include increases in water temperatures or chemical composition, blockages or water course, or deposits of sediment that are likely to seriously

and adversely affect water conditions or fish habitat. Topography, vegetation type, soil, climatic conditions, management objectives, and other factors will be considered in determining what management practices may be performed within these areas and the constraints to be placed upon their performance in order to assure protection of water condition, fish habitat or other multiple-use values.

(f) Conservation of soil and water resources involves the analysis, protection, enhancement, treatment, and evaluation of soil and water resources, and their responses under management and will be guided by instructions in official technical handbooks. These handbooks must show specific ways to avoid or mitigate damage, and maintain or enhance productivity on specific sites. These handbooks may be regional in scope or, where feasible, specific to physiographic or climatic provinces.

(g) Diversity of plant and animal species and communities will be considered throughout the planning process. Inventories will include quantitative data making possible the evaluation of species and community diversity in terms of its prior and present condition. for each planning alternative, the interdisciplinary team will consider how diversity of species and communities will be preserved and enhanced by various mixes of resource outputs and uses, including the effects of proposed management practices on existing plant and animal species and communities in the planning area. The selected alternative will provide for plant and animal community diversity to meet the overall multiple-use objectives of the planning area. To the extent consistent with the requirement to provide for diversity, management practices, where appropriate and to the extent practicable, will preserve and enhance species and communities diversity similar to that which would be expected in an unmanaged part of the planning area. Reductions in existing plant and animal community diversity will be made only where needed to meet overall multiple-use management objectives. Planned type conversions of the species will be justified by a detailed analysis showing biological, economic, and social consequences, and the relation of such conversions to the process of natural change.

(h) The management requirements in paragraph (h) (1) through (7) of this section apply to timber harvest and cultural treatments.

(1) No timber harvesting shall occur during the planning period on lands classified as not suited for timber production pursuant to § 219.12(b) (1) through (5) except as necessary to protect other multiple-use values or activities that meet other objectives on such lands if the forest plan establishes that such actions are appropriate.

(2) The selected harvest schedule provides the allowable sale quantity, the quantity of timber that may be sold from the area of land covered by the forest plan during the planning period. Within the planning period, the volume of timber to be sold in any one year may exceed the average annual allowable sale quantity so long as the total amount sold for the planning period does not exceed the allowable sale quantity. Nothing in this standard shall prohibit salvage or sanitation harvesting of timber stands which are substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger of insect or disease attack where consistent with silvicultural and environmental standards. Such timber may either substitute for timber that would otherwise be sold under the plan or, if not feasible, be sold over and above the planned volume.

(3) When trees are cut to achieve multiple-use objectives, including timber production, the cuttings will be made in such a way as to assure that lands can be adequately restocked within 5 years after final harvest. Research and experience will indicate that the harvest and regeneration practices planned can be expected to result in adequate restocking. Adequate restocking means that the cut area will contain the minimum number, size distribution, and species composition of regeneration as specified in regional silvicultural guides attached to the forest plan for each forest type. Five years after final harvest means 5 years after clearcutting, 5 years after final overstory removal in shelterwood cutting, 5 years after the seed tree removal cut in seed tree cutting, or 5 years after selection cutting.

(4) Cultural treatments such as thinning, weeding, and other partial cutting may be included in the forest plan where they are intended to increase the rate of growth of remaining trees, favor commercially valuable tree species, favor species or age classes which are most valuable for wildlife, or achieve other multiple-use objectives.

(5) Harvest levels based on intensified management practices will be decreased no later than the end of each planning period if such practices cannot be completed substantially as planned.

(6) Timber harvest cuts designed to regenerate an even-aged stand of timber will be carried out in a manner consistent with the protection of soil, watershed, fish and wildlife, recreation, and aesthetic resources, and the regeneration of the timber resource.

(7) Timber shall not be harvested where such treatment would favor an abnormal increase in injurious insects and disease organisms.

(i) Monitoring will ensure as a minimum that:

(1) Lands are adequately restocked within 5 years after the final harvest cut;

(2) Lands identified as not suited for timber production will be examined every 10 years to determine if they have become suitable;

(3) Maximum size limits for harvest areas are evaluated to determine whether such size limits should be continued; and

(4) Destructive insects and disease organisms do not increase following management activities.

§ 219.14 Research.

(a) Research needs for management of the National Forest System will be identified during planning and continually reviewed during evaluation of implemented plans. Particular attention will be given to research needs identified during the monitoring and evaluation described in § 219.5(k). These identified needs will be included in formulating overall programs, which involve private as well as public forest and rangelands.

(b) Priorities for research needed for management of the National Forest System will be established and budgeted at the research station and national levels. Priorities will be based upon the information gathered at all planning levels of the National Forest System.

(c) An annual report at the national level will include, but not be limited to, a description of the status of major research programs which address these needs, significant findings, and how this information is to be applied in National Forest System management.

§ 219.15 Revision of regulations.

The regulations in this subpart shall be regularly reviewed and, when appropriate, revised. The first such review shall be completed no later than 6 years after the approval date of these regulations. Additional reviews shall occur at least every 5 years thereafter.

§ 219.16 Transition period.

(a) Until a forest planning area of the National Forest System land is managed under a forest plan developed pursuant to these regulations and approved by the regional forester, the land may continue to be managed under existing

land use and resource plans. As soon as practicable, existing plans will be amended or revised to incorporate standards and guidelines in this subpart. Pending approval of a forest plan, existing plans may be amended or revised to include management requirements not inconsistent with the provisions of the Forest and Rangeland Renewable Resources Planning Act, as amended, and these regulations.

(b) A forest plan may become effective prior to the development and approval of its related regional plan, provided that the forest plan will be reviewed upon regional plan approval, and if necessary, amended to comply with regional management direction. If such an amendment is significant, it will be made pursuant to the requirements for the development of a forest plan.

Final Report of the Committee of Scientists

February 22, 1979

A Report of the Committee of Scientists to the Secretary of Agriculture Regarding Regulations Proposed by the United States Forest Service to Implement Section 6 of the National Forest Management Act of 1976.

For the Committee of Scientists.

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Table of Contents

Executive Summary
Introduction
Organization of Report
The Broader Issues
The regulations must be read in their entirety
The regulations must be placed in proper perspective
The regulations are process oriented
The regulations lack specificity
The structure of the proposed forest planning process is sound
The regulations should state policy
The RPA/NFMA planning process can resolve many problems and deserves the chance to work
The regulations were developed with full public input
The proposed three-tiered planning process is sound
RPA/NFMA planning must involve both upward and downward flows of information
The planning process must be flexible and subject to revision
Monitoring is vital to the success of planning
The regulations must specify responsibility for decisions
Balanced planning requires a balance of interests among Forest Service personnel
Proposed management practices must be justified by competent economic analysis
Adequate inventory data are essential to sound plans
Provision for diversity is one of the most difficult issues dealt with in the regulations
Coordination of research efforts is vital
Competent planning will be costly
Successful implementaion of RPA/NFMA depends on prompt development of final regulations and support of them by those who have interests in management of the National Forests
Section-by-Section Analysis
219.1 Purpose
219.2 Scope and applicability
219.3 Definitions
219.4 Planning levels
Analysis
Recommended new language
Recommended new section on content of regional plan
219.5 Interdisciplinary approach
Analysis
Recommended new language
219.6 Public participation
Analysis
Recommended new language
219.7 Coordination
Analysis
Recommended new language
Recommended additions to other sections
219.8 Forest planning procedure
219.9 Forest planning process
Analysis
Recommended changes in language
219.10 Resource management standards and guidelines
Recommended new introductory language
Recommended new section (a) *All resource uses*
All management activities
Vegetation management practices (including choice of silvicultural system
Openings created by cutting (including size of clearcuts
Protection of streams and lakes
Conservation of soil and water resources
Diversity
Fish and wildlife resource
Analysis and recommended additions and changes
Range resource
Recommended new language
Recreation resource
Recommended new language
Timber resource
Definitions
Timber producing lands
Analysis
Recommended alternative process
Recommended new language
Silvicultural systems
Recommended new language
Determination of the allowable sale quantity
Analysis
Recommended additions and changes
Water and soil resources
Wilderness resource
Recommended additions and changes
Other resources to be treated in 219.10
219.11 Research
Analysis
Recommended new language
219.12 Transition period
Recommended provision for revision of regulations
Full draft of regulations proposed by the committee of scientists

Executive Summary

This report presents the Committee of Scientists' evaluation of the draft regulations for implementing section 6 and related sections of the National Forest Management Act of 1976. It consists of a discussion of broad issues, a section-by-section analysis of the draft regulations, and a set of proposed regulations.

Our review leads to the following general conclusions:

(1) In spite of some deficiencies, the draft regulations are a major step forward in Forest Service policy. A single plan for each National Forest, rather than functional plans for each resource and unit plans, and the proposed vertical integration of the RPA planning process are far-reaching changes.

(2) Many of the criticisms that have been leveled at the draft regulations have arisen from an incomplete reading of them. The regulations must be read in their entirety to be understood. We recommend more extensive cross-referencing to alleviate this problem.

(3) The regulations have been criticized as being too process oriented. We believe the legislative history of NFMA supports the fact that they should be process oriented. We recommend further clarification and definition of the planning process.

(4) The degree of specificity of the draft regulations has been hotly debated. We conclude that the regulations do lack specificity in many key areas. We recommend that they be specific in establishing the principles of land management planning and the process to be used in applying these principles. We recommend, however, that the regulations not be specific with regard to prescriptions for on-the-ground management problems.

(5) Interdisciplinarity was a key concern of Congress and the language of the NFMA requires that a process to insure interdisciplinarity must be embodied in the planning regulations. We recommend more specific language

on three issues: (1) A description of the interdisciplinary process, (2) the philosophy that is to guide the interdisciplinary team, and (3) the requirements for composition of the team and for qualifications of its members. We have been told that other legislation may prevent persons who are not Forest Service employees from being appointed to interdisciplinary teams. We propose a strategy to allow State personnel to work with teams if it proves impossible for them to serve as members of them.

(6) The proposed planning process to insure interdisciplinary planning as described in §§219.8, 219.9, and 219.10 is sound. This is evident when the sections are read as three parts of the whole. However, we propose changes in the draft regulations in several areas: clarification of the role of public participation; strengthening of the inventory requirements to assure adequate information for RPA planning and to insure ties to monitoring; clearer statement of planning objectives; more explicit evaluation criteria; clarification of the role of economic analysis and the requirements for treating diversity; and strengthening of the section outlining standards for formulating alternatives.

(7) We believe the regulations should contain statements of the Secretary of Agriculture's policy in certain key areas and we recommend such language in appropriate sections.

(8) Ongoing activities such as proposed Congressional allocations of wilderness and the RARE II process are contradictions and are counterproductive to RPA planning, goals, and processes. Congress, the administration, and the Forest Service must allow the process to run through at least one full iteration to demonstrate its potential and to establish its credibility.

(9) Citizens have expressed concern that prior regulations often did not make clear who was responsible for given actions. We find the present draft regulations adequate and definite in this regard.

(10) The proposed three-tiered planning concept involving national, regional, and forest planning is sound. The regional plan, an addition proposed by the Forest Service to the two levels required by RPA/NFMA, serves as a critical link between national and local planning. The draft regulations do not adequately convey the important iterative nature of the three levels of planning or the critical importance of the regional plan. We recommend clarifying and strengthening the description of the national and forest plan and their interactions and propose a new section dealing with the regional plan. We concur with the Forest Service proposal that many controversial management practices such as size of clearcuts, standards for biological growth potential, and silvicultural systems, be governed by the standards set in regional plans.

(11) The vital need for upward and downward flows of information in RPA/NFMA planning is implicit in the draft regulations but not clearly stated. It must be made clear that the goals and objectives of RPA planning are synthesized from upward flow of capabilities and demands at the local level.

The draft regulations deal with a number of important issues in forest planning and management. Among the most complex and controversial of these are: lands suitable for timber production, timber harvest scheduling and departures from nondeclining yield, silvicultural standards, diversity, wilderness, and coordination of public planning efforts. Our analyses and recommendations with regard to those are:

(12) The draft regulations provide a five step process for identifying lands not suited for timber production. We think this is not adequate, and we propose a different process with the following steps:

—Lands are screened to determine whether they are available (i.e., not already designated for other uses) for timber production;

—Available lands are then screened to identify areas that are not suitable for timber production because of physical, technical, biological (including a minimum productivity standard), or environmental factors;

—Lands passing these tests are then subjected to economic analysis and ranked to determine their relative economic efficiency for commercial timber production; and

—Alternative land management plans are formulated and lands are allocated to timber harvest on a cost-effective basis. An iterative procedure allows adjustment and revision on the basis of multiple-use considerations.

(13) Analysis of provisions of sections 6 and 13 of NFMA as they relate to timber harvest schedules and provisions for departure leads to the following three recommendations. First, implementation of sections 6 and 13 should be integrated because the intent of NFMA is that timber harvest schedules, including ceilings and departures, be integrated with planning for all resources. Second, section 13 of NFMA should be implemented by (a) stipulating that in the case of a base timber harvest schedule, the planned sale and harvest for any future decade must be equal to or greater than that in the previous decade, provided that the long run sustained yield ceiling is not exceeded and (b) by requiring that departures from the base harvest schedule be examined and evaluated during the planning process when certain conditions exist, subject to the constraint that the long run sustained yield capacity can be achieved at the end of the planning period. Third, determination of timber harvest schedule should be an integral part of the resource planning process and not an appendage to it. We recommend, however, that clarifying language be adopted which would emphasize the fact that consideration of departures is discretionary and that, if an upward departure is proposed, final approval for it should lie with the Chief, Forest Service.

(14) The proposed regulations have been criticized as not specific enough with respect to silvicultural standards and as not clarifying the fact that resource protection standards should apply equally to all uses and resources. The structure of proposed § 219.10 seems to imply that each resource is to be treated without consideration of others. We recommend cross-referencing of § 219.10 with the section on interdisciplinarity. More importantly, we recommend inclusion of a new subsection at the beginning of § 219.10. This subsection provides:

—Standards that all management activities must meet;

—Standards more detailed than those of the draft regulations that must be met when silvicultural systems are chosen;

—Standards that must be met when openings are created by cutting, including the size of clearcuts. We recommend that no national size limit on clearcuts be established but that this be done at the regional level for geographic areas and forest types;

—Standards for protection of streams, including designation of a 30-meter strip on either size of all perennial water bodies to receive special consideration in planning and monitoring;

—Special consideration for the conservation of soil and water resources (p. 107); and

—Specific direction for consideration of diversity generally and type conversions specifically.

As a result of these changes, the section on silvicultural systems should embody controls on timber cutting only.

(15) Provision for "diversity" as required by NFMA is one of the most

perplexing issues dealt with in the draft regulations. We believe it is impossible to write specific regulations to "provide for" diversity. We believe the interdisciplinary team should treat diversity as a major concern throughout the planning process and any changes in diversity should be identified and justified. Diversity is dealt with in several places in the regulations (219.9(c), (e), (f), 219.10(a), (b) and (d)) and we discuss the implications of these requirements in our report. We recommend clarifying and strengthening language in a number of places.

(16) The NFMA provides little guidance as to planning for the wilderness resource. The draft regulations treat, but do not fully resolve, two difficult issues: (1) Identifying and appraising additional candidate areas and (2) establishing maximum allowable levels of use. We recommend clarifying language to address both. Key provisions include: (1) evaluation of the wilderness resource and management planning for it in forest plans; (2) all potentially eligible lands should be considered at each revision of the forest plan; (3) costs and benefits should be weighed in considering wilderness status as with other resources; (4) criteria for designation should be evaluated continuously as experience dictates; and (5) determination of "carrying capacity" should be made for each area.

(17) Coordination among Federal, State and local governments is particularly poor in land use planning and management. We conclude that the requirements in the draft regulations for coordination are inadequate. We propose substitute language to assure that other governmental units understand how they can be involved in Forest Service planning, that the Forest Service make real efforts at coordination, and that Forest Service planners will evaluate and consider the plans of other governmental units as they develop regional and forest plans.

Other issues, although not so hotly debated, are nonetheless important and their resolution is critical to the success of the RPA/NFMA planning process. These include: public participation, adequacy of inventories, standards for resources other than timber and wilderness, economic analysis, monitoring, research, and consideration of mineral and visual resources. With regard to these matters, we conclude and recommend:

(18) Although the proposed regulations offer a good general framework for public participation, we feel they lack specificity and we propose additional language.

(19) Each forest plan should be based on sound detailed inventories of soils, vegetation, water resources, and wildlife and the other resources to be managed. Too often, such data are scanty or lacking. Another problem is lack of compatibility of data from comparable or even adjoining regions. As with monitoring, existing budgets are inadequate to rectify these deficiencies, and adequate budgets should be earmarked for these purposes.

(20) The guidance provided in the sections relating to resources other than timber (219.10(a), (b), (c) and (e)) is frequently limited and dwarfed by the detail provided for timber. This is an inevitable outcome of NFMA and its legislative history. The draft material on fish and wildlife (219.10(a)) appears to have general acceptance. We recommend several changes, the most important of which is substitution of the term "management indicator species" for "selected species". We recommend new, rewritten language for the sections on range (219.10(b)) and recreation (219.10(c)) which we think will insure more adequate treatment of these resources. The water and soil resources section (219.10(e)) should be titled "Water resource"; soil is treated adequately elsewhere.

(21) Competent economic analysis at all appropriate places in the planning process was clearly directed by RPA/NFMA. We propose language to provide additional guidance in evaluating management options.

(22) Any evaluation process demands some level of systematic inspection and measurement (i.e., monitoring). Special administrative and budgetary attention must be devoted to this activity.

(23) The resolution of research issues in forest management will depend on findings of numerous scientists in the Forest Service, universities, and the private sector. More effective coordination among all such research efforts, and between research results and planning operations in the National Forest System, is needed. The present level of coordination does not appear to be adequate. In addition, research needs identified by the planning process should be communicated speedly to appropriate research units.

(24) The draft regulations provide no real direction for consideration of mineral resources in the land allocation process. We recommend that a section providing such direction, appropriately cross-referenced to Forest Service and other agency regulations, be added to § 219.10. Furthermore, there is no treatment of visual resources in the draft. The Forest Service manual currently contains direction for consideration of esthetic values and we recommend that this serve as the basis for general guidance to be inserted in our new § 219.10(a) in the final regulations.

Finally, reflections on the draft regulations and our experience in evaluating them leads us to certain conclusions and recommendations:

(25) The planning process that will follow the approval of regulations will produce a vast amount of new practical experience which may point to areas for improvement. We recommend formal provisions for continued evaluation and revision of the regulations.

(26) Planning is costly. Additional costs will be measured in inventory, monitoring, and research requirements to implements to implement planning and to insure protection of all resources. We believe the estimates of planning costs by USADA are grossly conservative. If this RPA planning process is to work, it must be funded at a realistic level.

(27) Interdisciplinary planning and management require an adequate pool of resource specialists from various disciplines. Selective hiring, retraining, or appropriate arrangements with other agencies and private institutions may be required to provide sufficient numbers of such specialists without disrupting other programs.

(28) Successful implementation of the RPA/NFMA process depends on the prompt development of a set of final regulations and on support of them through at least one complete iteration of the process, by all constituencies with interest in the National Forests. We appeal to all for a constructive period of dialogue, common effort, and cooperation so that the process may succeed.

Introduction

In our preliminary report accompanying draft regulations for implementing Section 6 of the National Forest Management Act, as amended [1], we stated that the report containing our technical review of the draft regulations, prepared as required by law for the Secretary of Agriculture, would be published so that the public might be informed of the committee's views. The following report contains our views and fulfills our obligations under section (h) of RPA/NFMA.

[1] The Forest and Rangeland Renewable Resources Planning Act of 1974 (RPA) (88 Stat. 476, *et seq.*), as amended by the National Forest Management Act of 1976 (NFMA) (90 Stat. 2949, *et seq.*), hereafter referred to as RPA/NFMA.

Although the background of the committee's formation and responsibility was described in the preliminary report, a brief synopsis may be helpful. The committee is composed of seven members and is authorized by section 6(h)(1) of RPA/NFMA. Although the statutory charge to the committee is to "provide scientific and technical advice and counsel on proposed guidelines and procedures to assure that an effective interdisciplinary approach is proposed and adopted," the peculiar structure of the RPA/NFMA required the committee to consider all aspects of section 6 and, in addition, other section, particularly section 13, dealing with limitations on timber removal. The National Academy of Science, in a report to the Secretary of Agriculture, recommended that "The committee deliberations should embrace all parts of section 6 of the Act," and the charge to the committee from the Secretary included this broader mandate.

Our work took place in two phases. In the first, we worked with Forest Service staff in preparing language to be considered for incorporation in the draft regulations. Although such active involvement was perhaps not envisioned by Congress when it authorized the committee, it turned out to be the only practical way for us to operate. Meetings during this first phase were held throughout the country and were fully open to the public. Concerns of two major types were discussed. These involved the planning process itself and a number of critical issues that became fairly obvious on the basis of Congressional and other public debate over management of the National Forests. The first phase culminated in publication of the draft regulations on August 31, 1978.

In the second phase of our work we evaluated the draft regulations and prepared this report. This work required additional public meetings and intensive discussions of several unresolved issues identified for special study in a letter to the committee from the Assistant Secretary of Agriculture. These included: lands suitable for timber production, departures from non-declining yield, silvicultural standards, diversity, wilderness, and coordination of public planning efforts. In addition, discussion was devoted to a number of less controversial issues which are, nonetheless, critical to successful implementation of the Forest Service Planning process. These included: public participation, the relationships among plans at the forest, regional, and national level, and the need for more clearly defined standards to guide planning for resources other than timber.

Evaluating the regulations has proven difficult. Although the draft regulations may seem to have certain obvious deficiencies, many of the technical issues inherent in them are not amenable to straightforward technical or scientific solution. In fact, there are instances where the best scientific solution is inconsistent with Congressional direction.

In evaluating regulations related to planning, our standards were technical soundness of the process and the clarity with which it is explained. First of all, the process proposed had to be one that would work or could be made to work. Second, the explanation of the process in the regulations had to be sufficiently clear so that intelligent private citizens, whose interests might be affected by management of the National Forests, could understand it. The standard used was that for journalistic adequacy: who, what, when, how and where. The regulations must explain who is responsible for planning, what is to be done, and when, how and where it is to be done.

The standards for judging proposed technical solutions to major issue areas are more difficult to articulate. In many of these areas, there is no consensus on the nature of the technical standards to be involved and the degree of specificity that is desirable. Honest, competent professionals simply disagree and there may be, therefore, more than one technically acceptable solution. In such cases, we have identified either what we consider to be the most acceptable solution or what appear to be a reasonable range of alternatives with their reasonably predictable consequences.

Our discussions, analyses, and sources of information can be found in the minutes of our meeting. These are available at the Library of Congress and the Forest Service Washington office and regional offices.

In the last analysis, of course, our report represents our best judgment on the difficult issues inherent in National Forest planning.

We acknowledge the assistance of a number of persons who have worked with us and attended our meetings. First, we acknowledge the excellent presentations on several subjects made by invited consultants. These expositions helped bring several complex issues, including timber harvest scheduling and wilderness, into clearer focus. Their presentations are in the minutes of our meetings. We also thank the members of interest groups and of the general public who attended our meetings. This regular public participation brought a valuable dimension to our work. The representatives of interest groups were particularly helpful in casting up altenative views of complex issues. In fact, alternative language presented to us in this way has, in several cases, been used in recommended changes. We are indebted especially to the Silviculture Task Force appointed by the Forest Service in the fall of 1978. Its report helped us analyze the difficult matter of silvicultural standards and served as the basis for much of our text on that subject. We also thank all other Forest Service staff members who worked with us. Finally, we must express our deep personal thanks to Messrs. C. Rex Hartgraves, Donald L. Funking, and John W. Russell and Mrs. Joyce Parker, for their dedicated efforts. Although we frequently disagreed, we were always able to work together constructively. If the Forest Service can bring the same dedication to implementing these regulations that these persons brought to writing them, we are sure the outcome will be positive.

Organization of Report

Because of the length of this report, the complexity of the issues with which it deals, and the variable intensity of public attitudes toward these issues, a word about its organization is appropriate.

After the introductory material, the report is organized into three parts. The first deals with some of the broader, philosophical questions implicit in the regulations. Our views on these questions are important because they indicate the philosophical basis for evaluation of the draft regulations. Many questions, of course, relate to more than one section of the regulations, and appropriate cross-referencing is provided. The second part is a section-by-section analysis of the draft regulations. Here the report analyzes each issue considered in conjunction with each section of the regulations. Some of these issues are of major importance and public concern, and they were discussed intensively. The key issues are: silvicultural standards, identification of lands suitable for timber production, timber harvest scheduling and departures from non-declining yield, and coordination of intergovernmental planning. Other significant issues involve vertical intergration of the RPA planning effort, the content and role of the regional plan,

public participation, and the work of the interdisciplinary team.

As a result of our analysis of the proposed regulations, we have recommended insertion of new material that will necessitate changes in the numbering of certain sections. For the sake of clarity, the section numbers referred to in the text are those found in the Proposed Rules published in the **Federal Register** on August 31, 1978. Where changes recommended by the committee necessitate a change in section numbering in proposed regulation language, reference to our revised language is indicated, for example, by *'219.10(a)(6)'*.

The following table summarizes the main sections of the published version and of our version:

Published version	Committee version	Page
219.1 Purpose	Same	39
219.2 Scope and Applicability	Same	40
219.3 Definitions	Same	40
219.4 Planning Levels	Same	44
219.5 Interdisciplinary Approach	Same	51
219.6 Public Participation	Same	58
219.7 Coordination of Public Planning Efforts		69
	219.8 Regional Planning	48
219.8 Forest Planning Procedure	219.9 Forest Planning Procedure	82
219.9 Forest Planning Process	219.10 Forest Planning Process	83
219.10 Resource Management Standards and Guidelines	219.11 Resource Management Standards and Guidelines.	95
219.11 Research	219.12 Research	159
	219.13 Revision of Regulations	165
219.12 Transition Period	219.14 Transition Period	165

The final section is a full draft of the regulations as they will appear with changes recommended by the committee of scientists.

The Broader Issues

A number of broad, philosophical issues permeate the regulations and the process by which they were drafted. Some of these were apparent to the committee when it began its work, others became apparent during the drafting work, and others are apparent only in retrospect. Because our perseptions of these issues influenced the way we evaluated the draft regulations, it is important for the serious student of the regulations to be aware of them. Although others need not accept our views, we hope that our arguments are persuasive.

The Regulations Must Be Read In Their Entirety To Be Understood

The draft regulations are a long and complex document that must be read in their entirety to be understood. They lay out a planning process into which a number of technical standards are incorporated. One cannot understand how a resource such as timber is treated, for example, by reading the section on timber alone. The reader must first understand the planning process, then the technical standards pertaining to the timber resource, and finally the way in which standards fit into planning generally. The process proposed is an integrated one and the regulations themselves are integrated.

Unfortunately, it is clear that many reviewers of the regulations have not read them in their entirety. If they had, they would have found that their concerns were adequately treated. We have proposed additional continuity and cross-referencing in our proposed revisions. Even these changes will not help if issues are treated out of context. Therefore, we urge the reader to consider the regulations in their entirety before forming an opinion on them.

The Draft Regulations Must Be Placed In Proper Perspective

The draft regulations must be put into their proper perspective to be understood. Although the regulations have been roundly attacked by virtually everyone who has read them, the majority of these critics fail to acknowledge that, despite inadequacies, the regulations represent a major step forward for the Forest Service. For the first time the agency has attempted to put down on paper for all the public to see the procedures by which it will conduct its land management planning. For an agency that has traditionally resisted putting such direction outside of its manual, this represents a major change in policy. Furthermore, we regard the draft as an honest effort by the Forest Service to meet the mandates of Congress as expressed in RPA/NFMA. Apparent failure to meet these mandates at all points is due both to lack of clarity or certain purpose in the law and to the technical difficulties of developing such sweeping regulations.

The regulations also represent an important advance on several other counts. First, they require that, except as required by other statutes, the functional planning for individual resources and uses that has been so characteristic of Forest Service planning in the past be integrated into a single plan. The process "is intended to integrate all functional resource planning and thereby improve upon previous planning methods." The previously used unit planning procedures are no longer used; instead, the product is a comprehensive and integrated blueprint for the management of an entire National Forest. In our judgment the process embodied in the draft is conceptually sound and is capable of implementation if adequate resources are provided. Finally, the regulations establish a system of vertical integration for the RPA planning effort. These changes are far-reaching. If they are improved in the final regulations, activated by the Forest Service, and adequately funded, they bode well for the quality of the agency's future planning efforts.

Having complimented the Forest Service on the draft regulations, we are compelled to say that the draft is deficient on several counts. A number of the proposed procedures may not fully meet the intent of Congress or are less than adequate. We will document these deficiencies in our report and propose wording to resolve them. At the same time we urge the Forest Service's critics to recognize the far-reaching advances in this draft. The draft regulations go much more than halfway toward resolving most of the problems Congress addressed in NFMA.

The Regulations Are Process Oriented and This Is Appropriate

One of the two most persistent criticisms of the draft regulations is that they are too "process oriented." We consider this criticism to be invalid,—somewhat akin criticizing a skunk for smelling bad. A skunk is a skunk and planning is, by its very nature, process oriented.

In fact, the legislative history of RPA/NFMA clearly bears out that Congress deliberately chose a planning process, rather than prescriptive guidelines, as the preferred method of dealing with the complex issues confronting the National Forest system. This was the choice inherent in the debate between the Randolph and Humphrey bills in the Senate and the conference committee ultimately had to rationalize two bills, both of which placed heavy emphasis on

planning. RPA/NFMA is planning legislation. It stresses the interdisciplinary nature of the planning approach (section 6(b)) and requires that the Secretary promulgate regulations that "* * * set out the process for the development and revision of the land management plans * * *" (section 6(g)).

Clarity in expressing the requirements of planning is important on another count. Congress went to considerable lengths to make clear that all future Forest Service planning was to be open and accompanied by significant opportunities for public participation. For public participation to be effective, the public and interest groups must understand clearly what is being done, by whom, and in what order. Therefore, the regulations governing planning must be clear and explicit. Otherwise, public participation may be frustrated and the planning process embroiled in procedural controversy.

Consequently, we support the process oiented nature of the regulations and, in fact, recommend changes to clarify and make more explicit the planning requirements.

The Draft Regulations Lack Specificity In a Number of Critical Areas

The other most persistent criticism is that the draft regulations are not specific enough. The degree to which regulations should prescribe actions and procedures, as opposed to providing general policy guidance, has pervaded our discussions. This issue was also hotly debated in Congress.

Some observers argue that Congress intended that many specifics not included in the Act itself should be included in the implementing regulations. Others contend that the specifics should be included in the Forest Service Manual, not in these regulations. From either point of view, the issue is: How specific can the regulations be expected to be? How definitive should the guidance to the Forest Service planners, and the public, be?

There is no simple answer to these questions. After considerable study we have concluded that the regulations must be quite specific in one respect, and quite non-specific in another. We believe that the regulations must be specific in establishing the principles of land management planning and in establishing the process to be used by the Forest Service in applying those principles. We are equally strong in our belief that the regulations should not be specific in regard to the prescriptions for the solution of on-the-ground land management problems such as choice of silvicultural system or maximum size of harvest operations in a single block. We believe that when an exacting set of policy statements is adopted and a rigourous planning procedure is used, the most desirable solution to specific problems will be discovered by the interdisciplinary team, presented to the Forest Supervisor, and approved by the Regional Forester.

The majority of the proposals in the report provide more specificity on the principles of land management planning and on the planning process to be used. These proposals are intended primarily to provide specific guidance to Forest Service officers on policy and the planning process. Equally important, they will make it clearer to the interested public what the Forest Service must do to identify the critical areas of concern, the policies which are established, and the procedures to be followed in resolving the critical issues.

The Structure of the Proposed Forest Planning Process is Sound

A major requirement of RPA/NFMA is that the Forest Service adopt an interdisciplinary process (section 6(b)) to govern future planning for management of units of the National Forest system. It is important that the process proposed be workable and that responsibilities for its execution be clearly described. Although the regulations could be structured in a variety of ways in order to achieve these goals, we are satisfied that the principles inherent in §§ 219.8, 219.9, and 219.10 as they are now conceived are compatible with, and conducive to, the interdisciplinary planning envisioned by Congress.

A great deal of effort and thought both on the part of the Forest Service and the committee, went into developing an appropriate structure for the rules to guide forest planning. Initially, consideration was given to a section that would integrate the planning requirements and processes with resource standards and guidelines. It was felt that such an organization would emphasize the integrated nature of the planning and management called for by RPA/NFMA on the National Forests. The proposed language that emerged from these attempts seemed to us to be too long to be grasped readily and so complex that it obscured the basic intent of the section. A better alternative, therefore, was separate sections, one describing planning procedures, one enumerating the planning process, and a third containing the basic standards and guidelines for planning and managing individual resources. This concept is reflected by §§ 219.8, 219.9, and 219.10 of the draft regulations.

We are aware that this treatment seems to have the effect of isolating procedures from process and treatment of all resources from the planning process itself. Although a number of reviewers have pointed out this potential weakness, we consider it more apparent than real. If §§ 219.8, 219.9, and 219.10 are treatd as three parts of an integrated process, as intended, then the unity of the process should be evident.

The regulations Should State the Secretary of Agriculture's Policy in a Number of critical Areas

Early in our deliberations we saw a need for inclusion in the regulations of broad general statements of principle in many areas. The RPA/NFMA does provide some policy principles which were established by the Congress. However, the act itself and its legislative history indicate that Congress left the formulation and clarification of many of these principles to the Secretary of Agriculture.

We spent considerable time discussing and drafting statements of principle which were included in the earlier drafts of the regulations. We were cautioned by the representatives of the Office of General Counsel that such general principles were often subject to varying interpretations, and thus could become the targets for legal actions.

We acknowledge this difficulty, but continue to support the idea of including Secretarial statements of intent on policy matters. For exemple, it is our belief that a general statement on the purpose of an interdisciplinary approach is desirable. We do not believe that such a general policy statement would be more vulnerable to litigation than any of the specific guidelines laid down in direct response to a Congressional mandate.

Policy guidance is also important because of the unique nature of these regulations. Typical government agency regulations are designed to explain how the public is to be regulated by the agency. The RPA/NFMA regulations are different because they explain to the public how the Forest Service will govern *itself* with regard to its planning practices, and the limits that will be placed on certain management practices by the agency itself. In light of this peculiarity, it is vary important that the policies that the Forest Service evolves to govern its planning and subsequent management of the National Forests be available to the public in clearly understandable form. This fact further

emphasizes the need for specific wording in the regulations. The general standard that can be established is that the public must know the policies that guide Forest Service actions and it must know *who* is going to do *what* and *how* in implementing policies.

We are unanimous, therefore, in our feeling that the regulations as now drafted would be much more helpful to the Forest Service and the public if they contained general policy guidance from the Secretary of Agriculture to supplement, clairfy, and extend the policies established by Congress in RPA/NFMA. We propose such general policy guidance at appropriate places in this report. These statements generally form the lead-in language to the sections of the regulations dealing with major issue areas.

The RPA/NFMA Planning Process Can Resolve Many Problems Inherent in Management of the National Forests and Deserves the Chance To Work

From the very beginning of our work, we have been convinced that the planning process established in RPA/NFMA is sound in concept, workable, and also capable of resolving many of the present controversies over management of the National Forests.

Unfortunately, there are now a number of on-going or proposed activities that are inconsistent with the RPA planning process. The most obvious of these are Congressional proposals to allocate wilderness and the Forest Service's RARE II wilderness planning exercise. We recognize that these activities began well before regulations for implementing NFMA were developed. We further recognize that both are political responses to a terrible land allocation dilemma. Despite this, we emphasize that RPA/NFMA clearly states that wilderness is a co-equal value to be considered in planning for allocation of the lands of the National Forest System. Wilderness can be dealt with rationally and the RPA/NFMA planning process is the way to do it.

Wilderness is not the only resource that gives rise to proposals for separate treatment. Proposals to increase the amount of timber cut on the National Forests have been made periodically, most recently through the President's anti-inflation effort. If the RPA/NFMA planning process is to achieve its potential, and the credibility essential to acceptance, it must be allowed to work. It must be allowed to run through at least one full iteration, from the National Assessment and Program to the development of regional and forest plans and back to the National Assessment Program. Such a cycle cannot be completed before 1985, and, of course, it is not realistic to expect political forces to refrain from efforts to intervene in the process over that long period of time. In our view, Congress itself must prevent downgrading of its own legislative design for management of the National Forests.

The Draft Regulations and Their Revisions Were Developed With Full Public Input and This Trend Should Be Continued

All activities in developing these draft regulations were completely open to the public. All documents were made freely available and an open dialogue with the public was maintained. This openness was continued through revision of the regulations and drafting of our final report.

A report prepared by the Conservation Foundation [2] points out that this degree of public involvement is probably "unique in Forest Service experience." The meetings of the committee provided a continuing forum for interchange on alternatives among agency personnel, environmental and industry representatives, and the committee itself. The Conservation Foundation found this degree of interaction "truly impressive" and suggested that it might well lead to better regulations than would have emerged from the more traditional, internalized rule-making process. Despite this vigorous effort at full public participation, attendance at meetings of the committee has largely been limited to representatives of groups with clear interests in the outcome of the regulation-drafting process. Few members of the general public have attended.

Although we can hardly be considered an impartial body in this regard, we agree strongly with The Conservation Foundation's assessment. Although complete openness can create serious procedural problems in developing a document as complex and controversial as these regulations, in the long run the process itself benefits.

One major thrust of RPA/NFMA is to require full public participation in Forest Service planning. The draft regulations make a sincere effort to incorporate such participation, and our revisions are aimed at improving and clarifying the proposed procedures. It is our strong hope that the spirit of openness will continue and will pervade the entire future forest planning effort.

The Proposed Three-Tiered Planning Concept Involving National, Regional and Forest Planning Is Sound

RPA/NFMA specifies two levels of planning for the National Forest system: (1) The National Assessment and Program, which involve the forest resources of the entire nation, including those of the National Forests, and (2) land and resource management planning for individual units of the National Forest system. Early in development of these regulations, the Forest Service proposed that a third level, regional planning, be instituted. Such plans, one for each of the nine Forest Service regions, would serve as a link between national and local planning, as a means for aggregating capabilities of individual National Forests and for formulating and disaggregating national goals and targets, and as a means of dealing with difficult technical issues that transcend the concerns of individual forests.

There has been no substantive criticism of the concept of the regional plan. We believe that the idea is sound and urge that it be incorporated in the final regulations. However, there has been criticism that the role of the regional plan, its content, and the procedures by which it is to be developed are not well enough described in the draft regulations. We find this criticism to be valid and propose changes to deal with it.

The importance of regional plans needs to be emphasized. Although they are not mentioned anywhere in legislation, regional plans have assummed a vital role in the RPA/NFMA planning process. As we show in the next section, they provide the mechanism for aggregating the capabilities of individual forests and for assigning goals to individual National Forests. Furthermore, the regional level is where some of the most difficult issues, such as size of clearcuts, rotation age, and choice of silvicultural system, are assigned for resolution. The importance of these issues varies by regions. Although we have some reservations about this assignment, we conclude that it is both rational and appropriate. It is rational because the regions seem a reasonable place to develop standards for practices that simply are not amenable to regulation by national standards, and appropriate because it seems to most nearly meet the intent of Congress that standards for certain practices be developed "by forest type or geographic region." However, we here must stress the

2 Shands, W. E., P. R. Hagenstein and M. Roche. 1978. *Changing ground: future directions for the National Forests.* Draft report, The Conservation Foundation. September 28, 1978.

obvious. Once the assignment of such crucial determinations has been made to the regions and to the Regional Foresters, *there is no place else they can be assigned.* The hot potato has been tossed in the Regional Forester's lap and he *must* deal with it. Development of adequate regional plans is truly crucial to the success of RPA planning, and the Forest Service must make it the highest order of priority once these regulations are approved.

To Be Successful, RPA/NFMA Planning Must Involve Both Upward and Downward Flows of Information on the Demand for and Supply of the Renewable Resources

An important requirement of the RPA/NFMA planning process is that demand for, and supply of, the renewable resources of the National Forests must be assessed and that a National Program equating demands and supplies be formulated on the basis of this information. THe RPA/NFMA planning process should begin with on-the-ground assessments of the capabilities of each National Forest to supply goods and services at various budgetary levels, and the local demand for these goods and services. Planning at the national level should take into account these local data, insure that national demands are considered, and then allocate regional and forest targets in light of reasonable budget levels. There must be a continuous iteration and interchange of information between levels on availability of resources, demand, and budgetary considerations. Therefore, it follows that regulations defining the RPA planning process should clarify the iterative nature of the process.

The draft regulations have been criticized by a number of different interests for failing to convey an adequate concept of RPA planning. This criticism is perhaps mostly clearly explained by Resources for the Future [3] (RFF) in its draft comments on the regulations. RFF states that the draft regulations leave the impression that "the goals, objectives, and indeed in operational terms, *the production targets* are synthesized from high level intelligence absent relevant information," and "The planning process represented * * * conveys the impression that the National Forest system targets are divined in some manner independently of the basic information which should result from a rational planning process * * *."

[3] Bowes, M., J. Haigh and J. Krutilla. 1978. *Review and evaluation of proposed rules for National Forest System land and resource management planning.* Comments by Resources for the Future, December 15, 1978.

We find these criticisms valid in some degree, although the impression may result from incomplete wording in the draft regulations rather than from an intention to express any other philosophy. During all discussion of the draft regulations, their iterative nature was stressed and it was always indicated that the National Assessment and Program should be solidly founded on data gathered at the National Forest Level. Therefore, we propose language to clarify the original intention of the regulations. In preparing our language, we have given close attention to material provided by RFF.

The Planning Process Itself Must Be Flexible and Subject to Future Examination and Revision

Although the planning process that is embodied in the regulations as we have revised them is sound, there is no reason to suppose that it cannot be improved. The entire planning effort that will take place once these regulations are approved will produce a vast amount of practical experience that does not now exist. Furthermore, research efforts, both inside and outisde the Forest Service, likely will concentrate attention on the problem areas in which present knowledge limits our ability to devise entirely appropriate regulation.

Therefore, it is our opinion that the regulations should provide for their own continued evaluation and periodic revision on the basis of new experience and information. We propose a new section at the end of the regulations to embody this concept.

Monitoring of the Consequences of Management Is Vital to the Success of Planning

A recurrent theme in the Congressional debate on RPA/NFMA was the need for systems of monitoring that would provide information on the impacts and consequences, and allow compensatory modification of management plans where needed. A requirement in the original RPA act to "* * * study personnel requirements as needed to satisfy existing and ongoing programs" (section 3(4)) was amended to "* * * implement and monitor * * * programs (NFMA section 5). Since "monitoring" is an exceedingly general term, however, this requirement does not speak unequivocally to on-the-ground observations. Elsewhere RPA/NFMA mentions monitoring only in section 6(g)(3)(C), and only in connection with research on management systems, which we will discuss later.

Nevertheless, several other requirements of Section 6(g), namely (2)(C); (3)(E)(i–iii), and (3)(F)(v), can be fulfilled in practice only through some systematic inspection, measurement, or "monitoring" during and after management activities, coupled with provisions for evaluation and for changes in management as needed. The draft regulations provide for this in § 219.9(j) and elsewhere, as we will note later.

Some general comments about monitoring are appropriate here. The concept implied by the legislation and expressed in the draft regulations is sound in principle and far-reaching. Implementation in full detail will be more difficult than generally recognized and will require some substantial changes in present practices. Non-scientists sometimes consider monitoring and research to be the same thing; they confuse data gathering with evaluation. In the context of land management, the difference is great.

In the first place, the alterations in, say, soil, water, or vegetation following some activity such as grazing, organized camping, or timber harvesting must be differentiated from large natural variations and natural changes over time. Except when these alterations are overwhelmingly great or obvious, detection with certainty calls for an array of provisions and skills, such as prior selection of key areas to sample, or compatibility of methods and accuracy in both the initial inventory and subsequent monitoring.

In the second place, monitoring involves gathering data on the state of certain environmental indicators, such as soil disturbance, stream sediment load, or populations of a wildlife species. Any changes in the state of these indicators attributable to management activities must then be evaluated to determine whether these do indeed point to "substantial and permanent impairment of the productivity of the land" at one extreme, or perhaps to marked enhancement at the other, or to more moderate impacts, unfavorable or favorable. The evaluation depends on knowing what these indicators tell us about the behavior of the systems involved. Such knowing, in turn, is derived from research and codified experience. Without such experience to design the process and interpret the results, monitoring can be futile or wasteful.

Obviously, monitoring can provide data for further research, and new research is often necessary to determine what the changes signify in terms of productivity of the land and the state of

the resources, it supports. To be useful in land management, monitoring must extend over time and be carefully executed. For these reasons, it is costly in both money and manpower.

Forest Service budgets and personnel are insufficient to support either the monitoring process that Congress envisioned in drafting RPA/NFMA, or the yet more comprehensive requirements of the draft regulations. If the monitoring and evaluation process is to succeed to the degree required for the success of RPA/NFMA, then special administrative and budgetary attention must be devoted to it. The committee is fearful that this will require more awareness and sensitivity than existing processes of the Federal and Congressional budgetary bureaucracy allow.

Regulations Must Clearly Specify Who Is Responsible for Making Decisions

Citizens frequently express, with frustration, the view that it is impossible to find out who in an agency is responsible for a given decision. During our meetings, the charge was often heard that current Forest Service regulations do not make clear what official at which level has responsibility for intitiating, or approving, a given action.

The Forest Service is well aware of this problem and has sought to speak to it throughout the proposed regulations. Section 219.4, which describes the relationships among planning levels, also spells out the roles of the Chief of the Forest Service and the Regional Foresters with respect to the development of the National Assessment and Program and the regional plans. Section 219.4(c) and 219.8(e) describe the responsibilities of the Forest Supervisor and the Regional Forester in development and approval of the forest plan. As noted elsewhere, there is a requirement (219.9(i)(8)) that the names of interdisciplinary team members and a summary of their qualifications be included in the plan when it is published.

We find that the proposed regulations are adequate and definitive with regard to the issue of responsibility and propose no changes in this regard.

Balanced Planning for Management of Renewable Resources Requires an Appropriate Balance of Interests Among Forest Service Personnel

We have already pointed out the need for adequate numbers of personnel in the Forest Service if the planning envisioned in these regulations is ever to come about. There is, however, another equally important feature of the personnel issue and that involves the balance (mix) of professional backgrounds possessed by the Forest Service in general and its planners in particular.

Interdisciplinary planning and subsequent effective management depend upon an adequate pool of capable resource specialists trained in the various involved disciplines. There is, in our minds, a question as to whether the Forest Service now has the appropriate mix of personnel to meet the demands of such a planning effort. A number of important disciplines do not appear to be represented in numbers proportional to the demand that a major planning effort will create. For the interdisciplinary concept to work, each resource must be adequately represented on the team. There must be a person on the team who understands each resource, can act as an effective spokesperson for the resource, and, perhaps more important, who can understand the effects on a given resource of alternative management practices proposed for other resources. Wildlife simply cannot be represented on interdisciplinary teams by foresters who like to hunt or fish any more than timber can be by a wildlife manager who enjoys trees. Interdisciplinary planning depends on an adequate pool of capable resurce specialists in the various disciplines involved.

The Forest Service can create the needed pool of talent either by selective hiring or by retraining of existing personnel. Both strategies will work, but must be pursued vigorously if the agency is to produce the necessary personnel mix in time to develop the first set of forest plans. Even with shifts in hiring emphasis and internal retraining, we feel that it is unlikely that the agency can produce the appropriate mix in time to develop the first set of forest plans, given current restraints on personnel ceilings and existing workloads.

Proposed Management Practices Must Be Economically Justifiable and Supported by Competent Economic Analysis

The RPA/NFMA specifically requires economic analyses as a part of the process by which management programs are examined and their implications made clear. In fact, one of the major thrusts of RPA/NFMA is to require the Forest Service to analyze and make public the economic consequences of its programs. References in Section 6(g) require the regulations to * * * "insure consideration of the economic and environmental aspects of various systems of renewable resource management* * *" (section 6(g)(3)(A)), to consider economics in selecting harvesting systems (6(g)(3)(E,F)), and to utlilize economic considerations in determining which lands are not suited for timber production (section 6(k)). Furthermore, section 6(1) directs the Secretary to "formulate and implement, as soon as practicable, a process for estimating the long-term costs and benefits to support the program evaluation requirements of this Act." These directives, taken collectively, represent a strong instruction to the Secretary to insure competent economic analysis at all appropriate places in the planning process, and to display for consideration the economic consequences of each alternative management program, so far as they can be reasonably determined.

Some commentators contend that RPA/NFMA establishes that the National Forests are to be managed economically and efficiently and that public money is not to be spent in applications or for practices that are submarginal (where costs exceed benefits).[4] We agree that congessional direction of this sort is evident only in one area, that is, the determination of lands suitable for timber production. The legislative history of the act implies Congressional concern that timber harvesting is generally not to take place when, by some rules of reason, public benefits are less than production costs. However, we do not agree that RPA/NFMA provides a Congressional mandate to assure that benefits exceed costs for each and every management practice proposed for the National Forests. We believe that a full determination of benefits and costs must be made for all proposed management practices, but that the cost-benefit ratio is only one of a variety of criteria that may be used as a basis for finally approving any given management practice. The basic problem is that Congress has not given clear or consistent direction regarding the use of economic criteria for managing the National Forest system.

In any case, it is clear that economic analysis must permeate the planning regulations. We have several times proposed definite language defining the nature of the economic tests to be made during planning. Relatively little of this language has survived through to the draft regulations. Rather, the language in the draft dealing with economic analysis is often vague and must be improved if

[4] For a clear exposition of this view, see particularly Bowes, Haigh and Krutilla, op cit.

direction is to be clear. We will propose language at several places that we hope will resolve this difficulty.

The need for personnel to execute the analyses once their character has been decided deserves comment. The Forest Service informally has estimated that its staff resources in this area fall substantially short of those required to carry out the analyses envisioned in the regulations. As we have pointed out elsewhere, adequate personnel are absolutely vital to the ultimate success of planning. Unless serious efforts are made both to provide adequate funding and to bring a larger amount of expertise than now appears to exist in the agency to bear on economic analysis, the Congress and the public are likely to be disappointed in the quality and usefulness of the work contained in the first generation of forest plans.

Adequate Inventory Data Are Essential to Sound Plans Because Such Data Are Not Now Available for Many Forests or Resources, the Foundation for the First Generation of Forest Planning is Likely To Be Shaky

No plan is better than the resource inventory data that support it. Each forest plan should be based on sound, detailed inventories of soils, vegetation, water resources, wildlife, and the other resources to be managed. It is equally true that regional plans and the National Assessment and Program will only be as good as on-the-ground assessment of resources and capabilities at the forest level.

Unfortunately, it does not follow that truly adequate resource data will be available to support the development of every plan. In many cases, inventory data are too fragmentary or insufficiently detailed to allow firm judgments in developing management programs of the complexity demanded by RPA/NFMA. In other cases, data on certain organisms, resources, or management effects have simply never been gathered. For example, in the development of stand prognosis models for projections of timber yields, it was found that appropriate data were available for only a few species and in a few commercial timber areas. Even adjoining forests have not taken comparable data or have taken data in a form incompatible with the model. In the case of other resources, lack of inventory data is even more pronounced.

Another inventory-related problem that has inhibited planning is the general lack of compatibility among inventory efforts of different government agencies. In the past, relatively little effort has been devoted to coordination and compatibility of resource inventory programs. However, within the last year the Department of Agriculture, the Department of Interior and the Corps of Engineers have entered into an interagency agreement that offers the hope of better compatibility among future inventory efforts. We are encouraged by this step and urge the Forest Service to insure that its future inventory efforts are compatible both with other programs in the Department of Agriculture, chiefly the Soil Conservation Service, and with those other federal agencies.

The time schedule on which the first generation of plans must be developed precludes the gathering of much new inventory data. Basically, each forest will have to make do with what it has, or what it can reasonably obtain in a short time from accessible sources and existing inventory procedures. In practice, what this means is that the data base for a number of plans is likely to be marginally adequate or even shaky. Even if a Federal Government-wide crash program of data acquisition and storage were to begin tomorrow, it would not provide adequate data in time to be of much value in developing the first forest plans.

It is our opinion that there is little that can be done to rectify this deficiency immediately. All parties with interests in National Forest planning will simply have to recognize that the Forest Service cannot remedy decades of national indifference toward basic resource data in 5 years. Programs designed to remedy inventory deficiencies should begin while the first cycle of forest planning is taking place. Then, better data should be available for consideration in time for the first scheduled revisions. The Forest Service will simply have to do the best it can with what it has, while setting in motion the machinery to assure more competent data at the earliest possible time. It is also imperative that adequate attention be given in the budgetary process to the need for better inventory data programs. Without the necessary support, in money and personnel, the data base necessary to support planning can never be obtained.

The Requirement to "Provide for Diversity" Is One of the Most Difficult Issues Dealt with in These Regulations

Diversity is one of the more perplexing issues dealt with in these regulations. Section 6(g)(3)(B) of RPA/NFMA requires that the regulations specify guidelines for land management plans developed to achieve the Program goals which "provide for diversity of plant and animal communities based on the suitability and capability of the specific land area in order to meet overall multiple-use objectives, and within the multiple-use objectives of a land management plan adopted pursuant to this section, provide, where appropriate, to the degree practicable, for steps to be taken to preserve the diversity of tree species similar to that existing in the region controlled by the plan." This enunciates the significant Congressinal policy that multiple-use management shall maintain a wide variety of plant and animal species in a variety of communities on National Forest system lands, and that steps are to be taken to provide this variety. Conversely it is clear that Congress did not favor management practices which result in a limited variety of species and communities unless it is demonstrated that such reduction of variety is needed to achieve overall multiple-use objectives.

Although the statement of policy is clear, there remains a great deal of room for honest debate on the translation of policy into management planning requirements and into management programs. Section 6(g)(3)(B) is the combination of materials from the House and Senate. The first portion of the section is taken directly from the Senate bill; the remainder is a slightly rewritten portion of the House bill. The Conference Committee simply melded the two and added the second qualifier "where appropriate." Thus, the final language starts with a general statement about diversity of plant and animal communities and concludes with a specific caveat regarding tree species' diversity. The Conference Report [5] states that the House portion was added because "it is the intent of the Conferees that where the resource plan is developed separately from the land management plan, that this provision would govern the resource plan as well."

The major issues in the Congressional deliberations was concern with forest type conversions, and especially with conversion of eastern hardwood stands to pine. The Senate Agriculture Committee Report [6] makes this clear by stating that "the requirement in S3091 that the guidelines provide for diversity of plant and animal communities does not preclude conversion of timber stands from one type to another.

[5] 94th Congress, Second Session, Report 94-1335, hereafter Conference Report.

[6] 94th Congress, Second Session, Report 94-893, hereafter Senate Report.

However, the Committee is aware of the widespread public concern over conversion of eastern hardwood forests to pines. No conversion should be permitted unless it would be consistent with multiple use management and it is provided for in a land managment plan developed with full public participation and review." Thus, type conversions are not prohibited, but are to be used only when fully studied and justified.

The intent of Congress is clear: (1) Diversity is to be considered throughout the planning process, (2) steps are to be taken to maintain or increase diversity of plant and animal species and communities by management, and (3) management measures which tend to reduce diversity are to be used only when shown to be necessary to achieve overall multiple use objectives.

Translation of Congressional policy into reasonable regulations has proved a formidable task. Diversity has become a controversial and hotly debated issue. There are those who believe that Congress gave the Forest Service wide latitude in providing for diversity. They believe the two qualifiers "where appropriate" and "to the degree practicable" indicate the granting of rather wide latitude. These persons tend to feel the draft regulations are too restrictive and go far beyond the intent of Congress in providing for diversity. Other persons believe that diversity is a major key to making the National Forests attractive and productive of wildlife. They believe the regulations must be very specific and provide little discretionary authority to the Forest Service. These persons tend to feel that the lure of monetary returns from pure forests of pine will produce biological deserts and visual blight. They tend also to feel that less diverse forests are unstable communities, while diverse forests are stable and productive.

The Committee concludes that reason lies between these polarized positions. We believe the regulations should go beyond a narrow and limited restatement of the language of the Act to assure that the Forest Service shall indeed "provide for" diversity by maintaining and preserving existing variety, and to encourage steps to be taken to increase variety where that is appropriate. However, we believe it impossible to write regulations which are specific on how this is to be done in all regions, in a wide variety of vegetation types, and with a wide range of natural and human factors to consider. We believe it reasonable to specify that the interdisciplinary team consider diversity a major concern, and deal with it at several important junctures in the planning process. Most important, the regulations must assure that changes in diversity required by each alternative shall be identified, and that when significant changes are involved there shall be a detailed justification showing why those changes are needed to meet overall objectives of the Program.

Concern for diversity is stated at several places in the draft regulations rather than in a single section (219.9, *'219.10(a)(6)'*). We approve this format because it would insure that diversity considerations are addressed at several important junctures in the planning process. In addition, the planning process requires concern for diversity in many other places. The interdisciplinary team must assess environmental effects and determine consequences of alternate management strategies throughout the planning process. This insures concern for diversity at many stages, since both abundance and variety are objectives of multiple use management.

We worked closely with Forest Service personnel on the definition of diversity. We advised that a simple dictionary definition be adopted, i.e., that diversity means variety. We believe the definition given at § 219.3(b) is scientifically and technically adequate. The legislative history confirms that this straightforward definition meets the intent of Congress. The positive policy direction established is to maintain variety and productivity through integrated multiple-use management.

No matter how diversity is defined, its measurement is complex. We have studied the question as to whether the regulations should specify use of a diversity index to measure diversity and to monitor effects of management. Various indices are used in ecological research to express complex inter- and intra-specific relationships in a natural community by use of a single numerical expression. Although several mathematical formulations have been used in ecological research, there is no substantial agreement on the meaning or significance of the figures derived. Thus, we believe use of any of the present diversity indices would divert attention from the objective of considering variety throughout the planning process. If the proposed regulations required gathering masses of complex inventory data which are extremely difficult to interpret, there would be little assurance that diversity would be maintained or enhanced.

Coordination of the Research Efforts of the Forest Service, Universities and Private Entities Is Vital if the Latest Technology and Research Findings Are To Be Incorporated Systematically Into Forest Management Programs

During the course of its deliberations, the committee has been impressed by the fact that resolution of many of the present "issues" in forest management will depend on the research findings of the many scientists in the Forest Service, the universities, and the private sector. Numerous projects are now under way that are expressly designed to deal with such problems as effects of clearcutting, maintenance of diversity, prediction of the consequences of management alternatives, refinement in the use of economic analysis, and other problems central to the forest planning process.

Therefore, it is vital that there be close and effective coordination between these research efforts and planning operations in the National Forest system. We find that, although much effort appears to be devoted to such coordination, it is not really effective in bringing managers and those with new research findings together in a way that will assure translation of the findings into new, or altered, management practices. This problem, is of course, not unique to the Forest Service. It characterizes all government resource management programs that have research components. We do not have any solutions to offer. We merely wish to point out that the Forest Service bears a particularly heavy burden, because of its emphasis on planning and on research, to assure that the taxpayers' dollars are not wasted on ineffective or unheeded research efforts. The Technology Transfer Task Force, recently established by the Forest Service, is an effort to deal with this problem.

It is also true that much new, vitally-needed, research will be identified as efforts to resolve the complex issues inherent in multiple use management of renewable resources are intensified. Throughout our report we stress that such new research will be needed in the area of economic analysis. It is equally obvious that careful efforts to carry out the different silvicultural systems in a way that is compatible with protection of the environment will identify areas in which our present knowledge is inadequate. A focused, coordinated effort by all persons and entities with interest in the nation's forests will be the most effective means of getting this enormous research task done.

Competent Planning Will Be Costly and Resources Must Be Made Available

Although it is not possible to estimate accurately what it will cost to implement these regulations, the cost will be high! Additional costs will be incurred, not only in planning, but also in inventory requirements and in the monitoring and research necessary to insure protection of soil, water, and other resources. Although these costs will initially be high, they should decrease with time. We assume the members of Congress who debated this legislation in committee and on the floor recognized that they were establishing a planning process which required input of very substantial "new" funds. We also assume they recognized the need for additional personnel in a wide variety of disciplines to insure that the planning is truly interdisciplinary. Functional planning will be eliminated, and a more integrative process will take its place. Detailed inventories, public participation, coordination, complex economic analysis, and monitoring each has associated costs. We can only hope that Congress intended to fund fully the efforts it demanded. Otherwise RPA/NFMA will be a hollow exercise. To be sure, some economy can be achieved by the elimination of current functional and unit planning. However, it is our opinion that these savings will quickly be consumed by the heavy data and personnel demands of the new planning envisioned by RPA/NFMA.

Integrated planning for multiple resources by interdisciplinary teams is neither simple nor easy. New methods must be developed, and the Forest Service must be given the resources, the personnel, the time, and the latitude to develop and test new and innovative ideas. Unless funds and personnel are approved, RPA/NFMA will prove to be a step backward in the management of the National Forest system. The RPA/NFMA provided that the administration's budget submitted to Congress should be commensurate with the management activities prescribed for the National Forests. Because in the first year of this act the administration's budget requires a serious reduction in force of the Forest Service, we are fearful that neither the administration nor the Congress will acknowledge, in financial terms, the increased demands imposed by RPA/NFMA.

Very rough estimates of the costs of planning alone in the near future are available from several sources. Although the Senate included no additional costs for planning in its estimates of the costs of S. 3091 (p. 57) and the House Interior Committee Report [7] (p. 46–47) repeats the same data (which emanated from the Congressional Budget Office), the House Report does contain a supplemental statement on H.R. 15069 from the Department of Agriculture indicating that the costs of planning incurred under section 6 would be $20 million per year from 1977–1981. The fact that the Congressional Budget Office failed to include costs for planning in its data brings into question our assumption that Congress recognized the potential cost of the planning effort it created. The USDA recognizes that planning will cost money; we regard its estimates as grossly conservative. Therefore, we emphasize what was said earlier—if this process is to work, it must be funded at a realistic level.

If the additional funds and manpower needed to execute the planning process described in these regulations and to implement the management programs that derive from planning are not made available, one of two situations may occur. First, the Forest Service will have to adjust its activity within existing levels of funding and manpower to get plans done. In this event, it is likely that plans will not meet the full intent of these regulations and that other important on-going management tasks will be neglected. Alternatively, plans may not be completed within the time limits prescribed in the statutes. In the worst of circumstances, both events may occur. Such a situation would clearly be tragic and would subvert the good intentions of Congress.

Successful Implementation of the RPA/NFMA Depends on the Prompt Development of a Set of Final Planning Regulations and on Support of Them by the Various Constituencies With Interests in the National Forests

The last 10 years have not been happy ones for the National Forests or for the Forest Service. the agency and the lands that it manages have been submerged in controversy. Professional judgments have been called into question and long accepted practices denounced. Court decisions have rendered the agency almost without authority to manage National Forest lands as it felt they should be managed. Eventually, Congressional action in the form of RPA/NFMA was needed to provide a sound legislative basis for operation of the National Forest system.

The final regulations cannot speak to every issue that has been raised about management of the national Forests, nor can they resolve every foreseeable concern that each interest group might have. Rather, a workable product that does the best possible job of dealing with the issues must be approved and put to work. The National Forests should not sit forever in limbo.

We also emphasize that, in order to work, the planning process envisioned by these regulations must be supported by all parties with interests in the National Forests. The process can be made to work, but not if it is approached divisively. Implementation of these regulations can being about either of two futures. The next few years can be a constructive period of dialogue, common effort and cooperation, or they can be a continuation of the present paralysis of mistrust, bickering and negativism. It is clear that the nation's interests will be served only by diligent pursuit of the former, constructive path.

Section-by-Section Analysis

Here we provide a section-by-section analysis of the draft regulations. We discuss each issue that we have considered to be significant in relation to the section of the regulations in which it occurs. Each of these significant issues, and a number of others of lesser magnitude, is discussed in a common format. A brief statement of the issue and its background is given. We provide our interpretation of the intent of Congress, as we can discern it based upon RPA/NFMA and legislative history documents. The content and intent of the draft regulations are summarized and criticized. Finally, where appropriate, we provide new or substitute language. In those few cases where there is no discussion of a section of the draft regulations, it can be assumed that we accept that wording and would support its adoption as written.

219. Purpose

We find this section to be an adequate statement of the purpose of the planning process described in the regulations. No major criticisms of the section have been brought to our attention, either at our meetings or through written comments. Therefore, with one minor addition, we recommend adoption of the wording as proposed. In order to make clear that protection and preservation from pests by ecologically compatible means is the principle that should guide the incorporation of pest management practices into plans, we recommend that an additional section (j) be added at the end as follows:

"(j) Protection and preservation of all forest resources from depredations by

[7] 94th Congress, Second Session Report 94–1478, Part 2, hereafter House Report.

forest pests by ecologically compatible means."

219.2 Scope and Applicability

We recommend adoption of this section as written in the draft.

219.3 Definitions

We have little substantive comment to make about this section. Although there has been considerable criticism of a number of the proposed definitions, and many substitutes have been proposed, we do not find the substitutes materially better than those proposed by the Forest Service. Furthermore, we do not find any definitions proposed by the Forest Service that would materially limit the planning process or which would put a special, or inappropriate, meaning on any term. Therefore, with certain suggestions, we recommend that the language of the draft be adopted.

Because of their importance throughout the regulations, we suggest that the definitions of silvicultural terms now included in § 219.10(d)(1), including even-aged management, silvicultural systems, and uneven-aged management, be moved to § 219.3. Furthermore, we concur with the recommendations of the Forest Service Silvicultural Task Force that the wording of these definitions should be changed. The definition of *silvicultural systems* should be changed to make clear that the silvicultural system used has a major effect upon all resources, and not just on the timber resource. The definition should be expanded to make clear that:

1. The form and character of forests produced determine the level of benefits that can be obtained from all resources, not just timber.

2. A silvicultural system includes all management actions used in manipulation of vegetation. Thus, the system includes the cutting methods used to harvest trees, provisions for regeneration and intermediate culture, and all other techniques used such as seeding, planting, fertilization, pruning, site preparation, weed control, slash disposal, etc.

3. Reference to classification on the basis of harvest cutting method is eliminated.

We propose the following substitute definition:

"( ) "Silvicultural Systems:" A silvicultural system is a combination of interrelated actions whereby forests are tended, harvested, and replaced. The combination of management actions used in this process to manipulate the vegetation results in forests of distinctive form and character, and this determines the combination of multiple resource benefits that can be obtained. Systems are classified as even aged and uneven aged." The definition of enven-aged management should be changed slightly to:

1. Eliminate reference to clearcutting, shelterwood cutting, and seed tree cutting as silvicultural systems. In spite of use of this terminology in Agriculture Handbook 445 and elsewhere, these are cutting methods, not silvicultural systems. All three cutting methods are used to create essentially the same form and character of forest.

2. Recognize that clearcutting, shelterwood, and seed tree cutting have many variations. They are not precise and distinct cutting methods, but statements of general intent. There are many variations in degree, extent, timing, and arrangement of cutting that can be used to meet particular multiple use needs.

3. Include information on regulation of cutting under even-aged silviculture.

The definition of uneven-aged management should also be change in a manner parallel to the definition of even-aged management to:

1. Eliminate reference to cutting methods as systems.

2. Indicate that there are cutting methods other than single-tree selection and group selection that can lead to uneven-aged forests.

3. Include information on regulation and make the point that unevenaged regulation may often include both volume and area control.

We propose the following substitute definitions:

"( ) "Even-aged Silviculture": The combination of actions that results in the creation of stands in which trees of essentially the same age grow together. Managed even-aged forests are characterized by a distribution of stands of varying ages (and therefore tree sizes) throughout the forest area. Regeneration in a particular stand is obtained during a short period at or near the time that the stand has reached the desired age or size and is harvested. Clearcutting, shelterwood cutting, seed tree cutting, and their many variations are the cutting methods used to harvest the existing stand and regenerate a new one. In even-aged stands, thinnings, weedings, cleanings, and other cultural treatments between regeneration cuts are often beneficial. Cutting is normally regulated by scheduling the area of harvest cutting to provide for a forest that contains stands having a planned distribution of age classes."

"( ) "Uneven-aged Silviculture": The combination of actions that results in the creation of forests in which trees of several or many ages may grow together. Managed uneven-aged forests may take several forms depending upon the particular cutting methods used. In some cases, the forest is essentially similar throughout, with individual trees of many ages and sizes growing in close association. In other cases, small groups of trees of similar age may be intermingled with similar groups of different ages; although the groups are even aged, they are not recorded separately. Finally, an uneven-aged forest may contain two or three distinct age classes on the same area, creating a storied forest. Under uneven-aged silviculture, regeneration is obtained at several or many times during the period required to grow an individual tree to maturity. Single-tree selection cutting, group selection cutting, and other forms of partial cutting are used to harvest trees, obtain regeneration, and provide appropriate intermediate culture. Cutting is usually regulated by specifying the number of proportion of trees of particular sizes to retain within each area, thereby maintaining a planned distribution of size classes. Scheduling by area harvest is often used as well."

At a number of places throughout the text we have urged that the principles of integrated pest management govern the choice and application of pest management practices. Accordingly, we propose that the following definition be included:

"( ) "Integrated Pest Management": A process in which all aspects of a pest-host system are studied and weighed to provide the resource manager with an information base for decisionmaking. Integrated pest management is, therefore, a part of forest or resource management. The information provided includes the impact of the unregulated pest population on various resource values, alternative regulatory tactics and strategies, and cost/benefit estimates for these alternative strategies. Regulatory strategies are based on sound silvicultural practices and ecology of the pest-host system and may consist of a single tactic such as application of a pesticide, or a combination of tactics such as stand improvement plus selected use of pesticides. The overriding principle in the choice of strategy is that it is ecologically compatible or acceptable."

Finally, certain other terms could be misinterpreted and should be defined. These include: *Guidelines, policy, procedure, Regional Area Guides, Regional Silvicultural Guides, standards,* and *type conversions.* We recommend that the Forest Service

prepare such definitions and include them in the final regulations.

219.4 Planning Levels

We have previously discussed the importance of the three-tiered planning concept and of the regional plan. In addition, we have pointed out that the wording of the draft regulations does not adequately convey the important iterative nature of the three levels of planning.

The proposed regulations describe the Congressional requirement that the Chief of the Forest Service develop the National RPA Assessment and Program. They further require that each regional forester develop a plan for his region. The latter plans must both contribute to, and respond to, the national RPA Program by providing (1) long-range policy, goals, and objectives for the region assigned by the national program; (2) the ability of the region to achieve the assigned output levels of goods and services; (3) resource objectives for the land in each forest plan; and (4) guidelines to resolve public issues and management concerns, including such matters as size of clearcuts to be used in different forest types. It is at the regional level, therefore, that the Secretary of Agriculture is to meet the expectation of Congress that he "prescribe, according to geographic area, forest types or, other suitable classifications, appropriate systems of silviculture" and, on the basis of similar classifications, "maximum size limits for areas to be cut in one harvest operation" (NFMA, 6(g)(3)(F)(iv)). The regulation concludes with general statements relating to the forest supervisor's responsibility for developing the forest plan and with general provisions for the scope and content of that plan.

Although the general structure of this section is adequate, changes are needed to (1) make clear the iterative exchanges among the various planning levels and (2) the procedures for developing the reginal plan and its content.

Therefore, we propose the following language to be inserted in lieu of the existing 219.4:

"219.4 Planning Levels

The planning process includes detailed upward flows of information on local production capabilities and costs as well as local and regional demands. The national level aggregates local information, ensures that national demands are considered, and decides on the appropriate level of national, regional, and local activities and budget allocations under various reasonable and likely total budget levels.

(a) National. The Chief, Forest Service, shall formulate the Renewable Resources Assessment which will analyze the present and future demands for and supplies of the nation's forest and rangeland renewable resources. Demands will be assessed over a range of prices including the price which would equate supply and demand. The assessment of supply will indicate the feasible range of alternative mixes of outputs which may be forthcoming at each of various reasonable cost levels and will be based on the capabilities of local land units. The Chief shall also analyze opportunities to improve or extend the uses of the nation's forest and rangeland renewable resources. The Chief shall develop a recommended renewable resource program, based on the assessment, which will best meet the needs of the general public giving consideration to the costs of supply and the relative values of outputs as determined through the assessment of demands for both market and non-market outputs. The program will include quantified national renewable resource goals and objectives and the portion of each national goal and objective expressed as a range of outputs, which shall be assigned to each region for the regional plans. The ranges of regional goals and objectives will be based on local supply capabilities and costs so that a region can be expected to achieve the assigned level of goods and sevices from National Forest land. The goals and objectives will be re-evaluated and adjusted in subsequent revisions to reflect changes in relative values of goods and services and changes in the costs and capability in supplying such outputs.

(b) Regional. Each Regional Forester shall develop a regional plan designed to accomplish the region's assigned portion of the national program. The regional plan shall meet the minimum content requirements described in *'219.8'*, shall be developed utilizing the inderdisciplinary approach described in 219.5, and shall utilize the public participation and coordination requirements generally described in 219.6 and 219.7, and as further specified in *'219.8(c)'*.

(c) Forest. Forest plans shall be developed for all lands in the National Forest system. One forest plan may be prepared for all lands for which a Forest Supervisor has responsibility, or separate forest plans may be prepared for each National Forest, or combination of National Forests, within the jurisdiction of a single Forest Supervisor. These forest plans will constitute the land management plans developed in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act and will include all resource management planning. Forest plans must identify the range of resource capability information which is needed to formulate national, regional and local goals and objectives. In particular, they should indicate a range of alternative mixes of outputs which would be forthcoming at each of various reasonable budget levels for the local planning unit. Forest plans will be consistent with the goals and objectives set forth in the regional plan."

In addition, we propose a new section to be entitled Regional Plan, to be worded as follows, with subsequent sections renumbered:

" '219.8' Regional plan

(a) Regional plans must contribute to and respond to the Renewable Resource Assessment and Program by providing the following as a minimum:

(1) Long-range regional policies, goals, and objectives assigned by the National Program;

(2) Resource production objectives for each forest plan consistent with the regional plan;

(3) Guidelines to resolve public issues and management concerns, including those specific items mentioned in *'219.8(e)'* and those items identified through public participation and coordination activities.

(b) An environmental impact statement shall be prepared for each regional plan or revision thereof.

(c) In preparing the regional plan, the Regional Forester shall be guided by the general requirements for operation of the interdisciplinary team (219.5), for public participation and environmental impact statement preparation (219.6) and for coordination (219.7). However, public participation and coordination activities shall be adapted to the circumstances of regional planning. Particular efforts shall be made to involve regional and national representatives of interest groups. Coordination shall stress involvement by appropriate state, multi-state and regional agencies and entities. Efforts shall be made to obtain appointment of the designated state official described in *'219.7(d)(1)'* and to coordinate with each state through that person.

(d) Because Forest Service regions are heterogeneous, contain diverse topography, soils and forest types, and reflect widely differing political and social circumstances, the Regional Forester shall include in the regional plan a discussion of these specific differing conditions and circumstances.

He may do this through preparation of Regional Area Guides as defined in § 219.3.

(e) In addition to public issues and management concerns identified through public participation and coordination, each regional plan shall:

(1) Prescribe according to geographic areas, forest types, or other suitable classifications, appropriate systems of silviculture to be used within the region;

(2) Determine, according to geographic areas, forest types, or other suitable classifications, at least the maximum size limits for areas to be cut in one harvest operation. In establishing such size limits, the factors enumerated in *'219.10(a)(3)(ii)'* shall specifically be considered;

(3) Set standards for biological growth potential to be used in determining the capability of land for timber production as required in *'219.10(d)(2)'*;

(4) Set standards, by forest type or species, for assuring that all stands of trees have reached the culmination of mean annual increment prior to harvest;

(5) Define the management intensity and utilization standards to be used in determining harvest levels for the region;

(6) Specify by geographic areas, forest types, or other suitable classifications, the minimum number, size, distribution, and species composition of regeneration necessary to define adequate restocking as required in *'219.10(d)(2)'*.

(7) Establish the alternate cost standard(s) or price(s) to be used in determining the potential economic suitability of land for commercial timber production as required in *'219.10(d)(2)'*. These prescriptions, size limits, and standards shall be justified through the use of appropriate scientific and technical criteria and may be established either as an integral part of the regional plan or through Regional Silvicultural Guides as defined in § 219.3. If guides are prepared, then such preparation shall be subject to the same public participation and approval requirements as pertain to the regional plan and they shall be considered as a part of the regional plan. When geographic areas or forest types occur in more than one region, prescriptions, size limits, and standards shall be prepared to assure their compatibility as well as the compatibility of inventory data and monitoring techniques. In the event that regional plans establish different prescriptions, size limits, or standards for the same geographic area or forest type, each regional plan involved shall explain and justify such differences.

(f) The regional forester shall transmit the proposed regional plan to the Chief, Forest Service, for approval. The Chief shall review the transmittal and take either of the following actions:

(1) Approve the transmittal, which may become effective 30 days after the date on which the final environmental impact statement is filed with the Environmental Protection Agency, and attach to the plan a statement documenting approval; or

(2) Disapprove the transmittal, which shall be returned to the Regional Forester with a written statement of the reasons for such disapproval.

(g) When each regional plan is approved, each forest plan prepared under these regulations will be revised or amended to bring it into conformity as soon as practicable.

(h) For purposes of administrative review pursuant to § 211.19 of this title, the approval or disapproval of the regional plan shall be the only decision subject to review. The period for submission of a notice of appeal shall run from the date of filing of the final environmental impact statement with the Environmental Protection Agency.

(i) All regional plans must be reviewed after each National Program is adopted, or whenever the Regional Forester or the Chief of the Forest Service deems it desirable. Revisions must be prepared in accordance with the requirements outlined in the section for preparation of regional plans, and will not become effective until approved in accordance with the provisions of *'219.8(f)'*."

219.5 Interdisciplinary Approach

A key provision of RPA/NFMA requires that Forest Service planning use a "systematic interdisciplinary approach to achieve integrated consideration of physical, biological, economic, and other sciences." This requirement appears in section 6(b) of RPA/NFMA and was contained in one of the two original sections of the RPA/NFMA relating to planning when it was passed in 1974. One of the key concerns of Congress as it framed RPA/NFMA, therefore, was to insure that this requirement would be met during the planning process. The Senate Bill actually contained a statement that regulations promulgated by the Secretary of Agriculture "shall include * * * specifying how the interdisciplinary approach * * * will be implemented." Although this requirement was not included in the compromise bill adopted by the Conference Committee, the Conference Report states that "The Conferees anticipate that the regulations promulgated under amendments to present section 5 of the RPA will specify how the interdisciplinary approach required by the RPA will be implemented (including the manner in which the expertise of affected state agencies will be obtained and used in the preparation of plans) * * *" Therefore, it is clear that the regulations must include provisions that describe how the interdisciplinary approach will be implemented. In short, they must do more than state that an interdisciplinary approach will be used. They must describe how it will work.

There is a special burden on the Committee of Scientists with regard to the interdisciplinarity requirement, because section 6(h) of NFMA states that the second of the Committee's two charges is "* * * to assure that an effective interdisciplinary approach is proposed and adopted." We have taken this admonition to heart in our analysis of the regulations and, as we will show, find that the material contained in the draft regulation is not adequate to "assure an effective interdisciplinary process."

The Committee feels that there are three issues central to assuring that an effective interdisciplinary approach is adopted. These are:

1. The composition of the team and the qualifications of its members.

2. The philosophy that guides the team while it operates.

3. The actual planning process that the team uses.

Requirements must be spelled out in each of these areas in order to provide a satisfactory framework within which the team can work.

The draft regulations provide (219.5) only the barest of guidance as to the composition of the team, the qualifications of its members, and the philosophy that will guide its operation. Much more detail is provided about the planning process that is to be used (219.5). The draft is, therefore, deficient in its requirements for interdisciplinarity.

Discussions of implementation of the interdisciplinarity requirement occupied much time at our meetings, and it is clear from these discussions that assuring an interdisciplinary approach through regulations is very difficult. There are a number of pitfalls, and a discussion of these will reveal some of the problems that the Committee feels should be addressed in the final regulations.

Obviously, the composition of a planning team and the qualifications of its members are crucial to its success. It is clear that listing in the regulations the disciplines to be included on each planning team will not assure

interdisciplinarity nor will a detailed elaboration of qualifications assure team members who are capable of interdisciplinary interaction. Therefore, we concur with the requirements of the draft regulations that provide for flexibility with regard to the number and qualifications of members of teams and with the requirement that the names of team members and their qualifications be contained in the plan (219.9(i)(8)). However, we feel that more specific requirements are necessary, and we suggest substitute language.

As we have stated, immediate implementation of the draft regulations, or of our suggested alternatives, will place great stress on the professional resources of the Forest Service. Past staffing patterns, combined with recent limitations on personnel ceilings, will make it difficult to activate large numbers of interdisciplinary teams in the near future. Rather than using this difficulty as a reason for faulty or abbreviated planning, the agency should begin immediately to seek increased specialist assistance through short-term employment arrangements, and to implement accelerated training and retraining efforts for current employees.

The statement from the Conference Report that " * * * the manner in which the expertise of affected state agencies will be obtained and used in the preparation of plans * * *" makes it clear that involvement of the states in Forest Service planning was a desirable feature in Congress' eyes. The same view was presented to us in our meetings, paricularly by Forest Service and state personnel in Alaska. There, it was made clear that the success of Region 10's planning effort could in large part be attributed to the fact that state personnel participated as full members of the interdisciplinary teams. Original drafts of the regulations dealing with interdisciplinarity included the provision that persons other than Forest Service employees might also be appointed to interdisciplinary teams. We have been informed that this procedure may be contrary to certain provisions of the Federal Advisory Committee Act, although we have not been given a copy of the legal ruling. This situation seems to constitute another of those interesting situations where the intentions of Congress may well be foiled by its own legislative actions. The Committee believes very strongly that state personnel, and other private citizens where appropriate, should be able to serve on interdisciplinary teams. On the assumption that this is, at least for the moment, not legally possible, the Committee proposes no language to deal with the matter for inclusion in the section on interdisciplinarity but rather includes proposals for consideration in § 219.7 (coordination).

The philosophy that guides a team is also crucial to its success. Its essential features are that appropriately qualified team members interact in an essentially continous manner so as to give consideration to all resources, and to the effects of management of one resource upon other resources. The final product must be the result of cooperative effort among all team members and not just a series of individual disciplinary reports integrated together. The draft regulations provide very little language expressing the flavor of this philosophy, and the Committee therefore proposes additional language.

The planning process described in § 219.9 certainly can be implemented by a properly constituted, properly managed interdisciplinary team. Properly executed, the proceses envisioned can lead to interdisciplinary consideration, evaluation, and resolution of issues. As indicated later, we find the planning process adequate and consistent with the interdisciplinary requirements of RPA/NFMA.

In order to incorporate the above comments into the final regulations, we propose the following substitute language for § 219.5 in its entirety:

"219.5 Interdisciplinary Approach

The Forest Service shall use an interdisciplinary approach at each level of planning in the National Forest system to assure that plans provide for multiple use and sustained yield of the products and services to be obtained from the National Forests in accordance with the Multiple Use-Sustained Yield Act of 1960. This approach must insure coordinated planning for outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. Land management systems, harvest levels, and procedures must be determined with due consideration for (1) their effects on all resources, (2) the definition of "multiple use" and "sustained yield" as provided in the Multiple Use-Sustained Yield Act of 1960, and (3) the availability of lands and their suitabilities for resource management. The interdisciplinary approach shall also incorporate public participation (219.6) and coordination with other levels of government and with other federal agencies (219.7).

(a) An interdisciplinary team shall be used at each planning level to carry out interdisciplinary planning and to advise the responsible Forest Service official. Through essentially continuous interactions, the team shall insure that planning achieves the goals of multiple use and sustained yield management, by giving consideration to all resources and to the effects of management of one resource upon other resources. The interdisciplinary team shall be guided by the fact that the forests and rangelands of the National Forest system are ecosystems and, hence, that management for goods and services requires an awareness of the interdependencies among plants, animals, soil and the other environmental factors that occur within such ecosystems. Proposed management programs must be both consistent with the nature of these interactions and based upon the results of economic and social analysis. Of necessity, the interdisciplinary team must be composed of individuals with different technical backgrounds representing different disciplines. However, the team must inventory resources, assess management needs and opportunities, make economic and social analyses, develop and evaluate alternative management programs, and recommend a selected alternative in a manner that reflects integrated analysis throughout. The interdisciplinary team may choose any one or a combination of the many techniques and strategies available for achieving interdisciplinary planning. Throughout, however, the interdisciplinary team shall bear in mind that the goal is a technically sound and integrated management plan.

(b) The Forest Service official responsible for development of a plan shall determine the size of the interdisciplinary team and appoint its members. The team shall be composed of Forest Service personnel who collectively represent the appropriate areas of specialized knowledge about natural resources management applicable to the area being planned. The official shall also appoint the leader of the team, and may change the membership of the team as deemed necessary. Where Forest Service employees with appropriate expertise or qualifications are not available, the team shall consult persons other than Forest Service employees.

Note.—If it proves legally possible for persons other than Forest Service employees to serve as members of teams, we recommend that the last clause of the last sentence of (b) read: "the official may also appoint persons other than Forest Service employees as team members."

(c) In the appointment of the interdisciplinary team, the responsible Forest Service official shall determine

and consider the relevance of the qualifications of each potential team member on the basis of the areas of major concern being addressed in planning for the land area under consideration. Each team member shall, as a minimum, have either (1) successfully completed a course of study in an accredited college or university leading to a bachelor's or higher degree in the member's specialized area of assignment or (2) recognized expertise and experience in professional investigative, scientific or other responsible work in the speciality which the member represents. Where available, certification programs will be used both to assure competency of individual team members and to document disciplinary representation. Field experience in the area to be planned shall be considered a desirable attribute for potential team members.

(d) In implementing the plan, the Forest Supervisor will assure an interdisciplinary approach by using a staff of several disciplines. If the Forest Supervisor determines that a new team is needed for evaluation or revision (219.9(j)) of the plan, a new interdisciplinary team will be appointed."

219.6 Public Participation

The need for participation by the public during the development of Forest Service plans and policies was stressed throughout the debate preceding the passage of NFMA. It seems clear in retrospect that many of the problems the Forest Service encountered in gaining public acceptance for its management programs stemmed directly from the agency's failure to inform and involve the public in its decision-making process. Despite strong efforts in the mid-1970's to develop effective public involvement programs, some skepticism about the Forest Service's efforts and sincerity still exists.

Congress recognized this problem and included specific language mandating public participation as an integral part of planning at several key places in its amendments to section 5 of the original RPA. The most explicit is in section 6(d) which states (1) that "the Secretary shall provide for public participation in the development, review, and revision of land management plans"; and (2) that plans or revisions shall be made "available to the public at convenient locations in the vicinity of the affected unit for a period of at least three months before final adoption, during which period the Secretary shall publicize and hold public meetings or comparable processes at locations that foster public participation in the review of such plans or revisions." the first requirement originated in the Senate and the second in the House bill. Section 6(f)(1) embodies a provision of the original Senate bill that requires plans to "form one integrated plan for each unit of the National Forest system, incorporating in one document or set of documents, available to the public at convenient locations, all of the features required by this section." In addition, public participation is required in regard to several specific actions, such as in exceeding the maximum size of clear cuts and in developing exceptions to the standards that insure that trees have reached the culmination of mean annual increment prior to harvest. Finally, the Secretary is given general authority (section 14 of (RPA/NFMA) to establish regulations relating to Forest Service public participation programs and to establish such advisory boards as he deems necessary. This latter provision originated in the Senate, and the Senate Report (p. 40) makes it clear that the Senate envisioned advisory boards at "the national level and for each region and National Forest." The conference report makes it clear that Congress intended that the regulations governing the planning process specify "procedures to insure public participation."

The minimal elements of adequate public participation can be drawn from these provisions. The public must be adequately informed of Forest Service planning activities throughout the process, the plans must be available in convenient locations, and the documents forming a plan must be integrated and located together at a convenient location so as to allow public inspection of them. Furthermore, the procedures devised to insure public participation must be clearly spelled out in the regulations governing the planning process.

The importance of public participation in Forest Service planning and of the need for a clear and unequivocal set of regulations to govern it was stressed to us at our meetings and in written material submitted to us. Without clear regulations the public does not know what is being done, when it is being done, or how to influence the course of events. It was also made clear that, to be entirely satisfactory, the regulations governing public participation must require Forest Service officials to evaluate public input and to show how that input was considered in reaching planning decisions.

Recent efforts of the Forest Service seem to us to emphasize its clear dedication to meaningful public participation. We have already called attention to the openness with which these draft regulations were prepared. The Forest Service deserves a great deal of the credit for this; it made clear from the beginning that full public participation was desired. The public participation effort associated with RARE II is also impressive. Regardless of one's attitude toward RARE II, one must be impressed with the enormous effort the Forest Service has made to solicit public comment and involvement in the process.

The proposed regulations do specify requirements for public participation that the Forest Service must meet as it carries out its planning activities at each level. They require that public participation be used throughout the development, revision, and significant amendment of plans, although the scope and kind of participation is left to the discretion of the Forest Service official. This process begins with the notification in the **Federal Register** of intent to prepare a draft environmental impact statement. Certain notice requirements are spelled out and responsible officials are allowed the latitude to adapt to the circumstances with which they are confronted. The draft regulations require that a list of interested individuals and groups be kept and notified of all public participation activities. All activities must be documented. Plans are to be made available at certain specified locations and availability at other locations convenient to the public is discretionary.

Although the proposed regulations offer a good general framework for public participation, it is our view that more specific requirements in several areas should be included. Although the proposed regulations are long, and will be made longer by the addition of the material we propose, we consider the additional specificity necessary. It is particularly important that regulations specifying the way in which the public can be involved in planning are clear, because these are the "ground rules" that the public will read and use to govern its actions.[8] Vagueness and unreasonable discretion can only lead to discontent and an unhappy, uninformed public.

We propose additions in the following areas:

1. There should be, in addition to a general policy statement at the beginning of the section, a brief

[8] We are indebted to the Environmental Protection Agency for several ideas and concepts which we "borrowed" from its draft regulations for public participation in several water quality programs issued July 31, 1978.

statement of the objectives of public participation. This statement should specify that the purpose is to obtain the views of the public on the issues to be dealt with in planning, to inform the public of proposed Forest Service actions, and to solicit responses to these proposed actions. The purpose is a mutual program of information exchange and education involving the public and its resource management specialists. Public participation should not be construed as a vote-gathering mechansim; rather, it is a mechanism for insuring well informed, thoroughly considered, and completely open decisionmaking by the Forest Service.

2. Public participation should take place at a certain minimum number of specified key steps in the planning process. Specifying these steps will assure that the public has an opportunity to participate "throughout" the process and will provide guidance to the Forest Service official in establishing a process adapted to the conditions of the plan he is developing. The regulation should be modified to require public participation, at a minimum, (1) at the beginning of the process, (2) after the conclusion of inventories and assessment, and (3) before a preferred alternative is chosen.

3. In addition to the requirement for documentation in the draft regulations (219.6(h)), the final regulations should require the responsible official to show evidence that he has analyzed, evaluated, and considered all public input obtained during the process of developing a plan. Although this is a requirement of NEPA regulations, we feel it advisable that it be restated in the context of these regulations.

4. Some effort should be made to specify the kinds of places that would meet the "other convenient locations" wording in the law. Although there is clearly no end to the places that could be specified, we suggest that, as a minimum, at least the county court houses or public libraries in the counties directly affected by the plan be specified.

5. So as to clarify the scope of activities included as public participation, we recommend moving the definition of public participation activities from § 219.3 to 219.6.

6. The direction contained in the first sentence of section (b) of the draft regulations needs to be clarified. As presently worded, the responsible Forest Service official is free to determine the nature of the public participation for any planning effort. We propose that clearer direction be provided by:

a. Stressing that informal activities are to be encouraged so that free exchanges of information and views between the Forest Service and the public are the outcome;

b. Stating that obscure notification, as in the legal pages, shall not be acceptable as the sole means of public announcement of proposed meetings;

c. Indicating that public participation does not remove the responsible official's obligation to meet with and provide information to persons under other authorities.

7. Finally, the public is entitled to some general guidance as to the kinds of informational materials that will be available for use in conjunction with the public participation program. Although the character of these clearly should not be specified in regulations, the public is entitled to know that the Forest Service intends that these materials be designed to encourage public understanding and involvement, that they summarize complex issues, that they present alternative courses of action and their estimated consequences and, above all, that they be clearly written.

To resolve these points, we propose the following new wording, for inclusion instead of the existing 219.6:

"219.6 *Public participation*

(a) Land and resource planning determines how the public lands of the National Forest system are to be managed. Therefore, it is Forest Service policy that the public have the opportunity to participate and become involved throughout the planning process and that plans at every level consider the issues and concerns raised by the public. The objectives of public participation are to: Insure that the public understands Forest Service programs and proposed actions, and that the Forest Service understands public concerns; assure that no significant decisions are made without consultation with interested and affected segments of the public; assure that Forest Service actions are responsive to the maximum extent feasible to public concerns; and demonstrate that public concerns are evaluated and considered.

(b) As used in this section, public participation activities include public hearings, meetings, conferences, seminars, workshops, tours and similar activities scheduled and held to obtain comments from the general public and specific "publics." It also includes solicitation of written comments from individuals and groups.

(c) The responsible Forest Service official shall use public participation throughout the development, revision, and significant amendment of plans. Public participation activities as defined in (b) above should be appropriate to the level of planning, geographic area or areas, and people involved. Means of notification should be appropriate to the level of planning. Activities which unreasonably inhibit the public or the Forest Service from freely expressing views because of onerous legal requirements or the necessity for technical qualifications on the part of participants should be avoided. In no case should public hearings be the only form of public participation used. Public participation activities should be scheduled at times convenient to the public. Informational materials provided during public participation should be clearly written, should summarize complex technical materials in a manner appropriate for public and media uses, and should be designed to encourage the public to participate in significant decisions, particularly where alternative courses of action are proposed. When documents are summarized, the location of the full document should be noted. Significant issues that are to be the subject of decisionmaking should be stressed. Whenever possible, the social, economic, and environmental consequences of proposed decisions should be clearly stated.

(d) Public participation activities shall be initiated by media notice which includes the following information:

(1) Description of the proposed planning action;

(2) Descriptions of the geographic area to be planned with maps if appropriate;

(3) The issues expected to be discussed;

(4) The kind and extent of public participation to be used;

(5) The times, dates, and locations scheduled or anticipated for public meetings;

(6) The name, title, address, and telephone number of the Forest Service official who may be contacted for further information; and

(7) The location and availability of documents relevant to the planning process.

Notice of subsequent public participation activities shall include, as a minimum, a statement of the issue(s) to be discussed and the general nature of the public response desired. Such notice shall be given directly by U.S. mail or other means to any individual or group who has requested direct notification and by any other appropriate media notice. With regard to notice of any public participation activities, publication as a legal notice

shall not be acceptable as the sole means of public notification.

(e) Public participation activities in the preparation of a draft environmental statement for planning shall begin with the publication of a notice of intent to prepare a draft environmental impact statement in the **Federal Register**. After this publication, all public participation activities for land and resource management planning, including those required by the National Environmental Policy Act, shall be conducted simultaneously.

(f) Public notice will be given at least 30 calendar days prior to activities associated with the development of national or regional plans. Public notice will be given at least 15 calendar days prior to activities associated with forest plans. Any notice requesting written comments on national and regional planning will allow at least 60 calendar days for responses, and on forest planning will allow at least 30 calendar days for responses.

(g) In the preparation of forest plans, the Forest Supervisor shall schedule public participation activities as a minimum at the following points in the planning process: (1) At the beginning of the planning effort as required in (e) above; (2) after completion of the inventory and assessment process and prior to the development and selection of alternatives; and (3) prior to the selection of the preferred alternative.

(h) A list of individuals and groups known to be interested in or affected by the plan shall be maintained. They shall be notified of public participation activities.

(i) The responsible Forest Service official or his representative shall attend all Forest Service public participation activities.

(j) All scheduled public participation activities shall be documented by a summary of the principal issues discussed, comments made, and a register of those in attendance. In addition, the plan shall contain written material demonstrating that the significant issues raised during public participation have been analyzed and evaluated as required in 219.9(a) and summarizing the Forest Service's response to them.

(k) Copies of draft and approved plans shall be reasonably available for public review as follows:

(1) Renewable Resource Assessment and Renewable Resource Program shall be available at national headquarters, each regional office, each Forest Supervisor's office, and each District Ranger's office;

(2) The regional plan shall be available at national headquarters, at the regional office and the offices of contiguous regions, at each Forest Supervisor's office of forests within and contiguous to that region, and at each District Ranger's office in that region;

(3) The forest plan shall be available at the regional office for that forest, at that Forest Supervisor's office and the Forest Supervisor's offices contiguous to that forest, at each District Ranger's office in that forest, at those District Ranger's offices in other forests that are contiguous to that forest, and at the county or court houses or public libraries in the counties (or similar government units) where the forest is located.

(4) For public information purposes, copies of the above plans may be made available at other convenient locations.

(l) Supporting documents to plans shall be available at the office where the plan was developed.

(m) Upon issuance of a draft environmental impact statement on a forest plan, revision or significant amendment, and concurrent with the public participation activities under paragraph (g) of this section, the public shall have a 3-month period to review the statement for the proposed forest plan, revision or significant amendment. During that time additional public participation activities will take place to review the actions proposed in the draft environmental impact statement.

(n) Fees for reproducing requested documents may be charged according to the Forest Service schedule for Freedom of Information Act requests (7 CFR 1.1 et seq., Appendix A).

(o) Compliance with the formal public participation requirements of this section does not remove the requirement for the responsible Forest Service official to meet with, or supply relevant information to, interested parties."

219.7 Coordination

There is a major concern at present about the real or apparent lack of coordination among government programs. Proliferation of programs at the federal, state, and local levels has led to duplication, conflicts in agency missions and, sometimes, contradictory efforts by public agencies. In no area are these problems more evident than in land use planning and management. Recent federal legislation, for example the Coastal Zone Management Act of 1972, section 208 of the Clean Water Act of 1972, and the National Environmental Policy Act, attempt to mediate and resolve such conflicts.

Although governmental coordination was not a major concern in deliberations on future National Forest management, Congress did speak to this issue. A major finding of RPA/NFMA (section 2(2)) is that the public interest will be served by the Forest Service developing, "in cooperation with other agencies," a national renewable resource program. There is also a requirement, transferred from section 5 of the original RPA to the section 6 on National Forest planning of RPA/NFMA, calling for coordination of Forest Service unit (National Forest) planning with other federal, state and local governments. The Conference Report (p. 27) states that the conferees "anticipate that the regulations * * * will specify * * * the manner in which the expertise of affected state agencies will be obtained and used in the preparation of plans * * *"

As we indicated in our discussion of interdisciplinarity, we feel that coordination with other levels of government can be a major factor in the successful completion, approval, and implementation of any plan. The benefits of close coordination with state agencies, for example, were made clear to us at several locations. The apparent success of the regional planning effort in Alaska is a prime example.

Federal land managers, including those of the Forest Service, recognize the threats to the lands they manage resulting from the failure of governments to coordinate their actions. In a study still underway by the Conservation Foundation, such managers identified the expansion of small communities within or near their borders as the most serious threat to the purposes of the unit in their charge. The impacts of such development include problems such as water and air pollution, destruction of wildlife habitat and interference with wildlife migration routes, aesthetic blight, and constant demands for federal lands to provide community facilities. However, the same study showed, through documented field interviews, that federal "field level managers have a relatively low level of understanding and interest in such planning efforts as Section 208 Areawide Wastewater Management, Coastal Zone planning and State Comprehensive Outdoor Recreation Plans. These planning processes appear to be useful mechanisms for resolving conflicts and recognizing cooperative management opportunities." It is painfully clear that uncoordinated planning by different levels of government that fails to consider mutual goals and policies is a major cause of threats to federal lands.

Although coordination will not, in itself, resolve these problems, it will provide the framework within which they can be identified and discussed, and through which alternatives for their resolution can be developed.

The proposed regulations require that planning be coordinated with other governmental entities and that responsible Forest Service officials "shall consult systematically and as often as appropriate" with such entities. There is also a requirement that notice of intent to prepare or revise a plan shall be given through the A–95 State Clearinghouse process. Consultation must be documented in the record of the plan. Beyond these very minimal requirements, the scope and nature of the coordination effort is left entirely to the discretion of the responsible Forest Service official.

It is our opinion that the draft regulations for coordination are not adequate. They neither meet the intent of Congress nor provide a clear set of requirements that will assure an optimum coordination process on the part of the Forest Service. The proposed regulations require little more than a mutual review of plans. We feel that the proposed regulations neither allow other governmental units to understand how they can become involved in Forest Service planning nor require the Forest Service to make more than a *pro forma* effort at real coordination. Although extensive coordination could possibly be accomplished under the proposed regulations, it is not required nor are its minimal elements spelled out.

This deficiency is all the more serious in light of the apparent legal barriers against state officials serving on interdisciplinary teams. As we have stated, we would much prefer to see state agency personnel actually serve as members of planning teams. Although we propose a strategy to avoid the problems that are created by the absence of such service, the strategy is awkward and untested. Almost all comments on the regulations from state agencies indicated a desire to have their personnel serve on interdisciplinary teams. We feel that the goals of RPA/NFMA would best be achieved by this alternative and we urge the Forest Service to push to put it into practice.

Finally, it has been brought to our attention that these regulations represent an excellent opportunity to coordinate certain actions within the Forest Service, particularly the handling of administratively designated special purpose areas such as research natural areas, geologic areas, botanic areas, etc. The procedure for designation of such areas is now included in the Forest Service manual. We agree with the proposal that designation of such areas be considered in the planning process and such designation be made a part of the regulations.

Throughout our discussion on this coordination we have consistently maintained that the regulations must spell out standards that will promote a positive, constructive interaction between the Forest Service and other federal agencies and state and local governments. These minimum standards should include:

1. A clear statement of the elements of coordination and an obligation that the responsible Forest Service official:

—Be aware of the objectives of other federal, state and local governments as expressed in plans, policies, etc.;

—Assess mutual impacts of these;

—Determine how plans can deal with the issues identified;

—Where conflicts are identified, develop and discuss the alternative programs or policies which might contribute to their resolution.

2. A positive requirement that state agency representatives or other qualified persons be involved and consulted as the interdisciplinary team executes the planning process. If state representatives cannot be appointed to teams, then some other mechanism must be established to provide the desired link. As indicated in the proposed regulations such consultation should be documented in the record of the plan.

3. Although A–95 notification with subsequent coordination allows for notice to be given to state and local governments of the initiation of planning, it is not a useful vehicle for effecting real, ongoing communication between different levels of government. Therefore, we suggest that the regulations require the responsible Forest Service official to seek from the Governor of each state appointment of a designee who would then, on the Governor's behalf, coordinate state and local government input into each plan. The designee would be responsible for the work of the advisory mechanism proposed in item 2 preceding. The requirement should make clear that the Forest Service desires either an official with natural resource experience, such as the chief officer of the appropriate state natural resource agency, or the state planning officer if more appropriate in a given state. While no Governor can be required to appoint such a person, the important point is that the person would be responsible for notifying state agencies and local governments of the Forest Service planning effort and for coordinating their input into the plan.

4. The regulations should require that, in the preparation of plans at each level, the Forest Service show evidence that it has considered the plans, programs, and policies of other units of government which effect national forest management. Non-federal plans and policy documents to be considered should include: Local and/or state land use plans; state economic development or growth plans; state population and growth profections; state transporation plans; state wildlife plans; state comprehensive outdoor recreation plans; section 208 areawide waste treatment plans; state coastal zone management plans; and state energy plans. The forest plan should reflect the fact that the interdisciplinary team studied the relevant state or local plans, policy, and program documents and used, where possible and appropriate, material from them. Without such a requirement, there is no assurance that other plans will be considered.

5. The regulations should insure that coordination, as with public participation, takes place at a certain minimum number of critical times during the planning process. As the regulations stand now, consultation shall take place "systematically and as often as appropriate." Such a guideline is too discretionary. We suggest that, as a minimum, the opportunity for coordination be required (1) at the beginning of the planning process, (2) after issues and opportunities for management are identified and prior to the development and selection of alternatives, and (3) prior to the selection of the preferred alternative.

6. The private lands that exist intermingled with National Forest lands throughout the systme pose a special coordination problem. The goals of the owners of these lands and the management practices followed can have a major impact on National Forest lands. The reverse is, of course, also true. Therefore, it would seem to be desirable that a special effort be made in conjuction with forest planning to identify the goals and plans of the owners of intermingled lands and, to the maximum extent feasible, coordinate management acitvities on the two classes of ownership.

7. A provision should be included calling for coordination within the Forest Service in the establishment of administratively designated special purpose areas.

8. Finally, the requirements for coordination should be reiterated at appropriate locations in conjunction

with the requirements on forest planning (219.8 and 219.9). Such repetition would clarify the full intent of the planning process and would strengthen its integrity.

In order to incorporate these provisions, we recommend that the following material be substituted in its entirety for the existing 219.7:

"219.7 *Coordination of public planning efforts*

Efficient management of the resources of the National Forest system requires that planning be thoroughly coordinated among all levels of government, including state and local jurisdictions, and multi-county and multi-state bodies. Such coordination is necessary in order to insure wise use of regional and local resources and to insure, consistent with requirements of federal law, that governmental objectives, policies, and programs for management of those resources are compatible to the greatest extent possible. Therefore, the Forest Service shall maintain ongoing coordination of its national, regional, and forest planning with the equivalent and related planning efforts of state, local and other federal government agencies and with Indian tribes.

(a) The responsible Forest Service official, through the interdisciplinary team, shall coordinate Forest Service planning with land and resource management planning processes of other affected public entities, and Indian tribes.

(b) The purpose of coordination is to insure that plans at every level in the Forest Service include:

(1) An awareness and discussion of the objectives of other federal, state, and local governments and owners of intermingled private lands as expressed in their plans and policies;

(2) An assessment of the mutual impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the issues and impacts identified; and

(4) Where conflicts are identified, a presentation of the alternatives for their resolution.

(c) The responsible Forest Service official shall give notice of the preparation or revision of a forest plan along with a general schedule of anticipated planning steps to the State Clearinghouse (OMB Circular A–95) for circulation among state agencies. The same notice will be mailed to all Tribal or Alaska Native leaders to the extent Indian Reservations or Alaskan Native corporations are impacted, and to the heads of county boards for the counties that are involved. These notices shall be issued simultaneously with the public notice required in section *'219.6(e)'*.

(d) In order to facilitate state and local government participation in the planning process, the Chief of the Forest Service shall:

(1) Ask the Governor of each state or territory to designate a single official of that state to serve as the contact person for the Forest Service. In seeking designation of a state official, the Chief shall specify that the Forest Service desires that such appointment shall be either an official with natural resource experience, such as the chief officer of the appropriate state natural resource agency, or an official with responsibility for statewide planning if such appointment is more appropriate to a given state. Contacts with state and local governments relating to the National Assessment, National Program, and regional plan shall be coordinated through the designated state official, and state inputs into those planning activites shall be coordinated by that person. In the case of forest plans, contact shall be through the designated state official or through a person designated to serve in his stead.

(2) In the case of forest plans, ask that the Governor or his designee specified in (1) above appoint appropriate state and local government representatives to participate with the interdisciplinary team in coordinating the input of state and local governments to the forest planning process.

Note: This lanaguage becomes unnecessary if it is possible for state personnel to serve as members of interdisciplinary teams.

(e) In the development of forest plans, the Forest Supervisor and his interdisciplinary team shall meet with the designate state official (or his designee), state advisory persons, and representatives of other federal agencies and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, the opportunity for such conferences shall also be required at the following additional times: after issues and opportunities for management have been identified and prior to the development and selection of alternatives; and prior to the selection of the preferred alternative. Such conferences may be held in conjunction with other public participation activities, provided that the opportunities for other governmental officials to participate in the planning process are not thereby reduced.

(f) During the planning process, the responsible Forest Service official shall conduct an inventory, appropriate to each given level of planning, of multi-state, state, multi-county, and local planning and land use regulatory activity. This inventory shall include, but not be limited to, plans affecting renewable natural resources and minerals, recreation, community and economic development, land use, transportation, wildlife, growth, water and air pollution control, and energy. Plans at each level shall document this inventory and discussion of the plans of other entities. Where state and local plans contain population or economic growth projections, this discussion shall specifically analyze these and show their appropriateness, or inappropriateness, for use in meeting the requirements of 219.9(c)(3)(viii). The discussion shall be adequate to meet the purposes described in *'219.7(b)'* above.

(g) In the development of forest plans, the responsible official shall, to the extent feasible, notify in the manner required in (c) above the owners of lands that are intermingled with, or dependent for access upon, National Forest lands and on which management is being practiced similar in character to that being practiced on adjacent National Forest lands. He shall then coordinate, to the extent feasible, his planning activities with these owners. The results of this coordination shall be included in the plan as a part of the inventory required in (f) above.

(h) In developing the forest plan, the responsible Forest Service official shall seek input from other federal, state, and local governments, universities and private research organizations in resolving management problems identified in the planning process and in identifying areas where additional research is needed. This consultation shall be included in the discussion of the research needs of the forest being planned.

(i) The responsible Forest Service official, through the interdisciplinary team, shall coordinate forest planning activities with the efforts of the appropriate forest and range experiment station to identify and study lands meriting consideration for designation as research natural areas, geologic areas, botanic areas, or other special purpose areas. Such coordination shall include at least obtaining recommendations from the station as to areas that should be identified and protected pending study for potential designation.

(j) A continuing program of monitoring shall be carried out that includes consideration of the effects of national forest management on land, resources and communities adjacent to or near the National Forest being planned and the

effects upon national forest management of activities on nearby land managed by other federal or governmental agencies or under the jurisdiction of local governments."

In addition, we suggest certain changes in sections 219.8 and 219.9.

In 219.8, insert a new paragraph (c) and reletter the remainder of the section as follows:

"(c) *Intergovernmental coordination.* The Forest Supervisor shall contact multi-state, state, multi-county, county, and other local agencies responsible for various planning, development and regulatory programs including, but not limited to, water quality, pest management, recreation, air quality, community development, land use regulation, energy, wildlife, and transportation. The plans, policies and programs of these agencies will be analyzed for their relevance to the forest plan. The Forest Supervisor will systematically consult with these agencies, through the advisory committee, in the development of the forest plan."

In 219.9, revise the introductory language by adding the phrase "and other applicable statutes" at the end of the first sentence and by removing the word "generally" from the second sentence.

In 219.9, revise (a) so that the first sentence reads as follows:

"(a) *Identification of issues, concerns and opportunities.* Public issues, management concerns, and resource use and development opportunities identified through public involvement activities and intergovernmental coordination activities will be analyzed continually in the planning process by the interdisciplinary team."

In 219.9(b) add a new numbered paragraph (4) and renumber the remainder as follows:

"(4) The plans and programs of other federal agencies and the plans, policies and programs of multi-state agencies, state, and local governments."

In 219.9(c)(3) add a new numbered section:

"(xiii) lands meriting consideration for designation under special administrative classification, such as research natural areas, geologic areas, botanic areas, etc."

In 219.9(c) add a new numbered paragraph (4) and renumber the remainder:

"(4) Informational needs must include the plans of other federal agencies and those of state agencies and local jurisdictions relating to resource management, land use, and community development."

In 219.9(e)(2) add a new numbered section (v):

"(v) provision for lands administratively designated as special purpose areas or requiring further study for potential designation such as research natural areas, geologic areas, botanic areas, etc."

In 219.9(i) add a new paragraph (4) and renumber the remainder:

"A description and analysis of the policies, plans, and programs of other federal agencies, multi-state agencies, state, multi-county agencies, and local jurisdictions likely to affect or be affected by National Forest management activities."

219.8 Forest Planning Procedure

This section of the draft regulations is the first of three describing the activities to be carried out as land management plans are developed for each national forest (p. 12). It spells out the planning procedure, that is, the major actions that must be taken and the procedural requirements that must be met as a forest plan is prepared. The section specifies that the Forest Supervisor is responsible for preparation of the plan and that the plan is to be developed by an interdisciplinary team appointed by, and responsible to him. It specifies that the interdisciplinary team shall develop the plan in a manner consistent with the National Environmental Policy Act and that a draft and final environmental impact statement will be prepared for each forest plan, revision, and amendment with significant environmental impacts. Requirements for administrative review, conformity, revision, and amendment are also spelled out.

We consider that the planning procedures outlined in 219.8 are generally satisfactory. The procedures proposed are rational and lay out, in broad terms, the major responsibilities and actions that must be taken. We do, however, recommend certain minor changes in wording. These include:

1. Reword the first sentence of 219.8(b) to read:

"Records shall be maintained that support environmental assessments and alternative plans made by the team and decisions made by the Forest Supervisor throughout the planning process."

2. See new 219.8(c) proposed on p. 80.

3. Reword 219.8(e)(1) as follows:

"(1) Approve the transmittal, which may become effective 30 days after the date on which the final environmental impact statement is filed with the Environmental Protection Agency, and attach to the plan a statement documenting approval; or"

4. Reword 219.8(f) as follows:

"(f) *Administrative review.* For purposes of administrative review pursuant to 211.19 of this title, the approval or disapproval of the plan, revision, or significant amendment, shall be the only decision subject to review. The period for submission of a notice of appeal shall run from the date of submission of the final environmental impact statement to the Environmental Protection Agency."

5. In 219.8(i) delete the word "In" at the beginning of the last sentence and capitalize "The."

219.9 Forest Planning Process

This section of the regulations provides guidelines for the conduct of the planning process at the forest level (p. 12). Since it provides the framework for making land management decisions we believe that the various requirements are as important as the specific resource management standards in the section to follow.

In general, 219.9 calls for a planning process that is consistent with the various requirements of NEPA and RPA/NFMA. It calls for the identification of public issues, for specification of objectives and "planning criteria," for formulation and comparative evaluations of mutually exclusive land management alternatives, for selection of a preferred alternative, and finally for monitoring the outcome of management actions to "determine how well the objectives of the forest plan have been met."

We believe that these several steps are generally consistent with planning methods in the public sector. The planning process described has the potential to ensure that interdisciplinary consideration of all resources uses is achieved. It also provides for an unprecedented degree of public participation throughout the whole planning process.

We gave advice to the Forest Service staff on the technical and scientific aspects of the planning process as the draft regulations were developed. Some of this advice is reflected in the proposed regulations and some is not.

We believe that the draft regulations have particular deficiencies in the following areas:

1. The role of public participation is not adequately clarified. Frequent reference is made to public participation in the planning process, but its function is not adequately defined. Indeed, 219.9(a) and (b) appear to suggest that planning and decisionmaking will be controlled and guided by the requirements of achieving a political

consensus at the forest level. We do not believe this was intended, nor do we believe that public participation should be substituted for objective analysis of management alternatives directed toward maximizing the public benefits. A clear, positive statement of policy is needed to guide the interdisciplinary team's use of information from public participation. We have attempted to provide such policy guidance in our proposed language for 219.6(a). We recommend that (a) and (b) of 219.9 be revised to reflect this guidance.

2. The forest planning process should be related to the RPA Assessment and Program. Section 6 of RPA/NFMA clearly establishes that the forest plan is an element of the National program, which in turn is derived from the Assessment. Section 219.9 does not appear to present a planning process or method required to provide the information needed for the Assessment and Program. As an example, 219.9(e)(1) requires that at least four alternatives be formulated and evaluated; only two of these have any relationship to the National Program. Sections 219.9(f) and (g) make no reference to the RPA Assessment and Program at all. Guidelines, methods of analysis, and criteria are needed that are consistent with the information and analytical requirements of the RPA Assessment and Program.

3. Planning objectives should be specifically stated. As it stands, 219.9 provides only indirect, or at best fuzzy, guidance on the primary objective to which the planning effort is directed. If we were planners operating at the forest level, we would look to the regulations for an operational objective to govern the formulation and evaluation of land management plans. None is to be found in the proposed regulations—only a statement that criteria will be prepared throughout the planning process. On several occasions we expressed our concern about this deficiency. We repeat advice given earlier: the planning process should be directed to achieving a level and mix of resource services that maximizes public benefits, subject to technical, environmental, administrative, and budgetary constraints.

4. The role and function of economic analysis should be clarified. Earlier we have pointed out the importance of economic analysis to the RPA/NFMA planning process. We stressed that proposed management practices on the National Forests must be subjected to economic analysis and that such analyses are important in the evaluation of alternatives. The Forest Service needs to clarify in 219.9 how such economic analyses are to be used in decisionmaking.

5. The inventory section (219.9(c)) has certain deficiencies. It enumerates inventory and information requirements and appears somewhat distorted by specific mention of several items required or implied by the language of NFMA. We have no quarrel with their inclusion. There is no equivalent mention, however, of timber type, volume and growth rate, nor of the range resource, or habitat for other than selected animal species. We doubt that all readers of the regulations will understand that these are sufficiently included under "existing plant life" (219.9(c)(2) (iii)). Accordingly, we suggest a more explicit statement.

In the past, data needed for management of individual resources frequently were collected through separate inventories by the functional units concerned. The present need for additional and more detailed inventory data to be used both in interdisciplinary planning and as a baseline in monitoring will call for marked changes in these past procedures. We believe it will be technically feasible and administratively desirable to devise single or combined surveys to gather much of the vegetation data needed for 219.9(c). The methods by which this is done, however, are neither well developed nor appropriate to regulation. Hence, their elaboration is left to the Manual or technical handbooks.

6. Several important provisions for meeting the requirements for diversity in RPA/NFMA are included in 219.9. Section 219.9(c)(2) requires that inventories provide "* * * quantitative data for determining species and community diversity." Since §§ 219.9(f)(3)(vi) and (vii) require an historical analysis of diversity compared to diversity in unmodified natural communities, the inventory data will have to include information on ecological dynamics as well as an analysis of the effects of primative and modern man on trends of ecological succession. We believe this inventory requirement is adequate, considering the state of the art of diversity measurement.

The draft regulations require that each alternative formulated include an analysis of its effects on diversity. They require that the analysis be related to multiple use objectives and to suitability and capability of the land. We believe that § 219.9(e)(2)(vi) should be clarified and strengthened.

A requirement that changes in diversity be assessed is contained in § 219.9(f)(3)(vi) and (vii). We believe the draft regulations are adequate in requiring analysis of how each alternative affects diversity, and of how the proposed changes relate to natural dynamic ecological processes. The specific reference to tree species diversity in subsection (vii) is desirable at this point because it insures that contemplated type conversions will be studies on both forest and range lands. Forest type conversions are also covered in our new *'219.10(a)(6)'*, but we believe the repetition is desirable.

Diversity is not specifically mentioned § 219.9(g) and (h). However, the interdisciplinary team is required to evaluate significant physical, biological, economic, and social effects. Diversity is certainly one of the significant biological effects, and it may be desirable to indicate clearly which effects are to be evaluated. Therefore, we propose that a reference to the physical biological, economic, and social effects listed in subsection (f)(3) be made.

7. The section on formulation of alternatives (219.9(e)) establishes standards for designing the set of alternative land management plans, one of which will be slected as the preferred alternative. The proposed wording has several deficiencies. First, the alternatives that must be formulated are incommensurable since each is designed with a different set of criteria. There is no logical relationship among the alternatives. Second, only one alternative must be consistent with the RPA Program goals for the unit. If the preferred alternative (forest plan) is to be a logical, consistent element of the RPA Program, *all* alternatives must be consistent with the regional plan.

In the following comments, we provide specific recommendations for changes in the proposed regulations. To an extent, these are responsive to the deficiencies noted above. However, the development of regulation language which fully addresses the above points is beyond our responsibilities. That is a task for the Forest Service staff.

Changes recommended are:

1. See proposed change in § 219.9(a).

2. In § 219.9(b) revise (4) as follows and add a new section (5):

"(4) The ecological, technical and economic feasibility of management alternatives; and

(5) The resource management standards and guidelines found in 219.10 of this part."

3. See proposed additional new subsection for § 219.9(b).

4. Delete the present § 219.9(c)(2) and replace with the following:

"(2) Inventory data must be of a detail appropriate for the management decisions to be made and include at least the following:

(i) Geology and mineral characteristics; (ii) soils, their productivity and behavior under use; (iii) natural water occurrences, including quality and quantity, and wetlands, and flood plains; (iv) existing plant life, including maps of actual and potential plant communities, quantitative measurements of occurrence and condition of timber species, quantitative estimates of range condition and trend, forage availability, and the capability of each site; (v) existing fish and wildlife; (vi) habitat conditions for management indicator species; (vii) existing recreational facilities; (viii) quantitative data for determining species and community diversity; and (ix) threatened and endangered plant and animal species."

5. In § 219.9(c)(3) reword (i), (vii), and (xi) as follows:

"(i) Climatic, geologic, soil hazards, wildfire potential and major potential insect, disease, and other pest problems;"

"(vii) Location and extent of existing mineral claims, and known potential mineral and geothermal resources;"

"(xi) Fire history and effects of fire exclusion and management opportunities;"

6. See proposed new subsections 219.9(c)(3)(xiii) and 219.9(c)(4).

7. In 219.9(d) revise the wording of (1), (3), and (5) as follows:

"(1) The opportunities for providing on a sustainable basis alternative levels and mixes of various goods, services, and uses. Such an assessment shall analyze the productive capabilities of the area under alternative assumptions as to the intensity of management practices and expenditure levels. The assessment of management opportunities shall be consistent with the scope, procedures, and assumptions of the National Assessment required under section 3 of RPA;"

"(3) Projections of public demand and price trends for the various goods, services, and uses for the period covered by the forest plan. To the extent possible, demand will be assessed as a price-quantity relationship;"

"(5) Technical and economic feasibility of providing the levels of goods, services, and uses assigned to the forest by the regional plan and of meeting public demand."

8. In § 219.9(e) rewrite the introductory language and rewrite (1) as follows:

"(e) *Formulation of alternatives.* Based on the analysis of the management situation, a set of management objectives will be developed to guide the formulation of alternative plans. These objectives will provide a statement of the purpose of the actions proposed in each alternative. A reasonable range of alternative land management plans will be formulated by the interdisciplinary team and described in draft and final environmental impact statements.

(1) Reasonable range of alternatives. The alternative land management plans shall be formulated to provide alternative levels and mixes of goods, services, and resource uses for each of several alternative expenditure levels, provided that: (i) Each is capable of being chosen as the selected alternative; (ii) the alternatives include a no-change alternative which will represent existing levels of resource inputs and outputs; (iii) the alternatives provide for varying degrees in the elimination of backlogs of needed treatment for the restoration of renewable resources; and (iv) the alternatives are capable of supplying the range of goods, services, and resource uses allocated to the unit in the regional plan. The range of goods and services allocated to the unit must be consistent with the resource production capability of the unit as determined in the analysis of the management situation described in § 219.9(d)."

9. Rewrite § 219.9(e)(2)(iv) as follows:

"(iv) An analysis of the changes in diversity of plant and animal species and communities, the relation of those changes to capability and suitability, and their relation to achievement of overall multiple-use objectives."

10. See proposed new § 219.9(e)(2)(v).

11. Substitute the following wording for § 219.9(f) in its entirety:

"(f) *Estimated effects of management alternatives.* The physical, biological, economic, and social effects of implementing each alternative shall be estimated and displayed. Estimation of effects will involve at least:

(1) Expected changes in the physical and biological conditions including but not limited to: (i) Soil productivity and plant life; (ii) water quantity and quality, flood plains and wetlands and watersheds; (iii) air quality; (iv) esthetic values; (v) fish and wildlife; (vi) anticipated diversity of plant and animal communities compared to that diversity existing in the area being planned and to the diversity which might be expected to occur under natural forces unaffected by people; (vii) diversity of tree species in relation to that existing and that expected to occur on surrounding areas of similar soil; and (viii) the adverse effects on the human environment which cannot be avoided.

(2) Expected changes in economic and social conditions including but not limited to: (i) Local employment, payrolls, and income, direct and induced; (ii) revenue sharing with local governments; (iii) receipts to the Federal Treasury and capital improvements on the National Forest provided by users; (iv) resource commitments that are irreversible; (v) the relationship between local short-term use of the National Forest and the maintenance and enhancement of its long-term productivity; (vi) required local government services; (vii) prices for and supply of goods and services; (viii) economic stability; (ix) income from property yield and income taxes collected by state and local governments; (x) flow of resources from other lands; (xi) incidence of plan costs and benefits among affected groups; (xii) population in terms of composition, structure, and civil rights; and (xiii) effects on prime farmlands in the area surrounding the forest.

(3) Expected direct benefits and costs of the alternative expressed in present value terms computed with an appropriate interest rate including, but not limited to, the produced goods and services, administrative costs, and the protection and, as appropriate, enhancement of resource values. Direct and indirect benefits and costs will be estimated in accordance with standards and practices for economic analysis established by the Chief, Forest Service. Benefit values shall be based, where possible, on willingness to pay in an actual market. Physical outputs shall be reported for all goods and services provided. Capital investments and operating costs shall be reported separately and shall be charged proportionately to resource outputs which will be realized. Estimated costs shall include the value of resource opportunities foregone.

(4) A benefit-cost analysis including but not limited to (i) the values and costs identified in (2) and (3) above; (ii) the value of existing capital assets, including land, at the beginning and end of the period covered by the plan; and (iii) an economic efficiency indicator, such as benefit/cost ratio or estimated present net worth."

12. In § 219.9(g) reword the first sentence as follows:

"(g) *Evaluation of preferred alternatives.* The interdisciplinary team will evaluate the significant physical, biological, economic, and social effects of management alternatives, according

to the planning criteria, including at least those effects listed in subsection (f)(1) and (2) of this section."

13. See proposed new § 219.9(i)(4).

14. In § 219.9(j) revise the introductory language, add new wording to (2)(i), add a new (2)(v), and reword (3) as follows:

"(j) *Monitoring and evaluation.* At intervals established in the forest plan, an evaluation must be made to determine how well objectives of the forest plan have been met. Management activities associated with each of the resources planned shall be evaluated through monitoring on an appropriate sample basis. Methods used to monitor consequences of activities resulting from planning and management activities will be consistent with those used to gather inventory data and will be sufficiently accurate to detect change."

"(2)(i) a quantitative estimate of performance comparing actual accomplishments with those that were anticipated in the plan;"

"(2)(v) unit costs associated with carrying out the planned activities as compared with unit costs estimated in the plan."

"(3) Based upon the evaluation reports, the Forest Supervisor will make such changes in management direction, or revisions or amendments to the forest plan as deemed necessary to meet the forest goals and objectives."

219.10 Resource management standards and guidelines

The NFMA is legislation born in controversy over harvest methods and their application on National Forest lands. Debate in both houses was primarily about the degree of statutory prescription of harvesting practices. Although much debate centered on clearcutting, concern was also expressed about other types of even-aged management, about the effects of timber harvest on "fragile" soils and water resources, and hence about the need for management standards.

The resulting legislation describes the results expected rather clearly, and places emphasis on the development of regulations to guide the planning process in achieving these results. Section 6(g)(3) contains the statutory response to the timber harvesting practices that precipitated the controversy.

We have heard and read much about what others believe the details of Congressional intent may have been. Review of the legislative history and discussion with principals and participants in the debates, however, have led us to believe that the chief criteria for evaluation of these regulations should be pragmatic and scientific, rather than narrowly legal. Our analysis is essentially our answer to the questions posed by section 6(g)(3): Do the "regulations * * * specify * * * guidelines * * * for plans * * * which * * *

(A) Insure consideration of the economic and environmental aspects of the various systems of * * * management * * * to provide for outdoor recreation (including wilderness), range, timber, watershed, wildlife, and fish;

(B) Provide for diversity * * *

(C) Insure research on and * * * evaluation of the effects of each management system * * *

(D) Permit increases in timber harvest if * * *

(E) Insure that timber will be harvested * * * only where * * *

(F) Insure that * * * cuts designed to regenerate an even-aged stand * * * will be used * * * only where * * *".

Section 219.10 of the draft regulations establishes standards and guidelines to be met in planning for and managing each of the major renewable resources. The section is long, general in respect to some resources, and very detailed in respect to others. In terms of substantive requirements, it is the most demanding section of the regulations. A major difficulty, not completely resolved in the draft regulations, is presented by our conviction that the resource protection concerns should apply equally to all forest uses, and that interaction among uses and protection of major resources values should be dominant themes.

Elsewhere we have given our reasons why a separate section containing resource standards apart from the discussion of the planning process is acceptable. Such separation may seem to imply that each resource is to be treated without consideration of others. A number of reviewers have seen this as a weakness or have feared that organization by resource use would perpetuate the functional planning of the past. The draft has also been criticized on grounds that the standards and guidelines for each resource appear to have been developed independent of each other with no commonality to tie them together. This criticism has some validity. On the other hand, considerations such as some relating to wildlife and recreation, or the need for continued evaluation of lands for wilderness potential, are specific to individual resources.

Another criticism directed toward this section is the great emphasis placed on timber management. This emphasis, however, simply reflects the heavy emphasis on timber management practices in the legislative history and the Act itself. If the treatment were more limited, or if it were submerged in an integrated fashion with the treatment of other resources, the Forest Service likely would be accused of avoiding NFMA's requirements.

We see no easy solution to any of these criticisms. However, we do recommend certain changes that may minimize the difficulties encountered and better demonstrate the conformity of the section with the intent of NFMA. One change involves cross-referencing the more definitive language we propose for interdisciplinarity in § 219.5. This language makes clear that the interdisciplinary team must consider all resources and must integrate the effects of their management as it evaluates alternatives. Another change is to place a subsection of general provisions at the beginning of § 219.10. These state, first, the requirements applicable to all management activities and, thereafter, those relating to silviculture, protection of soil and water resources, and diversity. All of the latter bear on more than one of the individual resources treated under draft regulations 219.10(a) through (f). A suggested organization of the proposed initial general subsection is as follows:

219.10(a) All resource uses

(a)(1) All management activities.

(2) Choice of silvicultural systems.

(3) Control of openings.

(4) Protection of streams and lakes.

(5) Conservation of soil and water resources.

(6) Diversity.

We wish to emphasize here that it is in this section that we propose that the difficult issue of silvicultural standards be treated. The language that we propose accomplishes, we think, two purposes. First, it makes clear that silvicultrual practices affect the management of all resources and that this fact must be recognized in planning. Second, it provides reasonable additional specificity with regard to silvicultural practices. Although we do not go as far as some might wish us to, we believe the proposed language will provide adequate protection for National Forest resources from the potential damages of unwisely applied silvicultural practices.

Suggested language for our proposed § 219.10(a) and (a)(1) is given below, followed by discussion and suggested language for each of the other five topics to be dealt with in this new section.

Note.—This section will become § 219.11 if our proposed new section on the regional plan is adopted.

"219.10 Resource management standards and guidelines

The standards and guidelines set forth in this section will, as appropriate, be included in the planning criteria, or be applied throughout the planning process. Such application shall be only in a manner consistent with the interdisciplinary requirements of § 219.5.

(a) *All resource uses.* Certain standards and guidelines will apply to all resource uses:

(1) All management activities. All management activities must:

(i) Not allow significant or permanent impairment of the productivity of the land;

(ii) Provide means for minimizing serious or long-lasting hazards from flood, wind, wildfire, erosion, or other natural physical forces, except as these are specifically accepted, as in wilderness;

(iii) Provide means for prevention and reduction of serious or long-lasting hazards from pest organisms. The guiding principles will be those of integrated pest management;

(iv) Assure protection for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water as provided under (a)(4) and (a)(5) below;

(v) Maintain diversity in plant and animal communities and preserve the variety of endemic and desirable naturalized plant and animal species currently found in the area covered by the forest plan;

(vi) Be monitored and evaluated as required in 219.9(j) to assure that activities are carried out in a manner consistent with the protection of soil, watershed, fish and wildlife, recreation, and esthetic values, consistent with the maintenance of timber and range productivity, and consistent with reduction of hazards from insects, disease, weed species, and fire."

(2) Vegetation management practices.—RPA/NFMA requires particular attention to the choice of silvicultural systems, and especially the use of the even-aged system and related harvest methods and operations. Since silvicultural techniques are simply ways of manipulating forest vegetation for a variety of purposes, they are most appropriately treated as a general provision applicable to all uses other than wilderness. Hence, we concur with the recommendations of the Forest Service Task Force on Silviculture concerning the location and wording of the standards and guidelines governing choice of silvicultural systems and related topics.

Direction on the choice of silvicultural systems and cutting methods formerly scattered throughout § 210.10(d) of the draft regulations should be consolidated and moved to the front of § 219.10. Doing so emphasizes that this choice affects all resources on the affected land, not timber alone. The criteria in the present draft regulations follow NFMA in requiring that clearcutting be used only where it is the optimum method (219.10(d)(3)(iv)) whereas other systems, generally, need only be "appropriate" (219.10(d)(3)(i)). This material has been revised to require that *all* silvicultural systems and cutting methods should be the ones best suited for the multiple-use objectives of the area, taking into account all resources involved, together with ecological factors and soil fertility.

In addition, we feel that this section should be written so that it applies to all vegetation manipulation practices regardless of the form of the vegetation (grass, brush, trees, etc.) and regardless of whether the operations are for production of forage for livestock, trees for timber, habitat for wildlife, etc.

Our proposed wording for § 219.10(a)(2) is intended to provide such guidance in all vegetation manipulation:

"(2) Vegetation management practices. When vegetation is altered by management, the methods, timing, and intensity of the practices determine the level of benefits that can be obtained from the various resources. The vegetation management practices chosen for each vegetation type and circumstance will be defined in the forest plan with a display of the alternatives examined and the reasons for the final choices. where more than one vegetation management system will be used in a vegetation type, the conditions under which each will be used will be clearly defined. The choices will be based upon thorough reviews of technical and scientific literature and practical experience, with appropriate evaluation of this knowledge for relevance to the specific vegetation and site conditions. On National Forest land, the chosen alternative will:

(i) Be the one best suited to achieve the multiple-use goals established for the area, including consideration of all potential environmental, biological, esthetic, engineering, and economic impacts, as stated in the regional and forest plans;

(ii) Assure that forested lands can be adequately restocked within 5 years after final harvest, except where permanent openings are created for wildlife habitat improvement, vistas, recreation uses, and similar activities;

(iii) Not be chosen primarily because it will give the greatest dollar return or the greatest output of any one product or service, although these factors shall be considered. Both short- and long-term costs and benefits shall be used in economic analysis rather than immediate or short-term returns;

(iv) In meeting the requirements of *'219.10(a)(1) (ii)'* and *'(iii)'* above, give particular attention to potential effects on residual and adjacent vegetation;

(v) Avoid permanent impairment of site productivity, and assure conservation of soil and water resources in accord with *'219.10(a)(5)'*;

(vi) Provide the desired effects on water quantity and quality, wildlife and fish habitat, regeneration of desired plant species, recreation uses, esthetic values, and resource yields;

(vii) Be practical to use in terms of such factors as administration, costs of sales, transportation, and related considerations; and

(viii) Preserve and maintain species and community diversity as required in *'219.10(a)(6)'*."

(3) Openings created by cutting.—All cutting creates openings. These vary in size, shape, and proximity, depending first, of course, on the silvicultural system and cutting method, but also upon a large variety of other considerations. Examples of the latter are terrain limitations and opportunities, susceptibility to wind damage, roading costs and consequences, snow trapping for increased water yield, watershed protection and wildlife benefits, as well as regeneration of desired species. All of these and others that might be named are wholly local in their applicability. Width rather than area is often the element controlling wildlife use and regeneration of certain species.

Awareness of such diversity seems to have weighed upon the Senate Committee as it regarded public concern as will as its own discussion of the issue of clearcut size because it chose neither to establish nor to require a universal limit on maximum size. The Senate Report noted that "The size of clear cutting units had been a subject of wide public comment and Committee considerations. The Committee expects the Secretary to establish appropriate limits on size of units to be cut based on the best available scientific evidence, management plan goals, and the guides in this bill on overall decisionmaking. The Committee expects the Secretary to write specific guidelines and hold the average size of clearcuts as low as practicable". The section-by-section

analysis stated that "there are established by geographic areas, forest types, or other suitable classifications, the maximum size limits for clearcuts in one harvest operation, * * *".

The NFMA applied this requirement not only to clearcuts but also to "seed tree cutting, shelterwood cutting, and other cuts designed to regenerate an even-age stand of timber * * *" (section 6(g)(3)(F)) but again specified limits, rather than a single limit, to be based upon geographic areas, forest types or other suitable classifications.

We interpret the language of NFMA to mean: (a) Seed tree and shelterwood cutting should be subject to locally adapted maximum size limits for the same reasons clearcutting is, although the limits may well differ, and (b) to be meaningful, the limits must take account of the variety of situations in which cutting will occur. There simply is no scientific justification for establishing any single maximum (or minimum) area limit for the entire nation, nor yet for any region as a whole. In our view, the sole technical purpose of maximum size limits is as an outside safeguard against the unpredictability of natural events and on-the-ground misjudgments or excesses of zeal. That purpose is served only when the limits are made appropriate to particular sets of terrain, soil, climatic probabilities, and vegetation. A single arbitrary value, selected as a compromise, must necessarily prevent or needlessly hamper planning operations at some locations while providing wholly inadequate safeguards to more difficult or hazard-prone situations at others.

The present draft regulations require that each regiuonal plan establish maximum limits for the area to be cut in one harvest operation, according to geographical area and forest type (219.10(d)(3)(vi)). These provisions spell out no less than ten factors that must be considered in setting these limits. Furthermore, the regional plan is subject to the environmental impact statement process.

Again, we emphasize that such limits should be applied to all cutting methods under the even-age system, not to clearcutting alone.

In our opinion, this procedure, although cumbersome, agrees with the evaluation and intent of Congress, as expressed above, and provides the mandated control of cutting limits with flexibility. Paralleling our discussion of choice of silvicultural systems, we recommend that the provisions of § 219.10(d)(3) (v) and (vi) of the draft regulations be transferred to the new prosition indicated as "control of openings" in our outline (p. 98). These provisions are repeated here for clarity and to emphasize where they would fit into our revision of § 219.10:

"(3) Control of openings. when openings are created by the application of an even-aged silvicultural system:

(i) The blocks or strips cut shall be shaped and blended with the natural terrain to achieve esthetic and wildlife habitat objectives to the extent practicable; and

(ii) Individual cut blocks, patches, or strips must conform to the maximum size limits for areas to be cut in one harvest operation established by the regional plan according to geographic areas and forest types. The following factors must be considered in determining size limits by geographic areas and forest types: Topography; relationship of units to other natural or man-made openings and proximity of units; coordination and consistency with adjacent forest and regions; effects on water quality and quantity; effects on wildlife and fish habitat; regeneration requirements for desirable tree species based upon the latest research findings; transportation and harvesting system requirements; natural and biological hazards to survival of residual trees and surrounding stands; and relative total costs of preparation, logging, and administration of harvest cuts of various sizes. The size limits may be exceeded after 30 days public notice and after review by the responsible official one level above the official who normally would approve the harvest proposal. The established limit shall not apply to the size of areas harvested as a result of natural catastrophic condition such as fire, insect and disease attack, or windstorm."

(4) Protection of streams and lakes.— The concern for protection of water quality expressed in RPA/NFMA is addressed at several places in the draft regulations, as discussed in the next pages. Such protection calls for appropriate care in conduct of all management activities over entire watersheds. The strips or zones immediately adjacent to stream courses and lake margins pose particular problems, however. They often have a special importance not only to water quality but to the production of many kinds of benefits. On the one hand, such zones frequently are the most productive of timber and forage; riparian vegetation is critical to several kinds of wildlife; much recreation use is water-oriented; and the most logical and economic transportation routes may follow water courses. On the other hand, improper application of some management activities, or application without greater than normal care within these zones may damage vulnerable stream and lake margins, and degrade water quality.

The problem, then, is to find ways to reap the potential benefits from riparian strips while assuring that no management activity will "seriously and adversely affect water conditions and fish habitat" (NFMA, section 6(g)(3)(E)(iii)).

Specific region-wide prescriptions for treatment of such fixed width strips would inhibit multiple use planning, often for adjacent lands as well as for the strips themselves. Moreover, such prescriptions would invariably lead to many absurdities in application.

Accordingly, we accept the recommendation of the Forest Service Task Force on Silviculture that a strip on either side of all perennial water bodies be designated to receive special consideration in preparing the forest plan and in monitoring its effects. We concur with the Task Force's recommendation that the width of this strip be 30 meters, but emphasize that this is a wholly arbitrary value, proposed solely for administrative guidance. The interdisciplinary team must consider strips of this width but may recommend probibition of, or constraints on activities for less than the 30 meter width, or far more than this width, as particular circumstances dictate.

The purpose of the proposed language that follows is to assure intensive planning for an extremely important fraction of the forest area. No activity is specifically prohibited, but the activities allowed, and the way they are conducted, must be compatible with the values being protected.

"(4) Protection of streams and lakes. During the inventory, planning, and monitoring processes, special attention shall be given to a strip approximately 30 meters wide along both sides of all perennial streams, lakes, and other bodies of water. All management activities within these strips, such as timber harvest, road and campground location or construction, range improvements, or fish and widlife habitat modifications, will be conducted in such a way as to protect these waters from detrimental changes, in compliance with § 219.10(e) (4), (5), and (6), and to the extent that total multiple use benefits exceed costs. Such changes include increases in water temperatures or chemical composition, blockages of water course, or deposits of sediment that are likely to seriously and adversely affect water conditions or fish habitat. The interdisciplinary team will

consider topography, vegetation type, soil, climatic conditions, management objectives, and other factors in determining what activities may be performed within these strips and the constraints to be placed upon their performance in order to assure protection of water quality or other multiple use values. Documentation of the steps taken to meet this requirement shall be included in the plan as required in § 219.9(i)(5)."

(5) Conservation of soil and water resources.—A significant interest during the debate on NFMA was assuring protection of the soil and water resources on National Forest lands. Consequently, the Act expresses strong concern about protecting streams and lakes, assuring the soil productivity will not be impaired, and preventing irreversible damage to soil in the course of management and use.

The draft regulations respond to these concerns at several points. Briefly, inventories of soil and water must be maintained, with attention to special conditions and hazards (219.9(c) (2) through (4)). Analyses of capability and suitability for resource management must consider the levels of use that can be sustained with attention to situations that involve possibility of serious or irreversible damage (219.9(d)). As the interdisciplinary team formulates alternative forest plans, it must estimate their effects, including protection or possible enhancement of soil and water resources, expected changes in soil productivity and water quality and quantity, and relationships between short-term use and maintenance of long-term productivity *'(219.9(f)(1))'*. Finally, "management activities associated with each of the resources planned" must be evaluated on a schedule prescribed in the forest plan. Documentation of measured effects, including productivity of the land, is required (219.9(j)).

The foregoing apply to management of all resources. Two additional requirements (219.10 (d)(3)(D) and (d)(6)(iv)) apply specifically to timber production. A requirement for special planning attention to streamside and lakeside strips, such as proposed immediately above, would provide further safeguards for protection of soil and water at the critical meeting zone of the two resources.

These separate paragraphs represent some redundancy, responding in part to similar redundancy in the act. The separate mention throughout the sequence of inventory, planning, control and follow-up may diminish visibility to casual readers but actually insures that concerns for soil and water are integrated into planning and treat all of the secondary resources they support, rather than being single items on an environmental checklist.

Accordingly, we believe that the cited regulations, viewed in their entirety, form a comprehensive requirement that more than meets Congressional intent. These regulations are indeed open to the familar charge of lack of specificity. On the other hand, nothing would be more futile than attempting specific direction for a myriad of physical situations by regulation; and nothing would be more destructive to responsible multiple use planning than imposing a few simple textbook generalizations or rules of thumb as operational requirements.

In actual practice, maintenance of soil productivity, protection of water quality, and minimizing damage to either entails a large number of site-specific and activity-specific provisions. As a means of consolidating and making visible the numerous requirements cited above, and indicating the mechanisms for application, we propose addition of the following:

"(5) Conservatin of soil and water resources. The analysis, protection, enhancement, treatment, and evaluation of soil and water resources, and their responses under management, as required by § 219.9 (c), (d), (f), (j), and *'219.10(a)'*, will be guided by instructions in official technical handbooks. These handbooks will indicate site-specific and activity-specific practices aimed at avoiding or mitigating damage, and maintaining or enhancing productivity. They will also establish performance standards and tolerance limits for such effects as soil disturbance, erosion, compaction, nutrient losses, stream turbidity, and wetland and flood plain impacts, taking account of applicable federal and state regulations respecting water. These handbooks may be regional in scope or, where feasible, specific to geological or climatic provinces."

(6) Diversity.—The majority of land management activities have some influence on the diversity of species and communities of living organisms. Some of these influences are small and some result in significant changes in presence, abundance, and distribution. As indicated in our discussion of the diversity issue, we believe that RPA/NFMA clearly established the Congressional policy that multiple-use management shall maintain a wide variety of plant and animal species in a variety of communities on National Forest system lands. As we have also indicated, there is a great deal of public concern on this matter. Many feel that diversity alone is the key to acceptable multiple-use management. Although we disagree with this simplistic view, we nevertheless believe it highly desirable to include a section on diversity here where it applies to all land management activities. In this way, it is highly visible to the public who review these regulations, and also to the Forest Service planners who will be responsible for seeing that diversity is "provided for." We also propose that this section deal with the difficulty issue of type conversions by specifying that such conversions may be considered only when they are needed to meet multiple-use objectives and when they are thoroughly justified by appropriate analyses. Because of the importance of the type conversion issue, we suggest that the term "type conversion" be defined in 219.3.

The following language is proposed for § 219.10(a)(6):

"(6) Diversity. Diversity of plant and animal species shall be considered throughout the planning process, and in the selection of a forest plan. Inventories shall include quantitative data which make it possible to assess past and present species and community diversity (219.9(c)(2)). Each alternative considered shall include a determination of how diversity of species and communities will be affected, including discussion of changes in diversity which have taken place, and a comparison of the proposed action to this historical framework (219.9(f)(1) (vi) and (vii)). To the extent practicable the objective shall be to preserve and increase species and community diversity so that it will be at least similar to that which would be expected in an unmanaged area in the region. Reductions in diversity may be considered only where needed to meet overall multiple-use management objectives. Planned type conversions must be justified by a detailed analysis showing biological, economic, and social consequences and the relation of that conversion to natural dynamic processes."

Beyond the need to reorganize substantially the introductory language to § 219.10, other major changes must be made in the section. Section 219.10 contains language intended to meet some of the most difficult and demanding requirements of RPA/NFMA. Therefore, adequate regulations in this section are mandatory. Although the language of the draft regulations is a reasoned approach by the Forest Service to these requirements, in our opinion it often falls short of the specificity necessary to establish appropriate guidelines and standards in these

critical and controversial areas. The following sections of our report summarize our evaluation of these issues and of the requriements of the draft, and lay out our recommendations for new or additional language.

219.10(a) Fish and wildlife resource

At least six different drafts of the Fish and Wildlife section have been available for review and comment over a period of approximately 18 months. As a result the published draft appears to have general acceptance. There are two technical matters which we believe should be changed to further improve this section. These have to do with the concept of "selected species" and with requirements for coordination with the states.

The term "selected species" is introduced in § 219.10(a)(2) and used several additional times in the following paragraphs. The "selected species" concept involves identification of a number of species which are to be the focus of management activities, and which are to be monitored to determine the effects of management. These species are selected because it is never possible to manage an area so that every species will be considered. The species involved fall into two categories. Species in one group are included because of particular interest in them. Endangered species are in this group since they must be considered as primary concerns to meet the requirements of the Endangered Species Act. Species in the second group are chosen because they indicate the consequences of management on other species whose populations fluctuate in some measurable manner with the indicator species.

We do not believe the term "selected species" will be readily identified as a technical term used to characterize these very important species. To make the terminology more precise we propose the term *"management indicator species"* be used in place of "selected species" in sections (2), (3), and (6) of the fish and wildlife section. To accommodate this change and to be more specific about the concept involved, we urge the following wording be adopted in place of the present (2):

"(2) Management indicator species will be identified as concerns for planning, and justification for their selection will be given. These species shall include at least: endangered and threatened plant and animal species identified on state and federal lists for the area of the planning unit; species with speical habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; and additional plant or animal species selected because their population changes are believed to indicate effects of management activities on other speicies of a major biological community or on water quality. On the basis of available scientific information, the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species will be estimated. Where appropriate, measures to mitigate adverse effects will be prescribed."

Coordination between the Forest Service and state fish and wildlife agencies is especially important because of the traditional and legal division of responsibility. State agencies have managed the populations while the Forest Service has managed the habitats which support those populations. Legislative history of RPA/NFMA indicates that Congress clearly envisioned a close state-federal liaison in fish and wildlife management planning (Senate Report).

As we have pointed out, it would be most effective to appoint state biologists to interdisciplinary teams. It is our hope that this will be possible and that, consequently, state wildlife biologists will be appointed routinely as members of interdisciplinary teams. Should it prove necessary to use our advisory committee strategy, we certainly trust that such committees would include state biologists to ensure coordination and mutual understanding of the complex issues involved. In addition, we recommend that (3) and (6) of the fish and wildlife section be strengthened by substituting the following language:

"(3) Biologists from state fish and wildlife agencies and other federal agencies shall be invited to participate in the work of the interdisciplinary team. The forest plan shall be coordinated with the state strategic fish and wildlife plans, to the extent practicable."

"(6) Population trends of the management indicator species shall be monitored and relationships to habitat changes detemined. This monitoring shall be done in cooperation with state fish and wildlife agencies, to the extent practicable."

Consideration of diversity is important in regard to fish and wildlife. Many persons equate high diversity with wildlife abundance, community stability, and biological productivity. Therefore, the diversity requirements here may be a critical public issue, even though scientific support for such simplistic notions may be lacking. The primary diversity requirement in § 219.10(a) of the draft regulations is in (8) which requires that: "Effects of proposed changes in diversity on fish and wildlife will be evaluated." In addition (2) requires that mitigation of adverse effects will be prescribed. Subsection (2), as modified by our recommendation, also requires that effects of management activities on year-long suitability of habitat shall be related to mobility of the management indicator species. This clearly focuses attention on interspersion and juxtaposition of a variety of habitat types, and thus assures additional concern for diversity.

We believe these provisions, with those in our new § 219.10(a)(6), insure that diversity will be given consideration in planning, that steps will be considered to prevent major adverse consequences, and that variety of communities and vegetation types will be assured.

In addition, we recommend that, in the first sentence of § 219.10(a), the word "native" be added after the word "existing." Section 219.10(a) will become 219.10(b) if our proposed new § 219.10(a) is adopted.

219.10(b) Range resource

The laws governing National Forests clearly indicate that rangelands are to be considered as co-equals to forest land. The title of the RPA is "The Forest and Rangeland Renewable Resources Planning Act of 1974." The act to amend RPA, the National Forest Management Act of 1976, reaffirms the national objectives of planning both forests and rangelands for the production of multiple goods and services. While the NFMA tends to be specific in its requirements about timber harvest, silvicultural standards, and other criteria to be used in timber production, the same is not so for rangelands. We believe, however, that Congress intended that the rangelands of the National Forest system be planned with the same care as the forested areas (section 6(e)(1)) and with similar application of multiple-use, sustained-yield concepts.

The draft regulations (219.10(b)) require that the ability of the range to supply long-term grazing and browsing be determined, and that range management systems be prescribed, according to seven "standards or guidelines." These outline how productive ability of rangeland will be included in the planning process.

We believe that these regulations (1) do not provide sufficient guidelines on how such productive ability is to be determined, (2) do not adequately relate forage production to timber, wildlife, and other products from rangelands, (3) do not specify how and when successional stages may be manipulated to meet multiple-use objectives, and (4) do not emphasize that rangeland management, like timber management, directs how other resources may be used.

The current draft regulations lump the commonly accepted measurements used to determine range condition and trend into a single statement in 219.10(b)(1). It appears to us that these vegetation measurements could be incorporated into a general vegetation inventory, with increased efficiency and better integration of animal management (both wild and domestic) with timber, recreation, and other uses that affect the same vegetation resource.

It is technically possible, and we believe administratively desirable, to combine all vegetation inventories, whether for timber, range, wildlife or recreation uses, into a single survey. For the purposes of livestock and wildlife management we believe that at a minimum the inventory should determine, by defined soil units, the present vegetation and the approximate seral stage of the community, the potential plant community, the amounts of usable forage and productive plant cover, and the character or degree of soil disturbance. In addition; trend studies should be established to monitor change in the range plant communities.

We do not think it appropriate to designate specific techniques for study of range conditions and trends. At present, the possibility of uniform improved methods is being studied by three groups: An interagency task force, a committee of the Society for Range management, and a group of western university scientists. As long as the principles indicated above are followed, the Forest Service should be free to select the most appropriate method.

We believe that the regulations can be made more explicit by incorporating the concepts contained in the following alternate language, to be substituted for the present § 219.10(b):

Note.—This section will become 219.10(c) if our proposed new § 219.10(a) is adopted.

"(b) *Range resource.* Rangelands within the National Forest system will be inventoried, planned for, and managed according to the standards and guidelines set forth below:

(1) Rangelands. Each forest plan shall identify lands available, capable, and suitable for grazing and/or browsing by wild, domestic, and feral animals. The procedures and data to be acquired include, but are not limited to, the following:

(i) Range condition and trend studies conducted on each forest during the vegetation inventory as described in § 219.9(c)(2). These data will form the basis for the range management plan;

(ii) Records of actual use by domestic livestock, feral animals, and management indicator species of wildlife, and estimated percentage utilization of key forage species;

(iii) Analysis of vegetation data to determine range capability. This will consider:

(A) An estimate of the current ability of the rangelands to produce suitable food and cover for the management indicator species of wildlife;

(B) An estimate of the present supply of foreage for sheep, cattle, and feral animals; and

(C) An estimate of the potential ability to produce feed and cover for wild, domestic, and feral animals;

(iv) Analysis of range's ability to produce wild, feral, and domestic animals without permanent impairment of the resource will be based upon the condition of the vegetation, statutory and/or administrative withdrawals, characteristics of soil and slope, and accessibility to grazing and/or browsing animals.

(2) Range management systems. Management systems, including the existing system, will be considered in an alternatives analysis as required by § 219.9(f). Each alternative will meet the requirements of *'219.10(a)'* and will include consideration of at least the following:

(i) Grazing mangement systems;

(ii) Methods of altering successional stages for range management objectives, including vegetation manipulation as described in *'219.10(a)'*;

(iii) Evaluation of pest problems, and availability of integrated pest management systems;

(iv) Possible conflicts or beneficial interactions among domestic, feral, and wild animal populations, and methods of regulating these;

(v) Physical facilities such as fences, water points, and corrals, necessary for efficient management; and

(vi) Existing permits, cooperative agreements, and related obligations.

(3) Each management plan will include a mechanism for monitoring range trend in accord with the evaluation requirements of § 219.9(j).

(4) Plans shall comply with laws relating to the use of the range resource, particularly the Federal Land Policy and Management Act of 1976, the Bankhead Jones Farm Tenant Act (50 Stat. 526, as amended), and the Wild Horses and Burros Protection Act (85 Stat. 649).

(5) The economic and social impacts on small communities and the local livestock industry will be evaluated in the selection of alternatives for management."

219.10(c) Recreation resource

Although the legislative history of RPA/NFMA has few comments dealing directly with recreation, the inclusion of recreation among the multiple uses specified by Congress is a reaffirmation of intent to provide recreation opportunities.

Managing for recreation requires different kinds of data and mangement concepts than does most other activities. While recreation must have a physical base of land or water, the product—recreation experience—is a personal or social phenomenon. Although, the managment is resource based, the actual recreational activities are a result of people, their perceptions, wants, and behavior.

The draft regulations for recreation (219.10(c)) state that the Forest Service will provide for resource activities to enhance a broad spectrum of recreational opportunities. This general requirement is then followed by five "standard and guidelines."

We believe that these draft regulations are inadequate in the following respects: (1) They do not sufficiently recognize the *social* and *psychological* aspects of recreation; (2) they do not explictly provide for analysis of the effect of recreational uses on other resources, nor the effects of other uses on the quality and quantity of recreational activities; and (3) they do not show how information about recreation opportunities gained in the monitoring process required in 219.9(j) will be used.

Much of the data necessary for recreation management should be gathered during the inventory and information collection phase (219.9(c)). Some of the people-oriented data such as user identification and interests will be obtained in the identification of issues (219.9(a)) and the analysis of the management situation (219.9(d)). We recommend that specific references to recreation and its data needs be included in these sections of the regulations.

We believe the draft regulations can be improved by substituting the

following language for the present 219.10(c):

Note.—This section will become 210.10(d) if our proposed new 219.10(a) is adopted.

"219.10(c) *Recreation resource.* Management planning will provide for a broad spectrum of dispersed and developed recreation opportunities in accord with identified needs and demands. Planning will be governed by the goals of the regional plan, the general requirements of §§ 219.9 and 219.10(a), and the specific requirements of paragraphs (1) through (7) below:

(1) Each forest plan will identify the lands available, capable, and suitable for recreation.

(i) The physical and biological characteristics that make land suitable for recreation activities will be identified during the inventory process (219.9(c)).

(ii) During the analysis of issues, the recreational preferences and behavior of present user groups and those of the foreseeable future will be used to identify recreation opportunities on the National Forest and associated lands.

(2) The supply of recreational facilities to meet present and future needs in the area surrounding the forest will be appraised.

(3) Following (1) and (2) above, alternatives will be developed to provide a wide array of recreation opportunities responsive to current and anticipated user demands. The alternatives will include consideration of management need, establishment of physical facilities, and regulation of use.

(4) In formulation and analysis of alternative forest plans as specified in § 219.9(e) and (f), interactions among recreation activities and other multiple uses shall be examined. This examination shall consider:

(i) Impacts of the proposed recreation activities on other uses and values;

(ii) Impacts of other uses and activities asssociated with them on recreation opportunities, activities, and quality of experience; and

(iii) Mechanisms for mitigating any undesirable physical and social effects resulting from recreational opportunities.

(5) Development and evaluation of program alternatives under subsections (3) and (4) must be coordinated to the extent feasible with:

(i) Present and proposed recreation activities of local and state land use or outdoor recreation plans, particularly the State Comprehensive Outdoor Recreation Plan; and

(ii) Recreation opportunities already present and available on other public and private lands, with the aim of reducing duplication in meeting recreation demands.

(6) Modification of land ownership patterns to meet present and future recreation needs will be considered.

(7) The overall monitoring and evaluation program (219.9(j)) will include:

(i) Evaluation of changes in, or damage to, other resources resulting from recreation activities, and effectiveness of mitigation mechanisms developed under (4)(iii) of this subsection; and

(ii) Assessment of the adequacy of programs and activity opportunities in terms of present and future use."

219.10(d) Timber Resource

This section presents material relating to management of the timber resource. The issues dealt with here are complex and controversial. We have analyzed them throughly, and have sought assistance from various persons. Although we accept generally the proposed treatment of the timber resource in this section, we recommend greater specificity and some reorganization. This section will become § 219.10(e) if our proposed new § 219.10(a) is adopted.

(1) *Definitions*—As we have pointed out, the definitions of even-aged management, silvicultural systems, and uneven-aged management should be moved to the general definitions section (219.3). To clarify certain ambiquities that have been pointed out, we suggest the following changes:

1. "Average annual sale volume" should be defined.

2. The words "the silvicultural systems that will be used" are not part of timber harvest scheduling and should be removed from the definition.

Finally, all remaining definitions should be moved to an introductory section placed in § 219.10(d)(4).

(2) *Timber producing lands*—Section 6(k) of RPA/NFMA requires that the Secretary "identify lands within the management area which are not suited for timber production considering physical, economic, and other pertinent factors to the extent feasible, as determined by the Secretary, and shall assure that * * * no timber harvesting shall occur on such lands for a period of 10 years." Lands which are identified as unsuitable are to be reviewed at least every 10 years, and shall be returned to timber production whenever the Secretary determines that conditions have changed so that they have become suitable.

The proposed regulations contain provisions designed to implement these requirements (219.10(d)(2)). We reviewed the legislative history of RPA/NFMA regarding the marginal lands issue and the proposed rules. We believe that the rules should be substantially revised to clarify both the process used to identify lands unsuitable for timber production and to specify the economic criteria to be employed. In the following sections, we review legislative history and the proposed rules. We then propose an alternative rule with the recommendation that the principles which it embodies be included in the final regulations.

The legislative history shows that the Senate and House held differing views regarding the issue of marginal lands.

Senate bill 3091 contained very specific directions regarding an economic criterion for determining suitability. Section 6(d)(H)(iii) states:

"(iii) Identify the relative productivity of land for timber production and assure that timber production is not a management goal on lands where the estimated cost of production will exceed the economic return; *Provided,* That the estimated cost of production will include only direct timber productin costs and not access, protection, revegetation and administrative costs for multiple-use purposes * * *"

The Senate Report stated that the Committee wanted "to ensure that public funds are not invested in growing timber for commercial purposes on areas where the anticipated economic return is less than the cost of production. The Committee also declared that "it is not the intent of this bill to prevent the sale of marketable timber." Finally, the Committee declared it expected the Secretary to continue to harvest timber to achieve "other resource objectives on areas where commercial production may not be feasible."

In the House, amendments to the House version of NFMA to incorporate the Senate provisions were rejected on a voice vote in the Committee on Agriculture (House Report). Arguments against the Senate provisions included: (1) Ambiquity of the language as drafted; (2) the draft provision would foster litigation; (3) it provided excessive discretion to the Secretary in making a determination relative to what lands are marginal and the basis for making the determination; (4) difficulties in allocating benefits and costs as between all the various uses; and (5) discrimination against timber.

The Conference substitute adopted by both houses dropped the specific economic test to determine suitability of land for timber production, yet retained four significant requirements: (1) The Secretary must identify lands that are not suitable for timber production; (2) the Secretary is to *consider to the extent feasible physical, economic, or other factors,* as determined by the Secretary; (3) no timber harvesting shall occur on unsuitable lands for 10 years; and (4) lands identified as unsuitable may be returned to timber production.

The Conference Report does *not* contain any declaration of intent regarding requirement (2) above. The conferees merely stated that in making such indentification (i.e., of suitability), "* * * the Secretary need not follow the present Forest Service classifications," and that "* * * there may be other 'pertinent factors' which the Secretary may consider in making the determination regarding the suitability of lands for timber production."

Since the Conference Report is not specific regarding conferee's full intent, we are forced to infer a hypothesis on the basis of *both* what the conferees *did* say and what they *did not* say.

Rather than adopting the Senate's specific benefit-cost rule, the conferees directed the Secretary to "consider" economic factors. Moreover, the Secretary is given rather broad discretionary authority to consider "other pertinent factors," as he may determine are appropriate. At the same time, it is fairly clear that the conferees did not want the Secretary to harvest timber on lands where by some rule of reason public benefits were less than production costs. The conferees compromised by agreeing to language that avoided prescribing a specific formula for determining economic suitability, but which does appear to require a weighing of the economic consequences of investing in timber production. Moreover, in both the Senate and House, there was expectation that the Secretary might harvest timber to achieve other multiple-use purposes on areas where timber production was economically unfeasible.

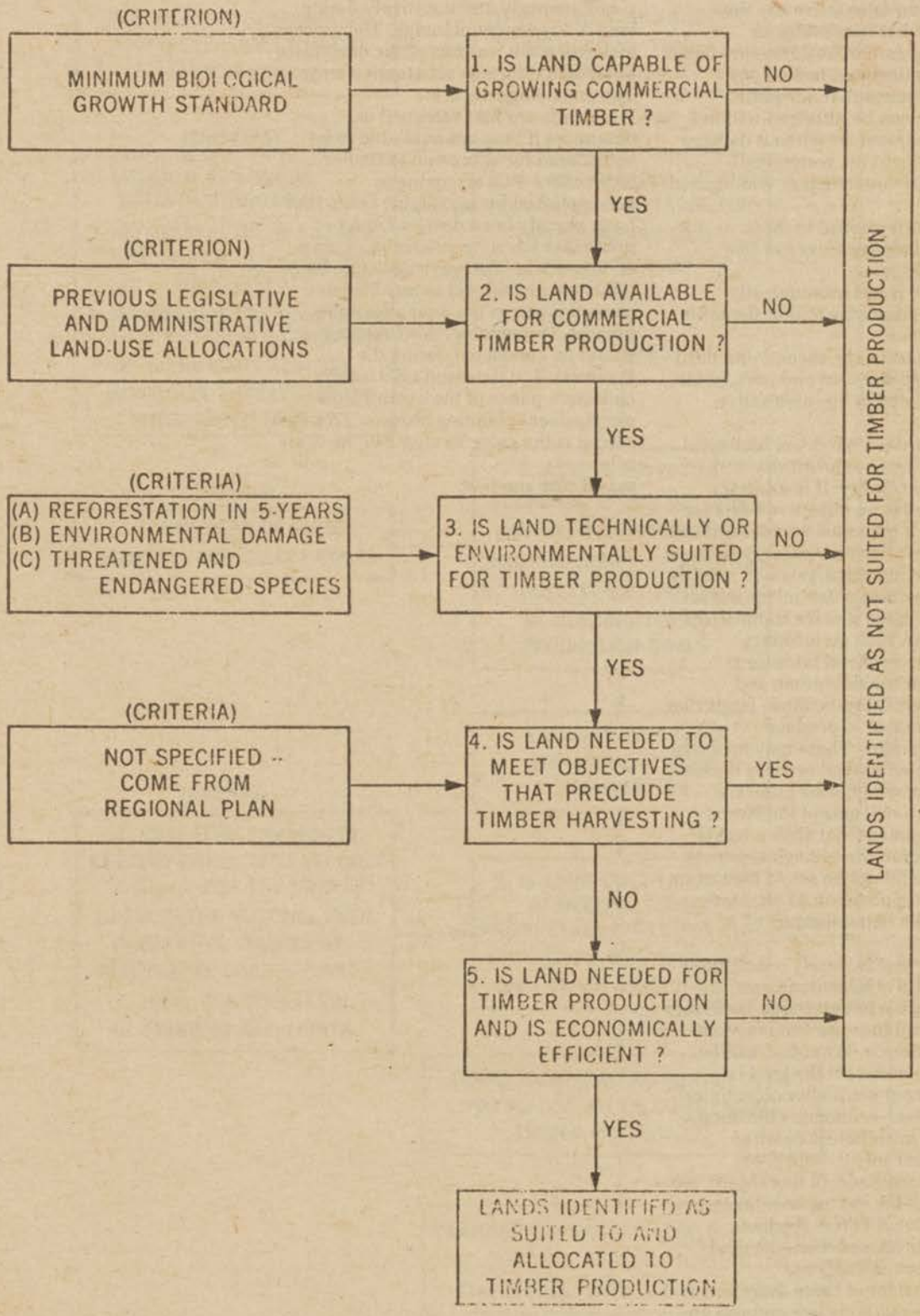
The process for identifying lands unsuited for timber production described in the draft regulations consists of 5 steps (Fig. 1). These involve questions and criteria, with each step leading to the identification of unsuitable lands. According to the draft, land is identified as unsuitable if:

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FIGURE 1

PROCESS FOR IDENTIFYING LANDS NOT SUITED FOR TIMBER PRODUCTION

DRAFT RULES



BILLING CODE 3410-11-C

1. The land's biological growth potential is less than a minimum standard (as provided in the regional plan); or

2. The land is not available for timber production because it has already been legislatively or administratively allocated to an alternative use that precludes timber harvesting; or

3. The land cannot be harvested under present or anticipated technology without assurance that adequate regeneration can be obtained within 5 years after harvest, or without damage to soils, productivity, watershed conditions, or threatened or endangered species; or

4. The land is needed to meet nontimber objectives given in the regional plan; or

5. The land is not economically efficient for producing timber (benefits less than costs).

Of these 5 tests, the second and third appear straightforward and reasonable. The are included in our alternative proposal.

The first test—a minimum biological productivity test—is arbitrary and perhaps unnecessary. It is arbitrary because there is no objective basis for establishing a minimum standard. It can be argued that it is unnecessary because a proper economic analysis will identify those lands whose potential biological productivity is too low for commerical use. However, such an arbitrary standard can be useful because it removes from consideration, and therefore from analysis, those lands that are plainly unable to produce commercial timber. There may be a cost saving in the analytical process if such lands are removed before analysis. Therefore, we will accept the Forest Service's argument that such a test is useful. However, the biological growth standard should not be set so high as to preclude the application of economic analysis to the determination of suitability.

The fourth test is merely a definition. Clearly, if land is allocated to an alternative use it is unsuitable for timber production and thus the test is not an operation criterion. What test will be applied to determine if the land is needed "to meet nontimber objectivies?"

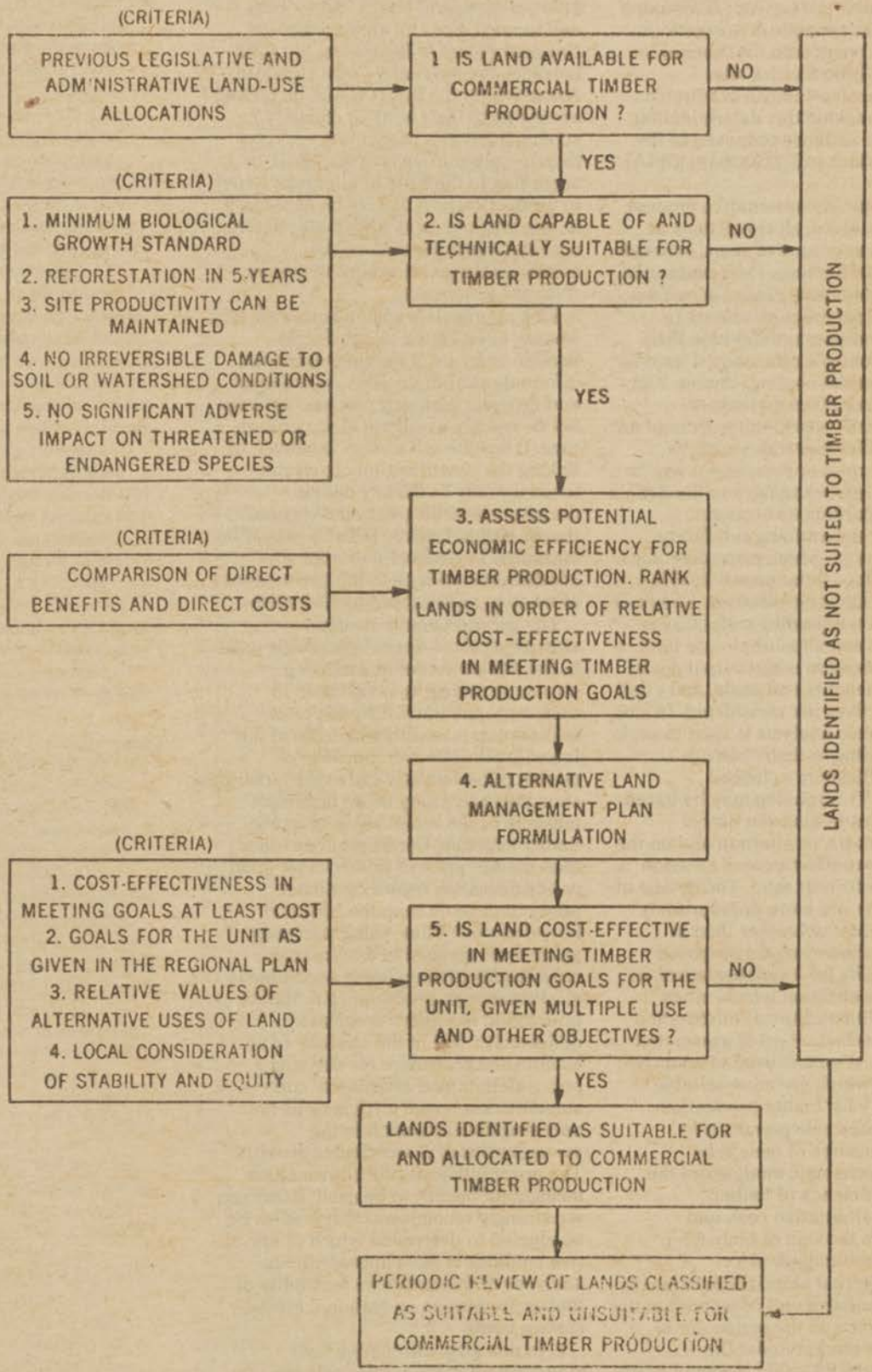
The fifth test—economic efficiency—is not stated in sufficient detail to establish either intent, policy, or analytical procedures. In this regard, we note that both the environmental groups and The National Forest Products Association proposed more detailed rules on economic analysis.

Having considered these deficiencies in the draft regulations, we propose an alternative process for identifying lands unsuited for timber production (Fig. 2). The process includes consideration of biological, technical, environmental, and economic factors, and consists of 5 steps. These are shown sequentially, but steps 3 through 5 must be conducted simultaneously and iteratively during land management planning. The process includes some features of the draft rules but it also differs in substantive ways. The main elements are:

1. Lands are first screened to determine if they are available to be considered for allocation to timber production. This screening is accomplished by identifying lands that have already been designated for nontimber use by previous legislative action or administrative decision. Such lands are not subject to any further consideration in the land allocation process. Presumably, this first step would be conducted during the inventory and data and information collection phase of the overall land management planning process. This first screen is the same as step 2 in the draft rules.

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FIGURE 2
ALTERNATIVE PROCESS FOR IDENTIFYING LANDS NOT SUITED FOR TIMBER PRODUCTION



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2. Lands that are available are next screened to identify areas that are not suitable for timber production because of physical, technical, bioligical, or environmental factors. *The minimum biological standard concept is included here.* Another example is revegetation following harvest: land that cannot be reforested within 5 years after harvesting is classified as unsuitable. Criteria for making this determination are the same as those proposed in the draft regulations in § 219.10(d)(2)(i) (A) and (C).

At this point, the alternative process departs from the draft regulations in terms of the sequence of steps, concepts, and details of the tests to be performed.

3. Lands that have passed screening tests (1) and (2) are now subject to economic analysis to determine their potential economic efficiency if used to grow commercial crops of timber. The analysis requires comparison of "benefits" and "costs" in the form of an economic efficiency index such as benefit-cost ratio or present net worth. This analysis is responsive to the Senate language regarding an economic criterion for determining suitability. However, the proposed procedure does not at this stage determine if land is suitable for timber production. The final determination regarding suitability is made in the overall multiple-use land allocation decision when output goals, secondary benefits and costs, and other policy objectives are considered. In step 3, the economic analysis is used to rank areas according to their *relative* economic efficiency in timber production. This ranking may be based on differences in long-run timber production costs, or alternatively on the basis of a cost-effectiveness criterion such as benefit-cost ratio. The details of the procedure are more appropriately specified in Manual rather than in regulations. However, the proposed regulation calls for a ranking based on an economic criterion which, when combined with additional information about the production goals associated with the forest unit, is used to identify those lands which are most suitable economically for timber production.

The proposed rule permits two different measures of benefit in conducting economic analyses of the economic efficiency of timber production: alternative cost, and receipts from the sale of timber, expressed as stumpage price.

Alternative cost standard here means the most expensive unit of wood that the National Forests in the region are to supply to the market under the disaggregated RPA goals assigned to the region. Suppose, for example, that in region X, the RPA planning process has set a timber production target of 25 million board feet and that the last 1 million board feet required will cost $100 per thousand board feet to grow and harvest. For any area within any National Forest in the region, the $100 becomes the alternative cost standard. Areas within the forest would be ranked according to their relative capacity to supply wood at a production cost less than the alternative cost standard, or according to the ratio of alternative cost to production cost. It may be necessary in most regions to establish alternative cost standards for each major commercial species of timber and for different subregions.

This approach is somewhat novel, and has not been tested by the Forest Service or by us. It requires economic information from the RPA Assessment and Program planning process that may not be readily available at the present time. It has the advantage, however, of linking the identification of suitable lands directly to the key policy decisions regarding national regional timber output targets. Benefits would be measured in terms of potential site-specific cost savings to the government of meeting regional production goals.

The second benefit measure—stumpage price—is conventionally used in the private sector in assessing economic returns to investment in timber production. Stumpage price information is readily available at the forest level. However, because of market imperfections and other factors, stumpage price may be an imperfect measure of the social value of public timber supplies. Considerations other than market price of timber enter public policy decisions regarding timber production goals from the National Forest system. Thus, using stumpage price as an element in a normative criterion for ranking areas according to relative economic efficiency in timber production is subject to serious deficiencies. Yet in the absence of an established procedure for deriving a policy-determined alternative cost-standard, stumpage price may be the only practical approach to the measurement of direct timber benefits. The proposed draft rule allows either measure of benefit to be used. However, we strongly recommend that studies be conducted to determine which of the two methods is most appropriate to analyses of the economic feasibility of timber production on National Forest system lands.

4. In this step, alternative land management plans for the unit are

formulated in accordance with requirements of § 219.9(e). This step is conducted simultaneously with step 5.

5. This step is conducted as an element of the overall land management planning process at the point where alternative plans are being developed for analysis and evaluation by the interdisciplinary team. Each alternative plan will presumably have an associated timber production target. Those lands identified as potentially economically suitable for timber use are allocated to timber harvest on a cost-effective basis (using production cost (per unit or benefit-cost criteria) to the point where the goal is satisfied. However, at this point, multiple-use objectives—that is, secondary benefits and costs of timber production—must also be considered, and as a result some lands that are cost-effective for timber use may be judged more suitable for an alternative use. Correspondingly, some lands that are apparently *not* cost-effective may be allocated to timber harvesting—that is, judged suitable—if complementary nontimber benefits are considered. The Senate committee recognized this situation in its report accompanying S. 3091: "It (i.e., the Committee) expects the Secretary to continue to utilize timber harvesting and other cultural practices to achieve the other resource objectives on areas where commercial production may not be feasible."

These decisions cannot be expresssed in a simple, technically acceptable rule, and we have not tried to do so here. Information on the secondary benefits and costs—including the opportunity cost of foregoing nontimber uses of a site—is not readily available or estimated with scientifically acceptable techniques. Under the circumstances, the best that can be done in a rule is to direct planners to (a) follow a particular process; (b) give consideration to certain specific criteria (Fig. 2), and (c) document and display the information used. Thus the proposed procedure does not lay down a specific formula for making a comprehensive benefit-cost test to determine suitability for timber, but it does clearly require a type of benefit-cost analysis with the implicit objective of classifying lands as suitable for timber use if (other things equal) direct costs are less than direct benefits, or if net benefits from timber use, including complementary benefits and opportunity costs, are positive. We believe the same type of test should apply to identifying the suitability of lands for management purposes other than timber production. Indeed, such a test is implicit in the proposed procedure.

The alternative process for identifying unsuitable lands differs from the draft regulations in the following ways:

1. It reverses the order in which economic efficiency analysis and multiple use allocations are made. In the draft regulations, an economic analysis of the suitability of land for timber production is conducted *after* multiple-use planning and apparently only for those lands *not needed* for nontimber purposes. The alternative proposed here calls for an economic analysis on *all* lands that pass screens (1) and (2) *prior to* the development of alternative land management plans.

2. It defines more specifically the type of economic analysis to be performed, and how the economic information is to be used in the land management planning process in which the final determinations of unsuitability versus suitability for timber production are made.

We have put these ideas into an alternative rule for consideration. We propose that the following language be substituted for the present § 219.10(d)(2):

"(2) Timber producing lands. Each forest plan shall identify lands available, capable, and suitable for timber production and harvesting. This identification will occur as two distinct actions in the planning process in accordance with the following guidelines and standards:

(i) In the collection and use of inventory data and information all National Forest system lands will be reviewed and lands will be identified as:

(A) Available for timber production if the land has not been legislatively or administratively withdraw from timber production; or;

(B) Capable for timber production if the biological growth potential for the land is equal to or exceeds the minimum standard for timber production defined in the regional plan or if technology is available that will insure timber production from the land without irreversible resource damage to soils, productivity, and watershed conditions, and without significant adverse impact on threatened or endangered species, and with reasonable assurance that such lands can be adequately restocked within 5 years after final harvest.

(C) Lands not meeting the requirements of (A) and (B) above will be identified as not suited for timber production.

(ii) Prior to the formulation and evaluation of land management alternatives and timber harvest schedules, lands that are classified as

available and capable for timber production shall be futher reviewed and assessed to determine their potential economic efficiency in commercial timber production in accordance with the following practices, standards, and requirements. The potential economic efficiency of commercial timber production shall be assessed by comparing the anticipated direct benefits of growing and harvesting trees to the anticipated direct costs to the government, including interest and capital investments required by timber production activities. On the basis of the assessment of benefits and costs, lands will be ranked by appropriate benefit-cost criteria to establish relative potential economic efficiency in meeting the timber production goals for the unit. Specific standards and practices for making the economic analyses required by this section are to be established by the Chief, Forest Service, in regulations which shall be effective within one year following publication in the **Federal Register** of these rules for national forest system land and resource management planning.

Provided: That in assessing benefits and costs the following principles shall be followed:

(A) Direct benefits are expressed in terms of alternative cost standards or by stumpage prices as provided by the regional plan. Alternative cost is the cost to the government of growing and harvesting the last or marginal unit of each major type of commercial timber that the National Forests in the region are to supply as provided in the current National Renewable Resource Program. In the absence of such standards, direct benefits may be measured in terms of the anticipated receipts from harvesting timber crops;

(B) Direct costs include the anticipated investments, maintenance, operating, and management and planning costs attributable to timber production activities, and any costs that may reasonably be attributed to mitigation measures necessitated by the impacts of timber production. Only the additional expenditures required for timber growing and harvesting activities, including the road system, are to be included in direct costs;

(C) The rate of interest used to discount future benefits and costs of timber production shall be equal to the rate used in the National Renewable Resources Program; and

(D) Economic analyses are based on the assumptions that the lands are managed primarily for timber production with intensity of management and degree of timber utilization determined in accordance with § 219.10(d)(4)(ii)(A). However, the practices associated with a particular intensity of management must be economically efficient. Rotation periods shall be consistent with those assumed for purposes of determining the long-term sustained yield capacity as provided in § 219.10(d)(4)(ii). Economic analyses shall consider costs and returns from conversion of existing timber inventory in addition to long-term potential yield.

(iii) During formulation of alternatives and alternative evaluation and selection, combinations of resource activities and outputs must be defined and evaluated in terms of meeting management objectives. During these actions, land that has been classified as available and capable for timber production, and has been assessed as economically suitable or unsuitable for commercial production, shall be further reviewed and allocated to the various multiple uses, including timber, outdoor recreation, watershed, range, wildlife and fish, and wilderness, to meet management objectives for the unit. During this process, land shall be identified as unsuitable for timber harvesting if:

(A) Given multiple-use and other constraints, the lands are not cost-effective in meeting the timber production goals for the alternative plan under consideration;

(B) Based on a consideration of multiple-use objectives for the area, the land is allocated to resource uses that preclude timber production; or

(C) Other joint multiple uses of the area limit timber production activities to the point where the silvicultural standards and guidelines set forth in *'219.10(a)'* and 219.10(d)(3) cannot be met.

(iv) Allocation of land, whether or not potentially economically efficient for timber production, to the various multiple uses, including commercial timber production, shall consider the multiple-use objectives for the unit specified in the regional plan, cost-effectiveness in meeting all resource use goals including timber production, relative values of the different resources and their uses, complementary relationships among the uses, regional and local stability, and such other criteria as have been determined in accordance with § 219.9(b).

(v) No timber harvesting shall occur on lands classified as not suitable for timber production during the planning period as provided under paragraphs (i) and (iii) above, except that salvage sales or sales necessary to achieve other

multiple-use objectives, such as control of insects and disease, may be made if the forest plan establishes that such actions are appropriate and that timber will be harvested in accordance with the provisions of '§ *219.10(a)*' and § 219.10(d)(3). When the plan is revised, or at least every 10 years, all lands classified as not capable, available, *or* suitable for timber shall be reviewed and where changed conditions permit, lands will be reclassified as capable, available, and suitable for timber production. Lands classified as not suitable for timber production shall continue to be treated for reforestation purposes, particularly with regard to the protection of multiple-use values."

(3) Silvicultural systems.—If definitions and general provisions relating to silvicultural practices and vegetative manipulation are moved to the beginning of §§ 219.3 and 219.10, respectively, the section relating to silvicultural systems (§ 219.10(d)(3)) will be devoted solely to specific items unqiue to timber management. Thus, the section will be reduced to an enumeration of primary controls over timber cutting activities. Our proposed substitute language for § 219.10(d)(3) is:

"(3) Controls on timber cutting. (i) When trees are cut to achieve multiple-use objectives, including timber production, the cuttings will be made in such a way as to:

(A) Assure that lands can be adequately restocked within 5 years after final harvest. Research and experience must indicate that the harvest and regeneration practices planned can be expected to result in adequate restocking. Adequate restocking means that the cut area must contain the minimum number, size, distribution, and species composition of regeneration as specified in Regional Silvicultural Guides attached to the forest plan for each forest type. Five years after final harvest means 5 years after clearcutting, 5 years after final overstory removal in shelterwood cutting, 5 years after cutting in selection cutting; and

(B) Provide a means of minimizing serious or long lasting hazard from insects, disease, windthrow, wildfire, or other natural forces.

(ii) Cultural treatments such as thinning, weeding, and other partial cutting may be included in the forest plan where they are intended to increase the rate of growth of remaining trees, favor commercially valuable tree species, favor species or age classes which are more valuable for wildlife, or to achieve other multiple-use objectives.

(iii) Timber cutting activities shall met the requirements for preserving and maintaining species and community diversity required in '*219.10(a)(6)*'."

(4) Determination of the allowable sale quantity.—Section 13 of RPA as amended by NFMA gives new statutory direction to the Secretary of Agriculture regarding limitations on timber removal from units of the National Forest System. Two key requirements of section 13(a) concern the establishment of *long-term* timber harvest levels for planning periods at least one decade in duration (and, in practice, up to thirty decades). The first directs that the Secretary " * * * shall limit the sale of timber from each national forest to a quantity equal to or less than a quantity which can be removed from such forest annually in perpetuity on a sustained-yield basis * * *" The second, however, further provides "That, in order to meet overall multiple-use objectives, the Secretary may establish an allowable sale quantity for any decade which departs from the projected long-term average sale quantity that otherwise would be established * * *" Such departures must be consistent with multiple-use objectives of the land management plan, and may be made only after public participation in the planning process. Authority to make planned departures is discretionary.

We studied section 13(a) continuously during the process of developing the proposed regulations. We requested and received several studies of timber harvest scheduling problems under the Act by consultants drawn from academic, private, and public organizations. We sought guidance as to congressional intent from Forest Service officers and others. Four issues, all addressed in the proposed regulations, emerged from this research. They are:

Issue 1. Should regulations for implementing the requirements of section 13(a) be integrated with those of section 6, which primarily relates to land management planning, or developed separately?

Issue 2. What should be the operational interpretation of the first element of section 13(a), which in a literal sense appears to put a ceiling on the amount of timber that can be harvested from a National Forest?

Issue 3. Under what conditions should the Secretary exercise his discretionary authority in section 13(a) to establish a timber harvest level greater than the amount that might otherwise be established under the ceiling provision?

Issue 4. How should the process used to establish an allowable timber sale quantity be integrated with the process for establishing the harvestable quantity or yield of all forest services (recreation, wildlife, water, etc.) from the forest unit?

Issue 1. The proposed regulations require that interdisciplinary planning teams formulate land management alternatives that include determination of the quantity of timber that may be sold for each decade during the planning period. The regulations also provide specific standards and guidelines by which such determinations will be made, and they require a planning process in which the selection of a timber harvest level is made simultaneously with the development and selection of a land management plan encompassing all multiple uses. As we understand it, *the intent of the regulation is to insure that the establishment of timber harvest schedules including ceilings and planned departures, if any are proposed, are integrated comprehensively with the planning for all forest resources.* Thus, the proposed regulations combine the requirements of section 6 and section 13 in a single land management planning process.

We believe that such an approcach is sound on technical and scientific grounds. Indeed, we believe that the requirement of section 6(b) of RPA (as amended) can be satisfied only with a regulation which includes the elements enumerated above. We therefore strongly recommend that the Secretary adopt regulations that provide for such a process.

Issue 2. We were given conflicting interpretations of the precise, operational meaning of the critical phrase" * * * equal to or less than a quantity which can be removed annually in perpetuity on a sustained yield basis * * *" One interpretation is that the planned harvest and sale of timber may fluctuate upward or downward from decade to decade provided that it does not exceed a ceiling level equal to the long-term sustained yield capacity of a forest with a balanced age-class (or tree diameter class) distribution. In our view, the meaning is consistent with the grammar used in section 13(a) and with the meaning of the term "sustained yield capacity" as commonly found in forestry literature. However, various individuals and the Forest Service hold the view that section 13(a) mandates the nondeclining yield harvest policy first promulgated by the Forest Service in 1973 in Emergency Directive 13. Under this policy, the allowable sale quantity in the first decade of a multi-decade planning period is limited to a quantity

no greater than the amount that could be sustained for the whole period. In application, the planned harvest quantity might rise over that established for the first decade of the planning period, but a harvest schedule that features an unsustainable quantity for the first decade is considered unacceptable and is rejected from any consideration.

We recognize that interpretation and implementation of section 13(a) involve fundamental legal and policy considerations that go beyond those special, narrow functions which Congress assigned us in section 6(h). Yet it was not possible to give effective advice regarding an interdisciplinary approach to planning for forest resources, including timber, without at the same time giving counsel regarding the regulations for implementing section 13(a). We therefore worked with Forest Service staff to develop regulations which jointly address issues 2 and 3.

With respect to issue 2, the proposed regulations require that the interdisciplinary planning team establish for *each* land management alternative: (1) An estimate of a long-term sustained yield capacity and (2) *a base timber harvest schedule* that constrains planned harvests to nondeclining yield levels. In western National Forests, where timber harvest levels are of great importance, the calculated allowable harvest under the base timber harvest schedule may be less than long-term sustained yield capacity if the present forest is substantially understocked, or it may be greater if present stocks are greater than the quantity needed to meet long-term sustained yield objectives. In any case, if the base timber harvest exceeds the long-term sustained yield capacity, justification for such a departure must be provided as described below. Furthermore, any timber harvest schedule formulated as an alternative to the base schedule must have the capacity to eventually reach long-term sustained yield capacity. Specific rules are provided to govern the calculations.

The proposed regulation therefore incorporates the second interpretation of section 13(a) as described above, and refers to it as the "base timber harvest schedule." In a strict technical sense, the proposed rules for calculating the base timber harvest schedule are not precisely equivalent to the computational techniques currently used by the Forest Service to implement its nondeclining yield policy. Under present practice, harvest levels are permitted to fluctuate upward or downward during the postconversion period. In contrast, the proposed regulations stipulate that in the base timber harvest schedule the planned sale and harvest for any future decade must equal or exceed that in the previous decade, provided the ceiling is not exceeded.

The effect of the proposed draft regulation on timber harvest levels is difficult to predict because many factors other than harvest scheduling policy are involved. However, other things being equal, the base timber harvest in the first decade of the planning period under the proposed regulation will probably be less than what would otherwise be calculated under present practice.

Issue 3. Section 13(a) does not stipulate the conditions under which harvest ceilings may be exceeded except by general reference to multiple-use objectives. Again, we were given different interpretations of Congressional intent. One view is that Congress intended the departure provision to be exercised as an exception to the base timber harvest level only under extraordinary conditions, such as a national emergency. Others argue that Congress intended the Forest Service to adopt a more flexible approach to harvest scheduling than would otherwise be the case under nondeclining yield, but to make departures only to achieve specific objectives on particular forest units and after following an orderly planning process with full public participation.

The proposed regulation reflects the second of these two views. Specifically, it requires that alternatives (departures) to the base timber harvest schedule be formulated and considered when certain specific conditions exist in the forest unit or local area. These alternatives are to be developed for *each* land management plan under consideration, and are to be designed under the same standards as applied to the base schedule. *All harvest schedules, including proposed departures from the base schedule, must be calculated under the constraint that long-term sustained yield capacity can be achieved at the end of the planning period.* All harvest schedules are to be subjected to comparative evaluation in conformance with the requirements of NEPA. In these evaluations, the volume expected from the base timber harvest schedule is used as the standard. The selected harvest schedule may be either the base schedule or one of the alternatives, but in any case must be supported with accompanying justification and is selected simultaneously with the land management plan with which it is associated. These provisions are to be applied to each forest unit on a case-by-case basis. Thus, in application, some forest units may select an alternative involving a departure while other units will select the base schedule corresponding to nondeclining yield.

It is important to note that the proposed regulation requires only that departures be *formulated* and *considered* under the conditions specified in § 219.10(d)(4)(iii). Although many persons have criticized the regulations as requiring departures from the base schedule, *no such language appears in the draft.* The only requirement is that departures be considered when certain trigger conditions occur. Departures may be made if these conditions exist, but they are not required and must be justified when proposed. Each of these triggers can be traced back either to NFMA or to its legislative history. The second (B) is found specifically in language in the Conference Report which states that section 13 of NFMA "gives the Secretary discretion to vary the allowable sale quantity where he determines that so doing would meet multiple use management objectives and would be consistent with the basic directives of the Multiple-Use Sustained-Yield Act of 1960. The Conferees understand that the Secretary may choose to exercise this discretion for a number of reasons, including, but not limited to, such things as the desirability of improving the age-class distribution on a forest to facilitate future sustained yield management, or the desirability of reducing high mortality losses." The first (A) and third (C) can be tracked back to the economic provisions of sections 6(a) and (g) of NFMA, and (C) is described as one of several multiple-use considerations discussed by Senators Humphrey and Hatfield in a colloquy during the September 30, 1976, Senate debate on the conference report.

We believe that the draft regulations which deal with these fundamental, sensitive issues in public land management are technically sound, capable of implementation at the forest level, responsive to optimum multiple use of resources in a dynamic society, and consistent with the specific wording of section 13(a). The rules provide flexibility in establishing timber harvest quantities to meet specific objectives, and at the same time insure achievement of sustained yield, as required by the Multiple-Use-Sustained Yield Act of 1960.

We do not believe that application of the departure provisions poses any threat of overcutting a National Forest, since any proposed departure must have

demonstrated potential to achieve long-term sustained yield capacity. On the other hand, in some cases we believe substantial public benefits could result from planned, controlled departures, and that where the public benefits are compelling, such departures should be made. It should be emphasized that departures may be either upward or downward relative to the base schedule, depending upon the specific objectives sought. None can be made without comparing benefits and costs, considering environmental impacts, and seeking public participation in the planning process. The proposed approach and planning process in essence merely applies the principles of the National Environmental Policy Act of 1969 to the unique problem of establishing timber harvest quantities on the National Forests.

We recommend adoption of the principles contained in the draft regulations as they pertain to timber harvest quantities. However, because of the controversial nature of this section, and because of the misunderstandings that seem to attend the draft language, we further recommend changes in the draft regulation. First, we recommend that a statement of basic policy with regard to timber harvest scheduling be included in the regulation. Second, we recommend some changes in the introductory language to § 219.10(d)(4)(iii) to make clear that departures from the base schedule and the planning required for them are discretionary. Finally, we recommend that the authority for approving any departure above the base timber schedule lie with the Chief of the Forest Service and that this be stated in the regulations. Moving the authority for such decision to the Chief will, in our opinion, assure careful consideration and public discussion of a proposal for departure above the base schedule.

Issue 4. The proposed regulations visualize a planning process in which a base timber harvest schedule and alternatives to it are developed for *each* alternative land management plan under consideration for the forest unit. Under this approach, the land management plan and harvest schedule are selected simultaneously, with the same public participation requirements, and in the context of a joint environmental impact statement. As an alternative, it has been suggested that proposed departures from the base timber harvest schedule be developed and considered only after a preferred land management plan (and its associated base timber harvest schedule) is selected. Presumably, this approach has the merit of reducing both the cost and complexity of the planning process. We have considered this issue and recommend adoption of the procedure in the proposed regulations. The extra costs of examining departures from the base schedule under each alternative land management plan will be negligible. Moreover, the feasibility and effects of departures will in part be determined by the nature of the land management plan itself, and should be considered in the process of selecting the preferred plan. Furthermore, it requires only one round of public participation activities and preparation of environmental impact statements, whereas the other alternative would require two rounds. Finally, we find language in the Conference Report (p. 28) that states that the conferees anticipate "that the amount of timber to be harvested from any National Forest system lands shall be determined only through the process of preparing land management plans * * *." It seems clear to us that Congress intended this fundamental decision to be made as an integral part of the planning process and not as an appendage to it.

In light of these comments, we recommend the following additions and changes in § 219.10(d)(4):

1. Revise the introductory paragraph of § 219.10(d)(4) to read as follows:

"(4) Determination of the allowable sale quantity. The elements of this section are a statement of policy with respect to the determination of the quantity of timber to be sold from a National Forest. The elements of this policy are described in the following process. The interdisciplinary team shall formulate alternatives that include determination of the quantity of timber that may be sold during the planning period. These determinations must be based on the principle of sustained yield and consider only those lands capable, suitable, and available for timber production which meet the constraints set out in *'219.10(a)'* and 219.10(d)(3). For each management alternative, the determination must include a calculation of the long-term sustained yield capacity and the base harvest schedule and, when appropriate, a calculation of timber harvest schedule alternatives that may depart from the base harvest schedule as provided in paragraphs (i) through (iii).

2. Revise the introductory language to § 219.10(d)(4)(iii) so that it reads as follows:

"(iii) Departures from the base harvest schedules will be forumlated, considered, and subjected to comparative analysis as part of the planning process when any of the following conditions occur:"

3. In § 219.10(d)(4)(iii)(A) insert the words "multiple-use" between the words "meet" and "objectives."

4. In § 219.10(d)(4)(iii)(B) add at the end "or by preventing and reducing high mortality losses from any cause."

5. In § 219.10(d)(5) following the third sentence add the following: "If the selected harvest schedule is not the base timber harvest schedule or in any decade exceeds the calculated long-term sustained yield capacity for the forest unit, the land management plan shall be transmitted to the Chief, Forest Service, for approval. The Chief shall review the selected harvest schedule, and take one of two actions:

(i) Approve the selected harvest schedule, and attach to the associated land management plan a statement documenting approval; or

(ii) Disapprove the selected harvest schedule, and return the land management plan to the Regional Forester with a written statement of the reasons for such disapproval.

(6) Control measures.—We recommend adoption of this section with the following addition:

"(v) Timber harvest cuts using any system do not create a situation favorable to abnormal increase of injurious insects and diseases."

(7) Monitoring.—We recommend adoption of this section with the following addition:

"(iv) Destructive insects and disease organisms do not increase following management activities."

219.10(e) Water and soil resources

We have few comments on this section. We do feel that, since virtually all of the language in the section relates to water, the title of the section should be changed to "Water." Furthermore, the extensive provisions for protection of the soil resource throughout the regulations (as we have revised them) should, in our opinion, provide assurance of protection and wise management of this resource. This section will become § 219.10(f) if our proposed new § 219.10(a) is adopted.

219.10(f) Wilderness resource

Wilderness is recognized in NFMA (section 6(e)(1)) as one of the resource uses that must be provided for in preparing plans for units of the National Forest system. In addition, the planning regulations must insure consideration of the "economic and environmental aspects of the various systems of renewable resource management * * * to provide for outdoor recreation (including

wilderness) * * *." Beyond these general statements the act provides no further guidance concerning wilderness. It does seem clear, however, that Congress did intend for wilderness potential to be considered in the development of land management plans. As we have stated earlier (p. 15), we consider the RPA/NFMA planning process to be a rational way to deal with the difficult issues concerning wilderness. It is also important that wilderness be adequately considered in planning so that important portions of our natural heritage can be protected, not only for purposes of preservation sake, but for their importance to research and education.

The draft regulations treat, but do not fully resolve, two difficult issues regarding the wilderness resource. The first is identifying and appraising additional candidate areas to be proposed for detailed study or formal Congressional designation as Wilderness Areas. The second is establishing maximum allowable levels of use for each Wilderness Area. The introductory language to § 219.10(f) in the draft regulations, however, speaks entirely about management planning and not at all about identification of additional candidate areas. A third issue not treated is the intensity of management that should be practiced in any given wilderness area. This matter is not treated in the draft regulations. We agree with this omission. We feel that intensity of wilderness management should not be covered in regulations because flexibility is needed to develop appropriate management strategies. Recent experience, including the Eastern Wilderness Act, shows that areas that have previously been exploited by man are being designated as wilderness. Forest Service land managers should be allowed the flexibility to incorporate new technology and new concepts in managing the wilderness resource.

In light of these above comments, we recommend that the introductory language to section (f) be revised as follows:

Note.—This section will become § 219.10(g) if our proposed new § 219.10(a) is adopted.

"(f) Wilderness resource. Each forest plan will evaluate the wilderness resource present and, when appropriate, recommend areas for wilderness designation. In addition, each plan will provide management planning for lands which are designated units of the National Wilderness Preservation System and for lands specifically designated for wilderness study by Congress or recommended by the administration for possible inclusion in the system. The requirements set forth in paragraphs (1) through (4) shall apply to all forest plans.

Paragraphs 219.10(f) (1) through (3) of the draft regulations provide direction for identifying areas of potential value as designated wilderness, at each revision of the forest plan. We find certain deficiencies in the wording. First, (2) is unclear and seems to constrain consideration of potential wilderness to certain lands, largely those which have previously been recognized as having wilderness potential. We feel that all potentially eligible lands should be considered at each revision of the forest plan, regardless of their past history of consideration. Second, because wilderness designation involves elimination of other management opportunities, there should be a requirement that the planning process weigh relative costs and benefits in this, as in other, resources.

Criteria employed in the current RARE II (Roadless Area Review and Evaluation), moreover, dominate § 219.10(f)(3) and the RARE II process itself preempts any immediate action at the level of forest planning. Hence the cited paragraphs are aimed at an uncertain future date. It seems certain that new criteria and priorities will emerge as total acreage in the National Wilderness Preservation System grows. Thus we believe that the planning process would be served better by requirements to develop appropriate criteria from time to time, with public participation, rather than embedding the RARE II criteria in regulations.

Therefore, we recommend the following wording to replace paragraphs (2) and (3) of § 219.10(f):

"(2) At least at 15-year intervals, the lands within the forest meeting the criteria of the National Wilderness Preservation Act of 1964, will be evaluated and considered for recommendation as to future status. The areas to be evaluated will include:

(i) Existing wilderness and primitive areas;

(ii) All previously inventoried wilderness resources not yet designated;

(iii) Areas contiguous to existing wilderness, primitive areas, or administration-proposed wildernesses, regardless of agency jurisdiction;

(iv) Areas, regardless of size, that are contiguous to roadless and undeveloped areas in other federal ownership that have identified wilderness potential; and

(v) Areas designated by Congress for wilderness study, administration proposals pending before Congress, and other legislative proposals pending which have been endorsed by the administration.

(3) Each area designated for examination under subsection (2) above will be evaluated either in terms of current national guidelines or, in their absence, by criteria developed by the interdisciplinary team with public participation. In the latter case, the criteria must consider as a minimum:

(i) The values of the area as wilderness;

(ii) The values foregone and effects on management of adjacent lands as a consequence of wilderness designation;

(iii) Feasibility of management as wilderness, as in respect to size, nonconforming use, and land ownership patterns;

(iv) Proximity to other designated wilderness, and relative contribution to the National Wilderness Preservation System; and

(v) The anticipated long-term changes in plant and animal species' diversity and in diversity of natural communities of the National Forest and the effects of such changes on the wilderness system."

Maintenance of the unique opportunities for research, education, and human enjoyment of wilderness plainly depends on minimal evidence of man an his works, and minimal damage by users. Yet already the wild quality of some portions of some designated Wilderness Areas is being degraded by excessive human activities. Managerial options available to prevent or repair such over-use are essentially only two: (1) Diversion of visitors to less heavily used portions or corridors of an area; or (2) restrictions on number of visitors, or the duration and condition of their visit. The first option deserves continuous study but physical features of the area will often limit its applicability. Both this and the second option, limitations on visitors, should be applied before damage is generally evident or before "wilderness experience" attributes for visitors are impaired.

Paragraph 219.10(f)(4) specifies particular attention to determining when visitors use "must be held to levels that allow natural processes to operate freely * * *". In practice, this latter provision might well place exclusive emphasis on visable physical damage, rather than on its early manifestations or impaired quality of visitor experience. It may also entail reacting after degradation or impairment is apparent, with the then difficult task of reducing established levels and patterns of use. A sounder alternative would be to estimate tolerable limits of use, or "carring capacity," in advance and to regulate visitor numbers accordingly.

This approach obviously parallels the use of carrying capacity for range and wildlife resources, and the "allowable cut" in timber management. Although methods for determining "carrying capacity" of wilderness are not well advanced at this time, we believe reasonable and objective estimates can be made and frequently updated as experience grows. Such estimates would facilitate planning in advance to avoid or mitigate impairment of the paramount values for which Wilderness Areas were designed by Congress.

Accordingly, we recommend that § 219.10(f)(4) specifically require estimates of such "carrying capacity" for each Wilderness Area or selected portions within, and use of these estimates in planning wilderness management. The following wording would accomplish this:

"(4) The forest plan must provide direction for the management of designated wilderness and primitive areas. In particular, it must:

(i) Provide for limiting and distributing visitor use to a level equal to or less than carrying capacity, defined as the maximum level of use that will allow natural processes to operate freely, and that does not impair the values for which wilderness areas were created; and

(ii) Evaluate the extent to which measures against wildfire, insects, and diseases may be desirable for protection of either the wilderness or adjacent areas, and provide for such measures when appropriate."

Other resources to be treated in § 219.10

Several reviewers of the draft regulations have pointed out that they contain no real provision for consideration of *mineral resources.*[9] Although the "location and extent of existing mineral claims, and known and potential mineral deposits" is one of the informational requirements of § 219.9(c)(3), the regulations provide no real direction for consideration of mineral resources in the land allocation process.

This fact can be traced back to the RPA itself which stresses only the renewable resources (timber, wildlife, water, wilderness, recreation, range) and to section 1 the Multiple Use-Sustatined Yield Act which states that "Nothing herein shall be construed so as to affect the use or administration of the mineral resources of national forest lands * * *" Furthermore, existing Forest Service regulations (Part 252) and other federal laws and regulations govern claims, leasing and extraction on National Forest lands. It can therefore be argued that the subject of mineral resources lies outside the jurisdiction of these regulations.

We feel, however, that minerals must be taken into account during the planning process. There is little logic to deciding the allocation of National Forest lands for various purposes without attention to all reasonably foreseeable uses, which in some forests include recovery of minerals. We suggest a section added to § 219.10 to specify inclusion of minerals in the land allocation process and to insure consideration of mineral recovery as a legitimate use of National Forest land. This section should be appropriately cross-referenced to other sections of the Forest Service regulations (e.g. 252), and those of other agencies, dealing with mineral resources on National Forest land. Because of our limited expertise in the area of minerals, we cannot recommend any language. Several detailed suggestions have been submitted through the public comment process, and we suggest that these contain the basis of an appropriate treatment.

There is, likewise, no treatment of the *visual resource* in the draft regulations. Various commentators have pointed out this dificiency, and we agree that visual and esthetic considerations should be acknowledged in the final regulations. Esthetic resources and impacts are mentioned specifically in NFMA only in section 6(g)(3)(F) and then only as considerations in applying and carrying out even-aged management. The current Forest Service manual contains direction for incorporating visual and esthetic considerations into management practices. Such material could serve as the basis for brief general guidance in the regulations. Therefore, we recommend that a guideline expressing concern for visual or esthetic resources be added as one of the general standards applicable to all management systems as described in our recommended new *'219.10(a)'*. Because of our lack of expertise we will not propose specific language.

219.11 Research

We combine our analysis of monitoring, research, and control because of the close relationship between research and monitoring activities, and because NFMA treats these subjects together. Our comments should be read in context with our general discussion (p. 33) and our discussion of § 219.9, particularly as these discussions relate to subsection 219.9(j) which deals with monitoring.

The NFMA provides a non-specific charge with respect to monitoring, as noted on p. 21 of our report. Otherwise, research and monitoring are called for at only one point (6(g)(3)(C)) and then only in a particular context: "The regulations shall include, but not be limited to * * * (3) specifying guidelines for land management plans * * * which * * * (C) insure research on and (based on continuous monitoring and assessment in the field) evaluation of the effects of each management system to the end that it will not produce substantial and permanent impairment of the productivity of the land."

The Conference Report, which developed this language from the previous Senate draft clarified its purpose and stated that, "The conferees intend that such research and evaluation will be done on a sample basis for each management system." The earlier Senate committee consideration (Senate Report) had expressed its intention that there be "an overall program of on-the-ground monitoring and evaluation, coupled with research," to insure sound management. "If research or evaluation established that a management system or method is producing impairment of the productivity of the land, such system or method will be modified or discontinued" * * * Particular mention was made of "nutrient degradation" of forest soils as a matter requiring attention.

It is clear that Senate committee members and the conferees intended on-the-ground research to insure that the methods of forest management, of themselves, would not lead to substantial and permanent impairment of productivity.

The draft regulations address this intent somewhat obliquely, going far beyond it in major respects but relegating eventual decisions on basic research to the research branch of the Forest Service.

Monitoring and evaluation are established as an integral part of the planning process in § 219.9(j) of the draft regulations. Moreover, they provide for feedback from the required evaluation reports to modify management direction or the forest plan itself if "forest goals and objectives" are not being met on an environmentally sound basis. Thus monitoring and evaluation are made part of an overall control loop which is independent of day-to-day operational

[9] The terms mineral resources and minerals are used in their broadest sense to include both hardrock minerals ("locatables" such as gold, silver, copper, etc.) covered by the Mining Law of 1872, on public domain lands and minerals covered by the Mineral Leasing Act of 1920,) "leasables" such as coal, oil, gas, etc.) on all federal lands.

activities, but concerned with their ultimate effects on the ground.

These are key provisions. Not only do they meet the congressional requirements for discontinuing operations and systems that impair productivity, damage water resources, or fail to insure restocking, but if taken seriously they establish a formal system of surveillance and evaluation of on-the-ground impacts of management over time. This seems particularly useful in view of the short tenure of many district rangers and supervisors in particular offices, relative to the time often required to reveal the environmental consequences of inappropriate action. Section 219.9(j) of the draft regulations specifically refers to "management activities associated with each of the resources planned * * *" It is further buttressed, with respect to timber harvest, by requirments under § 219.10(d)(6) (Control measurement) of the draft regulations. The applicability of 219.9(j) is reiterated in our proposed management guidelines for all resources *'(219.10(a))'*, range (219.10(b)), and recreation (219.10(c)). The effectiveness of these provisions in practice is likely to depend as much on administrative arrangements for timely field evaluation and prompt reaction to it, as on funding for monitoring itself. The additional costs for the prescribed monitoring itself, however, will be substantial.

The foregoing provisions do not, however, address the matter of research on long-term effects of management systems—the concerns which underly section 6(g)(3)(C) of NFMA. Instead, paragraphs 219.11(a), (b), and (c) of the draft regulations call for identifying research needs during the initial process of planning and in subsequent evaluation. These expressed needs are to be included in formulating overall programs of research. Section 219.11(b) provides that input from all planning levels of the National Forest system will determine research priorities of the research station and national level.

Hence, § 219.11 entails a far more general view of research needs, and is a less direct, or seemingly diffuse, approach to meeting them than is required by section 6 of NFMA. The evident reason for this indirection is that the research branch of the Forest Service, including the forest experiment stations, is separate from the National Forest system and must also serve the research needs of other public and industrial and nonindustrial forest lands. Its activities are neither directed nor funded by any provision of NFMA.

As a matter of record, however, the ecological and soil impacts of timber management systems, including nutrient losses and removals, were being investigated at the Forest Service forest experiment stations even when the Senate Committee expressed its concern. These investigations continue. Thus the specific intent of 6(g)(3)(C), as revealed by its history, is already being met.

Nevertheless, the interdisciplinary teams charged with detailed planning of multiple use management will encounter may critical shortages of information, especially in respect to new approaches, and noncommodity resources. Integrated management of pests—which include insects, microorganisms and weeds—fire management, recreation management, and wilderness management are evident examples. This lack is especially acute because our expectations, our awareness of the detailed knowledge developed in other branches of science, far outrun both available information and the present pace of research in natural resource management. It is likely such lack of information will frustrate some of the best intentioned planning efforts or perhaps force cut-and-try, efforts that will place excessive burdens on the monitoring and evaluation system indicated above. We believe that paragraphs 219.11(a)–(c) should be amplified or phrased more strongly, to make clear how the research essential to implementation of the multiple use objectives of the NFMA will be identified. Regulation language, however, obviously is no substitute for the additional total research support that will be necessary.

We are aware that the problems and delays encountered in moving new research findings into application are probably more severe than in agriculture. These difficulties stem in part from lags in communication and understanding, since forestry has no parallel to agriculture's extension service despite a similar total land area to be managed. An equal source of difficulty is that the feasibility and practicality of much forest land management research can be tested only through long-term results from full-scale application. This calls for a pattern different from the conventional research and development model of test tube to pilot plant to operational use. The "technology transfer" study currently conducted by State and Private Forestry branch of the Forest Service is attempting to develop such patterns. At the same time, the information requirement for selection of the silvicultural system (219.10(d)(3)(ii)) of the draft regulations, carried over in our proposed *'219.10(a)(2)'*, coupled with the required identification of research needs or information failures revealed during the evaluation of management effect (219.9(j)) as specified below should facilitate the flow and use of applicable research results.

In light of these comments, we recommend that the following section be substituted for the present § 219.11:

"219.11 Research

(a) Research needs for management of the National Forest system will be identified during the planning process and reviewed subsequently on a continuing basis through evaluation of implemented plans. Research needs identified during planning will be forwarded through administrative channels to the office of the Chief, Forest Service, and shall become part of the annual report described in (c) below along with a description of the active and proposed research program addressing these needs.

(b) Particular attention will be given to the results of the monitoring and evaluation efforts conducted under § 219.9(j). If these efforts identify management systems or practices that are not successfully meeting stated objectives, or are resulting in substantial and permanent impairment of the productivity of the land, as a result of inadequate information or technology, the research needs identified will be immediately forwarded to the Chief, Forest Service, for subsequent action by the management of Forest Service research activities.

Identified needs will be included in formulating overall programs involving research needs on other public lands and on industrial and nonindustrial private lands. The research priorities for management of the National Forest system will be established and budgeted at the research station and national levels based on input of the National Forest system at all planning levels with due consideration to problems and opportunities identified in (a) above and through the results of the monitoring and evaluation process described in § 219.9(j).

(c) An annual report at the national level will include, but not be limited to, a description of the status of major research programs, significant findings, and how this information is to be applied in National Forest system management."

219.12 Transition period

The wording of this section of the draft regulations has been available for comment for over a year. There have

been few comments raised about it at any of our meetings. We therefore conclude that the section is probably adequate to govern the complex set of circumstances that will occur between the time when the first forest plans are completed and September 30, 1985, when all such plans must be completed. We suggest, however, that this section be carefully re-examined to determine if it is adequate to allow the Forest Service to operate a National Forest on its existing management plan until a fully completed plan approved under these regulations is in force.

Provision for Revision of the Regulations Themselves

As mentioned earlier, we believe that the regulations which govern the planning process should be subject to regular re-examination and revision, if appropriate. Such provision would serve two purposes. First, it would make clear to all parties that no aspect of the planning process is immutable and that procedures that now may be controversial, or based on partial knowledge, can be revised in the light of experience and new findings. Further, it would allow for adjustments to new technology, both in planning and in resource management practices.

We propose the following new section to appear at the end of the regulations:

" '219.13' Revision of regulations

These regulations shall be subjected to regular review and, when appropriate, revision. Such review and revision may occur whenever it is deemed necessary, but the first such review shall be completed no later than 6 years after the approval date of these regulations. Additional reviews shall occur at least every 5 years thereafter. The Secretary shall consider the use of a Committee of Scientists to assist in this review and revision. The committee shall not be the same as the one that participated in drafting the initial set of regulations. It shall operate in the manner provided in section 6(h) of the National Forest Management Act of 1976. The process of revision shall take place with full opportunity for public participation. Such public participation shall be generally similar to that required in these regulations for regional planning (§ 219.8).

Full Draft of Regulations Proposed by the Committee of Scientists

The following material is a draft of the full regulations for National Forest System Land and Resource Management Planning which incorporates all additions, deletions, and wording changes proposed by the Committee of Scientists.

PART 219—PLANNING

Subpart A—National Forest System Land and Resource Management Planning

Sec.

219.1 Purpose.
219.2 Scope and applicability.
219.3 Definitions.
219.4 Planning levels.
219.5 Interdisciplinary approach.
219.6 Public participation.
219.7 Coordination of public planning efforts.
219.8 Regional planning.
219.9 Forest planning procedure.
219.10 Forest planning process.
219.11 Resource management standards and guidelines.
219.12 Research.
219.13 Revision of regulations.
219.14 Transition period.

Authority. The provisions of this subpart are issued pursuant to sections 6 and 15, 90 Stat. 2949, 2952, 2958 (16 U.S.C. 1604, 1613); and 5 U.S.C. 301.

§ 219.1 Purpose

These regulations set forth a process for the development, adoption, and revision of National Forest System land and resource management plans in accordance with the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended. The environmental impact assessment process established by the National Environmental Policy Act of 1969, is contained within this land management planning process. General resource management standards and guidelines which apply to specific renewable resources are set forth in this subpart. These regulations describe how land and resource management planning shall be conducted on National Forest System lands. The resulting plans will provide for multiple use and sustained yield of products and services from the National Forest System. Plans guide all natural resource management activities. They determine forest management systems, harvesting levels and procedures under the principles of multiple use and sustained yield, and the availability and suitability of lands for resource management. All levels of planning will reflect the following principles:

(a) Balanced consideration of all renewable resources and their various uses;

(b) Establishment of goals and objectives for the sustained yield of products and services without impairment of the long-term productivity of the land;

(c) Protection of and, where appropriate, improvement of the quality of soil, water, and air resources;

(d) Preservation of important historic and cultural resource aspects of our national heritage;

(e) A systematic interdisciplinary approach;

(f) Coordination with the resource planning efforts of state and local governments, other federal agencies, and Indian tribes;

(g) Early and frequent public participation;

(h) Responsiveness to changing conditions of the land and desires of the American people;

(i) Provision for the safe use and enjoyment of the forest resources by the public; and

(j) Protection and preservation of all forest resources from depredations by forest pests by ecologically compatible means.

§ 219.2 Scope and applicability

These regulations apply to all lands of the National Forest System. Any area within the National Forest System subject to acts of Congress which are more specific than the Forest and Rangeland Renewable Resources Planning Act, as amended, such as the Wild and Scenic Rivers Act, National Trails System Act, Wilderness Act, national recreation areas acts, and other similar statutes specifically designating lands for particular uses, also are subject to the general provisions of the Forest and Rangeland Renewable Resources Planning Act, as amended, and to these regulations. In the event of conflict between the general and specific acts, the act specifically designating an area for a particular use shall be controlling.

§ 219.3 Definitions

For purposes of this subpart the following words shall have these meanings:

(a) "Capability": The ability or potential of a unit of land to produce resources, supply goods and services, and allow resource uses under an assumed set of management practices or at a given level of management intensity. Capability depends upon a fixed set of conditions which are relatively stable overtime, including, but not limited to, climate, slope, landform, soils, and geology. Most land has an inherent capability to produce one or more resources, or goods and services, or allow resource uses, under natural conditions.

(b) "Diversity": The number of different plant and animal species and each species' abundance, plus the distribution and abundance of different natural plant and animal communities within the area covered by a land and resource management plan. A large number of species and a variety of natural bilological communities in an area is described as a high level or degree of ecological diveristy.

(c) "Economic efficiency analysis": A comparison of the values of the resource inputs (costs) required for plan implementation with the values of resource outputs (benefits) resulting from plan implementation. Benefits are expected to exceed costs.

(d) "Environmental assessment": All activities related to analyzing alternative actions and their predicatable short- and long-term environmental effects, which include physical, biological, economic, and social factors and their interactions.

(e) "Even-aged silviculture": The combination of actions that results in the creation of stands in which trees of essentially the same age grow together. Managed even-aged forests are characterized by a distribution of stands of varying ages (and therefore tree sizes) throughout the forest area. Regeneration in a particular stand is obtained during a short period at or near the time that the stand has reached the desired age or size and is harvested. Clearcutting, shelterwood cutting, seed tree cutting, and their many variations are the cutting methods used to harvest the existing stand and regenerate a new one. In even-aged stands, thinnings, weedings, cleanings, and other cultural treatments between regeneration cuts are often beneficial. Cutting is normally regulated by scheduling the area of harvest cutting to provide for a forest that contains stands having a planned distribution of age classes.

(f) "Goal": A concise statement of the desired state or condition that a land and resource management policy or program is designed to achieve. A goal is usually not quantifiable and may not have a specific date by which it is to be completed. Goals are the statements of principle from which objectives are developed.

(g) "Guidelines":

(h) "Integrated pest management": A process in which all aspects of a pest-host system are studied and weighed to provide the resource manager with an information base for decisionmaking. Integrated pest management is, therefore, a part of forest or resource management. The information provided includes the impact of the unregulated pest population on various resource values, alternative regulatory tactics and strategies, and cost/benefit estimates for these alternative strategies. Regulatory strategies are based on sound silvicultural practices and ecology of the pest-host system and may consist of a single tactic such as application of a pesticide, or a combination of tactics such as stand improvement plus selected use of pesticides. The overriding principle in the choice of strategy is that it is ecologically compatible or acceptable.

(i) "Management intensity": Management activities and the funding levels associated with them. Management intensity will vary according to site productivity and resource allocation.

(j) "Management concern": Consideration of conflicts, management problems, and constraints. Such concerns include policy, goals, and objectives.

(k) "Objective": A clear and specific statement of planned results to be achieved within a stated time period. Objectives are subordinate to goals, are narrower and shorter in range, and have an increased probability of attainment. Time periods for completion, and outputs or achievements that are measureable and quantifiable, are specified.

(l) "Policy":

(m) "Procedure":

(n) "Public issue": A subject or question of widespread public discussion or interest regarding management of National Forest System lands.

(o) "Regional Area Guides":

(p) "Regional Silvicultural Guides":

(q) "Responsible Forest Service official": That individual who has been delegated the authority to carry out a specific action under the authorities of the Secretary of Agriculture.

(r) "Silvicultural systems": A silvicultural system is a combination of interrelated actions whereby forests are tended, harvested, and replaced. The combination of management actions used in this process to manipulate the vegetation results in forests of distinctive form and character, and this determines the combination of multiple resource benefits that can be obtained. Systems are classified as even aged and uneven aged.

(s) "Standards":

(t) "Suitability": The appropriateness of applying certain resource management activities to a given unit of land, as determined by an analysis of the environmental and economic consequences and the alternative uses foregone.

(u) "Type conversions":

(v) "Uneven-aged silviculture": The combination of actions that results in the creation of forests in which trees of several or many ages may grow together. Managed uneven-aged forests may take several forms depending upon the particular cutting methods used. In some cases, the forest is essentially similar throughout, with individual trees of many ages and sizes growing in close association. In other cases, small groups of trees of similar age may be intermingled with similar groups of different ages; although the groups are even aged, they are not recorded separately. Finally, an unevenaged forest may contain two or three distinct age classes on the same area, creating a storied forest. Under uneven-aged silviculture, regeneration is obtained at several or many times during the period required to grow an individual tree to maturity. Single-tree selection cutting, group selection cutting, and other forms of partial cutting are used to harvest trees, obtain regeneration, and provide appropriate intermediate culture. Cutting is usually regulated by specifying the number or proportion of trees of particular sizes to retain within each area, thereby maintaining a planned distribution of size classes. Scheduling by area harvest is often used as well."

§ *219.4 Planning levels*

The planning process includes detailed upward flows of information on local production capabilities and costs as well as local and regional demands. The national level aggregates local information, insures that national demands are considered, and decides on the appropriate level of national, regional, and local activities and budget allocations under various reasonable and likely total budget levels.

(a) National. The Chief, Forest Service, shall formulate the Renewable Resources Assessment which will analyze the present and future demands for and supplies of the nation's forest and rangeland renewable resources. Demands will be assessed over a range of prices including the price which would equate supply and demand. The assessment of supply will indicate the feasible range of alternative mixes of outputs which may be forthcoming at each of various reasonable cost levels and will be based on the capabilities of local land units. The Chief shall also analyze opportunities to improve or extend the uses of the nation's forest and rangeland renewable resources. The

Chief shall develop a recommended renewable resource program, based on the assessment, which will best meet the needs of the general public giving consideraiton to the costs of supply and the relative values of outputs as determined through the assessment of demands for both market and non-market outputs. The program will include quantified national renewable resource goals and objectives and the portion of each national goal and objective expressed as a range of outputs, which shall be assigned to each region for the regional plans. The ranges of regional goals and objectives will be based on local supply capabilities and costs so that a region can be expected to achieve the assigned level of goods and services from National Forest land. The goals and objectives will be re-evaluated and adjusted in subsequent revisions to reflect changes in relative values of goods and services and changes in the costs and capability in supplying such outputs.

(b) Regional. Each Regional Forester shall develop a regional plan designed to accomplish the region's assigned portion of the national program. The regional plan shall meet the minimum content requirements described in § 219.8, shall be developed utilizing the interdisciplinary approach described in § 219.5, and shall utilize the public participation and coordination requirements generally described in § 219.6 and § 219.7, and as further specified in § 219.8(c).

(c) Forest. Forest plans shall be developed for all lands in the National Forest system. One forest plan may be prepared for all lands for which a Forest Supervisor has responsibility, or separate forest plans may be prepared for each National Forest, or combination of National Forests, within the jurisdiction of a single Forest Supervisor. These forest plans will constitute the land management plans developed in accordance with section 6 of the Forest and Rangeland Renewable Resources Planning Act and will include all resource management planning. Forest plans must identify the range of resource capability information which is needed to formulate national, regional, and local goals and objectives. In particular, they should indicate a range of alternative mixes of outputs which would be forthcoming at each of various reasonable budget levels for the local planning unit. Forest plans will be consistent with the goals and objectives set forth in the regional plan.

§ 219.5 Interdisciplinary approach

The Forest Service shall use an interdisciplinary approach at each level of planning in the National Forest System to assure that plans provide for multiple use and sustained yield of the products and services to be obtained from the National Forests in accordance with the Multiple Use-Sustained Yield Act of 1960. This approach must insure coordinated planning for outdoor recreation, range, timber, watershed, wildlife and fish, and wilderness. Land management systems, harvest levels, and procedures must be determined with due consideration for (1) their effects on all resources, (2) the definition of "multiple use" and "sustained yield" as provided in the Multiple Use-Sustained Yield Act of 1960, and (3) the availability of lands and their suitabilities for resource management. The interdisciplinary approach shall also incorporate public participation (§ 219.6) and coordination with other levels of government and with other federal agencies (§ 219.7).

(a) An interdisciplinary team shall be used at each planning level to carry out interdisciplinary planning and to advise the responsible Forest Service official. Through essentially continuous interactions, the team shall insure that planning achieves the goals of multiple use and sustained yield management, by giving consideration to all resources and to the effects of management of one resource upon other resources. The interdisciplinary team shall be guided by the fact that the forests and rangelands of the National Forest System are ecosystems and, hence, that management for goods and services requires an awareness of the interdependencies among plants, animals, soil and the other environmental factors that occur within such ecosystems. Proposed management programs must be both consistent with the nature of these interactions and based upon the results of economic and social analysis. Of necessity, the interdisciplinary team must be composed of individuals with different technical backgrounds representing different disciplines. However, the team must inventory resources, assess management needs and opportunities, make economic and social analyses, develop and evaluate alternative management programs, and recommend a selected alternative in a manner that reflects integrated analysis throughout. The interdisciplinary team may choose any one or a combination of the many techniques and strategies available for achieving interdisciplinary planning. Throughout, however, the interdisciplinary team shall bear in mind that the goal is a technically sound and integrated management plan.

(b) The Forest Service official responsible for development of a plan shall determine the size of the interdisciplinary team and appoint its members. The team shall be composed of Forest Service personnel who collectively represent the appropriate areas of specialized knowledge about natural resources management applicable to the area being planned. The official shall also appoint the leader of the team, and may change the membership of the team as deemed necessary. Where Forest Service employees with appropriate expertise or qualifications are not available, the team shall consult persons other than Fores' Service employees.

Note.—If it proves legally possible for persons other than Forest Service employees to serve as members of teams, the last clause of the last sentence of (b) should read: "the official may also appoint persons other than Forest Service employees as team members."

(c) In the appointment of the interdisciplinary team, the responsible Forest Service official shall determine and consider the relevance of the qualifications of each potential team member on the basis of the areas of major concern being addressed in planning for the land area under consideration. Each team member shall, as a minimum, have either (1) successfully completed a course of study in an accredited college or university leading to a bachelor's or higher degree in the member's specialized area of assignment or (2) recognized expertise and experience in professional investigative, scientific, or other responsible work in the specialty which the member represents. Where available, certification programs will be used both to assure competency of individual team members and to document disciplinary representation. Field experience in the area to be planned shall be considered a desirable attribute for potential team members.

(d) In implementing the forest plan, the Forest Supervisor will assure an interdisciplinary approach by using a staff of several disciplines. If the Forest Supervisor determines that a new team is needed for evaluation or revision (219.9(j)) of the plan, a new interdisciplinary team will be appointed.

§ 219.6 Public participation

(a) Land and resource planning determines how the public lands of the National Forest System are to be managed. Therefore, it is Forest Service

policy that the public have the opportunity to participate and become involved throughout the planning process and that plans at every level consider the issues and concerns raised by the public. The objectives of public participation are to: Insure that the public understands Forest Service programs and proposed actions, and that the Forest Service understands public concerns; assure that no significant decisions are made without consultation with interested and affected segments of the public; assure that Forest Service actions are responsive to the maximum extent feasible to public concerns; and demonstrate that public concerns are evaluated and considered.

(b) As used in this section, public participation activities include public hearings, meetings, conferences, seminars, workshops, tours and similar activities scheduled and held to obtain comments from the general public and specific "publics." It also includes solicitation of written comments from individuals and groups.

(c) The responsible Forest Service official shall use public participation throughout the development, revision, and significant amendment of plans. Public participation activities as defined in (b) above should be appropriate to the level of planning, geographic area or areas, and people involved. Means of notification should be appropriate to the level of planning. Activities which unreasonably inhibit the public or the Forest Service from freely expressing views because of onerous legal requirements or the necessity for technical qualifications on the part of participants should be avoided. In no case should public hearings be the only form of public participation used. Public participation activities should be scheduled at times convenient to the public. Informational materials provided during public participation should be clearly written, should summarize complex technical materials in a manner appropriate for public and media uses, and should be designed to encourage the public to participate in significant decisions, particularly where alternative courses of action are proposed. When documents are summarized, the location of the full document should be noted. Significant issues that are to be the subject of decisionmaking should be stressed. Whenever possible, the social, economic, and environmental consequences of proposed decisions, should be clearly stated.

(d) Public participation activities shall be initiated by media notice which includes the following information:

(1) Description of the proposed planning action;

(2) Descriptions of the geographic area to be planned with maps if appropriate;

(3) The issues expected to be discussed;

(4) The kind and extent of public participation to be used;

(5) The times, dates, and locations scheduled or anticipated for public meetings;

(6) The name, title, address, and telephone number of the Forest Service official who may be contacted for further information; and

(7) The location and availability of documents relevant to the planning process.

Notice of subsequent public participation activities shall include, as a minimum, a statement of the issue(s) to be discussed and the general nature of the public response desired. Such notice shall be given directly by U.S. mail or other means to any individual or group who has requested direct notification and by any other appropriate media notice. With regard to notice of any public participation activities, publication as a legal notice shall not be acceptable as the sole means of public notification.

(e) Public participation activities in the preparation of a draft, environmental statement for planning shall begin with the publication of a notice of intent to prepare a draft environmental impact statement in the Federal Register. After this publication, all public participation activities for land and resource management planning, including those required by the National Environmental Policy Act, shall be conducted simultaneously.

(f) Public notice will be given at least 30 calendar days prior to activities associated with the development of national or regional plans. Public notice will be given at least 15 calendar days prior to activities associated with forest plans. Any notice requesting written comments on national and regional planning will allow at least 60 calendar days for responses, and on forest planning will allow at least 30 calendar days for responses.

(g) In the preparation of forest plans, the Forest Supervisor shall schedule public participation activies as a minimum at the following points in the planning process: (1) At the beginning of the planning effort as required in (e) above; (2) after completion of the inventory and assessment process and prior to the development and selection of alternatives; and (3) prior to the selection of the preferred alternative.

(h) A list of individuals and groups known to be interested in or affected by the plan shall be maintained. They shall be notified of public participation activities.

(i) The responsible Forest Service official or his representative shall attend all Forest Service public participation activities.

(j) All scheduled public participation activities shall be documented by a summary of the principal issues discussed, comments made, and a register of those in attendance. In addition, the plan shall contain written material demonstrating that the significant issues raised during public participation have been analyzed and evaluated as required in § 219.10(a) and summarizing the Forest Service's response to them.

(k) Copies of draft and approved plans shall be reasonably available for public review as follows:

(1) Renewable Resource Assessment and Renewable Resource Program shall be available at national headquarters, each regional office, each Forest Supervisor's office, and each District Ranger's office;

(2) The regional plan shall be available at national headquarters, at the regional office and the offices of contiguous regions, at each Forest Supervisor's office of forests within and contiguous to that region, and at each District Ranger's office in that region;

(3) The forest plan shall be available at the regional office for that forest, at that Forest Supervisor's office and the Forest Supervisor's offices contiguous to that forest, at each District Ranger's office in that forest, at those District Ranger's offices in other forests that are contiguous to that forest, and at the county court houses or public libraries in the counties (or similar government units) where the forest is located.

(4) For public information purposes, copies of the above plans may be made available at other convenient locations.

(l) Supporting documents to plans shall be available at the office where the plan was developed.

(m) Upon issuance of a draft environmental impact statement on a forest plan, revision, or significant amendment, and concurrent with the public participation activities under paragraph (g) of this section, the public shall have a 3-month period to review the statement for the proposed forest plan, revision or significant amendment. During that time additional public participation activities will take place to review the actions proposed in the draft environmental impact statement.

(n) Fees for reproducing requested documents may be charged according to the Forest Service schedule for Freedom of Information Act requests (7 C.F.R. 1.1. et seq., Appendix A).

(o) Compliance with the formal public participation requirements of this section does not remove the requirement for the responsible Forest Service official to meet with, or supply relevant information to, interested parties.

§ 219.7 Coordination of public planning efforts.

Efficient management of the resources of the National Forest System requires that planning be thoroughly coordinated among all levels of government, including state and local jurisdictions, and multi-county and multy-state bodies. Such coordination is necessary in order to insure wise use of regional and local resources and to insure, consistent with requirements of federal law, that governmental objectives, policies, and programs for management of those resources are compatible to the greatest extent possible. Therefore, the Forest Service shall maintain ongoing coordination of its national, regional, and forest planning with the equivalent and related planning efforts of state, local and other federal government agencies and with Indian tribes.

(a) The responsible Forest Service official, through the interdisciplinary team, shall coordinate Forest Service planning with land and resource management planning processes of other affected public entities, and Indian tribes.

(b) The purpose of coordination is to insure that plans at every level in the Forest Service include:

(1) An awareness and discussion of the objectives of other federal, state, and local governments and owners of intermingled private lands as expressed in their plans and policies;

(2) An assessment of the mutual impacts of these plans and policies;

(3) A determination of how each Forest Service plan should deal with the issues and impacts identified; and

(4) Where conflicts are identified, a presentation of the alternatives for their resolution.

(c) The responsible Forest Service official shall give notice of the preparation or revision of a forest plan along with a general schedule of anticipated planning steps to the State Clearinghouse (OMB Circular A–95) for circulation among state agencies. The same notice will be mailed to all Tribal or Alaska Native leaders to the extent Indian Reservations or Alaskan Native corportations are impacted, and to the heads of county boards for the counties that are involved. These notices shall be issued simultaneously with the public notice required in § 219.6(e).

(d) In order to facilitate state and local government participation in the planning process, the Chief of the Forest Service shall:

(1) Ask the Governor of each state or territory to designate a single official of that state to serve as the contact person for the Forest Service. In seeking designation of a state official, the Chief shall specify that the Forest Service desires that such appointment shall be either an official with natural resource experience, such as the chief officer of the appropriate state natural resource agency, or an official with responsibility for statewide planning if such appointment is more appropriate to a given state. Contacts with state and local governments relating to the National Assessment, National Program, and regional plan shall be coordinated through the designated state official, and state inputs into those planning activities shall be coordinated by that person. In the case of forest plans, contact shall be through the designated state official or through a person designated to serve in his stead.

(2) In the case of forest plans, ask that the Governor or his designee specified in (1) above appoint appropriate state and local government representatives to participate with the interdisciplinary team in coordinating the input of state and local governments to the forest planning process.

Note.—This language becomes unnecessary if it is possible for state personnel to serve as members of interdisciplinary teams.

(e) In the development of forest plans, the Forest Supervisor and his interdisciplinary team shall meet with the designated state official (or his designee), state advisory persons, and representatives of other federal agencies and Indian tribal governments at the beginning of the planning process to develop procedures for coordination. As a minimum, the opportunity for such conferences shall also be required at the following additional times: After issues and opportunities for management have been identified and prior to the development and selection of alternatives; and prior to the selection of the preferred alternative. Such conferences may be held in conjunction with other public participation activities, provided that the opportunities for other governmental officials to participate in the planning process are not thereby reduced.

(f) During the planning process, the responsible Forest Service official shall conduct an inventory, appropriate to each given level of planning, of multi-state, state, multi-county, and local planning and land use regulatory activity. This inventory shall include, but not be limited to, plans affecting renewable natural resources and minerals, recreation, community and economic development, land use, transportation, wildlife, growth, water and air pollution control, and energy. Plans at each level shall document this inventory and discussion of the plans of other entities. Where state and local plans contain population or economic growth projections, this discussion shall specifically analyze these and show their appropriateness, or inappropriateness, for use in meeting the requirements of § 219.10(c)(3)(viii). The discussion shall be adequate to meet the pruposes described in § 219.7(b) above.

(g) In the development of forest plans, the responsible official shall, to the extent feasible, notify in the manner required in (c) above the owners of lands that are intermingled with, or dependent for access upon, National Forest lands and on which management is being practiced similar in character to that being practiced on adjacent National Forest lands. He shall then coordinate, to the extent feasible, his planning activities with these owners. The results of this coordination shall be included in the plan as a part of the inventory required in (f) above.

(h) In developing the forest plan, the responsible Forest Service official shall seek input from other federal, state, and local govenments, universities and private research organizations in resolving management problems identified in the planning process and in identifying areas where additional research is needed. This consultation shall be included in the discussion of the research needs of the forest being planned.

(i) The responsible Forest Service official, through the interdisciplinary team, shall coordinate forest planning acitivities with the efforts of the appropriate forest and range experiment station to identify and study lands meriting consideration for designation as research natural areas, geologic areas, botanic areas, or other special purpose areas. Such coordination shall include at least obtaining recommendations from the station as to areas that should be identified and protected pending study for potential designation.

(j) A continuing program of monitoring shall be carried out that includes

consideration of the effects of national forest management on land, resources, and communities adjacent to or near the National Forest being planned and the effects upon national forest management of activities on nearby land managed by other federal or governmental agencies or under the jurisdiction of local governments.

§ *219.8 Regional plan*

(a) Regional plans must contribute to and respond to the Renewable Resource Assessment and Program by providing the following as a minimum:

(1) Long-range regional policies, goals, and objectives assigned by the National Program;

(2) Resource production objectives for each forest plan consistent with the regional plan;

(3) Guidelines to resolve public issues and management concerns, including those specific items mentioned in § 219.8(e) and those items identified through public participation and coordination activities.

(b) An environmental impact statement shall be prepared for each regional plan or revision thereof.

(c) In preparing the regional plan, the Regional Forester shall be guided by the general requirements for operation of the interdisciplinary team (§ 219.5), for public participation and environmental impact statement preparation (§ 219.6) and for coordination (§ 219.7). However, public participation and coordination acitivities shall be adapted to the circumstances of regional planning. Particular efforts shall be made to involve regional and national representatives of interest groups. Coordination shall stress involvement by appropriate state, multi-state and regional agencies and entities. Efforts shall be made to obtain appointment of the designated state official described in § 219.7(d)(1) and to coordinate with each state through that person.

(d) Because Forest Service regions are heterogeneous, contain diverse topography, soils, and forest types, and reflect widely differing political and social circumstances, the Regional Forester shall include in the regional plan a discussion of these specific differing conditions and circumstances. He may do this through preparation of Regional Area Guides as defined in § 219.3(o).

(e) In addition to public issues and management concerns identified through public participation and coordination, each regional plan shall:

(1) Prescribe according to geographic areas, forest types, or other suitable classifications, appropriate systems of silviculture to be used within the region;

(2) Determine, according to geographic areas, forest types, or other suitable classifications, at least the maximum size limits for areas to be cut in one harvest operation. In establishing such size limits, the factors enumerated in § 219.11(a)(3)(ii) shall specially be considered;

(3) Set standards for biological growth potential to be used in determing the capability of land for timber production as required in § 219.11(e)(1);

(4) Set standards, by forest type or species, for assuring that all stands of trees have reached the culmination of mean annual increment prior to harvest;

(5) Define the management intensity and utilization standards to be used in determining harvest levels for the region;

(6) Specify by geographic areas, forest types, or other suitable classifications, the minimum number, size, distribution, and species composition of regeneration necessary to define adequate restocking as required in § 219.11(e)(1).

(7) Establish the alternate cost standard(s) or price(s) to be used in determining the potential economic suitability of land for commercial timber production as required in § 219.11(e)(1). These prescriptions, size limits, and standards shall be justified through the use of appropriate scientific and technical criteria and may be established either as an integral part of the regional plan or through Regional Silvicultural Guides as defined in § 219.3(p). If guides are prepared, then such preparation shall be subject to the same public participation and approval requirements as pertain to the regional plan and they shall be considered as a part of the regional plan. When geographic areas or forest types occur in more than one region, prescriptions, size limits, and standards shall be prepared to assure their compatibility as well as the compatibility of inventory data and monitoring techniques. In the event that regional plans establish different prescriptions, size limits, or standards for the same geographic area or forest type, each regional plan involved shall explain and justify such differences.

(f) The Regional Forester shall transmit the proposed regional plan to the Chief, Forest Service, for approval. The Chief shall review the transmittal and take either of the following actions:

(1) Approve the transmittal, which may become effective 30 days after the date on which the final environmental impact statement is filed with the Environmental Protection Agency, and attach to the plan a statement documenting approval; or

(2) Disapprove the transmittal, which shall be returned to the Regional Forester with a written statement of the reasons for such disapproval.

(g) When each regional plan is approved, each forest plan prepared under these regulations will be revised or amended to bring it into conformity as soon as practicable.

(h) For purposes of administrative review pursuant to § 211.19 of this title, the approval or disapproval of the regional plan shall be the only decision subject to review. The period for submission of a notice of appeal shall run from the date of filing of the final environmental impact statement with the Environmental Protection Agency.

(i) All regional plans must be reviewed after each National Program is adopted, or whenever the Regional Forester or the Chief of the Forest Service deems it desirable. Revisions must be prepared in accordance with the requirements outlined in the section for preparation of regional plans, and will not become effective until approved in accordance with the provisions of § 219.8(f).

§ *219.9 Forest planning procedure*

(a) *Responsibility.* The Forest Supervisor and the interdisciplinary team shall have the following responsibilities:

(1) Forest Supervisor. The Forest Supervisor shall have overall responsibilty for the preparation and implementation of the forest plan and shall appoint and supervise an interdisciplinary team.

(2) Interdisciplinary team. The team shall develop a proposed forest plan using the planning process in a manner consistent with the National Environmental Policy Act of 1969, and its implementing regulations. The team will implement the public participation and coordination requirements in preparing the draft and final environmental impact statements, forest plan, revisions, and amendments thereto. The team will continue to function, even though membership may change, and will monitor and evaluate planning results and recommend revisions and amendments.

(b) *Planning process records.* Records shall be maintained that support environmental assessments and alternative plans made by the team and decision made by the Forest Supervisor throughout the planning process. Such supporting records will provide the basis for the draft and final environmental statements and the

development of, revision, or significant amendment to, the forest plan.

(c) *Intergovernmental coordination.* The Forest Supervisor shall contact multi-state, state, multi-county, county, and other local agencies responsible for various planning, development, and regulatory programs including, but not limited to, water quality, pest management, recreation, air quality, community development, land use regulation, energy, wildlife, and transportation. The plans, policies and programs of these agencies will be analyzed for their relevance to the forest plan. The Forest Supervisor will systematically consult with these agencies, through state advisory personnel, in the development of the forest plan.

(d) *Draft environmental impact statement.* Proposed forest plans, revisions, or significant amendments will be described in the draft environmental impact statement. A notice of intent to prepare this statement will be issued. Beginning at the time of notification in the Federal Register of the issuance of the statement, this statement will be available for public comment for 90 days or 3 months, whichever is longer, at convenient locations in the vicinity of the lands covered by the plan, revision, or significant amendment. During this period, and in accordance with the provisions in section § 219.6, the responsible Forest Service official shall publicize and hold meetings or comparable activities as he deems appropriate to foster public participation.

(e) *Final environmental impact statement.* A final environmental impact statement on a forest plan will be prepared by the interdisciplinary team, and after review and concurrence, the Forest Supervisor will propose that it be filed by the Regional Forester at least 30 days prior to actions which are based upon the selected alternative for the plan, revision, or significant amendment. The forest plan, revision, or significant amendment shall be based on the selected alternative.

(f) *Forest plan approval.* The Forest Supervisor shall transmit the proposed forest plan, revision, or significant amendment, to the Regional Forester for approval. The Regional Forester shall review the transmittal and take either of the following actions:

(1) Approve the transmittal, which may become effective 30 days after the date on which the final environmental impact statement is filed with the Environmental Protection Agency, and attach to the plan a statement documenting approval; or

(2) Disapprove the transmittal, which shall be returned to the Forest Supervisor with a written statement of the reasons for such disapproval.

(g) *Administrative review.* For purposes of administrative review pursuant to § 211.19 of this title, the approval or disapproval of the plan, revision, or significant amendment, shall be the only decision subject to review. The period for submission of a notice of appeal shall run from the date of submission of the final environmental impact statement to the Environmental Protection Agency.

(h) *Conformity.* As soon as practicable after approval of the plan, revision, or significant amendment, the Forest Supervisor shall insure that, subject to valid existing rights, all outstanding and future permits, contracts, cooperative agreements, and other instruments for occupancy and use of affected lands are in conformity with the plan. In addition, all subsequent administrative activities affecting such lands, including budget proposals, shall be in compliance with the plan. Changes in the scheduling of management activities proposed in the forest plan may be made by the Forest Supervisor to respond to differences between annual budget proposals and appropriated funds. Such scheduled changes will be considered an amendment to the forest plan, but shall not require preparation of an environmental impact statement unless the changes significantly alter the relationship between levels of multiple-use goods and services projected under planned budget proposals as compared to those levels projected with actual appropriations.

(i) *Amendment.* The Forest Service may amend a plan through an environmental assessment. Such an amendment will be deemed significant if the assessment indicates the need to prepare an environmental impact statement. If such a need is indicated, the amending process will follow the same procedures as for the preparation of the plan. If the amendment is determined not to be significant, it may be implemented by the Forest Supervisor after public notice.

(j) *Revision.* A forest plan must be revised at least every 15 years, or whenever the Forest Supervisor determines that conditions in the area covered by the plan or the demands of the public have changed significantly. Revisions will not become effective until considered and approved in accordance with the requirements for the development and approval of a forest plan. The Forest Supervisor will review the conditions on the land covered by the plan at least every 5 years to determine whether conditions have changed significantly.

§ 219.10 Forest planning process

In the preparation of a proposed forest plan, revision, or significant amendment, the interdisciplinary team, as directed by the Forest Supervisor, shall follow a process in compliance with the national Environmental Policy Act of 1969, and its regulations and other applicable statutes. That process shall include at least the following actions:

(a) *Identification of issues, concerns, and opportunities.* Public issues, management concerns, and resource use and development opportunities identified through public involvement activities and intergovernmental coordination activities will be analyzed continually in the planning process by the interdisciplinary team. These analyses will be periodically reviewed by the Forest Supervisor who shall determine the major issues, management concerns, and use and development opportunities to be addressed in the planning process. The interdisciplinary team may recommend additions or changes for consideration and decision by the Forest Supervisor.

(b) *Development of planning criteria.* Criteria will be prepared to guide development of the forest plan, revision, or significant amendment, throughout the planning process. Planning criteria usually will apply to collection and use of inventory data and information, analysis of the management situation, the design and formulation of alternatives, and the estimation of effects of alternatives. Criteria will be used to evaluate alternatives and to select one alternative to serve as the proposed forest plan. Planning criteria may need to be revised as planning proceeds, and the interdisciplinary team will make a record of any significant change in the criteria. Generally, criteria will be based on:

(1) Laws, executive orders, and regulations;

(2) Goals and objectives in the renewable resource program and regional plans, and policy statements from higher officials;

(3) Recommendations developed from public issues, management concerns, and resource use and development opportunities;

(4) The plans and programs of other federal agencies and the plans, policies, and programs of multi-state agencies, state, and local governments;

(5) The ecological, technical, and economic feasibility of management alternatives; and

(6) The resource management standards and guidelines found in § 219.11 of this part.

(c) *Inventory data and information collection.* (1) Each Forest supervisor shall obtain and keep current inventory data appropriate for making planning and management decisions about the land and the resources under his administrative responsibility. The interdisciplinary team will collect inventory data and information, with pertinent maps, graphic material, and explanatory aids, to the degree necessary to plan effectively and carry out the environmental assessment. Inventory data and information needs may vary as planning problems develop from identification of issues, concerns, and opportunities.

(2) Inventory data must be of a detail appropriate for the management decisions to be made and include at least the following: (i) Geology and mineral characteristics; (ii) soils, their productivity and behavior under use; (iii) natural water occurrences, including quality and quantity, and wetlands and flood plains; (iv) existing plant life, including maps of actual and potential plant communities, quantitative measurements of occurrence and condition of timber species, quantitative estimates of range condition and trend, forage availability, and the capability of each site: (v) existing fish and wildlife; (vi) habitat conditions for management indicator species; (vii) existing recreational facilities; (viii) quantitative data for determining species and community diversity; and (ix) threatened and endangered plant and animal species.

(3) Informational needs generally may include: (i) Climatic, geologic, and soil hazards, wildfire potential, and major potential insect, diesease, and other pest problems; (ii) existing structural facilities and other physical changes on the land; (iii) existing transportation facilities and systems and transmission corridors for expected public utility needs; (iv) existing water developments and appropriated and reserved water rights; (v) applicable air and water quality standards, and area designation of air quality; (vi) land ownership patterns and jurisdictions, legislatively and administratively designated areas; (vii) location and extent of existing mineral claims, and known potential mineral and geothermal resources; (viii) economic and social data, such as population and employment patterns; (ix) property included in or eligible for inclusion in the National Register of Historic Places and other cultural resources; (x) quality of the visual resource; (xi) fire history and effects of fire exclusion and fire management opportunities; (xii) existing roadless areas; and (xiii) lands meriting consideration for designation under special administrative classification, such as research natural areas, geologic areas, botanic areas, or other special purpose areas.

(4) Informational needs must include the plans of other federal agencies and those of state agencies and local jurisdictions relating to resource management, land use, and community development.

(5) Methods used to gather inventory data will be consistent with those used to monitor consequences of activities resulting from planning and management. Inventory data and information will be stored for ready retrieval and comparison and periodically will be evaluated for accuracy and effectiveness.

(d) *Analysis of the management situation.* Based upon the inventory data and other relevant information, an analysis of capability and suitability of the area for resource management will be made to determine:

(1) The opportunities for providing on a sustainable basis alternative levels and mixes of various goods, services, and uses. Such an assessment shall analyze the productive capabilities of the area under alternative assumptions as to the intensity of management practices and expenditure levels. The assessment of management opportunities shall be consistent with the scope, procedures, and assumptions of the National Assessment required under section 3 of the Forest and Rangeland Renewable Resources Planning Act of 1974, as amended.

(2) Special conditions or situations which involve hazards that may cause serious or irreversible damage, and their relationship to alternative activities;

(3) Projections of public demand and price trends for the various goods, services, and uses for the period covered by the forest plan. To the extent possible, demand will be assessed as a price-quantity relationship;

(4) Opportunities to resolve public issues and management concerns; and

(5) Technical and economic feasibility of providing the levels of goods, services, and uses assigned to the forest by the regional plan and of meeting public demand.

(e) *Formulation of alternatives.* Based on the analysis of the management situation, a set of management objectives will be developed to guide the formulation of alternative plans. These objectives will provide a statement of the purpose of the actions proposed in each alternative. A reasonable range of alternative land management plans will be formulated by the interdisciplinary team and described in draft and final environmental impact statements.

(1) Reasonable range of alternatives. The alternative land management plans shall be formulated to provide alternative levels and mixes of goods, services, and resource uses for each of several alternative expenditure levels, provide that: (i) Each is capable of being chosen as the selected alternative; (ii) the alternatives include a no-change alternative which will represent existing levels of resource inputs and outputs; (iii) the alternatives provide for varying degrees in the elimination of backlogs of need treatment for the restoration of renewable resources; and (iv) the alternatives are capable of supplying the range of goods, services, and resource uses allocated to the unit in the regional plan. The range of goods and services allocated to the unit must be consistent with the resource production capability of the unit as determined in the analysis of the management situation described in 219.10(d).

(2) Alternative content. Each management alternative will contain at least: (i) A statement of future overall condition and various uses anticipated to be the result of the long-term management of the forest under the alternative; (ii) a statement of the goods and services that can be expected to be produced from selected resources; (iii) a statement of the time and vicinity of management activities which will be expected to occur to accomplish the anticipated production of goods and services, and control and mitigation of adverse environmental effects; (iv) an analysis of the changes in diversity of plant and animal species and communities, the relation of those changes to capability and suitability, and their relation to achievement of overall multiple-use objectives; and (v) provision for lands administratively designated as special purpose areas or requiring further study for potential designation such as research natural areas, geologic areas, botanic areas, or other special purpose areas.

(f) *Estimated effects of alternatives.* The physical, biological, economic, and social effects of implementing each alternative shall be estimated and displayed. Estimation of effects will involve at least:

(1) Expected changes in the physical and biological conditions including but not limited to: (i) Soil productivity and plant life; (ii) water quantity and quality, flood plains and wetlands and watersheds; (iii) air quality; (iv) esthetic values; (v) fish and wildlife; (vi) anticipated diversity of plant and animal communities compared to that diversity existing in the area being planned and to the diversity which might be expected to occur under natural forces unaffected by people; (vii) diversity of tree species in relation to that existing and that expected to occur on surrounding areas of similar soil; and (viii) the adverse effects on the human environment which cannot be avoided.

(2) Expected changes in economic and social conditions including but not limited to: (i) Local employment, payrolls, and income, direct and induced; (ii) revenue sharing with local governments; (iii) receipts to the Federal Treasury and capital improvements on the National Forest provided by users; (iv) resource commitments that are irreversible; (v) the relationship between local short-term use of the National Forest and the maintenance and enhancement of its long-term productivity; (vi) required local government services; (vii) prices for and supply of goods and services; (viii) economic stability; (ix) income from property yield and income taxes collected by state and local governments; (x) flow of resources from other lands; (xi) incidence of plan costs and benefits among affected groups; (xii) population in terms of composition, structure, and civil rights; and (xiii) effects on prime farmlands in the area surrounding the forest.

(3) Expected direct benefits and costs of the alternative expressed in present value terms computed with an appropriate interest rate including, but not limited to, the produced goods and services, administrative costs, and the protection and, as appropriate, enhancement of resources values. Direct and indirect benefits and costs will be estimated in accordance with standards and practices for economic analysis established by the Chief, Forest Service. Benefit values shall be based, where possible, on willingness to pay in an actual market. Physical outputs shall be reported for all goods and services provided. Capital investments and operating costs shall be reported separately and shall be charged proportionally to resource outputs which will be realized. Estimated costs shall include the value of resource opportunities foregone.

(4) A benefit-cost analysis including but not limited to (i) the values and costs identified in (2) and (3) above; (ii) the value of existing capital assets, including land, at the beginning and end of the period covered by the plan; and (iii) an economic efficiency indicator, such as benefit/cost ratio or estimated present net worth.

(g) *Evaluation of preferred alternatives.* The interdisciplinary team will evaluate the significant physical, biological, economic, and social effects of managment alternatives, according to the planning criteria, including at least those effects listed in subsection (f)(1) and (2) of this section. The Forest Supervisor will review the interdisciplinary team evaluation and will recommend a preferred alternative to be indicated in the draft environmental impact statement.

(h) *Selection of alternative.* After publication of the draft environmental impact statement, the interdisciplinary team will evaluate public comments and revise, as necessary, a recommended alternative. The Forest Supervisor will recommend the selected alternative for the final environmental impact statement using evaluation criteria developed pursuant to § 219.10(b).

(i) *Plan content.* The interdisciplinary team shall insure that the forest plan consists of one document or set of documents in a standard format containing at least:

(1) A brief description of the identified major public issues and management concerns;

(2) Descriptions and appropriate maps of the area covered by the forest plan;

(3) Goals and objective from the current regional plan;

(4) A description and analysis of the policies, plans, and programs of other federal agencies, multi-state agencies, state, multi-county agencies, and local jurisdictions likely to affect or be affected by National Forest management activities.

(5) Tabulations of expected types and amounts of goods, services, or uses for the time periods given in the regional plan;

(6) Proposed vicinity, timing, and standards and guidelines for proposed and probable activities;

(7) Monitoring and evaluation requirements;

(8) Appropriate references to information used in development of the forest plan; and

(9) The names of the interdisciplinary team members, together with a summary of each member's qualification in a particular discipline.

(j) *Monitoring and evaluation.* At intervals established in the forest plan, an evaluation must be made to determine how well objectives of the forest plan have been met. Management activities associated with each of the resources planned shall be evaluated through monitoring on an appropriate sample basis. Methods used to monitor consequences of activities resulting from planning and management activities will be consistent with those used to gather inventory data and will be sufficiently accurate to detect change.

(1) Monitoring requirements of the plan shall include descriptions of:

(i) those activities to be measured and the frequency of measurements;

(ii) expected precision and reliability of monitoring processes; and (iii) when evaluation reports will be prepared.

(2) Evaluation reports must be prepared and, for each management activity monitored, must contain at the least the following: (i) A quantitative estimate of performance comparing actual accomplishments with those that were anticipated in the plan; (ii) documentation of measured effects, including any change in productivity of the land; (iii) recommendations for changes; (iv) a list of needs for continuing evaluation of management systems and for alternative methods of management; and (v) unit costs associated with carrying out the planned activities as compared with unit costs estimated in the plan.

(3) Based upon the evaluation reports, the Forest Supervisor will make such changes in management direction, or revisions or amendments to the forest plan as deemed necessary to meet the forest goals and objectives.

§ 219.11 Resource management standards and guidelines.

The standards and guidelines set forth in this section will, as appropriate, be included in the planning criteria, or be applied throughout the planning process. Such application shall be only in a manner consistent with the interdisciplinary requirements of § 219.5.

(a) *All resource uses.* Certain standards and guidelines will apply to all resource uses:

(1) All management activities. All management activities must:

(i) Not allow significant or permanent impairment of the productivity of the land;

(ii) Provide means for minimizing serious or long-lasting hazards from flood, wind, wildfire, erosion, or other natural physical forces, except as these are specifically accepted, as in wilderness;

(iii) Provide means for prevention and reduction of serius or long-lasting hazards from pest organisms. The guiding principles will be those of integrated pest management;

(iv) Assure protection for streams, streambanks, shorelines, lakes, wetlands, and other bodies of water as provided under (a)(4) and (a)(5) below;

(v) Maintain diversity in plant and animal communities and preserve the variety of endemici and desirable naturalized plant and animal species currently found in the area covered by the forest plan; and

(vi) Be monitored and evaluated as required in § 219.10(j) to assure that activities are carried out in a manner consistent with the protection of soil, watershed, fish and wildlife, recreation, and esthetic values, consistent with the maintenance of timber and range productivity, and consistent with reduction of hazards from insects, disease, weed species, and fire.

(2) Vegetation management practices. When vegetation is altered by management, the methods, timing, and intensity of the practices determine the level of benefits that can be obtained from the various resources. The vegetation management practices chosen for each vegetation type and circumstance will be defined in the forest plan with a display of the alternatives examined and the reasons for the final choices. Where more than one vegetation management system will be used in a vegetation type, the conditions under which each will be used will be clearly defined. The choices will be based upon thorough reviews of technical and scientific literature and practical experience, with appropriate evaluation of this knowledge for relevance to the specific vegetation and site conditions. On National Forest land, the chosen alternative will:

(i) Be the one best suited to achieve the multiple-use goals established for the area, including consideration of all potential environmental, biological, esthetic, engineering, and economic impacts, as stated in the regional and forest plans;

(i) Assure that forested lands can be adequately restocked within 5 years after final harvest, except where permanent openings are created for wildlife habitat improvement, vistas, recreation uses, and similar activities;

(iii) Not be chosen primarily because it will give the greatest dollar return or the greatest output of any one product or service, although these factors shall be considered. Both short- and long-term costs and benefits shall be used in economic analysis rather than immediate or short-term returns;

(iv) In meeting the requirements of § 219.11(a)(1)(ii) and (iii) above, give particular attention to potential effects on residual and adjacent vegetation;

(v) Avoid permanent impairment of site productivity, and assure conservation of soil and water resources in accord with § 219.11(a)(5);

(vi) Provide the desired effects on water quantity and quality, wildlife and fish habitat, regeneration of desired plant species, recreation uses and esthetic values, and resource yields;

(vii) Be practical to use in terms of such factors as administration, costs of sales, transportation, and related considerations; and

(viii) Preserve and maintain species and community diversity as required in § 219.11(a)(6).

(3) Control of openings. When openings are created by the application of an even-aged silvicultural system:

(i) The blocks or strips cut shall be shaped and blended with the natural terrain to achieve esthetic and wildlife habitat objectives to the extent practicable; and

(ii) Individual cut blocks, patches, or strips must conform to the maximum size limits for areas to be cut in one harvest operation established by the regional plan according to geographic areas and forest types. The following factors must be considered in determining size limits by geographic areas and forest types: Topography; relationship of units to other natural or man-made openings and proximity of units; coordination and consistency with adjacent forests and regions; effects on water quality and quantity; effects on wildlife and fish habitat; regeneration requirements for desirable tree species based upon the latest research findings; transportation and harvesting system requirements; natural and biological hazards to survival of residual trees and surrounding stands; and relative total costs of preparation, logging, and administration of harvest cuts of various sizes. The size limits may be exceeded after 30 days public notice and after review by the responsible official one level above the official who normally would approve the harvest proposal. The established limit shall not apply to the size of areas harvested as a result of natural catastrophic condition such as fire, insect and disease attack, or windstorm.

(4) Protection of streams and lakes. During the inventory, planning, and monitoring processes, special attention shall be given to a strip approximately 30 meters wide along both sides of all perennial streams, lakes, and other bodies of water. All management activities withing these strips, such as timber, harvest, road and campground location or construction, range, improvements, or fish and wildlife habitat modifications, will be conducted in such a way as to protect these waters from detrimental changes, in compliance with § 219.11(f) (4), (5), and (6), and to the extent that total multiple-use benefits exceed costs. Such changes include increases in water temperatures or chemical composition, blockages of water courses, or deposits of sediment that are likely to seriously and adversely affect water conditions or fish habitat. The interdisciplinary team will consider topography, vegetation type, soil, climatic conditions, management objectives, and other factors in determining what activities may be performed within these strips and the constraints to be placed upon their performance in order to assure protection of water quality or other multiple-use values. Documentation of the steps taken to meet this requirement shall included in the plan as required in § 219.10(i)(5).

(5) Conservation of soil and water resources. The analysis, protection, enhancement, treatment, and evaluation of soil and water resources, and their responses under management, as required by § 219.10(c), (d), (f), (j), and 219.11(a), will be guided by instructions in official technical handbooks. These handbooks will indicate site-specific and activity-specific practices aimed at avoiding or mitigating damage, and maintaining or enhancing productivity. They will also establish performance standards and tolerance limits for such effects as soil disturbance, erosion, compaction, nutrient losses, stream turbidity, and wetland and flood plain impacts, taking account of applicable federal and state regulations respecting water. These handbooks may be regional in scope or, where feasible, specific to geological or climatic provinces.

(6) Diversity. Diversity of plant and animal species shall be considered throughout the planning process, and in the selection of a forest plan. Inventories shall include quantitative data which make it possible to assess past and present species and community diversity (219.10(c)(2)). Each alternative considered shall include a determination of how diversity of species and communities will be affected, including discussion of changes in diversity which have taken place, and a comparison of the proposed action to this historical framework (219.10(f)(1)(vi) and (vii)). To

the extent practicable, the objective shall be to preserve and increase species and community diversity so that it will be at least similar to that which would be expected in unmanaged areas in the region. Reductions in diversity may be considered only where needed to meet overall multiple-use management objectives. Planned type conversions must be justified by a detailed analysis showing biological, economic, and social consequences and the relation of that conversion to natural dynamic processes.

(7) Esthetic consideration.

(b) *Fish and wildlife resource.* A principal responsibility of the Forest Service is to manage habitats in order to maintain viable populations of all existing native vertebrate species and to maintain and improve habitat of management indicator species. To meet that responsibility, management planning of the fish and wildlife resource will include the requirements set forth in paragraphs (1) through (8).

(1) The desired future condition of fish and wildlife, where technically possible, will be stated in terms both of animal population trends and of amount and quality of habitat.

(2) Management indicator species will be identified as concerns for planning, and justification for their selection will be given. These species shall include at least; endangered and threatened plant and animal species identified on state and federal lists for the area of the planning unit; species with special habitat needs that may be influenced significantly by planned management programs; species commonly hunted, fished, or trapped; and additional plant or animal species selected because their population changes are believed to indicate effects of management activities on other species of a major biological community or on water quality. On the basis of available scientific information, the effects of changes in vegetation type, timber age classes, community composition, rotation age, and year-long suitability of habitat related to mobility of management indicator species will be estimated. Where appropriate, measures to mitigate adverse effects will be prescribed.

(3) Biologists from state fish and wildife agencies and other federal agencies shall be invited to participate in the work of the interdisciplinary team. The forest plan shall be coordinated with the state strategic fish and wildlife plans, to the extent practicable.

(4) Access and dispersal problems of hunting, fishing, and other visitor uses will be considered.

(5) The effects of pest management on fish and wildlife populations will be considered.

(6) Population trends of the management indicator species shall be monitored and relationships to habitat changes determined. This monitoring shall be done in cooperation with state fish and wildlife agencies, to the extent practicable.

(7) Critical habitat for threatened and endangered species will be determined, and measures shall be prescribed to prevent the destruction or adverse modifications of such habitat. Consideration shall be given to opportunities for improving their habitat.

(8) Effects of proposed changes in diversity on fish and wildlife will be evaluated.

(c) *Range resource.* Rangelands within the National Forest System will be inventoried, planned for, and managed according to the standards and guidelines set forth below:

(1) Rangelands. Each forest plan shall identify lands available, capable, and suitable for grazing and/or browsing by wild, domestic, and feral animals. The procedures and data to be acquired include, but are not limited to, the following:

(i) Range condition and trend studies conducted on each forest during the vegetation inventory as described in § 219.10(c)(2). These data will form the basis for the range management plan;

(ii) Records of actual use by domestic livestock, feral animals, and management indicator species of wildlife, and estimated percentage utilization of key forage species;

(iii) Analysis of vegetation data to determine range capability. This will consider:

(A) An estimate of the current ability of the rangelands to produce suitable food and cover for the management indicator species of wildlife;

(B) An estimate of the present supply of forage for sheep, cattle, and feral animals; and

(C) An estimate of the potential ability to produce feed and cover for wild, domestic, and feral animals; and

(iv) Analysis of range's ability to produce wild, feral, and domestic animals without permanent impairment of the resource will be based upon the condition of the vegetation, statutory and/or administrative withdrawals, characteristics of soil and slope, and accessibility to grazing and/or browsing animals.

(2) Range management systems. Management systems, including the existing system, will be considered in an alternatives analysis as required by § 219.10(f). Each alternative will meet the requirements of § 219.11(a) and will include consideration of at least the following:

(i) Grazing management systems;

(ii) Methods of altering successional stages for range management objectives, including vegetation manipulation as described in § 219.11(a)(2);

(iii) Evaluation of pest problems, and availability of integrated pest management systems;

(iv) Possible conflicts or beneficial interactions among domestic, feral, and wild animal populations, and methods of regulating these;

(v) Physical facilities such as fences, water points, and corrals, necessary for efficient management; and

(vi) Existing permits, cooperative agreements, and related obligations.

(3) Each management plan will include a mechanism for monitoring range trend in accord with the evaluation requirements of § 219.10(j).

(4) Plans shall comply with laws relating to the use of the range resource, particularly the Federal Land Policy and Management Act of 1976, the Bankhead Jones Farm Tenant Act (50 Stat. 526, as amended), and the Wild Horses and Burros Protection Act (85 Stat. 649).

(5) The economic and social impacts on small communities and the local livestock industry will be evaluated in the selection of alternatives for management.

(d) *Recreation resource.* Management planning will provide for a borad spectrum of dispersed and developed recreation opportunities in accord with identified needs and demands. Planning will be governed by the goals of the regional plan, the general requirements of §§ 219.10 and 219.11(a), and the specific requirements of paragraphs (1) through (7) below:

(1) Each forest plan will identify the lands available, capable, and suitable for recreation.

(i) The physical and biological characteristics that make land suitable for recreation activities will be identified during the inventory process (219.10(c)).

(ii) During the analysis of issues, the recreational preferences and behavior of present user groups and those of the foreseeable future will be used to identify recreation opportunities on the National Forest and associated lands.

(2) The supply of recreational facilities to meet present and future

needs in the area surrounding the forest will be appraised.

(3) Following (1) and (2) above, alternatives will be developed to provide a wide array of recreation opportunities responsive to current and anticipated user demands. The alternatives will include consideration of management need, establishment of physical facilities, and regulation of use.

(4) In formulation and analysis of alternative forest plans as specified in § 219.10(e) and (f), interactions among recreation activities and other multiple uses shall be examined. This examination shall consider:

(i) Impacts of the proposed recreation activities on other uses and values;

(ii) Impacts of other uses and activities associated with them on recreation opportunities, activities, and quality of experience; and

(iii) Mechanisms for mitigating any undesirable physical and social effects resulting from recreational opportunities.

(5) Development and evaluation of program alternatives under subsections (3) and (4) must be coordinated to the extent feasible with:

(i) Present and proposed recreation activities of local and state land use or outdoor recreation plans, particularly the State Comprehensive Outdoor Recreation Plan; and

(ii) Recreation opportunities already present and available on other public and private lands, with the aim of reducing duplication in meeting recreation demands.

(6) Modification of land ownership patterns to meet present and future recreation needs will be considered.

(7) The overall monitoring and evaluation program (219.10(j)) will include:

(i) Evaluation of changes in, or damage to, other resources resulting from recreation activities, and effectiveness of mitigation mechanisms developed under (4)(iii) of this section; and

(ii) Assessment of the adequacy of programs and activity opportunities in terms of present and future use.

(e) *Timber resource.* To insure production of timber products and related forest benefits, the requirements and procedures set forth in this section will be included in the planning process.

(1) Timber producing lands. Each forest plan shall identify lands available, capable, and suitable for timber production and harvesting. This identification will occur as two distinct actions (Fig. 2) in the planning process in accordance with the following guidelines and standards:

(i) In the collection and use of inventory data and information, all National Forest System lands will be reviewed and lands will be identified as:

(A) Available for timber production if the land has not been legislatively or administratively withdrawn from timber production; or;

(B) Capable for timber production if the biological growth potential for the land is equal to or exceeds the minimum standard for timber production defined in the regional plan or if technology is available that will insure timber production from the land without irreversible resource damage to soils, productivity, and watershed conditions, and without significant adverse impact on threatened or endangered species, and with reasonable assurance that such lands can be adequately restocked within 5 years after final harvest.

(C) Lands not meeting the requirements of (A) and (B) above will be identified as not suited for timber production.

(ii) Prior to the formulation and evaluation of land management alternatives and timber harvest schedules, lands that are classified as available and capable for timber production shall be further reviewed and assessed to determine their potential economic efficiency in commercial timber production in accordance with the following practices, standards, and requirements. The potential economic efficiency of commercial timber production shall be assessed by comparing the anticipated direct benefits of growing and harvesting trees to the anticipated direct costs to the government, including interest and capital investments required by timber production activities. On the basis of the assessment of benefits and costs, lands will be ranked by appropriate benefit-cost criteria to establish relative potential economic efficiency in meeting the timber production goals for the unit. Specific standards and practices for making the economic analyses required by this section are to be established by the Chief, Forest Service, in regulations which shall be effective within one year following publication in the Federal Register of these rules for National Forest System land and resource management planning. *Provided:* That in assessing benefits and costs, the following principles shall be followed:

(A) Direct benefits are expressed in terms of alternative cost standards or by stumpage prices as provided by the regional plan. Alternative cost is the cost to the government of growing and harvesting the last or marginal unit of each major type of commercial timber that the National Forests in the region are to supply as provided in the current National Renewable Resource Program. In the absence of such standards, direct benefits may be measured in terms of the anticipated receipts from harvesting timber crops;

(B) Direct costs include the anticipated investments, maintenance, operating, and management and planning costs attributable to timber production activities, and any costs that may reasonably be attributed to mitigation measures necessitated by the impacts of timber production. Only the additional expenditures required for timber growing and harvesting activities, including the road system, are to be included in direct costs;

(C) The rate of interest used to discount future benefits and costs of timber production shall be equal to the rate used in the National Renewable Resources Program; and

(D) Economic analyses are based on the assumptions that the lands are managed primarily for timber production with intensity of management and degree of timber utilization determined in accordance with § 219.11(e)(3)(iii)(A). However, the practices associated with a particular intensity of management must be economically efficient. Rotation periods shall be consistent with those assumed for purposes of determining the long-term sustained yield capacity as provided in § 219.11(e)(3)(iii). Economic analyses shall consider costs and returns from conversion of existing timber inventory in addition to long-term potential yield.

(iii) During formulation of alternatives and alternative evaluation and selection, combinations of resources activities and outputs must be defined and evaluated in terms of meeting management objectives. During these actions, land that has been classified as available and capable for timber production, and has been assessed as economically suitable or unsuitable for commercial production, shall be further reviewed and allocated to the various multiple uses, including timber, outdoor recreation, watershed, range, wildlife and fish, and wilderness, to meet management objectives for the unit. During this process, land shall be identified as unsuitable for timber harvesting if:

(A) Given multiple-use and other constraints, the lands are not cost-effective in meeting the timber production goals for the alternative plan under consideration;

(B) Based on a consideration of multiple-use objectives for the area, the land is allocated to resource uses that preclude timber production; or

(C) Other joint multiple uses of the area limit timber production activities to the point where the silvicultural standards and guidelines set forth in §§ 219.11(a) and 219.11(e)(2) cannot be met.

(iv) Allocation of land, whether or not potentially economically efficient for timber production, to the various multiple uses, including commercial timber production, shall consider the multiple-use objectives for the unit specified in the regional plan, cost-effectiveness in meeting all resource use goals including timber production, relative values of the different resources and their uses, complementary relationships among the uses, regional and local stability, and such other criteria as have been determined in accordance with § 219.10(b).

(v) No timber harvesting shall occur on lands classified as not suitable for timber production during the planning period as provided under paragraphs (i) and (iii) above, except that salvage sales or sales necessary to achieve other multiple-use objectives, such as control of insects and disease, may be made if the forest plan establishes that such actions are appropriate and that timber will be harvested in accordance with the provisions of §§ 219.11(a) and 219.11(e)(2). When the plan is revised, or at least every 10 years, all lands classified as not capable, available, *or* suitable for timber shall be reviewed and where changed conditions permit, lands will be reclassified as capable, available, and suitable for timber production. Lands classified as not suitable for timber production shall continue to be treated for reforestation purposes, particularly with regard to the protection of multiple-use values.

(2) Controls on timber cutting. (i) When trees are cut to achieve multiple-use objectives, including timber production, the cuttings will be made in such a way as to:

(A) Assure that lands can be adequately restocked within 5 years after final harvest. Research and experience must indicate that the harvest and regeneration practices planned can be expected to result in adequate restocking. Adequate restocking means that the cut area must contain the minimum number, size, distribution, and species composition of regeneration as specified in Regional Silvicultural Guides attached to the forest plan for each forest type. Five years after final harvest means 5 years after clearcutting, 5 years after final overstory removal in shelterwood cutting, 5 years after cutting in selection cutting; and

(B) Provide a means of minimizing serious or long lasting hazard from insects, disease, windthrow, wildfire, or other natural forces.

(ii) Cultural treatments such as thinning, weeding, and other partial cutting may be included in the forest plan where they are intended to increase the rate of growth of remaining trees, favor commercially valuable tree species, favor species or age classes which are more valuable for wildlife, or to achieve other multiple-use objectives.

(iii) Timber cutting activities shall meet the requirements for preserving and maintaining species and community diversity required in § 219.11(a)(6)).

(3) Determination of the allowable sale quantity. The elements of this section are a statement of policy with respect to the determination of the quantity of timber to be sold from a National Forest. The elements of this policy are described in the following process. The interdisciplinary team shall formulate alternatives that include determination of the quantity of timber that may be sold during the planning period. These determinations must be based on the principle of sustained yield and consider only those lands capable, suitable, and available for timber production which meet the constraints set out in §§ 219.10(a) and 219.11(e)(2). For each management alternative, the determination must include a calculation of the long-term sustained yield capacity and the base harvest schedule and, when appropriate, a calculation of timber harvest schedule alternatives that may depart from the base harvest schedule as provided in paragraphs (ii) through (iv).

(i) As used in this section, the following definitions apply:

(A) "Allowable sale quantity": The quantity of timber that may be sold from the area of land covered by the forest plan for a time period specified by that plan. This quantity is usually expressed as an average annual sale volume.

(B) "Average annual sale volume":

(C) "Long-term sustained yield capacity": The highest uniform wood yield from those lands in a forest being managed for timber production that may be sustained under a specified intensity of management consistent with multiple-use objectives.

(D) "Timber harvest schedule": A description of quantity and the time period in which timber is planned for sale and harvest from the area of land covered by the forest plan. The first period, usually a decade, of the selected harvest schedule provides the allowable sale quantity. Future periods are shown only to establish that sustained yield will be achieved and maintained.

(E) "Timber production": The growing, tending, harvesting, and regeneration of regulated crops of industrial wood. Industrial wood includes, logs, bolts, or other round sectins cut from trees for industrial consumer use except fuelwood.

(ii) For the base harvest schedule the planned sale and harvest for any future decade must be equal to or greater than the planned sale and harvest for the preceing decade provided that the planned harvest is not greater than the long-term sustained yield capacity.

(iii) The determinations of the long-term sustained yield capacity, base harvest schedules, and departure alternatives to the base harvest schedule will be made on the basis of the guidelines which follow:

(A) For the long-term sustained yield capacity and the base harvest schedule assume an intensity of management and degree of timber utilization consistent with the goals, assumptions, and standards contained in, or used in the preparation of, the current Renewable Resource Program and regional plan. For the long-term sustained yield capacity, the management and utilization assumptions must reflect those projected for the fourth decade of the regional plan. For the base harvest schedule, the management and utilization assumptions must reflect the projected changes in practices for the four decades of the regional plan. Beyond the fourth decade, the assumptions must reflect those projected for the fourth decade of the regional plan.

(B) For departure alternatives to the base harvest schedule which provide outputs above the current regional plan, assume an appropriate management intensity.

(C) In accordance with the established standards, assure that all even-aged stands scheduled to be harvested during the planning period shall generally have reached the culmination of mean annual increment of growth. Mean annual increment must be based on management intensities and utilization standards assumed in paragraphs (A) and (B) of this subsection and expressed as units of measure consistent with the regional plan. Exceptions to these standards are permitted for the use of sound silvicultural practices, such as thinning or other stand improvement measures; for salvage or sanitation harvesting of timber stands which are

substantially damaged by fire, windthrow, or other catastrophe, or which are in imminent danger from insect or disease attack; or for the removal of particular species of trees after consideration has been given to the multiple uses of the area being planned and after completion of the public participation process applicable to the preparation of a forest plan.

(D) For all harvest schedules, achieve a forest structure by the conclusion of the schedueling period that will enable perpetual timber harvest thereafter at the long-term sustained yield capacity, consistent with the long-range multi-use objectives of the alternative.

(iv) Departures from the base harvest schedules will be formulated, considered, and subjected to comparative analysis as part of the planning process when any of the following conditions occur:

(A) None of the timber harvest alternatives formulated has the capacity to produce the goods, services, or uses to met multiple-use objectives specified for the area by the regional plan.

(B) Attainment of the multiple-use objectives of the forest plan will be enhanced by more rapid and efficient achievement of the long-term sustained yield capacity of the forest owing to present forest structure or by preventing or reducing high mortality losses from any cause.

(C) Implementation of the base harvest schedule would cause instability or dislocation in the economic area in which the forest is located.

(4) Harvest schedule selection. Selection of a harvest schedule must be made following a comparison of management alternatives. This comparison must include an evaluation of the sustained yield goal, silvicultural standards and guidelines, and the effects of timber removal on other resources. The selected harvest schedule provides the allowable sale quantity, or the quantity of timber that may be sold from the area of land covered by the forest plan for the plan period. If the selected harvest schedule is not the base timber harvest schedule or in any decade exceeds the calculated long-term sustained yield capacity for the forest unit, the land management plan shall be transmitted to the Chief, Forest Service, for approval. The Chief shall review the selected harvest schedule, and take one of two actions:

(i) Approve the selected harvest schedule, and attach to the associated land management plan a statement documenting approval; or

(ii) Disapprove the selected harvest schedule, and return the land management plan to the Regional Forester with a written statement of the reasons for such disapproval.

Within the planning period, the volume of timber to be sold in any one year may exceed the average annual allowable sale quantity so long as the total amount sold for the planned period does not exceed the allowable sale quantity. Nothing in this standard shall prohibit the responsible Forest Service official from providing for salvage or sanitation harvesting of timber stands as which are substantially damaged by fire, windthrow or other catastrophe, or which are in imminent danger from insect or disease attack, provided such harvest is consistent with silvicultural and environmental standards. This timber may either substitute for timber that would otherwise be sold under the plan or, if not feasible, be sold over and above the planned volume.

(5) Control measures. As a minimum, control measures must be established to insure that:

(i) Harvest levels based on intensified management practices are decreased no later than the end of each planning period if such practices cannot be completed substantially as planned;

(ii) Prior to sale, the potential physical, biological, aesthetic, engineering, and economic impacts have been assessed on each advertised sale area, as well as the consistency of the sale with the multiple uses of the general area, providing that harvested areas should be dispersed so that normal streamflow charateristics are not appreciably changed;

(iii) Cut blocks, patches, or strips are shaped and blended to the extent practicable with the natural terrain to achieve asthetic and wildlife habitat objectives;

(iv) Timber harvest cuts designed to regenerate an even-aged stand of timber are carried out in a manner consisent with the protection of soil, watershed, fish and wildlife, recreation, and aesthetic resources, and the regeneration of the timber resource; and

(v) Timber harvest cuts using any system do not create a situation favorable to abnormal increase of injurious insects and diseases.

(6) Monitoring. As a minimum, monitoring measures must be established to insure that:

(i) Lands are adequately restocked within the time planned for regeneration after the final harvest cut;

(ii) Lands identified as not suited for timber production will be examined to determine if conditions have changed so that these lands may be returned to timber production at the time of revision of the forest plan or every 10 years;

(iii) Maximum size limits for areas to be cut in one entry are evaluated to determine whether such size limits continue to meet silvicultural and management objectives; and

(iv) Destructive insects and disease organisms do not increase following management activities.

(f) *Water resource.* In order to provide high-quality water sufficient to meet human and environmental needs and to insure protection from loss of life, property, or physical and biological values resulting from floods, avalanches, and other water related events, the requirements set forth in paragraphs (1) through (6) will be followed in planning the management of the water and soil resources.

(1) Current water uses (both consumptive and non-consumptive) within the area of land covered by the forest plan, including instream flow requirements, will be determined.

(2) Existing impoundments, transmission facilities, wells, and other man-made developments on the area of land covered by the forest plan will be identified.

(3) The probable occurrence of various levels of water volumes, including extreme events which would have a major impact on the planning area, will be estimated.

(4) Plans shall comply with the requirements of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977, the Safe Drinking Water Act, and all substantive and procedural requirements of federal, state, and local governmental bodies with respect to the provision of public water systems and the disposal of waste water.

(5) Existing or potential watershed conditions that will influence soil productivity, water yield, water pollution, or hazardous events, will be evaluated.

(6) Measures, as directed in applicable Executive Orders, to minimize risk of flood loss and to restore and preserve floodplain values, and to protect wetlands, will be adopted.

(g) *Wilderness resource.* Each forest plan will evaluate the wilderness resource present and, when appropriate, recommend areas for wilderness designation. In addition, each plan will provide management planning for lands which are designated units of the National Wilderness Preservation System and for lands specifically designated for wilderness study by Congress or recommended by the administration for possible inclusion in

the system. The requirements set forth in paragraphs (1) through (4) shall apply to all forest plans.

(1) The interdisciplinary team will collect and use information about existing and potential wilderness values for those lands identified by Congress or by the Forest Service as lands suitable for further study for possible inclusion in the System. Lands identified in previous planning processes as lands to be managed for purposes other than wilderness need not be assessed for wilderness in development of the initial generation of forest plans prepared under these regulations.

(2) At least at 15-year intervals, the lands within the forest meeting the criteria of the National Wilderness Preservation Act of 1964, will be evaluated and considered for recommendation as to future status. The areas to be evaluated will include:

(i) Existing wilderness and primitive areas;

(ii) All previously inventoried wilderness resources not yet designated;

(iii) Areas contiguous to existing wilderness, primitive areas, or administration-proposed wildernesses, regardless of agency jurisdiction;

(iv) Areas, regardless of size, that are contiguous to roadless and undeveloped areas in other federal ownership that have identified wilderness potential; and

(v) Areas designated by Congress for wilderness study, administration proposals pending before Congress, and other legislative proposals pending which have been endorsed by the administration.

(3) Each area designated for examination under subsection (2) above will be evaluated either in terms of current national guidelines or, in their absence, by criteria developed by the interdisciplinary team with public participation. In the latter case, the criteria must consider as a minimum:

(i) The values of the area as wilderness;

(ii) The values foregone and effects on management of adjacent lands as a consequence of wilderness designation;

(iii) Feasibility of management as wilderness, as in respect to size, nonconforming use, and land ownership patterns;

(iv) Proximity to other designated wilderness, and relative contribution to the National Wilderness Preservation System; and

(v) The anticipated long-term changes in plant and animal species' diversity and in diversity of natural communities of the National Forest and the effects of such changes on the wilderness system.

(4) The forest plan must provide direction for the management of designated wilderness and primitive areas. In particular, it must:

(i) Provide for limiting and distributing visitor use to a level equal to or less than carrying capacity, defined as the maximum level of use that will allow natural processes to operate freely, and that does not impair the values for which wilderness areas were created; and

(ii) Evaluate the extent to which measures against wildfire, insects, and diseases may be desirable for protection of either the wilderness or adjacent areas, and provide for such measures when appropriate.

(h) *Mineral resources.*

§ *219.12 Research*

(a) Research needs for management of the National Forest System will be identified during the planning process and reviewed subsequently on a continuing basis through evalution of implemented plan. Research needs identified during planning will be forwarded through administrative channels to the office of the Chief, Forest Service, and shall become part of the annual report described in (c) below along with a description of the active and proposed research program addressing these needs.

(b) Particular attention will be given to the results of the monitoring and evaluation efforts conducted under § 219.10(j). If these efforts identify management systems or practices that are not successfully meeting stated objectives, or are resulting in substantial and permanent impairment of the productivity of the land, as a result inadequate information or technology, the research needs identified will be immediately forwarded to the Chief, Forest Service, for subsequent action by the management of Forest Service research activities.

Identified needs will be included in formulating overall programs involving research needs on other public lands and on industrial and nonindustrial private lands. The research priorities for management of the National Forest System will be established and budgeted at the research station and national levels based on input of the National Forest System at all planning levels with due consideration to problems and opportunities identified in (a) above and through the results of the monitoring and evaluation process described in § 219.10(j).

(c) An annual report at the national level will include, but not be limited to, a description of the status of major research program, significant findings, and how this information is to be applied in National Forest System management.

§ *219.13 Revision of regulations.*

These regulations shall be subjected to regular review and, when appropriate, revision. Such review and revision may occur whenever it is deemed necessary, but the first such review shall be completed no later than 6 years after the approval date of these regulations. Additional reviews shall occur at least every 5 years thereafter. The Secretary shall consider the use of a Committee of Scientists to assist in this review and revision. It shall operate in the manner provided in section 6(h) of The National Forest Management Act of 1976. The process of revision shall take place with full opportunity for public participation. Such public participation shall be generally similar to that required in these regulations for regional planning (§ 219.8).

§ *219.14 Transition period.*

Until such time as an area of National Forest Ssytem land is managed under a forest plan approved by the Regional Forester, such areas of land may continue to be managed under existing land-use and resource plans. As soon as practicable, exisiting plans will be amended or revised to incorporate standards and guidelines in this subject. Pending approval of a forest plan, existing plans may be amended or revised to include management requirements not inconsistent with the provisions of the Forest and Rangeland Renewable Resources Planning Act, as amended, and these regulations.

[FR Doc. 79-13863 Filed 5-3-79; 8:45 am]

BILLING CODE 3410-11-M

Friday
May 4, 1979

Federal Register

Part VI

Department of Housing and Urban Development

Section 8 Housing Assistance Payments Program; Special Procedures for Moderate Rehabilitation Program

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 882

Section 8 Housing Assistance Payments Program—Existing Housing; Special Procedures for Moderate Rehabilitation Program

AGENCY: Department of Housing and Urban Development (HUD).

ACTION: Final rule.

SUMMARY: The Department is amending the Section 8 Existing Housing Program regulations to add two new Subparts which establish policies, procedures and operating guidelines for a new Moderate Rehabilitation Program. This Program provides for the upgrading of substandard housing units to comply with certain Housing Quality Standards and provides in standard housing units, for the repair or replacement of major building systems or components in danger of failing.

EFFECTIVE DATE: May 24, 1979.

FOR FURTHER INFORMATION CONTACT: Cheryl D. Patton, Moderate Rehabilitation Division, Department of Housing and Urban Development, Washington, D.C. 20410. (202) 755–5380. This is not a toll free number.

SUPPLEMENTARY INFORMATION: On December 28, 1978, proposed additions to the Section 8 Existing Housing Program regulations (24 CFR Part 882), to establish a Moderate Rehabilitation Program were published in the **Federal Register**, at 43 FR 60752, for public comment. Interested parties were given until January 29, 1979 to submit comments. More than 90 individuals and organizations submitted written comments. Due to the volume of comments and numerous requests that the comment period be extended, all comments received prior to March 1, 1979 were considered. Numerous changes are being made in the proposed regulations in response to these comments. A discussion of the principal changes and of the more recurrent and significant comments is set forth below.

1—Organization

Subpart D is being revised to rearrange several of the sections to place them in a more logical order, to add several new sections in response to comments, and to address some areas not mentioned in the proposed regulations. Subpart E is also being revised to add several new paragraphs, to clarify procedures and to specify additional suggested requirements.

2—Purpose of the Program

While there are several Departmental objectives that the Moderate Rehabilitation Program could further, the proposed regulations did not specify a particular objective. However, the emphasis was clearly toward neighborhood revitalization since a funding preference was provided to PHAs in metropolitan areas which proposed to concentrate the Program in a specific neighborhood. Several comments suggested that this bias towards targeting was inappropriate particularly since the Moderate Rehabilitation Program is a part of the Existing Housing Program and could be used for providing mobility to lower-income families and for providing housing opportunities in areas outside of low income and minority concentration.

Based on these comments, a paragraph is being added to § 882.401 detailing three possible objectives of the Moderate Rehabilitation Program, i.e., (1) freedom of housing choice and spatial deconcentration of assisted housing into areas outside of low income and minority concentrations, (2) prevention of displacement of lower-income Families in areas undergoing private rehabilitation, and (3) neighborhood preservation and revitalization. PHAs must indicate in their applications which (one or more) of these objectives they propose to promote with the Program. Application requirements are also being expanded to require the PHA to specify which of these objectives it plans to pursue as well as the feasibility of achieving that objective(s). To provide each of the objectives with equal weight in ranking approvable proposals, a preference is no longer being provided for applications which target. The field office must still, however, review the overall feasibility of the proposed program in meeting the stated objective.

3—Administrative Fees

One of the major concerns of many commenters was the administrative fee that the PHA will receive for administering a Moderate Rehabilitation Program.

The Department recognizes that many PHAs have recommended that the administrative fees for the Existing Housing Program be revised. A research analysis of this fee structure will be commenced soon; however, until this study is completed and the fee structure is revised as necessary, it has been determined that the Moderate Rehabilitation Program administrative fees will be based on a system of preliminary and ongoing administrative costs as in the Existing Housing Program.

The maximum allowable administrative fee for preliminary expenses in the Moderate Rehabilitation Program is $500 per unit for the initial project placed under an Annual Contributions Contract and $400 per unit for subsequent projects. These amounts were determined appropriate based on the following functions and costs: (a) rehabilitation and temporary relocation responsibilities—$300 per unit; (b) initial development of the application, plans for administration and local government coordination, and administrative capacity—$100 per unit; and (c) limited outreach to families, receipt and verification of family applications, and provision of program information to families selected to participate in the program—$100.

The cost of providing rehabilitation services is based on estimates submitted by PHAs and Community Development Agencies administering rehabilitation programs similar to the Moderate Rehabilitation Program. The cost of the remaining two categories of functions is based on an analysis of the preliminary fee in the Existing Housing Program, taking into account the differences between the two programs. The $500 maximum for initial projects consists of reimbursement for functions (a) through (c) listed above, and the $400 maximum for subsequent projects is based on functions (a) and (c).

It is emphasized that the maximum amounts are not automatic and Field Offices will review PHAs' justifications to determine the type and amount of preliminary administrative expenses which are necessary for successful program implementation.

The Department encourages use of the Moderate Rehabilitation Program to upgrade units occupied by lower-income families in buildings with 20 or fewer units, and recognizes that the fee for preliminary expenses may need to be increased when economies of scale cannot be achieved. Additionally, studies indicate that rehabilitation administrative expenses increase proportionate to the amount and type of rehabilitation. Therefore, in limited cases, PHAs may request reimbursement for preliminary expenses in excess of the maximum allowable amount per unit. Any such request must be fully documented by the PHA and be based on the actual necessary costs of providing rehabilitation assistance to owners of buildings with 20 or fewer units or to owners whose rehabilitation costs exceed $5,000 per unit.

Examples of justifiable costs of providing additional assistance to owners of a small number of units include the increased efforts to identify and discuss the Program with those owners who may be reluctant to become involved with a subsidized housing program; travel associated with inspecting units in scattered locations; processing of a larger number of owner proposals; provision of more intensive financing counseling and work write-up and cost estimating assistance; and preparation, monitoring, or review of an increased number of contractual documents and owner certifications.

With respect to the costs associated with selecting owners' proposals which require more than $5,000 of rehabilitation per unit, PHAs would need to justify costs based on the complexity of the necessary rehabilitation, e.g., replacement of major electrical, plumbing or heating systems. Additional assistance could be justified based on more complex work write-ups and cost estimates; increased time to monitor rehabilitation; and provision of increased temporary relocation services and monitoring.

The administrative fee for ongoing expenses in the Moderate Rehabilitation Program is the same fee allowed in the Existing Housing Program—the higher of $15 or 8½ percent of the Existing Housing Fair Market Rent for a two-bedroom, non-elevator unit in the market area. Major PHA responsibilities after the rehabilitation and initial leasing of units are identical in the two programs, for example, annual inspections of units, reverification of family income and composition, certification and briefing of new families entering the program due to turnover, and review of utility allowances. It is noted that the family turnover rates and associated administrative expenses experienced by many PHAs administering the Existing Housing Program should be reduced in the Moderate Rehabilitation Program since the subsidy is tied to the unit and families cannot elect to move to another unit and continue to receive assistance.

4—Housing for the Handicapped

Housing for the handicapped, removal of architectural barriers, development of Independent Group Residences or other activities to provide access to the handicapped are Departmental priorities. Therefore, as suggested in several comments, the removal of architectural barriers is an eligible activity under the Moderate Rehabilitation Program. Making a unit barrier-free is not included as a Housing Quality Standard except in connection with Independent Group Residences and is thus not generally required. However, where there is a handicapped person occupying a unit or the owner wishes to make the unit available for a handicapped individual, rehabilitation to make the unit accessible to these individuals is considered an eligible rehabilitation cost, provided that the unit meets the criteria in the definition of Moderate Rehabilitation and the cost of the work can be supported within the Fair Market Rent limitations.

PHAs should provide technical assistance, where necessary, to owners wishing to make units barrier free. Where the PHA does not have this expertise, it should, to the extent feasible within administrative cost constraints, consult or subcontract with an experienced entity.

Several changes are being made in the regulations to facilitate the Department's goal of providing suitable housing for the handicapped.

a. A PHA may approve gross rents which exceed the Moderate Rehabilitation Fair Market Rent (FMR) by up to 10 percent where the higher rent is necessary to support the costs of making the physical modifications to a unit and/or structure which are necessary to make the unit(s) accessible to handicapped or disabled persons occupying or expected to occupy the unit(s).

b. A PHA may select, for up to 5 percent of the units in its Program, units which could not meet the $1000 minimum standard without the rehabilitation needed to provide access to a handicapped individual occupying or expected to occupy the unit.

c. Section 882.517(g) is being amended to include the fact that discrimination due to handicap is not allowed. Section 504 of the Rehabilitation Act of 1973 prohibits discrimination based on handicap and compliance with this Section and HUD regulations and requirements issued thereunder is a requirement for participation in the Program.

5—Eligible Types of Housing

Section 882.401 is being revised to make it clear that all housing excluded under the Existing Housing Program, such as nursing homes and reformatories, is excluded under Moderate Rehabilitation and to exclude all housing which is otherwise Federally assisted, or has received federal assistance in the 12 months prior to the Owner submitting a proposal (e.g. projects assisted under Section 236 or 221(d)(3) (BMIR) of the National Housing Act). Units assisted under the Section 8 Existing Housing Program which meet the Housing Quality Standards but have a major system or component in danger of failing are exempt from this rule. To ensure that units are assisted under only one program, the Existing Housing Contract must be terminated prior to the date a Moderate Rehabilitation Contract becomes effective.

Conversion of Section 23 units to the Moderate Rehabilitation Program is prohibited by the regulations since the Department will publish regulations to address conversions and operational issues of the Section 23 program. Section 23 units with short term leases will continue to be converted to the Section 8 Existing Program rather than Moderate Rehabilitation since the Department's commitment is to continue assistance to the families occupying these units. Projects with long term leases will either be continued under the Section 23 program with some increase in rents to reflect higher costs subject to the availability of funds or will be considered for acquisition by PHAs under the public housing program.

In response to a comment pointing out the possible problems and delays associated with field office approval on a case-by-case basis, the field office is allowed to make a determination that elevator units for families are permissible for all or a portion of the PHA's Moderate Rehabilitation Program rather than on a case-by-case basis. The field office may, of course, choose to review each building individually in making its determination.

Several comments concerned the use of units owned by State and local governments under the program. After consideration of the comments, it has been determined that a PHA may select units owned by a State or unit of general local government for participation in the Moderate Rehabilitation Program only under the following circumstances:

a. HUD must review and approve the site, assuring that the site is in conformance with the site and neighborhood standards of the Program. This HUD review may be accomplished on a neighborhood rather than on a case-by-case basis.

b. The State or unit of general local government may not retain ownership of the property but must sell the property to another owner prior to the PHA's entering into an Agreement with respect to the property.

Since the Department is encouraging cooperation and coordination between the PHA and the local government and since local governments are becoming increasingly involved in the policies and

activities of the PHAs, it was determined that these additional requirements are necessary.

In addition to these requirements, field office monitoring of these units will be more intensive in that the field office, in its management reviews of the PHA, is required to review the files on each unit owned, or formerly owned, by a State or unit of general local government to assure that selection was accomplished in accordance with the PHA's administrative plan and HUD regulations and that initial contract rents were calculated appropriately.

6—Definitions

The definition of Moderate Rehabilitation is being changed in response to comments which suggested that a differing minimum amount of rehabilitation would discriminate against owners of 12 or fewer units. Based on these comments and other suggestions concerning the minimum amount of rehabilitation required, the minimum has been changed to $1,000 per unit regardless of the number of units in the building. The definition is also being amended to clarify that the unit must be in substandard condition to qualify under paragraph (a) of the definition and to emphasize that routine maintenance will not be considered Moderate Rehabilitation. An exception to the substandard condition requirement of the definition to provide barrier-free housing is discussed in the preamble in section 4—Housing for the Handicapped.

The definition is also being amended to clarify that the $1,000 per unit minimum may include both the cost of work to be accomplished within a unit and a prorated amount of the work to be done on common systems or areas affecting the unit (e.g., central heating system repair, lobby renovations, etc.). While the statute allows the Secretary "to make assistance available * * * to any unit in a housing project which, on an overall basis, reflects the need for such upgrading", it has been determined that in order to make the best possible use of housing assistance funds, only units requiring at least $1,000 of rehabilitation work are eligible for assistance under the Program.

A definition of Statement of Family Responsibility is being added along with a new § 882.415 in response to several comments. Since there is no Certificate of Family Participation in the Moderate Rehabilitation Program, the proposed regulations did not provide for a document to be signed by the family in which they agree to assume the responsibilities required through their participation in the Program. The Statement is a HUD form and is an agreement between the family and the PHA specifying the responsibilities of each party. Should the family not fulfill these responsibilities, it is grounds for termination of assistance.

7—ACC Provisions

A new section on the ACC has been added specifying that there will be a single ACC Part I for the Moderate Rehabilitation Program of a PHA and that all units for which metropolitan or non-metropolitan contract authority is reserved in a fiscal year for a PHA will constitute a separate project with a 17-year term. Assistance will be available for any unit for up to 15 years. Certain controlled accounts will be maintained by project and most reports and financial forms will be submitted by project rather than by program as is done in the Existing Housing Program. Separate project accounts will be maintained for each Moderate Rehabilitation project rather than one account for the entire Program.

8—Contract and Lease Term

Consistent with the Department's policy that owners not use the Section 8 programs, including the Moderate Rehabilitation Program, to obtain financing and then drop out of the Program at the end of the initial 5 year term of the HAP Contract, Section 882.404 is being amended to specify that the HAP Contract will be for a 15-year term. While this policy may discourage some owners from participating in the Program, the Department is interested in assuring that the rehabilitated units will be available to lower-income families for the longest possible time.

The proposed regulations did not state whether a 30 day termination clause would be allowed in leases under the Program. Several comments addressed this issue, the majority of which expressed concern that owners might not participate in the Program without such a clause in the lease. The Department has determined that since the Moderate Rehabilitation Program is a project based program and terminating the tenancy of a family will often result in termination of housing assistance, the owner should not have the right to terminate a family's tenancy by merely issuing a 30 day notice to vacate. A section on terminations is thus being added (discussed later in the preamble), and the term of the lease is being amended to specify that a lease of longer than one year must contain a 30 day termination clause on the part of the family. No such termination clause is allowed for the owner.

9—Housing Quality Standards

The Housing Quality Standard for energy efficiency is being revised to state that caulking and weatherstripping will be required in every unit rehabilitated under the Program. Other energy conserving improvements, such as storm windows and insulation are required if they are determined to be practicable, cost effective and financially feasible. Comments were received advocating both the inclusion and exclusion of the cost of these improvements in the rehabilitation cost. While the proposed regulations were not specific on this point, it has been determined that, since these improvements are being required and due to the difficulty of accurately calculating cost savings from improvements, the cost of installing the required energy efficient improvements should be included as a rehabilitation cost in the computation of rents. Specific instructions on the improvements that are required and the method of determining cost effectiveness of other improvements will be contained in a PHA Handbook.

A new Housing Quality Standard is being added involving site and neighborhood standards. Since the subsidy is tied to the unit in this Program, it has been decided that the site and neighborhood standards applicable to the Section 8 Substantial Rehabilitation Program should be applied. The Department is considering amending the site and neighborhood standards for all of its programs; however, until changes are made effective for all Departmental programs, the Moderate Rehabilitation standards will conform to the current Substantial Rehabilitation site and neighborhood standards.

10—Financing

A large number of comments suggested that the Moderate Rehabilitation Program could function more effectively and more rehabilitation could be achieved by allowing Section 312 financing of Moderate Rehabilitation units. Nevertheless, the Department has determined to prohibit the use of the Section 312 program as a means of financing rehabilitation under the Moderate Rehabilitation Program. This decision was based upon the facts that combining the two programs could be viewed as a double subsidy to owners and the Section 312 program could be used more effectively on units not receiving Section 8 assistance, thus

promoting the rehabilitation of twice the number of units possible if the two programs were combined. Waivers of this policy by the Assistant Secretaries for Housing and Community Development will be considered on a case-by-case basis where the combination of the programs is proposed for good cause, such as, to achieve an income mix in a building, to prevent displacement of lower income families, or to provide mobility opportunities to lower income families.

It was suggested that various HUD insurance or rehabilitation loan programs could be used in financing rehabilitation under the Moderate Rehabilitation Program. Among these programs are HUD/FHA mortgage insurance programs under Sections 223(f), 221(d)(3) and 221(d)(4) of the National Housing Act; HUD/FHA rehabilitation loan insurance programs under Title I and Sections 241, 203k, 220(d)(3)(A) and 220(h) of that Act; and GNMA Tandem and Mortgage-Backed Securities Programs.

While the use of any of these programs to obtain financing for rehabilitation under the Moderate Rehabilitation Program is possible, each program has requirements and operating procedures which must be followed in addition to those for the Moderate Rehabilitation Program. These procedures may conflict and may preclude the use of these insurance programs with the Moderate Rehabilitation Program. At present, there are no special procedures to interface Moderate Rehabilitation processing with HUD/FHA mortgage insurance processing. For additional information on any of these insurance or loan programs, a HUD/FHA-approved lender should be contacted since any application for these programs must be made through or to a HUD/FHA-approved financial institution.

11—Relocation

One of the major concerns of most commenters was the relocation requirements of the Program. Many expressed the view that requiring Uniform Act-level assistance to displaced lower income families was unnecessary while others suggested that requiring the local government to assume the costs of permanent displacement would virtually exclude non-Community Development entitlement localities from participating in the Moderate Rehabilitation Program.

In response to these comments a revised relocation policy is being established which protects families from being displaced without appropriate assistance, while not requiring that the local government sign off on the Moderate Rehabilitation application agreeing to assume responsibility for permanent relocation payments.

The revised policy prohibits permanent displacement (i.e., it does not permit a PHA to select a building where permanent displacement of tenants will be necessary). The only exception to this policy is if a PHA submits an approvable relocation strategy which states that no tenant will be displaced unless that tenant is in a unit which is overcrowded or underoccupied or the owner is combining two or more occupied units resulting in fewer units than tenants after rehabilitation; states that no tenant will be required to move until suitable alternative housing is available; provides for assistance to displaced tenants in securing alternative housing at a price they can afford; and specifies the source of funding for any moving costs and relocation payments. While the regulations provide for assistance to tenants similar to that required under the Uniform Act, the tenant will be provided suitable alternative housing within his/her ability to pay rather than a choice between such housing and a replacement housing payment. The PHA may choose to make a replacement housing payment to a Family but such a decision is at the sole option of the PHA. By imposing the restrictions on displacement and payments to displacees outlined above, much of the uncertainty on the part of the local governments who may be asked to fund relocation payments should be eliminated thus making it easier for the local government to assume this responsibility.

While the PHA may provide any assistance needed by temporarily relocated tenants (such as assistance in finding a unit) and be reimbursed for these expenses through the preliminary administrative fee, the PHA will not be responsible for any direct payments to tenants (such as moving costs or increased housing expenses). Payments for temporary relocation costs remain the responsibility of the owner. Costs and sevices associated with permanent displacements must be assumed by another entity unless the PHA proposes to fund these payments from other than HUD-related housing funds.

Much concern was expressed regarding the potential displacement of single persons and over-income tenants. To address these concerns, serveral changes and clarifications have been made to the regulations. It has been determined that a lower-income single person (even if not elderly or handicapped) occupying a unit in a Moderate Rehabilitation proposal may be assisted under the Program, because under 24 CFR Part 812 a lower-income person is eligible if displaced. If the occupant were required to move, he/she would then be a displaced person under 24 CFR Part 812 and therefore eligible for reoccupany. Since no purpose would be served by going through the motions of requiring a move and immediate reoccupancy, such persons are treated as eligible occupants. In addition, the owner must certify in the proposal that he/she has not terminated without good cause the tenancy of any family in the 12 months prior to entering into the Moderate Rehabilitation Program. For those over-income tenants who are displaced because there will not be sufficient suitable-sized units available after rehabilitation, the regulations require that the PHA assure that they receive appropriate assistance and are reimbursed for moving costs.

12—Other Federal Requirements

The applicability of labor standards, environmental, historic preservation, and fair housing and equal opportunity requirements was the subject of numerous comments. Under new procedures being developed by the Department for the National Environmental Policy Act, the Moderate Rehabilitation Program will be exempt from the requirements of NEPA whenever the cost of rehabilitation under the Program will be less than 75 percent of the value of the property after rehabilitation. The other requirements are categorized to indicate which affect the PHA's selection of units and which affect the owner and the rehabilitation work and are discussed in greater detail below.

a. Civil Rights Laws

The laws requiring fair housing practices are familiar to PHAs and owners throughout the country. Executive Order 11063, "Equal Opportunity in Housing," prohibit discrimination based on race, color, creed, or national origin in any federally assisted housing program. Title VI of the Civil Rights Act of 1964 provides that no person shall be excluded from participation in any federally assisted program on the basis of race, color, or national origin. The most comprehensive fair housing law is Title VIII of the Civil Rights Act of 1968, which bans discrimination based on race, color, religion, sex, and national origin in all housing, federally assisted or not. PHAs and other qualified agencies applying

for a Moderate Rehabilitation Program must include certifications of their intent to comply with and to require participating owners comply with fair housing requirements in their applications to HUD.

b. Environmental Requirements.

Although the Moderate Rehabilitation Program is exempt from NEPA as discussed above, participants in the Moderate Rehabilitation Program must comply with requirements of several other environmental protection laws. Since the Program does not involve new construction or substantial amounts of rehabilitation, the most significant impact of these laws is the requirement that PHAs include enviromental concerns in their list of project selection criteria.

The Clean Air Act and the Federal Water Pollution Control Act are laws designed to restore and maintain clean air and water. PHAs should give consideration at time of project selection to projects which conform most closely to the principles of environmental protection. Also, a clause which requires owners to comply with Clean Air and Water Acts must be included in contracts with owners, if contract rents over the maximum total term of the PHA Contract exceed $100,000.

There are two other environmental protection requirements which PHAs should keep in mind in their selection of proposals. Executive Order 11988, "Floodplain Management," and Executive Order 11990, "Protection of Wetlands." Both Executive Orders require public notice before any federally assisted action can be taken in a floodplain or new construction begun in a wetland. Since the Moderate Rehabilitation Program does not involve new construction or site selection, Executive Order 11990 should have little or not effect. The public notice is the only requirement of Executive Order 11988 on the Moderate Rehabilitation Program.

Another law concerned with the hazards of floods is the Flood Disaster Protection Act of 1973. This law is the only environmental law that requires some specific action by the owner. For those projects undertaken in a community having special flood hazards and in which HUD flood insurance is available, the owner must agree to purchase flood insurance to cover his property. The federally subsidized insurance can be purchased over the phone, and the cost is minimal.

The environmental protection laws are designed to regulate major federal or private actions which could endanger plant and animal life or otherwise harm the environment. Their impact is not directed at a program such as Moderate Rehabilitation, which involves small amounts of repair to existing housing. Those requirements, such as flood protection, which affect the program are beneficial and easily handled by an owner of a small number of units.

c. Historic Preservation Requirements

The necessity for compliance with historic preservation laws (National Historic Preservation Act, Archeological and Historic Preservation Act, and Executive Order 11593) has been questioned. The people commenting on these requirements are concerned with the possibilities of complex rules, delays, and additional expense. However, the historic preservation laws should present no great obstacle to the administration of the Section 8 Moderate Rehabilitation Program. The amount of rehabilitation involved in the program is not substantial. It is unlikely that the rehabilitation will be significant enough to require long deliberation by historic preservation officials before approval. Also, historic preservation officials are concerned primarily with the exterior of a building. Much of the rehabilitation in the Moderate Rehabilitation Program, such as repairs to plumbing, wiring, interior walls, and heating/air-conditioning systems, should not involve alteration of the exterior at all. In addition, historic preservation requirements apply to historic sites, districts, and buildings only.

Public housing agencies and builders in these areas should already have some experience in dealing with requirements for historic preservation. No exemptions or thresholds apply to historic preservation, and the requirements also cover buildings being privately rehabilitated. Therefore, it would be inappropriate for any HUD program to be exempt from these requirements. HUD is not seeking an exemption because it supports the principles stated in the National Historic Preservation Act, "that the historical and cultural foundations of the Nation should be preserved as a living part of our community life and development in order to give a sense of orientation to the American people."

d. Discrimination Based on Handicap

Section 504 of the Rehabilitation Act of 1973 basically requires only that the PHA and owner not discriminate against a person based on that person's handicap. As in the Existing Housing Program, individual owners are required to comply with provisions specifying nondiscrimination in tenant selection and employment. Regulations implementing Section 504 have not been published for effect by the Department; however, it is anticipated that these regulations will contain provisions which take into consideration the feasibility of physical alterations for accessibility, and providing barrier-free units may be required by some owners as part of the rehabilitation to be accomplished under the program.

e. Equal Employment Opportunity Requirements

Participants in the Moderate Rehabilitation Program are required to comply with three Equal Employment Opportunity laws. The first, Executive Order 11246, "Equal Employment Opportunity," applies to all federally assisted construction contracts for $10,000 and over. Executive Order 11246 prohibits discrimination on the basis of race, color, creed, sex, or national origin in the hiring or employment of individuals. A clause stating a commitment to equal employment opportunity requirements must be included in all non-exempt contracts.

The second applicable Equal Employment Opportunity law is Section 3 of the Housing and Urban Development Act of 1968, which provides that project-area lower-income residents and small businesses be used for federally assisted housing construction, whenever feasible. For the Moderate Rehabilitation Program, Section 3 covers those Agreements and Contracts where total Contract Rents over the maximum term of the Contract exceed $500,000. A clause agreeing to utilize project-area residents and businesses to the greatest extent feasible must be included in all non-exempt contracts or subcontracts.

Executive Order 11625, "Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise", calls for the participation of all federal departments and agencies in an effort to increase minority enterprises. To assist in furthering minority enterprise participation in the Program, PHAs administering the Moderate Rehabilitation Program must maintain a list of contractors, including minority contractors, to be provided to owners. The PHA may obtain assistance from the HUD field office in developing this list.

f. Labor Standards Requirements

The Moderate Rehabilitation Program is subject to four laws generally

designated as Labor Standards. The laws are designed to guarantee that workers on federally assisted construction projects will not receive substandard wages, treatment, or fringe benefits. To avoid unduly burdening contractors willing to work on smaller projects, none of the Labor Standards laws covers Section 8 contracts of fewer than 9 units.

Many commenters questioned the rationale for requiring compliance with labor standards provisions, particularly the Davis-Bacon Act, in the Moderate Rehabilitation Program. It was pointed out that other HUD repair programs such as Section 223(f) are exempt from these provisions and requiring that owners comply with these Acts would significantly raise rehabilitation costs. The Department acknowledges these comments; however, the statute requires that all Section 8 Agreements covering nine or more assisted units must comply with these requirements. Therefore, they must be retained in the regulations.

The Davis-Bacon Act provides that construction workers will be paid not less than the wages prevailing in the locality for similar work, as determined by the Department of Labor. The Contract Work Hours and Safety Standards Act provides that construction workers will be paid time and a half for overtime work. The Copeland Act aids in enforcing the Davis-Bacon Act by prohibiting "kick-backs" to employers. Under this Act, contractors are required to furnish wage statements to their employees. These statements help guarantee that only allowable deductions, those for the benefit of or requested by the employee (e.g., medical insurance, union dues, charitable contributions), are deducted from the employee's wages. The National Apprenticeship Act sets standards for the employment of apprentices and trainees. Apprentices and trainees enrolled in programs approved by the Department of Labor may be paid at less than the prevailing wage rate for similar work. Contractors must employ the same ratio of apprentices and trainees at their federally assisted work sites as they do in the rest of their work force. Contractors on larger projects are also encouraged to employ apprentices and trainees in the ratio suggested by the Department of Labor and to employ 25 percent of trainees in their first year of training.

Clauses relating to the Labor Standards laws must be included in all non-exempt contracts or subcontracts. Contractors are required to keep payroll and employment records to show their compliance with the laws. HUD is committed to assuring that the workers on the construction it assists do not receive substandard pay or treatment.

13—Contract Rents

The majority of the comments expressed concern as to the adequacy of the Fair Market Rents—a) establishing them at only 120 percent of the Existing FMRs and b) allowing the Moderate Rehabilitation FMRs to be exceeded only with prior HUD approval after rehabilitation had commenced. The FMRs are being maintained at 120 percent of the Existing Housing FMRs. These rents should be sufficient in most market areas to encourage owners to participate in the program. The regulations are being revised, however, to provide for a more liberal exception rent policy. Specifically, the PHA will have authority to approve gross rents which exceed the Moderate Rehabilitation FMRs by up to 10 percent (1) in areas approved by the field office as having high median rents and (2) on a case-by-case basis to provide necessary physical modifications of housing for handicapped and disabled individuals or to meet the needs of families needing four or more bedrooms. Additionally, the field office may approve gross rents up to 120 percent of the Moderate Rehabilitation FMRs on a case-by-case basis during rehabilitation to cover unexpected costs.

There were numerous comments on the initial calculation of gross rents; comments varied from those suggesting that the formula was too complicated and that only a rent reasonbleness test should apply, to those who felt a strict income/expense approach should be used. It was determined that a "reasonableness" approach to the rents was not appropriate since it would be difficult to determine a reasonable rent for a unit which has been recently moderately rehabilitated and since the rents in a marginal neighborhood (to which the Program may be targeted) are often depressed and a "comparable" rent may not be sufficient to compensate the owner for rehabilitation. Therefore, the base rent calculation in the proposed regulations has been retained with the exception that if the owner believes the base rent as calculated is too low, the PHA may approve a higher rent based upon an estimate of the actual costs of owning, managing and maintaining the unit after rehabilitation. A formula for this computation which will specify what costs are eligible and will allow for a reasonable return on the owner's investment will be included in a PHA Handbook.

In response to several comments, the rent calculation is being revised to allow the owner to receive rents sufficient to repay a short term rehabilitation loan on the required improvements over the term of the rehabilitation loan that the owner obtains rather than over 15 years, if the total cost of rehabilitation under the Program is less than $15,000. This flexibility is allowed to facilitate the obtaining of a loan by an owner of only a small number of units or an owner needing to accomplish only a minimum of rehabilitiation. A 15 year amortization is required on a contract specifying a rehabilitation cost of $15,000 or more since an owner should be able to secure a 15 year loan for amounts of that size. Additionally, it was determined that an owner would be more likely to remain in the Moderate Rehabilitation Program, leasing to lower-income families, if the owner were reimbursed for rehabilitation costs over the 15 year term of the Contract.

Several commenters suggested that higher contracts rents should be allowed than established in the Agreement if actual rehabilitation costs exceed the estimate. Flexibility is allowed for recomputing rents to cover the cost of unexpected work items uncovered in the rehabilitation or imposed by a change in local codes. This flexibility should be sufficient since an owner should, in most cases, sign a fixed price contract with a general contractor prior to signing the Agreement and beginning rehabilitation work. This process is detailed in the regulations and allowance is made at the feasibility analysis for increasing rents based on a contractor's price which is higher or lower than estimated.

A new section has been added entitled "Contracts Rents at End of Rehabilitation Loan Term." Since the regulations now allow for the repayment of a rehabilitation loan over a shorter term than the HAP Contract, if the total rehabilitation cost is less than $15,000, it will be necessary to reduce the rents at the end of the loan period in order to exclude the amount of debt service no longer required. The new section provides for a reduction in contract rents to the base rent plus appropriate annual and special adjustments.

14—Rent Adjustments

Several comments pointed out that, by computing the annual adjustment on the gross rent, we were over-compensating the owner since we were increasing the portion of the rent fixed for amortization of the rehabilitation loan as well as the rent for management and maintenance. In response to these comments, the

regulations are being revised to apply the annual adjustment factor to the base rent or contract rent (after the rehabilitation loan has been repaid).

The suggestion that the PHA have the authority to approve special adjustments has been rejected since under the statute HUD must approve special adjustments. It was also pointed out that the audited financial statements may be an undue burden on small owners; therefore the threshhold for requiring audited statements has been increased to 20 units.

15—Very Low-Income Families

The Act requires that at least 30 percent of all Section 8 units be occupied by Very Low-Income Families. It was ponted out in the comments that this requirement might be difficult to achieve in Moderate Rehabilitation since tenancts will be allowed to remain in occupancy. A new section has thus been added which specifies that owners will be required to attempt to achieve this 30 percent Very Low-Income Goal; however, the PHA will be allowed to meet this 30 percent requirement in its combined Existing Housing and Moderate Rehabilitation Programs.

16—Vacancy Payments and Security Deposits

To address concerns that the vacancy payments procedure is too complicated and the payments are too generous, the vacancy payments provisions of the program are being amended. To allow for a normal rent-up period and to minimize vacancy claims at initial occupancy, an owner may not receive payments at initial occupancy if the unit is leased within the first 15 days. For vacancies after initial occupancy, an owner will be allowed to retain the housing assistance payment received at the beginning of the month for the month in which a tenant vacates, provided the unit remains vacant for the remainder of the month. If the unit remains vacant for up to an additional 30 days, the owner may receive 80 percent of the contract rent for this additional vacancy period. This revised policy would provide for payments for a vacancy period of from 31–60 days depending upon when the tenant vacated the unit. This new policy should simplify paper work and should provide adequate vacancy protection for owners. To provide consistency between the Moderate Rehabilitation Program and Existing Housing Program, the Existing Housing Program regulations are being revised in a separate publication to conform the vacancy payments provisions, where appropriate, to those being published for Moderate Rehabilitation.

In addition, the Existing Housing Program regulations (and Moderate Rehabilitation, by reference) are being amended in a separate publication to allow an owner to be compensated for damages or other amounts owed by the tenant up to an amount equal to two months' rather than one month's Contract Rent. It is anticipated that this amendment will encourage owner participation in the two programs since it should provide improved protection against excessive tenant damage.

17—PHA Management

The Department recognizes that it is sometimes difficult to interest owners in providing assisted housing for lower-income families due to the anticipated management difficulties of such projects. Where this is the case and where an owner is only willing to provide such housing under the Program if the PHA will manage that housing, the Department will allow, under certain conditions, the PHA to manage units for which it administers the HAP Contract under the Moderate Rehabilitation Program. The application and attachments, contract terms and other requirements of this section closely parallel those established in Section 882.117 for the Existing Housing Program.

A PHA, with prior HUD approval, may manage units for which it administers the Contract provided (1) no other PHA is able and willing to administer the HAP Contract, (2) it is necessary to provide housing for lower-income families, i.e., there is no management alternative, (3) the PHA is capable of managing the units, (4) the management contract is for a term of one year, renewable for only one year at a time, (5) the management fee meets certain specified criteria, (6) rents may only exceed the Fair Market Rent with prior HUD approval, and (7) the PHA keeps separate accounts and records for these projects. In addition to these requirements, there will be extensive HUD review and monitoring of these units.

18—Application Requirements

Since it is anticipated that State Agencies and Regional PHAs will be involved in the Program, an application requirement that the PHA specify the primary area(s) in which units will be rehabilitated and the approximate number of units per area is being added. This information is necessary to determine consistency with local Housing Assistance Plans.

A number of comments expressed concern over the requirement that the PHA specify in the application the proposed bedroom distribution and elderly/non-elderly breakdown of units. They felt that without specific buildings in mind this requirement would be difficult to meet. Such specificity is needed, however, in order to determine compliance with the Housing Assistance Plan and to reserve appropriate housing assistance funds. The field office will be flexible in granting amendments to the ACC to accommodate bedroom redistributions; however, it should be noted that the field office must work within the constraints of HAP needs and available funds.

Language is also being added to the regulations to require that if a PHA does not have rehabilitation expertise and if there is a local public rehabilitation agency capable of and willing to provide rehabilitation technical assistance, the PHA must subcontract with that agency. The Department does not want to create competing public rehabilitation agencies within a locality and is interested in fostering coordination between the local government and PHA.

A requirement is being added that the PHA specify in the application which (one or more) of the three purposes of the Program it plans to achieve. If the PHA proposes to use the Program for deconcentration, the application must demonstrate that there are units available outside of areas of low income and minority concentration which are appropriate for the Program. The PHA must also certify that it will not select units in an area of minority concentration unless it proposes a balanced Program which will provide for comparable units outside areas of minority concentration.

If the PHA proposes to target the Program, it must adequately describe the neighborhood and demonstrate there are units which meet the site and neighborhood standards of the Program. Additionally, if the PHA proposes to target to a neighborhood undergoing private reinvestment to prevent displacement, the PHA must demonstrate that the Program will be workable in that neighborhood. If the Program is to be targeted to a deteriorating neighborhood, the PHA must demonstrate that the Program is appropriate for the neighborhood and the chief executive officer must provide a letter of endorsement of the application describing other activities in the neighborhood.

The relocation requirements are modified to coincide with the new relocation policy. The PHA must,

therefore, either state that no permanent displacement will be allowed or must provide its strategy for conforming with the relocation requirements of the program.

Several State and regional PHAs questioned the feasibility of obtaining a concurrence on the application from the chief executive officer of the local government in each locality in which they propose to operate the program. This requirement is, therefore, changed to require a concurrence from the chief executive of all localities with approved Housing Assistance Plans. However, even in localities without approved HAPs, the chief executive officer concurrence is required where the PHA proposes to target the program to a specific area, and where the local government agrees to assume the responsibility for payments to displaced tenants.

19—Evaluation of Applications

To conform to requirements of regulations concerning application review, 24 CFR Part 891, processing of applications will include the Section 213 procedure of notifying the local government of the receipt of an application and soliciting comments on the application from the local government. Language has also been added to specify that the Part 891 regulations must be followed in application review and that local government comments will be considered in evaluating applications.

20—Leasing Schedule

In response to comments suggesting that the field office should monitor rehabilitation as well as leasing, the regulations are revised to require both a rehabilitation and leasing schedule. The regulations require that the rehabilitation schedule be established in order that all units in the project will be under Agreement with in 15 months of ACC execution. Due to concern about the tightness of the leasing schedule, particularly for large projects and for the first year of operation of the program, a provision has been added which allows for more flexibility in the rehabilitation and leasing schedules in the first year and for projects of over 1,000 units.

21—Owner Proposals

Pursuant to comments, the following changes have been made in the requirements for owner proposals:

(a) Due to Lead Based Paint requirements, the owner must specify the year in which the unit(s) was constructed.

(b) The owner must provide information concerning the family size and household type of current tenants in order to assess the need for permanent displacement due to a family's overcrowding of a unit and to determine whether present occupancy will conform to the household types specified in the application.

(c) The proposal must contain a certification that the owner has not evicted any tenant without good cause in the twelve months preceeding submittal of the proposal.

(d) The owner must present plans for managing and maintaining the unit(s). A PHA Handbook will provide guidance in assessing the owner's management plan and in assisting an owner to develop a viable plan.

(e) Several comments suggested that allowing owners to have a separate waiting list would be unfair to Families on the PHA's Existing Housing waiting list who had been waiting, often for years, for housing assistance. Based on these comments and to provide for more uniform administration of the program, the regulations are revised to require that an owner select tenants from referrals made by the PHA from the PHA's Existing Housing waiting list. The requirement for an Affirmative Fair Housing Marketing Plan is thus eliminated.

22–PHA Selection of Units to be Rehabilitated and Assistance to Owners

Based on comments that the regulations were too vague on when the PHA selected proposals and units for participation in the program, §§ 882.506 and 882.507 are being revised. As revised, the regulations specify a step by step process from public notice to owners through the entire pre-construction process. Initial screening of proposals is suggested to eliminate any clearly inappropriate or unresponsive proposals.

The preliminary feasibility analysis has been expanded to include a preliminary assessment of relocation needs and the feasibility of energy conserving improvements as well as a preliminary estimate of gross rents. It was believed that these assessments and estimates need to be done at this stage since such information is important in the selection of units and the determination of family eligibility.

A paragraph on selection of proposals is being added to clarify that an inspection and preliminary feasibility analysis should be accomplished prior to this selection. This paragraph also specifies that the PHA must make public its method of selecting proposals.

Language is being added to clarify that the $1000 minimum amount of rehabilitation requirement pertains to rehabilitation work necessary to correct significant deficiencies in the unit and not routine maintenance. The exception to this requirement involves rehabilitation to make a unit barrier-free and is discussed in the preamble under Housing for the Handicapped.

A mandatory preference is being established for the proposal which indicates the most rehabilitation per unit. Since units will not be selected until after the preliminary feasibility analysis, such a preference should be more easily administered. Where the PHA has proposed and HUD approved the concentration of the Program in a neighborhood, the PHA may refuse to accept proposals for units located in other neighborhoods. Therefore, proposals for units in the targeted neighborhood may receive preference over all other proposals regardless of the amount of rehabilitation proposed. If the PHA is proposing to use the Program for deconcentration, the PHA need not adhere strictly to this preference if the proposals indicating the greatest amount of rehabilitation are for units located in areas of minority concentration.

Numerous comments suggested other preferences be mandated in the regulations; however, it was decided that a minimum of preferences should be required and that the PHA be given the discretion to set preferences to meet local needs. Some of the preferences suggested which may be considered by PHAs include: owners proposing to assist less than 40 percent of the units in a building; owners proposing to provide barrier-free housing or to establish Independent Group Residences; and owners proposing to provide units for large families.

It is also noted in the paragraph on selection of proposals that HUD review of the site, where a State or unit of general local government owns the units, should be requested at this point.

After selection of proposals, the PHA must notify the owners of their selection and the tentative number of units to be assisted. After determining the eligibility of tenants residing in these units, the PHA must adjust the number of units approved to exclude any unit(s) occupied by tenants ineligible to receive housing assistance payments. In response to several comments, we are clarifying the policy that the Agreement will not over any unit(s) occupied by tenants not eligible to receive housing assistance payments.

The paragraph on work write-ups is being amended to specify that work not

necessary to bring the unit(s) up to program standards may not be included in the cost estimate upon which the rents will be based. While the owner may accomplish additional rehabilitation at this time, contract rents may include only that amount necessary to repay that part of the loan attributable to essentail items.

A new paragraph on selection of contractors is being added. PHAs may assist owners in selecting capable contractors but must, at a minimum, provide owners with a list of contractors, including minority contractors and require that these contractors be provided an opportunity to submit bids or proposals for the work.

The comments reflected some confusion as to whether an owner could rehabilitate only a portion of the units in a building. Some suggested that this flexibility be allowed in order to encourage partially subsidized projects and to minimize displacement while others suggested that to rehabilitate only a portion of a building would adversely affect the assisted units. The Department recognizes that requiring an owner to rehabilitate every unit in a building to meet Program standards (which may often be local codes) could be financially infeasible unless a HAP Contract is executed on each unit. However, to enter into a HAP Contract on all units would either preclude occupancy by any over income tenants or commit, but not use, limited housing assistance funds for units occupied by tenants who can afford the contract rent after completion of the rehabilitation. Since these are unacceptable alternatives, it has been determined that partial assistance in a building will be allowed in the Moderate Rehabilitation Program provided that the unassisted units do not adversely affect the assisted units. PHAs will not be required to inspect each unassisted unit; however, owners will be required to certify prior to the execution of a HAP Contract that any unassisted units in the building meet the Housing Quality Standards of the Section 8 Existing Housing Program. It is noted that unassisted units need not meet the higher standards of the Moderate Rehabilitation Program if the PHA proposes to use local codes rather than the Housing Quality Standards and, in any event, this requirement is not a substantial change from previous requirements since the common areas, building systems and components had to meet acceptable standards prior to the addition of this new requirement.

There were also several suggestions that the PHA be required to inspect units during rehabilitation. This requirement was in the proposed regulations and is being retained.

23—Vacancies at Rent-up

Several comments suggested that the owner notify the PHA in all cases of any potentially vacant units 60 days prior to completion of rehabilitation. Since the rehabilitation work under this program may in some cases take less than 60 days to accomplish, an option has been retained to allow notification as late as when the Agreement is executed.

24—Acceptance of Units

Since the contract rent may be based upon the term as well as the interest rate of the rehabilitation loan, an owner whose total rehabilitation costs as specified in the Agreement are less than $15,000 and who wants contract rents based upon a loan term of less than 15 years must include in the certification the actual term of the loan. Additionally, in response to comments the section has been clarified to require that the PHA review and accept the owners' certifications rather than verify them.

In response to several comments, particularly from State and regional agencies, the five day requirement for PHAs to review the evidence of completion and inspect the completed units has been changed to 10 days.

Additionally, since the contract rents are based upon the owner's certification of cost and, in some incidences, loan terms, the Contract may not be executed until the owner provides, and the PHA accepts, the appropriate certification(s).

25—Utility Allowances

It was also suggested that utility allowances be established for each building in the Program as is done in the substantial Rehabilitation Program. However, due to the type of buildings expected in the Moderate Rehabilitation Program, often including single family and small multifamily buildings, it has been determined that an overall utility allowance schedule for the entire PHA Program is appropriate. To take into account larger buildings, the regulations have been amended to allow the PHA to establish, based upon one year's actual consumption data after rehabilitation, a separate utility allowance for each building in which 20 or more units are assisted.

In response to several comments, a provision is also being added requiring that adjustments to utility allowances be implemented no later than concurrently with the next income reexamination or lease renewal, whichever comes first.

26—Termination of Tenancy

Since the Moderate Rehabilitation Program is a project-based program, many commenters pointed out that a family should have more protection against an owner terminating its tenancy and jeopardizing its housing assistance. The eviction section is thus being revised to establish the tenant's right to occupany and to allow an owner to terminate a family's tenancy only for good cause and in accordance with State and local law. The owner must notify the family of any proposed termination, stating the cause for the termination. The owner must also notify the PHA of any proposed termination and, while PHA authorization of eviction is not required in the final rule, the PHA must assure that the termination is being performed in accordance with the procedures of this section.

The requirements of this section, except for the role of the PHA, are similar to those being considered by the Department for the Section 8 New Construction Program (24 CFR Part 880). The Part 880 regulations will be published for comment, and based upon the comments received on those regulations, the Moderate Rehabilitation Program regulations may be amended since the Department is interested in providing as much uniformity as possible in the administration of its Section 8 programs.

27—Failure to Lease to Eligible Families

A number of commenters expressed concern that owners would use the Agreement to obtain financing for the rehabilitation of their units and then either not lease the units to eligible families or drop out of the program once their rehabilitation loan is repaid. Based on these comments and the Department's concern that the program meet both its objectives of rehabilitating housing and providing housing assistance to lower-income families, the mandatory contract term is 15 years (discussed earlier in the preamble) and a provision has been added which states that an owner who fails to lease vacant units to eligible families, in addition to other remedies, will have the number of units under HAP Contract reduced and may be suspended or debarred from future participation in any HUD program. This section is also being revised, since the owner is required to fill vacancies from the PHA waiting list, to state that the owner may not fill any vacancy with ineligible families without violating the contract.

28—Family Participation

One commenter suggested that a family should not continue to be assisted if it vacates its unit in violation of the lease and causes the PHA to pay vacancy payments. This suggestion has been included in Section 882.517(d).

In response to comments suggesting clarification, a statement is being added to § 882.517(e) indicating that an assisted family which is forced to move through no fault of its own will not be required to move nor will assistance be terminated unless the family rejects without good reason the offer of acceptable alternative housing.

Some PHA's suggested that it may be unworkable to require that a family be given a preference for a Certificate in the PHA's Existing Housing Program when it is forced to move due to a change in family size and the HAP Contract cannot be cancelled. The Department has determined that providing appropriate assistance to these families is of primary importance and thus has retained this requirement. Since this preference is a regulatory requirement, the PHA must adopt this preference notwithstanding any existing preference in order to participate in the Moderate Rehabilitation Program. Where necessary, the PHA will have to amend its Existing Housing Program administrative plan to establish such a preference.

PHA's also expressed concern over the means for the conversion of a Moderate Rehabilitation unit to an Existing Housing unit when a HAP Contract is cancelled. A provision has been added to clarify that the units will remain under the Moderate Rehabilitation ACC, which will provide for Existing Housing units, in order that no ACC amendments will be necessary. The converted unit will remain in the Moderate Rehabilitation project and will be treated for reporting and financial purposes as a Moderate Rehabilitation unit.

29—Maintenance, Operation and Inspections

A section has been added which states the owner's responsibility to manage and maintain the assisted units and the PHA's responsibility for inspecting and monitoring the quality of all the units in the program. This section provides for a rent reduction where the owner does not provide the services agreed to under the Contract. Additionally, if the unit is not maintained in a decent, safe, and sanitary condition, the PHA may abate housing assistance payments to the owner and may cancel the HAP Contract.

A paragraph has also been added to detail HUD's rights and responsibilities if the PHA which is administering the HAP Contract is also managing the units for the owner. Additional HUD involvement is necessary in these circumstances since the PHA is in the position of supervising and evaluating its own activities.

30—Miscellaneous Comments

Several suggestions were made by commenters which were not incorporated into the regulations. A summary of the more recurrent comments and the rationale for their rejection follows.

a. Several commenters suggested that there should be a special allocation of Moderate Rehabilitation units in order not to reduce the number of Existing Housing units a locality will receive. While Moderate Rehabilitation will be considered part of the Existing Housing goal in FY 1979, the recently revised HAP forms contain a separate goal for Moderate Rehabilitation. Beginning in FY 1980 Moderate Rehabilitation funds will be allocated on the basis of a HAP goal for the Program and will not directly reduce the Existing Housing allocation.

b. A few commenters suggested that owners be allowed to apply directly to the HUD field office for assistance under the Moderate Rehabilitation Program. Since PHA involvement is required by the statute and since the Department does not want to establish competing programs in the same market area, this option was not included in the final regulations.

c. There was some objection to the exclusion of PHA-owned properties, HUD-held properties, mobile homes, and owner-occupied units from the program. PHA-owned properties are excluded unless another PHA administers the Contract on the units due to the inherent conflict of interest involved with a PHA establishing its own rents and monitoring its own performance. HUD-held properties were excluded since there is a separate program for disposing of these properties. A variation of the Moderate Rehabilitation Program will be proposed shortly to assist in the disposal of HUD-held properties; however, that program will operate under separate regulations in another Part. It has been determined that, as in the Substantial Rehabilitation Program, mobile homes are inappropriate for assistance. Owner-occupied units are excluded since the statute provides for only rental assistance under the Section 8 programs, the exception being for units in a co-operative.

NEPA

A Finding of Inapplicability respecting the National Environment Policy Act of 1969 has been made in accordance with HUD procedures. A copy of this finding of inapplicability will be available for public inspection during regular business hours at the Office of the Rules Docket Clerk, Office of the General Counsel, Room 5218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, D.C. 20410.

Accordingly, 24 CFR Part 882 is revised as follows by adding new Subparts D and E:

Subpart D—Special Procedures for Moderate Rehabilitation—Basic Policies

Sec.

882.401 Applicability, scope, and purpose.
882.402 Definitions.
882.403 ACC provisions.
882.404 Term of housing assistance payments contract and lease.
882.405 Housing quality standards.
882.406 Financing.
882.407 Relocation.
882.408 Other federal requirements.
882.409 Initial contract rents.
882.410 Contract rents at end of rehabilitation loan term.
882.411 Rent adjustments.
882.412 Establishment of income limit schedules; 30 percent occupancy by very low-income families.
882.413 Payments for vacancies.
882.414 Subcontracting of owner services.
882.415 Responsibility of the family.

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

Sec.

882.501 Distribution of funds.
882.502 Invitations for moderate rehabilitation program applications.
882.503 Submission of applications.
882.504 Processing of applications.
882.505 Annual contributions contract; schedule of rehabilitation and leasing.
882.506 Obtaining and screening proposals from owners.
882.507 Assistance to owners and selection of units.
882.508 Agreement to enter into housing assistance payments contract.
882.509 Rehabilitation period.
882.510 Completion of rehabilitation.
882.511 Execution of housing assistance payments contract.
882.512 Overcrowded and under occupied units.
882.513 Adjustment of allowance for utilities and other services.
882.514 Termination of tenancy.
882.515 Reduction of number of units covered by contract.

Sec.

882.516 Public notice to lower-income families; waiting list.
882.517 Family participation.
882.518 Reexamination of family income and composition.
882.519 Maintenance, operation and inspections.

Subpart D—Special Procedures for Moderate Rehabilitation—Basic Policies

§ 882.401 Applicability, Scope and Purpose.

(a) *General.* This Subpart D and Subpart E set forth the policies and procedures for requests made by Public Housing Agencies (PHAs) for approval by HUD of a Moderate Rehabilitation Program, and the procedures to be used by PHAs in initiating and administering a Moderate Rehabilitation Program. The Moderate Rehabilitation Program is designed to be used to achieve one or more of the following objectives: (1) freedom of housing choice and spatial deconcentration of assisted housing into areas outside of low income and minority concentrations, (2) prevention of displacement of Lower-Income Families in areas undergoing private rehabilitation, and (3) neighborhood preservation and revitalization. PHAs must indicate in their applications which of these objectives they proposed to promote with the Program.

(b) *Eligible Applicants.* PHAs, including State Housing Finance and Development Agencies authorized to participate under 24 CFR Part 883, eligible to participate in the Program are those who (1) have the ability to operate a rehabilitation program, or (2) will subcontract with a qualified agency or entity, or (3) will develop the capability to operate a rehabilitation program, all in accordance with Section 882.503(a)(7).

(c) *Eligible and Ineligible Properties.*(1) Except as provided in paragraphs (2) through (7) of this Section, housing, suitable for moderate rehabilitation as defined in § 882.402 is eligible for inclusion under the Moderate Rehabilitation Program. Existing structures of various types may be appropriate for this Program including single-family houses, multi-family structures and Independent Group Residences. (2) Housing (i) which is or has been within twelve months prior to the Owner's submittal to the PHA of a proposal, subsidized under any federal housing program, except housing assisted under Subparts A and B of this Part which meets the Performance Criteria of the Housing Quality Standards but has a major building system or component in danger of failure (provided that the Existing Housing Contract is terminated before the Moderate Rehabilitation Contract takes effect), or (ii) which is owned by the PHA administering the ACC under this Program, or (iii) which is a project with a HUD-held mortgage or is a HUD-owned project is not eligible for assistance under this Program. (3) Nursing homes, units within the grounds of penal, reformatory, medical, mental and similar public or private institutions, and facilities providing continual psychiatric, medical or nursing services are not eligible for assistance under the Moderate Rehabilitation Program. (4) Housing owned by a State or unit of general local government is not eligible for assistance under this Program unless: (i) HUD has reviewed and approved the site prior to the execution of an Agreement, and (ii) the State or unit of a general local government sells the property to another Owner prior to execution of an Agreement. (5) High rise elevator projects for Families with children may not be utilized unless HUD determines there is no practical alternative. (HUD may make this determination for a locality's Moderate Rehabilitation Program in whole or in part and need not review each building on a case-by-case basis.) (6) Mobile homes may not be utilized in this Program. (7) No Section 8 assistance may be provided with respect to any unit occupied by an Owner; however, cooperatives will be considered as rental housing for purposes of this Program.

(d) *Applicability of Subparts A, B, C and F.* Sections 882.102 (Definitions), 882.109 (Housing Quality Standards), and 882.112 (Security and Utility Deposits) of Subpart A and Sections 882.201 (Allocations of Contract Authority to Field Offices), 882.202 (Determination of Number and Types of Units to be Assisted), 882.216 (Inapplicability of Low-Rent Public Housing Model Lease and Grievance Procedures), and 882.217 (HUD Review of Contract Compliance) of Subpart B are applicable to the Moderate Rehabilitation Program. Other sections which have been modified for this Program are repeated or referenced in Subparts D and E with appropriate amendments. Provisions of Subpart C, Administration of Program by Contract Administrator on Behalf of HUD, which was issued as a proposed rule on April 10, 1979, may apply to Subparts D and E. Provisions of Subpart F, Special Provisions for Mobile Home Owners, when published, will not apply to Subparts D and E.

§ 882.402 Definitions.

In addition to the definitions set forth in § 882.102, the following will apply:

Agreement to Enter Into Housing Assistance Payments Contract ("Agreement"). A written agreement between the Owner and the PHA that, upon satisfactory completion of the rehabilitation in accordance with requirements specified in the Agreement, the PHA will enter into a Housing Assistance Payments Contract with the Owner.

Eligible Family ("Family"). A family as defined in § 882.102, including lower-income single persons as provided in § 882.407(a).

Moderate Rehabilitation. Rehabilitation involving a minimum expenditure of $1,000 for a unit, including its prorated share of work to be accomplished on common areas or systems, to:

(a) Upgrade to Decent, Safe and Sanitary condition to comply with the Housing Quality Standards or other standards approved by HUD, from a condition below those standards (improvements being of a modest nature and other than routine maintenance); or

(b) Repair or replace major building systems or components in danger of failure.

Statement of Family Responsibility. An agreement, in the form prescribed by HUD, between the PHA and a Family to be assisted under the Program, stating the obligations and responsibilities of the two parties.

§ 882.403 ACC provisions.

(a) *Single ACC.* (1) All of the Moderate Rehabilitation units administered by a PHA under the Housing Assistance Payments Program (except where the PHA's area of operation is within the jurisdiction of more than one HUD field office) will be covered by and administered under a single ACC, Part I.

(2) All Moderate Rehabilitation units for which contract authority is reserved for a PHA in the same fiscal year will constitute one project unless metropolitan and nonmetropolitan contract authority is utilized, in which case two projects will be established. Should contract authority for units in two or more applications from a PHA be reserved in the same fiscal year, the ACC Part I will be amended to indicate a single project utilizing metropolitan or nonmetropolitan contract authority for that fiscal year with the unit count and annual contributions commitment for that project(s) being the total for all units for which contract authority is reserved during the fiscal year.

(3) The ACC term for each project will be 17 years.

(b) *Maximum Total ACC Commitments.* The maximum total annual contribution will be established in accordance with § 882.505(a). The fee for the regular costs of PHA administration and the HUD-approved preliminary costs will be payable out of this total.

(c) *Project Account.* (1) A project account will be established and maintained by HUD as a specifically identified and segregated account for each project. The account will contain the sum of the amounts by which the maximum annual commitment exceeds the amount actually paid out for the project under the ACC each year. Payments will be made from this account when needed to cover increases in Contract Rents or decreases in Gross Family Contributions for (i) housing assistance (including vacancy) payments, (ii) the amount of the fee for PHA costs of administration, and (iii) other costs specifically approved by the Secretary.

(2) When a HUD-approved estimate of required payments under the ACC for a fiscal year exceeds the maximum annual commitment, and would cause the amount in the project account to be less than 40 percent of the maximum, HUD will, within a reasonable period of time, take such additional steps authorized by Section 8(c)(6) of the U.S. Housing Act of 1937, as may be necessary, to assure that payments under the ACC will be adequate to cover increases in Contract Rents and decreases in Gross Family Contributions.

§ 882.404 Term of housing assistance payments contract and lease.

(a) *Term of Housing Assistance Payments Contract.* The Contract for any unit rehabilitated in accordance with the Program must be for a term of 15 years. However, the Contract term may in no case extend beyond the expiration of the ACC term for the applicable project.

(b) *Term of Lease.* The term of the Lease for each unit must be for not less than one year. The Lease may, or in the case of a lease for a term of more than one year must, contain a provision permitting termination on 30 days' advance written notice by the Family.

(c) *Renewals of Lease.* Any renewal or extension of the Lease term for any unit must in no case extend beyond the remaining term of the Contract.

§ 882.405 Housing quality standards.

In addition to the standards set forth in Section 882.109, the following will apply:

(a) *Energy Efficiency-Performance Requirement.* Caulking and weatherstripping are required as energy conserving improvements. Other appropriate energy conserving improvements such as insulation and storm windows must be accomplished by the Owner as part of the rehabilitation under this Program, to the extent that the PHA determines these improvements to be practicable, cost effective and financially feasible. (See § 882.507(b).)

(b) *Site and Neighborhood-Performance Requirement.* In addition to meeting the standards required in Section 882.109(k), the site must:

(1) Be adequate in size, exposure and contour to accommodate the number and type of units proposed; adequate utilities and streets must be available to service the site. (The existence of a private disposal system and private sanitary water supply for the site, approved in accordance with local law, may be considered adequate utilities.)

(2) Be suitable from the standpoint of facilitating and furthering full compliance with the applicable provisions of Title VI of the Civil Rights Act of 1964, Title VIII of the Civil Rights Act of 1968, Executive Order 11063, and HUD regulations issued pursuant thereto.

(3) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

(4) Be accessible to social, recreational, educational, commercial, and health facilities and services, and other municipal facilities and services that are at least equivalent to those typically found in neighborhoods consisting largely of unassisted, standard housing of similar market rents.

(5) Be so located that travel time and cost via public transportation or private automobile, from the neighborhood to places of employment providing a range of jobs for lower-income workers, is not excessive. (While it is important that housing for the elderly not be totally isolated from employment opportunities, this requirement need not be adhered to rigidly for such projects.)

§ 882.406 Financing.

(a) *Types.* Any type of public or private financing may be utilized with the exception of the rehabilitation loan program under Section 312 of the Housing Act of 1964.

(b) *Use of Contract as Security for Financing.* An Owner may pledge, or offer as security for any loan or obligation, an Agreement or Contract entered into pursuant to this Program, provided that (1) such security is in connection with a unit(s) rehabilitated pursuant to this Program and (2) the terms of the financing or any refinancing must be approved by the PHA in accordance with standards provided by HUD. Any pledge of the Agreement or Contract, or payments thereunder, will be limited to the amounts payable under the Contract in accordance with its terms.

§ 882.407 Relocation.

(a) *General.* (1) Moderate Rehabilitation will involve only a limited amount of work on dwelling units which can usually be accomplished with tenants in residence. Also, an Agreement and Contract will not be entered into on units occupied by families not eligible for housing assistance payments after completion of the rehabilitation. (Units occupied by lower-income single persons, even if not elderly or handicapped may be included because under 24 CFR Part 812 a lower-income person is eligible if displaced, and the occupant, if required to move, would be displaced and thus eligible for reoccupancy.) Accordingly, temporary relocation or permanent displacement will not be required except in limited circumstances (see paragraph (b) of this section).

(2) To assure minimal displacement (i) no application for the Program will be approved which proposes PHA selection of proposals where permanent displacement of tenants will be necessary unless the PHA has submitted and HUD has approved a relocation strategy in accordance with § 882.503(a)(11) and paragraphs (b) through (h) of this section, and (2) an Owner must certify in the proposal that no tenant has been forced to move without cause in the twelve month period preceding the submittal of the proposal to the PHA.

(b) *Determination of Necessity for Displacement and Notice to Tenants.* The provisions of this paragraph (b) (1) and (2) apply only where the PHA has an approved relocation strategy (see paragraph (a)(2)(i) of this section).

(1) The PHA must determine, in consultation with the Owner, as promptly as possible after notification of selection of units for participation in the Program (§ 882.507(e)), the need for any tenant in a building proposed for

rehabilitation to be permanently displaced. A tenant will only be displaced if there will not be sufficient suitable-sized units available after rehabilitation. The determination of suitable size will be made in accordance with § 882.109(c) and, for those units to be included in the Agreement, in accordance with § 882.209(a)(2). Unless a tenant is determined by the PHA and Owner to be displaced based on these criteria or unless the Owner evicts the tenant for cause and in accordance with § 882.514, the tenant will be allowed to remain in or return to the unit or a suitable-sized unit in the building or complex after rehabilitation.

(2) If there are not suitable alternative units meeting the requirements of paragraph (d)(1) of this section available for any tenant who will be displaced, the PHA may not enter into an Agreement for any units in that building.

(3) Not later than 30 days after the Owner is notified of selection of units for participation in the Program (§ 882.507(e)), each tenant occupying a unit in a building in which units will be rehabilitated under the Program must be issued either a notice stating that he/she will be displaced or a notice stating the tenant's right to remain in or return to the current unit or another unit in the same complex. These notices must be in accordance with paragraphs (c) and (d) and issued in accordance with paragraph (e) of this section.

(c) *Tenants Permitted to Continue in Occupancy.* (1) If the tenant is issued a notice in accordance with paragraph (b)(3) of this section stating the tenant may continue in occupancy, the notice must state the following tenant rights:

(i) After the completion of the rehabilitation, the tenant will have the right to lease and occupy a decent, safe and sanitary dwelling located within the same building or complex.

(ii) During the period between execution of the Agreement and execution of the Contract, the tenant will not be required to move from the dwelling unit, other than for cause, unless the work cannot be done with the tenant in residence. If any such move is required, (A) not more than one temporary relocation will be required, (B) the temporary relocation will be to a decent, safe and sanitary dwelling in a location that is not generally less desirable with respect to public and commercial facilities and the occupant's place of employment than the location of the dwelling to be rehabilitated, (C) the Owner will pay the actual reasonable out-of-pocket expenses, including moving costs (see paragraph (f)) and any increase in monthly housing costs (rent and utilities), incurred by the tenant in connection with the moves and/or temporary relocation, and (D) the temporary relocation will not be for more than six months. If for unforeseen reasons the rehabilitated unit is not ready for occupancy within the six months, the tenant will be notified of the earliest date by which it will be ready, and the tenant in that case will have the right either to agree to wait until the extended date or to request that it be treated as permanently displaced in accordance with paragraph (d) of this section.

(2) If the tenant is a Family which is eligible to receive housing assistance payments the notice must state, in addition to the provisions specified in paragraph (c)(1) of this section, the following:

(i) The Family will be allowed to occupy that unit for the term of the Contract unless the Family is evicted for cause and in accordance with § 882.514 or is required to move for other good reason such as changes in Family size. If the Family is required to vacate the dwelling during the term of the Contract for any reason other than for cause, such as a change in Family size, the PHA will assure that the Family is provided assistance in accordance with § 882.517(e).

(ii) The amount of rent payable by the Family will be determined in accordance with 24 CFR Part 889; however, the Family will not be required to pay more than the Gross Rent for the unit established in accordance with Program requirements.

(d) *Tenants Who Are to be Permanently Displaced.* The provisions of this paragraph (d) apply only where the PHA has an approved relocation strategy (see paragraph (a)(2)(i) of this section). If the tenant is issued a notice in accordance with paragraph (b)(3) of this section stating that the tenant will be displaced, that notice must state the tenant's rights as specified in this paragraph.

(1) The tenant will not be required to move until after being given a reasonable choice of opportunities to relocate to an affordable decent, safe and sanitary dwelling unit meeting the standards of Section 882.109, which is in a location that is not generally less desirable, with respect to public and commercial facilities and the occupant's place of employment, than the location of the dwelling to be rehabilitated. If the tenant is a minority or lower-income family, it must be given reasonable opportunities to relocate to a decent, safe and sanitary dwelling that is not located in an area of low-income and/or minority concentration if such opportunities are available.

(2) The PHA's obligation under paragraph (d)(1) may be met for Lower-Income Families by offering publicly-owned housing or privately-owned housing that is assisted under the Section 8 program or other housing subsidy for which the tenant is eligible.

(i) If the PHA determines, at its sole option, that relocation to privately-owned unsubsidized housing is appropriate for a Family eligible to receive housing assistance payments under the Moderate Rehabilitation Program, the PHA must make a lump sum payment to the Family equal to 48 times the amount, if any, necessary to reduce the monthly housing cost (rent and utilities) for a suitable decent, safe and sanitary replacement dwelling to 25 percent of the monthly gross income of all adult members of the Family's household.

(ii) To be eligible for this payment the Family must lease and occupy a decent, safe and sanitary dwelling unit within one year after the displacement.

(iii) The lump sum payment will be computed as follows. First, twenty-five percent of the Family's monthly gross income will be subtracted from the lesser of (A) the monthly housing cost of a decent, safe and sanitary replacement dwelling meeting the standards of § 882.109, or (B) the monthly housing cost of a decent, safe and sanitary replacement unit actually occupied by the displaced tenant. Second, the remaining amount will be multiplied by 48.

(3) The tenant will be provided appropriate advisory services including:

(i) Explaining the tenant's rights and responsibilities (see § 882.517(c));

(ii) Providing current and continuing information on the availability and rental costs of replacement units which are decent, safe and sanitary;

(iii) Ensuring that the relocation process does not result in different or separate treatment on account of race, color, religion, national origin, sex or source of income;

(iv) Assuring that during the period between execution of the Agreement and displacement, the unit occupied by the tenant is maintained in a safe and habitable condition; and

(v) Minimizing hardships to persons in adjusting to relocation.

(4) The tenant will be reimbursed for moving expenses. The tenant may elect to receive a fixed payment for moving expenses which will consist of a moving expense allowance not to exceed $300 (determined in accordance with the applicable approved Federal Highway

Administration schedule (49 CFR 25.153)) and a dislocation allowance of $200, or the tenant may elect to be reimbursed for actual reasonable expenses for the items listed in paragraph (f) of this section.

(e) *Manner of Notices.* Any notice which is required under this section must be personally served, receipt documented, or sent by certified or registered first-class mail, return receipt requested. Each notice must be written in plain understandable language. Recipients who are unable to read and understand the notice must be provided with appropriate explanation and counseling. Each notice must indicate the name and telephone number of a person who may be contacted for answers to questions or other needed help.

(f) *Moving Expenses.* Reasonable moving expenses in connection with temporary relocation or permanent displacement of tenants include:

(i) Transportation of the tenant and personal property from the unit to be rehabilitated to the replacement unit and return to the rehabilitated unit, if applicable. Transportation costs for a distance beyond 50 miles are not eligible unless the PHA determines that relocation beyond 50 miles is justified;

(ii) Packing, crating, unpacking and uncrating of the personal property;

(iii) Disconnecting, dismantling, removing, reassembling and reinstalling relocated household appliances and other personal property;

(iv) Storage of the personal property as the PHA determines to be necessary;

(v) Insurance of the personal property in connection with the move and necessary storage; and

(vi) Other moving-related expenses as the PHA may determine to be reasonable and necessary.

(g) *Responsibility for Relocation Payments and Assistance.* (1) The PHA will have the administrative responsibility for assuring that appropriate relocation payments are made to displaced or temporarily relocated tenants and will be directly responsible for providing all services specified in this section. Advisory services provided by the PHA to tenants temporarily relocated are eligible costs to be reimbursed from the preliminary administrative funds.

(2) The provision and funding of payments on account of temporary relocation of tenants will be the responsibility of the Owner. The Contract Rent computation, as specified in § 882.409, may at the Owner's option include relocation costs for those units to be assisted under the Program; however, the Owner must make appropriate relocation payments to any tenant temporarily relocated, regardless of income or whether the tenant will occupy a unit which is under the Agreement. No Owner will be selected for participation in the Program unless the Owner agrees, in the proposal, to assume this responsibility.

(3) Services to tenants permanently displaced will not be considered eligible costs for reimbursement under the Moderate Rehabilitation or any other HUD assisted housing programs. Unless an entity, such as the local government, agrees in writing to assume responsibility for providing funds for relocation payments and services associated with permanent displacement from other sources or unless the PHA demonstrates that it has funds available from other than HUD-assisted housing programs, an application for Moderate Rehabilitation from a PHA which proposes to allow permanent displacement of tenants will not be approved.

(h) *Appeal Procedures.* A tenant who believes he/she has not received the proper relocation payments or opportunities to relocate to decent, safe and sanitary housing to which the tenant is entitled under this section may appeal to the PHA. The tenant is entitled to an informal hearing as if the tenant were determined ineligible for the Program (§ 882.517(g)). Should the tenant not be satisfied with the PHA's disposition of the matter, the tenant may appeal to the HUD field office.

(i) *Applicability of Uniform Act.* The relocation requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (Uniform Act) and HUD implementing regulations at 24 CFR Part 42 apply only to the displacement of any person (owner or tenant) that results from the acquisition of real property for a project assisted under this Program if the acquisition is by a PHA or other State agency (defined at 24 CFR 42.85). When the Uniform Act is applicable, the provisions of this section do not apply, except for paragraphs (a) and (g).

§ 882.408 Other Federal requirements.

(a) Participation in this Program requires compliance with the Equal Opportunity requirements specified in § 882.111.

(b) Additionally, in selecting among proposals the PHA must take into consideration compliance with the following:

(1) Executive Order 11988, Floodplains Management;

(2) Executive Order 11990, Protection of Wetlands;

(3) National Historic Preservation Act (Pub. L. 89–665);

(4) Archeological and Historic Preservation Act of 1974; and

(5) Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

If the PHA proposes to select a building which is on or eligible for the National Register of Historic Places, the PHA must contact the HUD field office prior to approval to assure compliance with paragraphs (b) (3), (4), and (5) of this section.

(c) The PHA and Owner must agree to comply with the requirements of the following, where applicable:

(1) Clean Air Act and Federal Water Pollution Control Act;

(2) Flood Disaster Protection Act of 1973;

(3) Section 504 of the Rehabilitation Act of 1973 (as implemented in 24 CFR Part 8),

(4) Executive Order 11246, Equal Employment Opportunity (for all construction contracts of over $10,000);

(5) Executive Order 11625, Prescribing Additional Arrangements for Developing and Coordinating a National Program for Minority Business Enterprise; and

(6) Labor Standards Provisions contained in the following acts (for Agreements covering 9 or more assisted units):

(i) Davis-Bacon Act;

(ii) Contract Work Hours and Safety Standards Act;

(iii) Copeland Anti-Kickback Act; and

(iv) National Apprenticeship Act.

§ 882.409 Initial contract rents.

(a) *Fair Market Rent Limitation.* The initial Gross Rent for any Moderate Rehabilitation unit specified in the Agreement (§ 882.508(a)(3)) must not exceed the Moderate Rehabilitation Fair Market Rent applicable to the unit on the date that the Agreement is executed except by up to 10 percent as provided in paragraph (b) of this section. Additionally, as provided in paragraph (d) of this section, changes may be made in the Contract Rent subsequent to the signing of the Agreement which result in Gross Rents which exceed the Moderate Rehabilitation Fair Market Rent by up to 20 percent. The Fair Market Rent Schedule for Moderate Rehabilitation will be 120 percent of the Existing Housing Fair Market Rent Schedule.

(b) *Exception Rents.* The PHA may approve initial Gross Rents which exceed the applicable Moderate Rehabilitation Fair Market Rents by up

to 10 percent in the following circumstances:

(1) For all units of a given size or type in specified areas where HUD has determined that median rents for standard units of that size or type in the area are from 10 to 20 percent higher than the Existing Housing Fair Market Rents. Such a determination by HUD may be made on a case-by-case basis or by area upon receipt from the PHA of documentation demonstrating the necessity for exception rents in the area.

(2) On a case-by-case basis, where the PHA has made a written determination that the higher Gross Rent is necessary (i) to meet the needs of families needing four or more bedrooms, or (ii) to provide the physical modifications to a unit and/or structure which are necessary to meet the needs of the handicapped or disabled.

(c) *Determination of Initial Contract Rents.* (1) The PHA must establish a base rent for each unit. This base rent will be the average rent charged for the unit during the 18 months preceding the date the Owner submitted the proposal to the PHA plus an adjustment not to exceed the amount obtained by application of the appropriate annual adjustment factor established by HUD (see § 882.411(a)(1)). However, the Owner may request a higher base rent on the ground that the base rent is insufficient to allow for adequate management and maintenance of the unit. The PHA may approve a higher base rent established by determining the estimated costs to the Owner of owning, managing and maintaining the rehabilitated unit. This higher base rent will be calculated using a HUD prescribed formula.

(2) In addition the PHA must determine the monthly per unit cost to the Owner of repaying a rehabilitation loan to finance the cost of the rehabilitation specified in the Agreement and the cost of any necessary temporary relocation payments to be made by the Owner to Families to be assisted under the Program. In making this calculation, the PHA must use the interest rate at which the Owner proposes to obtain his rehabilitation loan (the HUD–FHA maximum interest rate for multifamily housing plus ½ percent Mortgage Insurance Premium will be used where the Owner does not obtain a loan) and a loan period as follows:

(i) A 15-year term if the total amount of rehabilitation established in the feasibility analysis (Section 882.507(h)) equals or exceeds $15,000.

(ii) The actual term of the rehabilitation loan obtained by the Owner if the total amount of rehabilitation established in the feasibility analysis is less than $15,000.

(iii) A 15-year term if the Owner does not obtain a loan to finance all or part of the rehabilitation.

(3) The initial Contract Rent for the unit must be the lesser of (i) the base rent as established in paragraph (c)(1) of this section plus the monthly cost of amortization of a rehabilitation loan as established in paragraph (C)(2), or (ii) the Moderate Rehabilitation Fair Market Rent or exception rent for that unit size (see parargraphs (a) and (b) of this section), minus any applicable Allowance for Utilities and Other Services attributable to the unit.

(d) *Changes in Initial Contract Rents during Rehabilitation.* (1) The Contract Rents established pursuant to paragraph (c) will be the Contract Rents on the effective date of the Contract exept under the following circumstances:

(i) When, during rehabilitation, work items are discovered which (A) could not reasonably have been anticipated or are necessitated by a change in local codes or ordinances, and (B) were not listed in the work write-up prepared or approved by the PHA, and (C) will require additional expenditures which would make the rehabilitation infeasible at the Contract Rents established in the Agreement. Under these circumstances, the PHA will:

(A) Approve a change order to the rehabilitation contract, or amend the work write-up if there is no rehabilitation contract, specifying the additional work to be accomplished and the additional cost for this work,

(B) Recompute the Contract Rents, within the limits specified in paragraph (d)(4) of this section, based upon the revised cost estimate, and

(C) Prepare and execute an amendment to the Agreement stating the additional work required and the revised Contract Rents.

(ii) When the actual cost of the rehabilitation performed is less than that estimated in the calculation of Contract Rents for the Agreement.

(iii) When the actual interest rate or term (if the total cost of the work established in the feasibility analysis is less than $15,000) of the rehabilitation loan differs from that anticipated in the calculation of Contract Rents for the Agreement.

(iv) When the actual relocation payments made by the Owner to temporarily relocated Families varies from the cost estimated in the calculation of Contract Rents for the Agreement.

(2) Should changes occur as specified in paragraph (d)(1) (ii), (iii) or (iv) (either an increase or decrease), the PHA will recalculate the Contract Rents in accordance with paragraph (c) of this section and amend the Contract or Agreement, as appropriate, to reflect the revised rents.

(3) The PHA must review and approve the Owner's certification that the rehabilitation costs, temporary relocation costs, interest rate and term (if the total cost of the work to be performed under the Agreement is less than $15,000) on which the Contract Rents are based are the actual costs incurred, interest rate and loan term (where applicable). (See § 882.510(c).)

(4) In establishing the revised Contract Rents, the PHA must determine that the resulting Gross Rents do not exceed the Moderate Rehabilitation Fair Market Rent or the exception rent under paragraph (b) of this section, in effect at the time of execution of the Agreement. The Fair Market Rent or exception rent, as appropriate, may only be exceeded when the PHA determines in its calculations specified in paragraph (d)(1)(i) of this section that it will be necessary for the revised Gross Rent to exceed the Moderate Rehabilitation Fair Market Rent or exception rent. Should this determination be made, the PHA may not execute a revised Agreement until it receives HUD field office approval of such an exception. The HUD field office may approve revised Gross Rents which exceed the Fair Market Rents by up to 20 percent for reasons specified in paragraph (d)(1)(i) of this section upon proper justification by the PHA of the necessity for the increase.

§ 882.410 Contract rents at the end of rehabilitation loan term.

For a Contract where the Owner accomplished less than $15,000 of rehabilitation and the initial Contract Rent was based upon a loan term shorter than 15 years, the Contract must provide for reduction of the Contract Rent effective with the rent for the month following the end of the term of the rehabilitation loan. The amount of the reduction will be the monthly cost of amortization of the rehabilitation loan. This reduction should result in a new Contract Rent equal to the base rent established pursuant to § 882.409(c)(1) plus all subsequent adjustments.

§ 882.411 Rent adjustments.

(a) *Annual and Special Adjustments.* Contracts Rents will be adjusted as provided in paragraphs (a) (1) and (2) of this section upon submittal to the PHA by the Owner of a revised schedule of

Contract Rents, provided that the unit is in decent, safe, and sanitary condition and that the Owner is otherwise in compliance with the terms of the Lease and Contract. Subject to the foregoing, adjustments of Contract Rents will be as follows:

(1) The Annual Adjustment Factors which are published annually by HUD (see Schedule C, 24 CFR Part 888) will be utilized. On or after each anniversary date of the Contract, the Contract Rents may be adjusted effective with the month following the submittal by the Owner of a revised schedule of Contract Rents which may be no higher than Rents established by applying the applicable Annual Adjustment Factor most recently published by HUD to (1) the Contract Rent minus the monthly amortization amount of the rehabilitation loan, or (2) the Contract Rent established pursuant to § 882.410 at the end of the rehabilitation loan term. These increased Contract Rents must then be examined in accordance with paragraph (b) of this section and may be adjusted accordingly. Contract Rents may be adjusted upward or downward, as may be appropriate; however, in no case may the adjusted rents be less than the Contract Rents on the effective date of the Contract except as provided in § 882.410.

(2) A special adjustment, subject to HUD approval, to reflect increases in the actual and necessary expenses of owning and maintaining the unit which have resulted from substantial general increases in real property taxes, utility rates, assessments and utilities not covered by regulated rates, may be recommended by the PHA for approval by HUD but only if and to the extent that the Owner clearly demonstrates that these general increases have caused increases in the Owner's operating costs which are not adequately compensated for by annual adjustments. The Owner must submit financial information to the PHA which clearly supports the increase. For Contracts of more than twenty units, the Owner must submit audited financial information.

(b) *Overall Limitation.* Notwithstanding any other provisions of this part, adjustments as provided in this section must not result in material differences between the rents charged for assisted and comparable unassisted units, as determined by the PHA (and approved by HUD in the case of adjustments under paragraph (a)(2)). However, unless the rents have been adjusted in accordance with § 882.410, this limitation should not be construed to prohibit differences in rents between assisted and comparable unassisted units to the extent that differences existed with respect to the initial Contract Rents.

§ 882.412 Establishment of income limit schedules; 30 percent occupancy by very low-income families.

(a) *Income Limit Schedules.* Income Limit Schedules for Moderate Rehabilitaion will be the same as those established pursuant to § 882.113(a).

(b) *Occupancy by Very Low-Income Families.* (1) Owners in the Moderate Rehabilitation Program will be required under the Contract to lease, to the maximum extent feasible, at least 30 percent of the units under Contract to Very Low-Income Families.

(2) The PHA must administer its Moderate Rehabilitation Program and Existing Housing Program under this Part so that at least 30 percent of the Families assisted by the PHA under these Programs are Very Low-Income Families. To this end the PHA may refer Very Low-Income Families to other Owners rehabilitating vacant units under the Moderate Rehabilitation Program or provide assistance to such Families through its Existing Housing Program.

§ 882.413 Payments for Vacancies.

(a) *Vacancies from Execution of Contract to Initial Occupancy.* If a Contract unit which has been rehabilitated in accordance with this Program is not leased within 15 days of the effective date of the Contract, the Owner will be entitled to housing assistance payments in the amount of 80 percent of the Contract Rent for the unit for a vacancy period not exceeding 60 days from the effective date of the Contract, provided that the Owner (1) has complied with § 882.509 (d) and (e) (2); (2) has taken and continues to take all feasible actions to fill the vacancy; and (3) has not rejected any eligible applicant except for good cause acceptable to the PHA.

(b) *Vacancies after Initial Occupancy.* (1) If an Eligible Family vacates its unit (other than as a result of action by the Owner which is in violation of the Lease or the Contract or any applicable law), the Owner may receive the housing assistance payments due under the Contract for so much of the month in which the Family vacates the unit as the unit remains vacant. Should the unit continue to remain vacant, the Owner may receive from the PHA a housing assistance payment in the amount of 80 percent of the Contract Rent for a vacancy period not exceeding an additional month. However, if the Owner collects any of the Family's share of the rent for this period, the payment must be reduced to an amount which, when added to the Family's payments, does not exceed 80 percent of the Contract Rent. Any such excess must be reimbursed by the Owner to the PHA. The Owner will not be entitled to any payment under this paragraph (b)(1) unless the Owner: (i) immediately upon learning of the vacancy, has notified the PHA of the vacancy or prospective vacancy, and (ii) has taken and continues to take all feasible actions specified in paragraphs (a)(2) and (3) of this section. (2) If the Owner evicts an Eligible Family, the Owner will not be entitled to any payment under paragraph (b)(1) of this section unless the PHA determines that the Owner complied with all requirements of § 882.514, the Contract, and all applicable State and local laws.

(c) *Prohibition of Double Compensation for Vacancies.* The Owner will not be entitled to housing assistance payments with respect to vacant units under this section if the Owner is entitled to payments from other sources (for example, payments for losses of rental income incurred for holding units vacant for relocatees pursuant to Title I of the HCD Act of 1974 or payments for unpaid rent under § 882.112 (Security and Utility Deposits)).

§ 882.414 Subcontracting of owner services.

(a) *General.* Any Owner may contract with any private or public entity to perform for a fee the services required by the Agreement, Contract or Lease, provided that such contract may not shift any of the Owner's responsibilities or obligations.

(b) *PHA Management.* If the Owner and a PHA wish to enter into a management contract, they may do so provided that:

(1) The Housing Assistance Payments Contract with respect to the housing involved is administered by another PHA, or

(2) Should another PHA not be available and willing to administer the Housing Assistance Payments Contract, the PHA agrees to comply with the following requirements.

(i) The PHA must submit to HUD an application consisting of a copy of the proposed management contract and documentation showing that:

(A) Performance of the management functions by the PHA is necessary to provide housing for Lower-Income Families, i.e. no management alternative exists;

(B) The PHA has or will have the capability to perform adequately the management functions for the units as proposed in the application taking into consideration the relevant characteristics of the housing and the Families, e.g., scattered site or multifamily projects; and

(C) The management contract meets the conditions of paragraphs (b)(2) (ii) and (iii).

(ii) The term of the proposed management contract must not exceed one year in order that the parties and HUD may evaluate the effectiveness of such a contract and renew it from year to year if justified. For similar reasons, the contract must include a clause which will allow either party to terminate, or HUD to require termination of, the contract on 90 days' advance written notice.

(iii) The compensation to the PHA must be in the form of a fixed fee to cover all routine management services including routine legal services and local travel. The amount of the fixed management fee must be negotiated between the Owner and the PHA and approved by HUD. The fee must be specified as dollars per unit rather than a percent of Contract Rent and must be sufficient to adequately compensate the PHA for the cost of providing the services, including the prorated fair share of all indirect and overhead costs so as to assure that costs of this management function are not shifted to other HUD-assisted programs. The fee must also be shown to be reasonable when compared with fees paid to private firms in similar management situations, such as management of Section 8 Existing Housing units and FHA projects. Costs of non-routine repairs and replacements, taxes, insurance, utilities and other non-routine items established in the contract to be paid by the PHA must be paid by the owner to the PHA in addition to the fixed fee.

(iv) Notwithstanding the provisions of § 882.409 (b) and (c)(3), a PHA may not approve, without prior HUD approval, rents which exceed the appropriate Moderate Rehabilitation Fair Market Rent for a unit for which it provides the management functions under this section.

(v) PHAs must keep separate accounts and records of their activities in performing the management functions pursuant to this section.

§ 882.415 Responsibility of the family.

A Family receiving housing assistance under this Program must fulfill all of its obligations under the Lease with the Owner and the Statement of Family Responsibility. Failure of the Family to meet its responsibilities under the Lease or Statement of Family Responsibility may be grounds for termination of assistance by the PHA. Should the PHA determine to terminate assistance to the Family, provisions of § 882.517(g) must be followed.

Subpart E—Special Procedures for Moderate Rehabilitation—Program Development and Operation

§ 882.501 Distribution of funds.

Contract and budget authority will be assigned to and allocated for metropolitan and non-metropolitan areas by each HUD field office pursuant to 24 CFR, Part 891, Review of Applications for Housing Assistance; Allocation of Housing Assistance Funds.

§ 882.502 Invitations for moderate rehabilitation program applications.

(a) *Sending of Invitation.* The HUD field office must initiate implementation of its program with respect to Moderate Rehabilitation by sending invitations for Moderate Rehabilitation Program applications for areas in the field office's jurisdiction where the Housing Assistance Plan (HAP) indicates a goal for Existing Housing in fiscal year 1979 or a goal for Moderate Rehabilitation Housing in fiscal year 1980 and subsequent years, where there are eligible applicants in accordance with § 882.401(b), and where there is a supply of housing suitable for moderate rehabilitation. These invitations may solicit applications for both the Existing Housing Program and Moderate Rehabilitation Program or may request only Moderate Rehabilitation applications. These invitations must be distributed in the same manner as specified in § 882.203(a).

(b) *Contents of Invitation.* The invitation must indicate: (1) that applications may be submitted by PHAs, (2) the amount of contract authority available and the estimated number of units the authority is expected to support, for both metropolitan and non-metropolitan areas, (3) the deadline for submission of applications (which will generally be 60 calendar days but must be at least 15 calendar days after the date invitations are sent (see paragraph (a) of this section)), (4) the fact that copies of the application, other forms, and Program regulations may be obtained from the HUD field office, (5) such other basic information as the field office may specify. If the invitation is for both Existing Housing and Moderate Rehabilitation applications, the invitation must also contain the information specified in § 882.203(b).

§ 882.503 Submission of applications.

The application for a Moderate Rehabilitation Program will be submitted by a PHA to the HUD field office. Advice and assistance in the preparation of the application are available from the HUD field office.

(a) *Contents.* The application must:

(1) Indicate the primary area(s) in which units will be rehabilitated under the Program and the approximate number of units to be located in each area.

(2) Indicate the types of housing (e.g., detached, walkup, elevator) expected to be utilized in the proposed project, the total number of units expected to be utilized by unit size (number of bedrooms), and the approximate number of units for occupancy by elderly, handicapped, or disabled.

(3) Demonstrate that the units requested in paragraph (a)(2) of this section are consistent with the applicable Housing Assistance Plan, or in the absence of such a Plan, that the proposed application is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families residing in or expected to reside in the community and that there is or will be available in the area public facilities and services adequate to serve the housing proposed to be assisted.

(4) Demonstrate that the applicant qualifies as a PHA and is legally qualified and authorized to participate in the Section 8 Moderate Rehabilitation Program for the area in which the Program is to be carried out and include in such demonstration (i) the relevant enabling legislation, (ii) any rules and regulations adopted or to be adopted by the agency to govern its operation, and (iii) a supporting opinion from the agency counsel. If the PHA already has an ACC for an Existing Housing Project, this demonstration will not be required if the PHA submits a statement that it is qualified to participate based on the same documentation.

(5) Include a statement that the housing standards to be used in the operation of the Program will be those set forth in §§ 882.109 and 882.405 or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation must be specified and justified. Should the PHA propose to use local code standards which are more restrictive than the Housing Quality Standards, no justification need be submitted.

(6) Include a proposed schedule specifying the number of units to be rehabilitated and leased by quarter.

(7) Include a description of the rehabilitation expertise and experience of the PHA.

(i) A PHA without rehabilitation expertise may not propose to hire staff to perform these functions if it can subcontract with an experienced and qualified agency or entity.

(ii) If there is a local Community Development Agency or other local public agency which is qualified and willing to provide rehabilitation technical assistance, the PHA must propose to subcontract with that agency, if the PHA does not possess that rehabilitation expertise.

(iii) If the PHA proposes to subcontract with any public or private rehabilitation entity, the PHA must specify the subcontractor and detail the subcontractor's experience in rehabilitation. A memorandum of intent between the PHA and any subcontractor specifying the obligations of each party must be submitted with the application.

(iv) Should the PHA not have the expertise and should an entity with such expertise not be available, the PHA must demonstrate how it proposes to obtain that expertise and detail the qualifications of any staff to be hired, if known, in the application.

(8) Include a description of the PHA's experience in administering housing or other programs and provide other information which evidences present or potential administrative capability for the proposed Program including experience with the Section 8 Existing Housing Program.

(9) Indicate which of the Program objectives specified in § 882.401(a) the PHA proposes to achieve.

(i) If the PHA proposes to use the Program to achieve deconcentration, the PHA must demonstrate that there are sufficient units in need of moderate rehabilitation in areas outside of low income and minority concentrations within the area of operation of the PHA which can be rehabilitated within the Fair Market Rent limitations of the Program. The PHA must also certify that in selecting units for participation in the Program, it will not select units located in: (A) An area of minority concentration unless sufficient, comparable opportunities exist for housing for minority Families outside areas of minority concentration; or (B) A racially mixed area if the units will cause a significant increase in the proportion of minority to nonminority residents in the area.

(ii) If the PHA proposes to concentrate its activities in a specific neighborhood(s), the application must contain a map outlining the neighborhood boundaries and a description of neighborhood characteristics, including demographics, owner/renter status of current residents, extent of vacancy and overall condition of the housing stock. The PHA must demonstrate that there are units within the neighborhood which can meet the site and neighborhood standards pursuant to § 882.405(b).

(A) If the Program is to be concentrated in a neighborhood undergoing private reinvestment and the Program is to be used to prevent displacement, the PHA must so state in its application and must demonstrate that there are units in the neighborhood suitable for moderate rehabilitation and which can be rehabilitated within the Fair Market Rent limitations of the Program.

(B)If the Program is to be concentrated in a neighborhood to reverse or prevent neighborhood deterioration, the PHA must demonstrate that the Program is appropriate to the needs of the proposed neighborhood. The application must also contain a letter from the chief executive officer of the local government indicating the locality's endorsement of the application and describing other public and private improvements completed, underway and/or planned for this neighborhood to complement the Moderate Rehabilitation Program.

(10) Indicate the types of financing expected to be used under the Program particularly Federal, State or local financing programs, and describe the availability of the financing. Statements from these financing sources as to their willingness to finance rehabilitation under this Program should be submitted where available. Types of financing could include but are not limited to Community Development Block Grant loan and grant programs, State Agency rehabilitation loan programs, Neighborhood Housing Services programs and private rehabilitation loan programs. HUD mortgage insurance programs may be used to help secure financing; however, Section 312 rehabilitation loans may not be used in conjunction with the Program.

(11) Include:

(i) A certification that no buildings will be selected for participation in the Program where permanent displacement of tenants will be required; or

(ii) A statement of the PHA's relocation strategy including:

(A) A description of the circumstances under which permanent displacement of tenants will be allowed (i.e. overcrowded or under-occupied units or the combination of occupied units);

(B) A certification that the PHA will comply with requirements specified in § 882.407.

(C) A certification that the PHA will provide a preference for Certificates in its Section 8 Existing Housing Program to Families displaced as a result of Moderate Rehabilitation or a certification from the PHA administering the Section 8 Existing Housing Program in the area that it will provide such a preference.

(D) A certification that the PHA will provide a preference for any Family displaced under the Program in its referral of Families to Owners of vacant Moderate Rehabilitation units and that it will give a preference to these Families in any assisted housing owned and/or managed by the PHA.

(E) If the PHA proposes to assume the responsibility for any assistance or payments to permanently displaced tenants, a certification that the funds for these purposes will come from other than HUD-assisted housing programs.

(F) If any entity other than the PHA agrees to assume the responsibility for assistance or payments to displacees under the Program, a certification from an official of that entity to that effect.

(12) If the PHA is proposing to rehabilitate units in a locality with an approved Housing Assistance Plan, include a statement from the chief executive officer of the local government indicating local government approval of the submission of the application, stating that the application is consistent with the local Housing Assistance Plan and providing any additional comments.

(b) *Other Submissions.* The PHA must submit the following items with the application or after application approval but no later than with the PHA executed ACC.

(1) An equal opportunity housing plan.

(i) The plan must describe the PHA's policies and procedures for:

(A) Fulfilling the requirements of § 882.506(a), Public Notice to Owners, and § 882.516, Public Notice to Lower-Income Families.

(B) Achieving the participating of Owners of units in areas outside of low income and minority concentrations, if the PHA has indicated that the objective of the Program will be deconcentration (see paragraph (a)(9) of this section).

(C) Selecting from among eligible applicant Families those to be referred to Owners for filling vacant units rehabilitated under the Program, including any provisions establishing preferences for selection.

(D) Providing assistance to a Family who has applied for a vacant unit assisted under the Program, who has been rejected by the Owner and who believes that the Owner's rejection was the result of unlawful discrimination. (See § 882.509(e)(3)).

(ii) The plan must also include signed certification of the applicant's intention to comply with Title VI of the Civil Rights Act of 1964; Title VIII of the Civil Rights Act of 1968; Executive Order 11063; Executive Order 11246; Section 3 of the Housing and Urban Development Act of 1968; and if the housing assistance will be used within a locality which has a Housing Assistance Plan, a certification that the PHA will take affirmative action to provide opportunities to participate in the Program to those elderly persons expected to reside in the locality and those Familys expected to reside in the community as a result of current or planned employment as indicated in the Housing Assistance Plan.

(2) Estimates of financial requirements for preliminary costs, ongoing administrative costs and housing assistance payments on the prescribed forms.

(3) A proposed schedule of Allowance for Utilities and Other Services with a justification of the amounts proposed.

(4) An Administrative Plan.

(i) The plan must contain: a statement of the PHA's overall approach and objectives in administering the Moderate Rehabilitation Program, a description of the procedures to be used in carrying out each administrative function, and a statement of the number of employees proposed for the Program, by position and functions to be performed. Where a subcontractor such as the Community Development Agency, other local government staff or private entity will be utilized to perform any of the functions of the PHA, the staff and procedures of the subcontractor must be described, as well as how the PHA plans to coordinate with, review and monitor the subcontractor's operation.

(ii) The following functions should be addressed in addition to those required in § 882.204(b)(3)(ii): outreach to Owners; selection of proposals, including any preferences for selection; initial inspection of units; preparation of feasibility analyses, work write-ups, and cost estimates; establishment of rents; financing counseling; preparation of loan applications; assistance to Owners in the selection of contractors; execution, review and monitoring of Agreements and Contracts; oversight of rehabilitation including inspection of units during rehabilitation; final inspection of units; review of Owners' cost certifications; and rehousing Families who move.

(iii) The plan must also contain the relocation policy and procedures of the PHA. The PHA must detail how temporary relocation will be minimized and under what circumstances such relocation will be allowed. The responsibilities of the PHA and Owners as specified in § 882.407 must be clearly delineated and the PHA must indicate how it will monitor the Program to assure that proper relocation payments and assistance are provided and that any temporary relocation does not exceed six months in duration. Additionally, it must be stated that no Owner will be selected for participation unless the Owner agrees to make relocation payments to those tenants temporarily relocated, in accordance with § 882.407. Should the PHA propose to allow permanent displacement of tenants, and this policy has been specified in the PHA's application and approved by HUD, this section must detail how the PHA will monitor the Program to assure that displacement is minimized, that proper relocation payments and assistance are provided, and that other requirements of Section 882.407 are met. This section of the administrative plan must clearly delineate the responsibilities of the PHA, Owners and the entity proposing to fund any costs associated with permanent displacement.

§ 882.504 Processing of applications.

(a) *Initial Screening of Applications.* Promptly after receipt of an application, HUD will determine whether or not the application is complete. If an application is incomplete, the PHA must be so notified and will be given until the deadline date or, if necessary, a reasonable time thereafter within which to complete the application.

(b) *Local Government Comment.* Pursuant to Section 213 of the HCD Act and regulations issued pursuant thereto (24 CFR Part 891), no later than 10 working days after receipt of an application (or completion of initial screening and determination that the application is acceptable for further processing), HUD will send a notification to the chief executive officers of units of general local government of those localities which are identified in the application as primary areas in which units will be rehabilitated under the Program. This notification will advise the local government that HUD has received an application for housing assistance and will invite local government comments on the application in accordance with Part 891.

(c) *Evaluation of Applications.* HUD may begin its evaluation immediately upon receipt of the application, but no final decision of approval or disapproval of the application may be made until after the deadline for receipt of applications or the end of the opportunity for response referred to in paragraph (b) of this section, whichever is later. Each application will be evaluated by HUD on the basis of the factors specified in this paragraph [c]. HUD will consider in its evaluation any comments submitted by the local government, and conformance with local government comments submitted consistent with Part 891 may be required. Should the available contract authority not be sufficient to fund all approvable applications, HUD will list the applications in a rank order based on its assessment of which applications have the best combination of the following:

(1) The demonstrated capacity of the PHA and/or its subcontractor(s) to provide the rehabilitation technical assistance to Owners required under the Program;

(2) The availability of financing resources, both assisted and unassisted, as demonstrated through statements from financing agencies (for example, local Community Development or State agency rehabilitation loan programs);

(3) The PHA's experience with the Section 8 Existing Housing Program and/or the PHA's overall administrative capability;

(4) The potential of achieving, as expeditiously as possible, the rehabilitation and leasing of housing units under this Subpart; and

(5) The overall feasibility of the proposed program in meeting the objective specified in the application.

(d) *Disapproval, Conditional Approval, or Approval of Applications.* If an application is disapproved, HUD must notify the PHA by letter indicating the reasons for disapproval. If an application can be approved only if certain changes are made, HUD must notify the PHA by letter stating that the application can be approved if the PHA adopts, within a specified reasonable time as determined by HUD, the changes required by HUD. If an application is approved, the PHA will be sent a notification of application approval.

§ 882.505 Annual contributions contract; schedule of rehabilitation and leasing.

(a) *Maximum Total ACC Commitment.* The maximum total

annual contribution that may be contracted for will be the total for all the units of the Moderate Rehabilitation Fair Market Rents.

(b) *Transmittal of ACC and Execution of ACC by HUD.* These functions must be performed as specified in § 882.206 (a) and (b).

(c) *Schedule of Rehabilitation and Leasing.* The ACC will include a provision relating to expeditious rehabilitation and leasing of units under the Program. HUD will review the PHA-proposed schedule specifying the number of units that are expected to be under an Agreement and the number of units expected to be leased by the end of each three-month period, and will make such changes as it determines to be appropriate. In its transmittal of the ACC to the PHA, HUD will include the HUD-approved schedule. This schedule will be established so as to implement HUD policy that all units in a Section 8 Moderate Rehabilitation project of 100 units or more must be under an Agreement within 15 months and leased by Eligible Families within 18 months of execution of the ACC for that project. In the case of smaller programs, a shorter time period may be established by HUD. Additionally, HUD may approve a schedule which allows as long as 21 months for Agreements and as long as 24 months for leasing for the first project undertaken by a PHA or for projects of over 1,000 units. HUD may modify the unit mix and/or reduce the number of units and/or the amount of the annual contributions commitment if, in the determination of HUD, the PHA fails to demonstrate a good faith effort to adhere to this schedule or if other reasons justify a reduction in the number of units or change in the unit mix.

§ 882.506 Obtaining and screening proposals from owners.

(a) *Public Notice to Owners.* Promptly after receiving the executed ACC, and thereafter as may be necessary, the PHA must make known to the public through publication in a newspaper of general circulation as well as through minority media and other suitable means, the availability and nature of the Program. The notice must inform Owners where they may apply for the Program and must be made in accordance with the PHA's HUD-approved equal opportunity housing plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement and slogan.

(b) *Owner Proposals.* The PHA must develop a proposal format for Owners wishing to apply for participation in the Program which will require, at a minimum, the following information: (1) Name, address and phone number of Owner, (2) Address of building to be rehabilitated and date of construction, (3) Number, type (elevator/nonelevator) and bedroom size of unit(s) to be rehabilitated, (4) Rent(s) charged by bedroom size during the previous 18 months, (5) Number and size of vacant unit(s), (6) Number of units the Owner proposes to be assisted after rehabilitation by bedroom size and family characteristics (size and household type) of present tenants, (7) Whether the Owner anticipates that permanent displacement or temporary relocation of tenants will be necessary and the anticipated length of any temporary relocation. If temporary relocation is anticipated, the Owner must indicate willingness to assume the responsibilities specified in § 882.407. (8) A certification that no tenant has been forced to move without cause in the twelve month period preceding the submittal of the proposal, (9) The prior participation of the Owner in HUD Programs, and (10) The Owner's plans for managing and maintaining the unit(s) under the proposal.

(c) *Initial Screening of Proposals.* The PHA should review all proposals submitted and make an initial determination, based on the data submitted in the proposal, of those proposals which are clearly inappropriate or unresponsive to the PHA's advertisement. For example, if the PHA has certified in its application that no permanent displacement will be allowed, any proposal which would involve displacement must be rejected at this stage. Similarly, if the Owner suggests that temporary relocation exceeding six months will be required to complete the rehabilitation proposed, that proposal must be rejected. Should the PHA reject a proposal, the Owner must be notified in writing with a statement of the reason(s).

§ 882.507 Assistance to owners and selection of units.

(a) *Initial Inspection.* For all proposals not rejected in the initial screening, the PHA must inspect the property with the Owner and tenant(s) if possible. A determination must be made by the PHA as to the specific work items which need to be accomplished to bring the unit(s) to be assisted up to the Housing Quality Standards specified in § 882.109 and § 882.405 (or other standards as approved in the PHA's application) and/or to repair or replace major building systems or components in danger of failing. The PHA, as soon as possible following the inspection, must provide the Owner with a written list of deficiencies.

(b) *Preliminary Feasibility Analysis.*—A rough cost estimate and cash flow analysis of the property following rehabilitation must be made by the PHA. A determination of the necessity for any permanent displacement and/or temporary relocation and a preliminary estimate of the cost of any temporary relocation must be made by the PHA. If the proposal is determined to be feasible, analysis of additional energy conserving improvements which may be cost effective and which may be accomplished within the Fair Market Rent limitations of the Program must be made. The Owner must be required to provide energy conserving improvements in accordance with § 882.405(a). A preliminary estimate of Gross Rents should be made based upon the estimates of rehabilitation, temporary relocation and energy conserving improvements costs.

(c) *Selection of Proposals.* After the initial inspection and preliminary feasibility analysis, the PHA should select among Owner proposals those proposals which it will approve. The PHA must establish a method of selecting among Owner proposals and must make this method known to any Owner submitting or planning to submit a proposal. Proposals must be approved in accordance with criteria established by the PHA, including any PHA rules for preferences as approved by HUD (see § 882.503(b)(4)(ii)) and in accordance with the following requirements:

(1) No proposal found infeasible by the PHA in the preliminary feasibility analysis may be approved unless the Owner can demonstrate that the allowable rent will be sufficient to rehabilitate, manage and maintain the unit(s) adequately;

(2) If, during the preliminary feasibility analysis, it is determined by the PHA that the work necessary to bring a unit(s) to the Housing Quality Standards, or other standards approved for the Program, or to repair or replace major systems is not sufficient to meet the $1000 per unit minimum amount of rehabilitation requirement, that unit(s) may not be assisted under the Program.

(3) If a unit(s) does not meet the requirement of paragraph (c)(2) but the Owner is proposing to accomplish at least $1000 per unit of rehabilitation by including work to make the unit(s) accessible to a handicapped or disabled individual occupying the unit(s) or expected to occupy the unit(s), the PHA may approve such units not to exceed 5

percent of the units under its Program. The rehabilitation must make the unit(s), and access and egress to the unit(s), barrier-free with respect to the handicap or disability of the individual in residence or expected to be in residence.

(4) A preference must be provided to those proposals which indicate in the preliminary feasibility analysis the greatest dollar amount of necessary rehabilitation per unit. This preference need not be adhered to strictly if the PHA is proposing to use the Program for deconcentration (§ 882.503(a)(9)) and the proposals indicating the greatest amount of rehabilitation are located in areas of minority concentration.

(5) Prior to the approval of any unit(s) owned by a State or unit of general local government, the PHA must contact HUD and request HUD review of the site. The PHA may not enter into an Agreement on any such unit(s) until HUD approval of the site is obtained and the State or unit of general local government has sold the unit(s) to another Owner.

(d) *Notification of Owners.* When the PHA has selected the proposals which it plans to approve, the PHA must notify all Owners specifying:

(1) Whether their proposal has been rejected or approved;

(2) If the proposal was rejected, the reason(s) for rejection and the Owner's right to appeal to the PHA the PHA's basis for rejection;

(3) The tentative number of units to be assisted; and

(4) That the Owner should request all tenants residing in units tentatively selected for participation in the Program to contact the PHA to submit an application.

(e) *Selection of Units.* The PHA must take the applications and determine the eligibility of all tenants residing in approved units who wish to apply for the Program. After eligibility of all tenants has been determined, the Owner must be informed of any adjustment in the number of units to be assisted. In order to make the most efficient use of housing assistance funds, an Agreement may not be entered into covering any unit occupied by a family which is not eligible to receive housing assistance payments. Therefore, the number of units approved by the PHA for a particular proposal must be adjusted to exclude any unit(s) determined by the PHA to be occupied by a family not eligible to receive housing assistance payments. Eligible Families must also be briefed at this stage as to their rights and responsibilities under the Program § 882.517(c)).

(f) *Work Write-ups and Cost Estimates.* Should the Owner agree with the assessment of the PHA as to the work that must be accomplished, the preliminary feasibility of the proposal, and the number of units to be assisted, the Owner, with the assistance of the PHA where necessary, must prepare detailed work write-ups including specifications and plans (where necessary) so that a cost estimate may be prepared. The work write-up will describe how the deficiencies specified in paragraph (a) of this section are to be corrected including minimum acceptable levels of workmanship and materials. From this work write-up, the Owner, with the assistance of the PHA, must prepare a cost estimate for the accomplishment of all items specified in this section. While this work write-up may include items of routine maintenance or other items which are not among the deficiencies specified in the initial inspection (paragraph (a)), these extra items may not be included in the rehabilitation cost upon which the Contract Rent(s) is based.

(g) *Selection of Contractor.* The PHA should discuss with the Owner the selection of a competent contractor to undertake the rehabilitation. The PHA must provide the Owner a list of contractors, including minority contractors, and must require that these contractors be provided an opportunity to submit bids or proposals for the work. The PHA must also, to the fullest extent possible, promote opportunities for minority contractors to participate in the Program.

(h) *Feasibility Analysis.* After a firm price has been secured from the contractor selected by the Owner, a feasibility analysis of the proposal must be conducted by the PHA and the Owner. This analysis will be similar to the preliminary analysis specified in paragraph (b) of this section. The work to be accomplished and/or rents to be specified in the Agreement may be adjusted to reflect the contractor's price.

(i) *Financing.* The PHA must discuss with the Owner the various financing options available. The PHA, where necessary, must also assist the Owner in the preparation of an application for rehabilitation financing.

(j) *Preparation of Lease Form.* The PHA, where necessary, must assist the Owner in the preparation of a form of tenant Lease which meets the following requirements:

(1) Term of Lease. The term of the lease must be consistent with § 882.404(b).

(2) Required Provisions. The Lease must contain the HUD-prescribed provisions in Appendix I except for paragraph (e). In addition, a provision implementing § 882.514 must be included.

(3) Prohibited Provisions. The Lease must not contain any clause which falls within the classifications of HUD-prescribed prohibited lease provisions in Appendix II.

§ 882.508 Agreement to enter into housing assistance payments contract.

(a) *Provisions.* Prior to the commencement of any rehabilitation under this Part, the PHA must enter into an Agreement with the Owner which contains among other requirements the following:

(1) A statement that the Owner agrees to bring the unit(s) into compliance with the Housing Quality Standards or other standards approved for the Program in accordance with the work write-up specified in § 882.507(f). The work write-up and cost estimate will be an attachment to the Agreement.

(2) A date by which rehabilitation will have commenced and a deadline date by which the rehabilitation will be completed and the unit(s) ready for occupany.

(3) An anticipated Contract Rent which will be paid to the Owner after rehabilitation is completed and the Contract is executed. This rent will be established in accordance with § 882.409(c).

(4) The term of the Contract. The term must be consistent with § 882.404(a).

(5) If there are units in the building which will not be assisted under the Program, a statement that the Owner agrees to bring the unassisted units into compliance with the Housing Quality Standards specified in § 882.109 by the completion date referred to in paragraph (a)(2) of this section.

(6) The form of Contract, as an exhibit.

(b) *Preparation and Execution.* The Agreement must be prepared by the PHA in the form prescribed by HUD and include all required information in paragraph (a) of this section and a provision specifying the Owner's responsibility for making relocation payments to Families temporarily displaced. The PHA will provide the Owner with one executed copy of the Agreement and retain at least one copy for its records.

§ 882.509 Rehabilitation period.

(a) *Timely Performance of Work.* After execution of the Agreement, the Owner must promptly proceed with the rehabilitation work as provided in the Agreement. In the event the work is not so commenced, diligently continued, or completed, the PHA will have the right

to rescind the Agreement, or take other appropriate action. Although extensions of time may be granted, no increases in Contract Rents may be granted for delays.

(b) *Inspections.* The PHA must inspect, as appropriate, during rehabilitation to ensure that work is proceeding on schedule and is being accomplished in accordance with the terms of the Agreement, particularly that the work meets the acceptable levels of workmanship and materials specified in the work write-up.

(c) *Changes.* (1) The Owner must submit to the PHA for approval any changes from the work specified in the Agreement which would alter the design or the quality of the required rehabilitation. The PHA may condition its approval of such changes on a reduction of the Contract Rents. If changes are made without prior PHA approval, the PHA may determine that Contract Rents must be reduced or that the Owner must remedy any deficiency as a condition for acceptance of the unit(s).

(2) Contract Rents may not be increased except in accordance with provisions of § 882.409(d).

(d) *Vacancies from Execution of Contract to Initial Occupancy.* At the time the Contract is executed, the Owner will be required to submit a list of dwelling unit(s) leased as of the effective date of the Contract and a list of the unit(s) not so leased, if any. The Owner will be entitled to housing assistance payments for any unleased unit(s), pursuant to § 882.413(a), only if the Owner has fully complied with the requirements of that section and of this paragraph.

(e) *Initial Occupancy.* (1) In filling a vacant unit(s) which is being rehabilitated under the Agreement, the Owner must select from those Eligible Families on the PHA's waiting list. The PHA will refer Eligible Families to the Owner for this purpose.

(2) In order that the unit(s) might be promptly occupied, 60 days prior to the scheduled completion of the rehabilitation, or the date the Agreement is executed, whichever is later, the Owner must notify the PHA of any unit(s) which it is anticipated will be vacant on the anticipated effective date of the Contract. The PHA will notify one or more appropriate size Families on its waiting list of the availability of the unit.

(3) Since the Owner is responsible for tenant selection, the Owner may refuse any Family provided that the Owner does not unlawfully discriminate. Should the Owner reject a Family, and should the Family believe that the Owner's rejection was the result of unlawful discrimination, the Family may request the assistance of the PHA in resolving the issue. If the issue cannot be resolved promptly, the Family may file a complaint with HUD and the PHA may refer the Family to the next available unit.

§ 882.510 Completion of rehabilitation.

(a) *Notification of Completion.* The Owner must notify the PHA when the work is completed and submit to the PHA the evidence of completion and certifications described in paragraphs (b) and (c) of this section.

(b) *Evidence of Completion.* Completion of the unit(s) must be evidenced by furnishing the PHA with the following:

(1) A certificate of occupancy and/or other official approvals as required by the locality.

(2) A certification by the Owner that:

(i) The unit(s) has been completed in accordance with the requirements of the Agreement;

(ii) The unit(s) is in good and tenantable condition;

(iii) The unit(s) has been rehabilitated in accordance with the applicable zoning, building, housing and other codes, ordinances or regulations, as modified by any waivers obtained from the appropriate officials;

(iv) Any unit(s) built prior to 1950 is in compliance with applicable HUD Lead Based Paint regulations (24 CFR Part 35);

(v) If applicable, the Owner has complied with the provisions of the Agreement relating to the payment of not less than prevailing wage rates and that to the best of the Owner's knowledge and belief there are no claims of underpayment concerning alleged violations of said provisions of the Agreement. In the event there are any such pending claims to the knowledge of the Owner or PHA, the Owner will be required to place a sufficient amount in escrow, as determined by the PHA, to assure such payments; and

(vi) If there are units in the building which will not be assisted under the Program, the units comply with the Housing Quality Standards specified in § 882.109.

(c) *Actual Cost and Rehabilitation Loan Certifications.* The Owner must provide the PHA with a certification of the costs incurred for the rehabilitation and any temporary relocation as well as the interest rate and term (if the total cost of rehabilitation under the Agreement is less than $15,000) of any rehabilitation loan. The Owner must certify that these are the actual costs, interest rate, and term (where applicable). The PHA must review for completeness and accuracy and accept these certifications subject to the right of post audit. The PHA must then establish the Contract Rents as provided in § 882.409 which will be subject to reduction based on a post audit.

(d) *Review and Inspections.* (1) Within ten working days of the receipt of the evidence of completion, the PHA must review the evidence of completion for compliance with paragraph (b) of this section.

(2) Within the same time period, a PHA representative must inspect the unit(s) to be assisted to determine that the unit(s) has been completed in accordance with the Agreement and meets the Housing Quality Standards or other standards approved by HUD for the Program. If the inspection discloses defects or deficiencies, the inspector must report these in detail.

(e) *Acceptance.* (1) If the PHA determines from the review and inspection that the unit(s) has been completed in accordance with the Agreement, the unit(s) will be accepted.

(2) If there are any items of delayed completion which are minor items or which are incomplete because of weather conditions, and in any case which do not preclude or affect occupancy, and all other requirements of the Agreement have been met, the unit(s) must be accepted. An escrow fund determined by the PHA to be sufficient to assure completion for items of delayed completion must be required, as well as a written agreement between the PHA and the Owner, to be included as an exhibit to the Contract, specifying the schedule for completion. If the items are not completed within the agreed time period, the PHA may terminate the Contract or exercise other rights under the Contract.

(3) If other deficiencies exist, the PHA must determine whether and to what extent the deficiencies are correctable, and whether the Contract Rents should be reduced. The Owner must be notified of the PHA's decision. If the corrections required by the PHA are possible, the PHA and the Owner must enter into an agreement for the correction of the deficiencies within a specified time. If the deficiencies are corrected within the agreed period of time, the PHA must accept the unit(s).

(4) Otherwise, the unit(s) may not be accepted, and the Owner must be notified with a statement of the reasons for nonacceptance.

§ 882.511 Execution of housing assistance payments contract.

(a) *Time of Execution.* Upon acceptance of the unit(s) by the PHA pursuant to § 882.510(e) and acceptance of the certifications by the PHA pursuant to § 882.510(c), the Contract will be executed by the Owner and the PHA. The effective date must be no earlier than the PHA inspection which provides the basis for acceptance as specified in § 882.510(e).

(b) *Changes from Agreement.* The Contract Rents may be higher or lower than those specified in the Agreement in accordance with requirements of § 882.409(d).

(c) *Unleased Unit(s).* At the time of execution of the Contract, the PHA must examine the lists of dwelling units leased and not leased, referred to in § 882.509(d), and must determine whether or not the Owner has met the obligations under that section with respect to any unleased unit(s) and for which unit(s) it will make vacancy payments if the unit(s) is not leased within 15 days. The Owner must indicate in writing either concurrence with this determination or disagreement, reserving all rights to claim vacancy payments for the unleased unit(s) pursuant to the Contract, without prejudice by reason of the Owner's signing the Contract.

§ 882.512 Overcrowded and under occupied units.

If the PHA determines that a Contract unit is not decent, safe, and sanitary by resason of increase in Family size, or that a Contract unit is larger than appropriate for the size of the Family in occupancy, housing assistance payments with respect to the unit will not be abated; however, the Owner must offer the Family a suitable alternative unit should one be available and the Family will be required to move. If the Owner does not have a suitable available unit, the PHA must assist the Family in finding an appropriate dwelling unit following the procedure specified in § 882.517(e) and require the Family to move to such a unit as soon as possible. In no case will a Family be forced to move unless the Family rejects without good reason the offer of a unit which the PHA judges to be acceptable.

§ 882.513 Adjustment of allowance for utilities and other services.

The PHA must determine, at least annually, whether an adjustment is required in the Allowance for Utilities and Other Services applicable to the dwelling units in the Program, on grounds of changes in utility rates or other change of general applicability to all units in the Program. The PHA may also establish a separate schedule of allowances for each building of 20 or more assisted units, based upon at least one year's actual utility consumption data following rehabilitation under the Program. If the PHA determines that an adjustment should be made in its Schedule of Allowances or if it establishes a separate schedule for a building which will change the allowance, the PHA must then determine the amounts of adjustments to be made in the amount of rent to be paid by affected Families and the amount of housing assistance payments and must notify the Owners and Families accordingly. Any adjustment to the Allowance must be implemented no later than at the Family's next reexamination pursuant to § 882.518 or at lease renewal, whichever is earlier.

§ 882.514 Termination of tenancy.

(a) *Applicability.* The provisions of this section apply to all decisions by an Owner to terminate the tenancy of a Family residing in a unit under Contract during or at the end of the Family's lease term.

(b) *Entitlement of Families to Occupancy.*

(1) *General.* The Owner may not terminate any tenancy except upon the following grounds; (i) Material noncompliance with the lease; (ii) Material failure to carry out obligations under any State landlord and tenant act, or (iii) Other good cause, which may include the refusal of a Family to accept an approved modified lease form (see paragraph (d) of this section). No termination by an Owner will be valid to the extent it is based upon a lease or a provision of State law permitting termination of a tenancy solely because of expiration of an initial or subsequent renewal term. All terminations must also be in accordance with the provisions of any State and local landlord tenant law and paragraph (c) of this section.

(2) *Notice of Good Cause.* The conduct of a tenant cannot be deemed "other good cause" under paragraph (b)(1)(iii) of this section unless the Owner has given the Family prior notice that the grounds constitute a basis for termination of tenancy. The notice must be served on the Family in the same manner as that provided for termination notices under State and local law.

(3) *Material Noncompliance.* The term material noncompliance with the lease includes (i) one or more substantial violations of the lease or (ii) repeated minor violations of the lease which disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a material noncompliance with the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

(c) *Termination Notice.* (1) The Owner must give the Family a written notice of any proposed termination of tenancy, stating the grounds and that the tenancy is terminated on a specified date and advising the Family that it has an opportunity to respond to the Owner. (2) When a termination notice is issued for other good cause (paragraph (b)(1)(iii) of this section), the notice will be effective, and it will so state, at the end of a term and in accordance with the termination provisions of the lease, but in no case earlier than 30 days after receipt by the Family of the notice. Where the termination notice is based on material noncompliance with the lease or material failure to carry out obligations under a State landlord and tenant act pursuant to paragraph (b)(1) (i) or (ii) of this section, the time of service must be in accord with the lease and State law. (3) In any judicial action instituted to evict the Family, the Owner may not rely on any grounds which are different from the reasons set forth in the notice. A copy of the notice must be furnished simultaneously to the PHA and the PHA must determine that the proposed termination is being performed in accordance with the procedures required in this section.

(d) *Modification of Lease Form.* The Owner may, with the prior approval of the PHA, modify the terms and conditions of the lease form effective at the end of the initial term or a successive term, by serving an appropriate notice on the Family, together with the offer of a revised lease or an addendum revising the existing lease. This notice and offer must be received by the Family at least 30 days prior to the last date on which the Family has the right to terminate the tenancy without being bound by the modified terms and conditions. The Family may accept the modified terms and conditions by executing the offered revised lease or addendum, or may

reject the modified terms and conditions by giving the Owner written notice in accordance with the lease that he/she intends to terminate the tenancy. Any increase in rent must in all cases be governed by Section 882.411 and other applicable HUD regulations.

(e) *Continued Assistance.* Should the Family be evicted in accordance with this section, the PHA will have no obligation to continue assistance to the Family.

§ 882.515 Reduction of number of units covered by contract.

(a) *Limitation on Leasing to Ineligible Families.* Owners may not lease any of the assisted units under Contract to ineligible families. Failure on the part of the Owner to comply with this prohibition is a violation of the Contract and grounds for all available legal remedies, including suspension or debarment from HUD programs and reduction of the number of units under the Contract, as set forth in paragraph (b) of this section. Once the PHA has determined that a violation exists, the PHA must notify HUD of its determination and the suggested remedy(ies). At the direction of HUD, the PHA must take the appropriate action.

(b) *Reduction for Failure to Lease to Eligible Families.* If, at any time beginning six months after the effective date of the Contract, the Owner fails for a continuous period of six months to have at least 90 percent of the assisted units leased or available for leasing by Eligible Families, because families occupying units who were initially eligible have become ineligible, the PHA may, on at least 30 days' notice, reduce the number of units covered by the Contract. The PHA may reduce the number of units to the number of units actually leased or available for leasing plus 10 percent (rounded up). If the Owner has only one unit under Contract and if one year has elapsed since the date of the last housing assistance payment, the Contract may be terminated with the consent of the Owner.

(c) *Restoration.* The PHA will agree to an amendment of the Contract, to provide for subsequent restoration of any reduction made pursuant to paragraph (b) of this section if:

(1) The PHA determines that the restoration is justified by demand,

(2) The Owner otherwise has a record of compliance with obligations under the Contract, and

(3) Contract authority is available.

§ 882.516 Public notice to lower-income families; waiting list.

(a) *Public Notice to Lower-Income Families.* (1) If the PHA does not maintain a waiting list for its Existing Housing Program pursuant to § 882.207(b) which is sufficient to provide applicants for the units under the Moderate Rehabilitation Program, the PHA must, promptly after receiving the executed ACC, make known to the public the availability of the Program in accordance with § 882.207(a).

(i) The notice must state that assistance under this Program will be available only in specified units which have been rehabilitated under the Program.

(ii) The notice must also state that current occupants of housing assisted under the Act and applicants on a waiting list for any such housing (except for those Families on the Section 8 Existing Housing waiting list) must apply separately if they wish to be considered for assistance under the Program. In addition, the notice must state that such applicants will not lose their place on the public housing or other waiting list.

(iii) The notice must be made in accordance with the PHA's HUD-approved plan and with the HUD guidelines for fair housing requiring the use of the equal housing opportunity logotype, statement and slogan.

(2) If the PHA has a waiting list for its Existing Housing Program which is sufficient to provide applicants for the units under the Moderate Rehabilitation Program, the PHA need not advertise the availability of assistance under this Program, until the next time it advertises under that program, but must refer Families on the Existing Housing waiting list.

(b) *Waiting List.* Any Family on the waiting list must be allowed to refuse participation in the Moderate Rehabilitation Program without losing its place on the waiting list for Existing Housing.

§ 882.517 Family participation.

(a) *Initial Determination of Family Eligibility.* (1) The PHA will be responsible for determining Family eligibility for participation, in accordance with 24 CFR Part 889. The PHA is responsible for verifying the sources and amount of the Family's Income and other information necessary for determining eligibility and the amount of the assistance payments.

(2) Every applicant for participation must complete and sign the form of application prescribed by HUD.

(3) The PHA must maintain a system to assure that it will be able to assist all Families selected to participate within its ACC authorization and that it will comply, to the maximum extent feasible, with the unit distribution in the ACC.

(4) PHA records on applicants and Families selected to participate must be maintained so as to provide HUD with racial, gender, and ethnic data and must be retained for three years.

(b) *Selection of Families for Participation.* The PHA must select Families for participation in accordance with the provisions of the Program and in accordance with the PHA's application, including any PHA requirements or preferences as approved by HUD (see § 882.503(b)(1)(i)(C)). The PHA must select Families eligible for housing assistance payments currently residing in units which are designated for rehabilitation under the Program without requiring that these Families be placed on the waiting list. If assistance under this Part is being concentrated in a neighborhood (see § 882.503(a)(9)), the PHA may establish a preference for applicants currently residing in that neighborhood who are being directly displaced by HUD programs.

(c) *Briefing of Families.* (1) When a Family is initially determined to be eligible for housing assistance payments (§ 882.507(e)) or is selected for participation (§ 882.517(b)), the PHA must provide the Family with information as to the Gross Family Contribution and the PHA's schedule of Allowances for Utilities and Other Services. Each Family must also, either in group or individual sessions, be provided with a full explanation of the following:

(i) Family and Owner responsibilities under the Lease and Contract;

(ii) Significant aspects of the applicable State and local laws;

(iii) Significant aspects of Federal, State and local fair housing laws;

(iv) The fact that the subsidy is tied to the unit and the Family must occupy a unit rehabilitated under the Program;

(v) The Family's options under the Program should the Family be required to move due to an increase or decrease in Family size; and

(vi) The Family's options under the Program if it decides to move from its rehabilitated unit.

(2) For all Families residing in units to be rehabilitated, whether or not they will be displaced, the briefing must include notices and discussions of relocation and displacement rights and policies specified in § 882.407.

(d) *Continued Participation When Assisted Family Wishes to Move.*

(1) If an assisted Family notifies the PHA that it wishes to find another dwelling unit within the area in which the PHA has determined that it is able to enter into Contracts or that it has found another unit to which it wishes to move, the PHA, unless it determines that the Owner is entitled to payments pursuant to § 882.413 due to the Family's vacating the unit in violation of the lease or pursuant to Section 882.112 on account of nonpayment of rent or other amount owed under the Lease and that the Family has failed to satisfy any such liability or unless it determines the Family to be ineligible, may:

(i) Give the Family a preference as a currently assisted Family wishing to move and provide it with the next available Section 8 Existing Housing Certificate of Family Participation or refer the Family to the next available unit rehabilitated under the Program, or

(ii) Place the Family on its Section 8 Existing Housing Program waiting list as if they had just applied.

(2) If the PHA determines the Family to be ineligible, provisions of paragraph (g) of this section must be followed.

(3) If an assisted Family wishes to move out of the area in which the PHA has determined that it is able to enter into Contracts and the Family qualifies under paragraph (e)(1) of this section, the Family may obtain housing assistance in the jurisdiction to which it is moving, provided that the Family obtains a Certificate of Family Participation from the appropriate PHA in the new jurisdiction or the PHA in the new jurisdiction refers the Family to a unit rehabilitated under the Program. The appropriate PHA must treat the Family either as a Family to whom the PHA is already providing assistance who wishes to move to another unit or as a resident who has submitted an application for assistance.

(e) *Continued Participation When Assisted Family Forced to Move.* Should an assisted Family which qualifies for continued assistance be forced to move through no fault of its own, such as an increase or decrease in Family size, the Family may continue to receive housing assistance through one of the following means, in the order stated:

(1) The PHA must refer the Family to the Owner of any appropriate vacant unit which has been rehabilitated under the Program if such a vacancy exists.

(2) The PHA must refer the Family to the Owner of the next vacant unit which will be rehabilitated under the Program provided that a vacancy will occur within a reasonable time after the Family is notified to vacate its present unit.

(3) If the PHA has a Section 8 Existing Housing Program and Certificates are available, the PHA must offer the Family a Certificate of Family Participation and assist the Family in finding a suitable replacement unit.

(4) The PHA must offer the Family the next available, suitable unit owned or managed by the PHA under another program.

(5) The PHA must assist the Family in locating other assisted or unassisted available housing in the locality within the Family's ability to pay.

In no case will a Family be forced to move nor will assistance be terminated unless the Family rejects without good reason the offer of a unit which the PHA judges to be acceptable.

(f) *Continued Participation of Family When Contract is Terminated.* Should an Owner evict an assisted Family in violation of the Contract or otherwise breach the Contract and the Contract for the unit is terminated, the assisted Family, if it is eligible for continued assistance, may continue to receive housing assistance through the conversion of the Moderate Rehabilitation unit allocation to an Existing Housing unit. The Family must then be treated as any certified Family under Subparts A and B and must be issued a Certificate of Family Participation and assisted by the PHA in finding a suitable replacement unit. The unit will then be considered an Existing Housing unit and all requirements of Subparts A and B will be applicable except that the term of any Existing Housing Contract may not extend beyond the term of the initial Moderate Rehabilitation Contract. If the family is determined ineligible for continued assistance, the Certificate may be offered to the next Family on the PHA's Existing Housing waiting list. The units will remain under the Moderate Rehabilitation ACC which provides for such a conversion of units; therefore, no amendment to the ACC will be necessary to convert to Existing Housing units.

(g) *Families Determined by the PHA to be Ineligible.* If a family is determined by the PHA to be ineligible in accordance with the PHA's HUD-approved Administrative Plan, either at the application stage or after assistance has been provided on behalf of the family, the PHA must promptly notify the family by letter of the determination and the reasons for it and the letter must state that the family has the right within a reasonable time (specified in the letter) to request an informal hearing. If, after conducting such an informal hearing, the PHA determines that the family is ineligible, it must so notify the family in writing. The procedures of this paragraph do not preclude the family from exercising its other rights if it believes it is being discriminated against on the basis of race, color, creed, religion, sex, handicap, or national origin. The PHA must retain for three years a copy of the application, the notification letters, the family's response if any, the record of any informal hearings, and a statement of final disposition.

§ 882.518 Reexamination of family income and composition.

A reexamination of Family Income, composition and redetermination of Gross Family Contribution must be conducted by the PHA as specified in § 882.212. A Family's eligibility for housing assistance payments will continue until the amount payable by the Family equals the Gross Rent for the dwelling unit it occupies. However, the termination of eligibility at that point will not affect the Family's other rights under the Lease. Any resumption of housing assistance payments as a result of subsequent changes in income or rents or other relevant circumstances will be contingent upon the availability of assistance under the Contract (see § 882.515). A Family may at any time request a redetermination of its Gross Family Contribution on the basis of changes in Family Income or other relevant circumstances.

§ 882.519 Maintenance, operation, and inspections.

(a) *Maintenance and Operation.*— The Owner must provide all the services, maintenance and utilities as agreed to under the Contract, subject to abatement of housing assistance payments or other applicable remedies if the Owner fails to meet these obligations.

(b) *Periodic Inspection.* In addition to the inspections required prior to execution of the Contract, the PHA must inspect or cause to be inspected each dwelling unit under Contract at least annually and at such other times as may be necessary to assure that the Owner is meeting the obligations to maintain the unit in decent, safe and sanitary condition and to provide the agreed upon utilities and other services. The PHA must take into account complaints and any other information coming to its attention in scheduling inspections.

(c) *Units not Decent, Safe and Sanitary.* If the PHA notifies the Owner that the unit(s) under Contract are not

being maintained in decent, safe and sanitary condition and the Owner fails to take corrective action (including corrective action with respect to the Family where the condition of the unit is the fault of the Family) within the time prescribed in the notice, the PHA may exercise any of its rights or remedies under the Contract, including abatement of housing assistance payments (even if the Family continues in occupancy) and termination of the Contract on the affected unit(s). If the Family was not at fault and wishes to be rehoused in another dwelling unit with Section 8 assistance and the PHA terminates the Contract, the PHA must assist the Family in accordance with § 882.517(f).

(d) *PHA Management.* Where the PHA is managing units on which it is also administering the Housing Assistance Payments Contract pursuant to a management contract approved by HUD in accordance with § 882.414(b)(2), HUD will make reviews of project operations, including inspections, in addition to required PHA reviews. These HUD reviews will be sufficient to assure that the Owner and the PHA are in full compliance with the terms and conditions of the Contract and the ACC. Should HUD determine that there are deficiencies, it may exercise any rights or remedies specified for the PHA under the Contract or reserved for HUD in the ACC, require termination of the management contract, or take other appropriate action.

Issued at Washington, D.C., April 30, 1979.

Lawrence B. Simons,

Assistant Secretary for Housing—Federal Housing Commissioner.

[Docket No. R-79-592]

[FR Doc. 79-13957 Filed 5-3-79; 8:45 am]

BILLING CODE 4210-01-M

federal register

Friday
May 4, 1979

Part VII

Securities and Exchange Commission

Off-Board Trading Restrictions; Price Protection for Public Limit Orders

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Part 240]

Off-Board Trading Restrictions

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proceeding and proposed rulemaking.

SUMMARY: The Commission announces the commencement of a proceeding, including public hearings to consider the amendment of national securities exchange rules as they relate to restricted off-board trading. Amendment is specifically made to the rules which limit or condition the ability of members to engage in over-the-counter transactions in securities that are listed and registered, or securities that are admitted to unlisted trading privileges on a national securities exchange. The Commission is proposing to amend those exchange rules to preclude their application to certain securities which were not traded on an exchange on April 26, 1979, or which were traded on an exchange on April 26, 1979, but failed to remain so thereafter.

DATES: Public hearings will begin Wednesday, June 20, 1979, at 10 a.m. Persons wishing to appear at the hearing should contact André Weiss of the Commission staff not later than June 1, 1979, and submit the text of any prepared statements not later than four business days prior to their appearance. Written presentations of views, data and arguments (other than those submitted as prepared statements) should be submitted no later than June 15, 1979, and written presentations responding to the written or oral presentations of others should be submitted no later than July 22, 1979.

ADDRESSES: Public hearings will be held in Room 776 at the headquarters office of the Securities and Exchange Commission, which is located at 500 North Capitol Street, Washington, D.C. 20549. All written submissions should refer to File No. 4–220 and be delivered as follows: 30 copies to George A. Fitzsimmons, Secretary of the Commission, Room 892, at the above address and one copy to André Weiss, Room 390, at the above address. Copies of all written submissions and hearing transcripts will be made available at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: André Weiss, Division of Market Regulation, Room 390, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202) 376–7470.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced a proceeding, pursuant to section 19(c) [15 U.S.C. 78s(c)] of the Securities Exchange Act of 1934 ("Act") [15 U.S.C. 78a *et seq.*, as amended by the Securities Acts Amendments of 1975 ("1975 Amendments"), Pub. L. No. 94–29, 89 Stat. 97, (June 4, 1975)], to consider rulemaking to amend existing rules of national securities exchanges ("exchanges") which limit or condition the ability of members of those exchanges to effect transactions otherwise than on an exchange ("off-board trading restrictions") in securities which are listed or admitted to unlisted trading privileges on those exchanges. The Commission is proposing Rule 19c–3 which would prevent off-board trading restrictions from applying, with certain exceptions, to any equity security or class of equity securities (collectively, "Rule 19c–3 Securities") [1] (i) which was not traded on an exchange on April 26, 1979,[2] or (ii) which was traded on an exchange on April 26, 1979, but ceases to be listed and registered or admitted to unlisted trading privileges pursuant to Section 12(f)(1)(A) of the Act on an exchange for any period of time thereafter.[3] The Rule would provide a limited exception for any equity security or class of equity securities issued in connection with a statutory merger, consolidation or similar plan of reorganization in exchange for any equity security or class of equity securities which was traded on an exchange continuously between April 26, 1979, and the date of the plan of reorganization. [4]

In connection with this proceeding, the Commission will conduct public hearings commencing at 10:00 a.m. Wednesday, June 20, 1979, in Room 776 at the Commission's headquarters in Washington, D.C. The attention of interested persons is directed to materials cited or referred to herein, copies of which are available at the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C., (File Nos. 4–180, SR–Amex–77–3, SR–Amex–77–18, and S7–735–A).[5] The information contained in these files is hereby incorporated into the record of this proceeding. While a restatement of views previously expressed is, therefore, not necessary, persons wishing to participate in this proceeding may, of course, refer to any material previously submitted. In addition to appearing at the scheduled public hearings, interested persons are invited to submit written presentations of views, data and arguments concerning proposed Rule 19c–3 and the issues discussed in this release, and to submit written presentations responding to written or oral presentations made by others to the extent possible by the dates established for receipt of such materials.

I. Discussion

A. Prior Commission Action Concerning Off-Board Trading Restrictions

The exchange rules addressed in this proceeding have previously been the subject of Commission [6] and

[1] *See* proposed Rule 19c–3(a). By its terms, the Rule would preclude the application of off-board trading restrictions to any equity security or class of equity securities which is not a "covered security," *i.e.*, a security which on April 26, 1979, and continuously thereafter, is covered by off-board trading restrictions. *See* Rule 19c–3(b)(3). Exchange-traded options would be excluded from the scope of the Rule and would therefore continue to be subject to the off-board trading restrictions currently imposed by exchanges trading standardized options. *See* Rule 19c–3(a). For a general discussion of some of the market structure problems resulting from multiple trading of options, *see* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, Comm. Print No. 96–1FC3, 96th Cong., 1st Sess., Chapter VIII (1978).

[2] In order to limit the anti-competitive effects of current off-board trading restrictions and to preserve the existing over-the-counter market to the greatest extent possible, the effective date of proposed Rule 19c–3, if adopted, would be retroactive to the date of issuance of this release. *See* note 19 *infra*. The Commission specifically solicits public comment on the proposed effective date.

[3] *See* proposed Rule 19c–3(b)(3). Thus, if, at any time in the future, an exchange traded security becomes traded exclusively over-the-counter (either because of voluntary delisting or otherwise) it would be treated in the same manner as a security which was traded exclusively in the over-the-counter market on April 26, 1979.

[4] *See* proposed Rule 19c–3(b)(3)(iii).

[5] *See* notes 8, 12, 13 and 15 *infra*.

[6] *See, e.g.*, Securities and Exchange Commission Report-rule 394 (September 14, 1965), *reprinted in*, Study of the Securities Industry Report, ("House Study") Hearings Bef. the Subcomm. on Com. & Fin. of the House Comm. on Interstate & For. Com., 92nd Cong., 2d Sess., at 3362 (1972); and SEC, *Report of the Securities and Exchange Commission on Rules of National Securities Exchanges Which Limit or Condition the Ability of Members to Effect Transactions Otherwise Than on Such Exchanges* (September 2, 1975).

[7] *See, e.g.*, House Study, at 126–28.

[8] The record of these proceedings (including transcripts of public hearings and written views, data and arguments submitted during the proceedings) is contained in File No. 4–180.

[9] *See* Securities Exchange Act Release No. 11942 (December 19, 1975), 41 FR 4507, ("December Release") The Rule 19c–1 Proceeding was commenced in accordance with Section 11A(c)(4)(A) of the Act [15 U.S.C. 78–1(c)(4)(A)], added by the 1975 Amendments which directed the Commission to review all exchange rules "which limit or condition the ability of members to effect transactions in securities otherwise than on such exchanges." That section required that the

Footnotes continued on next page

Congressional studies [7] as well as two prior regulatory proceedings.[8] The first of these regulatory proceedings ("rule 19c–1 Proceeding") culminated in the adoption of Rule 19c–1 under the Act [17 CFR 240.19c–1] removing off-board trading restrictions with respect to agency transactions ("off-board agency restrictions") by members of exchanges with qualified third market makers and non-member block positioners.[9] The second proceeding ("Rule 19c–2 Proceeding") has focused on a proposed amendment to Rule 19c–1 expanding the coverage of that rule [10] and the proposal of Rule 19c–2, which would remove all remaining off-board trading restrictions with respect to certain equity securities. In addition, the Commission proposed four alternative rules specifically designed to negate or minimize any possibilities for overreaching that might arise as a result of the adoption of proposed Rule 19c–2.[11]

In January 1978, the Commission issued a statement on the development of a national market system ("January Statement") [12] in which it outlined a series of proposals designed to achieve certain national market system objectives. In that statement, the Commission also announced that it was deferring a final decision on proposed Rule 19c–2 and the attendant alternative overreaching rules until such time as the Commission could evaluate industry and self-regulatory organization responses to the various national market system initiatives announced in the January Statement. On March 22, 1979, the Commission issued a status report on the development of a national market system ("Status Report") [13] in which it assessed the progress made during 1978 toward achievement of the initiatives outlined in the January Statement and also described certain goals which it believed should be achieved in the near term to facilitate development of a national market system. In the Status Report, the Commission stated:

> Notwithstanding [the Commission's] determination [in the January Statement] to defer consideration of removal of off-board trading restrictions as they apply to securities which are now listed, the Commission believes that many of the arguments raised by commentators in support of retaining these restrictions, even if accurate as to securities which are currently traded primarily in an exchange environment, may not be applicable to or warrant extension of these rules to securities which are currently traded exclusively over-the-counter. Thus, the Commission is concerned that future extension of off-board trading restrictions to securities now traded exclusively over-the-counter upon their initial exchange listing may not be justified under the Act. . . .
>
> The Commission continues to believe that, in areas involving potentially profound market structure change, such as the elimination of remaining off-board trading restrictions, use of controlled, limited experiments may be both prudent and instructive. In addition, a proposal of this type could permit over-the-counter market makers to experience a trading environment in which last sale and quotation information is made available on a real time basis.[14]

To address these concerns, the Commission indicated its intent to commence this rulemaking proceeding.[15]

B. Proposed Rule 19c–3

In both the Rule 19c–1 and 19c–2 Proceedings, the Commission, in evaluating whether the purposes which may be served by the retention of off-board trading restrictions outweigh their anti-competitive impact, has been cognizant of the applicable statutory objectives of the Act and has endeavored to consider both the benefits which may be expected to flow from removal of off-board trading restrictions as well as the possible risks of adverse consequences resulting from that action.[16] In determining to commence this proceeding, the Commission has carefully considered the comments submitted in connection with its earlier proceedings concerning off-board trading restrictions, particularly those comments submitted in connection with the Commission's ongoing Rule 19c–2 Proceeding.

Although the Commission has not completed its deliberations with respect to proposed Rule 19c–2, it is concerned that, as companies continue to list their securities on exchanges which have rules precluding over-the-counter market making by their members, the anti-competitive consequences of off-board trading restrictions on participants in the trading markets (particularly exchange member firsm currently competing as market makers) are extended to those securities.[17] Unless this consequence of off-board trading restrictions is eliminated, it appears that over-the-counter trading and competititon between the over-the-counter market and exchange markets will be effectively precluded in an ever-increasing number of securities.

As a preliminary matter, it appears that proposed Rule 19c–3 is necessary or appropriate to conform the rules of the various exchanges to the requirements of the Act in that adoption of the proposal would remove burdens on competition which, insofar as they act to eliminate over-the-counter market making in securities upon their initially becoming exchange traded, may not be necessary or appropriate in furtherance of the purposes of the Act. Thus, the Commission is concerned that the continued retention of off-board trading restrictions with respect to securities currently traded exclusively in the over-the-counter market may be inconsistent with two of the important purposes sought to be achieved by the development of a national market system, namely, assuring the opportunity for "fair competition among brokers and dealers . . . and between

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Footnotes continued from last page
Commission, on or before the ninetieth day following enactment of the 1975 Amendments, report the results of its review to the Congress and commence a proceeding, pursuant to Section 19(c) of the Act, to "amend any such rule imposing a burden on competition which does not appear to the commission to be necessary or appropriate in furtherance of the purposes" of the Act. *See* Securities Exchange Act Release No. 11628 (September 2, 1975), 40 FR 41808.

[10] *See* Securities Exchange Act Release No. 13662 (June 23, 1977), 42 FR 33510 ("June Release"). In December 1977, the Commission adopted the proposed amendment to Rule 19c–1. That rule, as amended, now precludes the application of off-board trading restrictions to any agency transaction in exchange traded equity securities except those in which a member acts as agent for both buyer and seller in the same transaction ("in-house agency cross restrictions"). *See* Securities Exchange Act Release No. 14325 (December 30, 1977), 43 FR 1327.

[11] *See* June Release, *supra* note 10, at 111–131, 42 FR at 33525–27.

[12] Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354. (File No. S7–735–A).

[13] Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360. (File No. S7–735–A).

[14] *Id.* at 45–46, 44 FR at 20387.

[15] *Id.* at 46, 44 FR at 20387. The initiation of this proceeding is part of the Commission's continuing effort "to deal with the various issues presented by off-board trading rules in proceedings addressed to all exchanges." *See* Securities Exchange Act Release No. 15376 (December 1, 1978), at 12, 43 FR 58664, at 58667 ("Amex Order"). In the Amex Order, the Commission (with two Commissioners dissenting) approved two proposed rule changes of the Amex that liberalized Amex's listing requirements with respect to domestic (SR–Amex–77–3) and foreign (SR–Amex–77–18) issuers. The Commission understood that those rule changes would expand the universe of securities to which Amex's off-board trading restrictions could be applied, but preferred to deal with issues relating to off-board trading restrictions in a generic fashion (rather than in the context of an individual exchange's proposed rule changes). Consistent with this determination, the Commission stated that it would

> * * * be alert for a more appropriate framework * * * within which to adress some or all of the broad issues raised in this proceeding.

Id. at 18, n.42, 44 FR at 58669, n.42.

[16] *See* December Release, *supra* note 9; June Release, *supra* note 10.

[17] For example, in 1977 and 1978, an aggregate of approximately 85 issues formerly traded exclusively in the over-the-counter market were listed on the new York Stock Exchange, Inc. ("NYSE") and the Amex. The pattern of companies trading initially in the over-the-counter market and then seeking exchange listing as they become larger and more well-established is an historical one (although certain companies, for various reasons, prefer to remain over-the-counter companies regardless of size).

exchange markets and markets other than exchange markets," [18] and preserving and strengthing the nation's securities markets.[19]

In addition, the Commission questions whether the arguments against adoption of proposed Rule 19c–2 advanced in the 19c–2 Proceeding,[20] even if valid in connection with that proposed rule (as it would affect securities traded on exchanges), are significant when considered in connection with proposed Rule 19c–3, which would eliminate off-board trading restrictions only with respect to securities now traded exclusively in the over-the-counter market which become listed or admitted to unlisted trading privileges on an exchange for the first time. Adoption of Rule 19c–3 would also not appear to involve the potential for the kind of dramatic and radical effects on the existing exchange markets which have been predicted in the Rule 19c–2 Proceeding. In this more limited context, the Commission believes that it may well conclude that the anti-competitive effects of off-board trading restrictions outweigh any purposes such restrictions arguably may be said to serve as to securities currently traded in exchange markets.

The potential impact of removal of off-board trading restrictions for Rule 19c–3 Securities would appear to be far different from the potential impact of complete removal of remaining restrictions concerning off-board principal transactions and in-house agency crosses. Proposed Rule 19c–3 would apply almost exclusively to securities which are currently the subject of trading—and, in many cases, very active trading—in the over-the-counter market.[21] Since most firms currently providing continuous over-the-counter markets with respect to securities traded exclusively over-the-counter are exchange members, when a security becomes exchange traded for the first time, the pre-existing over-the-counter market for that security is seriously impaired, if not, as a practical matter, extinguished. This situation is to be contrasted with the consequences of adopting proposed Rule 19c–2, which would permit over-the-counter trading by these same exchange members in securities now confined, to a significant degree, to exchange trading.

Furthermore, proposed Rule 19c–3 would permit investors and issuers of Rule 19c–3 Securities to continue to enjoy whatever benefits would flow from an active over-the-counter market existing concurrently with exchange markets. Proposed Rule 19c–3, if adopted, might also create new incentives to improve existing market linkage facilities and to develop new facilities to meet the needs of a more complex trading structure and would appear to provide a test of the sufficiency of existing and developing national market system facilities to ensure an appropriate integration of trading in disparate locations and to safeguard the integrity of such a market.

Finally, to test the consequences of removal of off-board trading restrictions and the ability of existing and developing facilities of a national market system to ameliorate any of those consequences which might be regarded as adverse, it would appear beneficial to observe the effects of trading in securities listed and registered or admitted to unlisted trading privileges on one or more exchanges under circumstances permitting exchange members the fullest opportunity to continue or commence competitive over-the-counter trading in those same securities. In addition, if Proposed Rule 19c–3 is adopted, it will be possible to observe a trading environment free of the constraints imposed by off-board trading restrictions, but tempered in most instances by the discipline of comprehensive, multiple market real-time last sale reporting and other national market system mechanisms and regulations.[22] If the Rule is adopted, both the Commission and the securities industry may gain valuable experience as to the dynamics of active competition between exchange markets and the over-the-counter market-experience which will assist the Commission in fulfilling its statutory mandate to facilitate the establishment of a national market system.

II. Additional Considerations

A. Equal Regulation

As a preliminary matter, it does not appear that the adoption of proposed Rule 19c–3 will require that any other exchange or Commission rules need be modified or abrogated as a prerequisite to the adoption of proposed Rule 19c–3 in order to assure equal regulation of all market makers.[23] The experience to be provided by the adoption of the Rule should assist the Commission in determining whether any Commission of self-regulatory rules regulating the activities of market makers should be eliminated or modified or whether they should be expanded to apply to all market participants performing similar functions. In responding to proposed Rule 19c–3, however, commentators are requested to address this matter and to focus on the following additional considerations:

B. Competitive Impact of Rule 19c–3

Section 23(a) of the Act requires the Commission to consider, in rulemaking proceedings, "the impact that such rule or regulation may have on competition" and precludes the Commission from

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[18] *See* Section 11A(a)(1)(C)(ii) of the Act. As indicated by the Senate Committee on Banking, Housing and Urban Affairs, the 1975 Amendments approached the problem "of encouraging the development and implementation of a national market system from the point of view of preserving the competing markets for securities that have developed. . . ." Senate Comm. on Banking, Housing & Urb. Affs., *Report to Accompany S.249*, S. Rep. No. 94–75, 94th Cong., 1st Sess. 8 (Comm. Print 1975).

[19] Section 11A(a)(1)(A) under the Act states as a finding of the Congress that the nation's securities markets must be preserved and strengthened. It should be noted, however, that, consistent with that section, proposed Rule 19c–3 is not intended to *per se* preserve the over-the-counter market for a security by assuring that the over-the-counter market does not lose all or part of its existing order flow to the exchanges. Rather, the Rule is designed to ensure that over-the-counter market makers have a continuing opportunity to compete in an appropirate manner for order flow when securities traded in the over-the-counter market become exchange traded. *Cf.* June Release, *supra* note 10, at 55, 42 FR at 33517.

[20] The concerns expressed with respect to proposed Rule 19c–2 related principally to "fragmentation", "overreaching" and "internalization."

The term "fragmentation" refers to the dispersion of order flow among market centers. *See generally* June Release, *supra* note 10, at 45–69, 42 FR at 33516–33519.

The term "overreaching" refers to the possibility that broker-dealer firms may take advantage of their customers by executing retail transactions as principal at prices less favorable to those customers than could have been obtained had those firms acted as agent. *See generally id.* at 70–84, 42 FR at 33519–33521.

The term "internalization," when used with respect to the activities of an integrated broker-dealer making markets over-the-counter, refers to the withhholding of retail orders from other market centers for the purpose of executing them "in-house," as principal, without exposing those orders to buying and selling interest in those other market centers. *See generally id.* at 49–66, 42 FR at 33516–33517; *see also* letter from Roger E. Birk, President, Merrill Lynch & Co., Inc., to Andrew M. Klein, Director, Division of Market Regulation, dated October 4, 1977, contained in File No. 4–180.

[21] Only those few securities which are exchange traded immediately upon issuance would not be previously traded in the over-the-counter market.

[22] *See* Status Report, *supra* note 13, at 46, 44 FR 20360, 20367.

[23] The Act defines a class of persons or markets as subject to "equal regulation" if—no member of the class has a competitive advantage over any other members thereof resulting from a disparity in their regulation under [the Act] which the Commission determines is unfair and not necessary or appropriate in furtherance of the purposes of [the Act.]

See Section 3(a)(36) of the Act. The Act also empowers the Commission to adopt rules to "assure equal regulation of all markets for qualified securities." Section 11A(c)(1)(F) of the Act. For a general discussion of "equal regulation" concerns, *see* December Release, *supra* note 9, at 24–25, 41 FR at 4514, and June Release, *supra* note 10, at 85–90, 43 FR at 33521.

adopting any rule or regulation "which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of [the Act]."

As the Commission has previously stated, off-board trading restrictions impose burdens on competition.[24] The purpose of this proceeding is to remove those burdens as they apply to Rule 19c–3 Securities. However, in addition to the question of whether the burdens on competitions resulting from off-board trading rules generally, as they would apply to Rule 19c–3 Securities, are necessary or appropriate in furtherance of the purposes of the Act, the Commission recognizes that proposed Rule 19c–3 may raise other concerns.

For example, since the scope of proposed Rule 19c–3 is generally limited to securities which are currently traded exclusively in the over-the-counter market, Rule 19c–3 initially would affect primarily specialists on those exchanges which derive most of their original common stock listings from the over-the-counter market, as well as such exchanges. Specialists who are members of those exchanges will be forced to compete with over-the-counter market makers for order flow in Rule 19c–3 Securities, whereas specialists who are members of exchanges deriving most of their listings from other exchanges would at least initially be less subject to such additional competition. As a preminimary matter, the Commission does not believe that this disparate effect should preclude the adoption of proposed Rule 19c–3 or require a modification of its terms. However, commentators are requested to address the implications of this effect as well as any other concerns relating to the impact of proposed Rule 19c–3 on competition.

C. Scope of Proposed Rule 19c–3

Rule 19c–3 as proposed would apply to virtually all securities listed on an exchange for the first time after the date of this release. As a result, although most of these securities would be reported securities and would therefore be the subject of last sale and quotation information and might also be included in market linkage systems, some small number of Rule 19c–3 Securities would not become reported securities.[25] As a preliminary matter, the Commission questions whether the absence of last sale information would justify the continuing application of off-board trading restrictions to those few securities in light of the perceived anti-competitive effects of those rules. The Commission has, however, proposed Rule 19c–3 in alternative forms, one of which would be applicable to all Rule 19c–3 Securities, and one of which would be applicable only to Rule 19c–3 Securities which are reported securities. Commentators are specifically requested to address this issue.

D. Issuer Consideration of Whether To Apply for Listing With Respect to Rule 19c–3 Securities

The Commission understands that certain issuers whose securities are currently traded in the over-the-counter market would view the application of the Rule to their securities as a positive factor in determining whether to list their securities. In this connection, the Commission is interested in receiving the views of those issuers whose common stock is currently traded exclusively in the over-the-counter market (and who meet Amex or NYSE original listing requirements) as to whether the adoption of the Rule would cause those issuers to consider listing.

III. Text of Proposed Rule and Request for Comment

The Securities and Exchange Commission hereby proposes to adopt Rule 19c–3 under the Act [17 CFR § 240.19c–3] pursuant to its authority under the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq., as amended by Pub. L. No. 94–29 (June 4, 1975)], and particularly Sections 2, 3, 6, 11, 11A, 17, 19 and 23 thereof [15 U.S.C. 78b, 78c, 78f, 78k, 78k–1, 78q, 78s and 78w]. This rule proposal is intended to amend the rules of national securities exchanges to conform those rules to the requirements of the Act and to further the purposes of the Act, particularly the protection of investors, the maintenance of fair and orderly markets, and the removal of impediments to and the facilitation of the establishment of a national market system. The text of proposed Rule 19c–3 is as follows:

§ 240.19c–3 Governing off-board transactions by members of national securities exhanges.

The rules of each national securities exchange shall provide as follows:

(a) No rule, stated policy or practice of this exchange shall prohibit or condition, or be construed to prohibit, condition or otherwise limit, directly or indirectly, the ability of any member to effect any transaction otherwise than on this exchange in any [reported security] [equity security or class of equity securities] [26] listed and registered on this exchange or as to which unlisted trading privileges on this exchange have been extended (other than a put option or call option issued by the Options Clearing Corporation) which is not a covered security.

(b) For purposes of this rule, (1) The term "Act" shall mean the Securities Exchange Act of 1934, as amended.

(2) The term "exchange" shall mean a national securities exchange registered as such with the Securities and Exchange Commission pursuant to Section 6 of the Act.

(3) The term "covered security" shall mean

(i) Any equity security or class of securities which—

(A) Was listed and registered on an exchange on April 26, 1979, and

(B) Remains listed and registered on at least one exchange continuously thereafter;

(ii) Any equity security or class of equity security which

(A) Is traded on one or more exchanges on April 26, 1979, pursuant to unlisted trading privileges permitted by section 12(f)(1)(A) of the Act, and

(B) Remains traded on any such exchange pursuant to such unlisted trading privileges continuously thereafter.

(iii) Any equity security or class of equity securities listed and registered on an exchange after April 26, 1979, issued in connection with a statutory merger, consolidation or similar plan of reorganization (including a reincorporation or change of domicile) in exchange for an equity security or class of equity securities described in subparagraphs (b)(3)(i) or (b)(3)(ii) of this rule.

(4) The term "reported security" shall mean

(i) Any equity security or class of equity securities designated as "qualified securities" pursuant to section 11A(a)(2) of the Act and for which transaction reports are required to be collected, processed and made available pursuant to § 240.11Aa3–1 ([proposed] Rule 11Aa3–1 under the Act); and

(ii) Any other equity security or class of equity securities for which transaction reports are required to be collected, processed and made available pursuant to any effective transaction reporting plan.

[24] *See* December Release, *supra* note 9, at 2, 41 FR at 4507; June Release, *supra* note 10, at 36, 42 FR at 33514; January Statement, *supra* note 12, at 39–40, 43 FR at 4360.

[25] Those equity securities which are listed solely on regional exchanges and which do not substantially meet Amex or NYSE listing standards are not eligible to be reported securities.

[26] If the proposed rule is to cover all equity securities or classes of equity security (other than options) newly listed on exchanges, delete subparagraphs (b)(4), (5), and (6).

(5) The term "transaction report" shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security.

(6) The term "effective transaction reporting plan" shall mean any plan for collecting, processing and making available transaction reports with respect to transactions in reported securities approved by the Commission pursuant to § 240.11Aa3–1 ([proposed] Rule 11Aa3–1 under the Act).

(Secs. 2, 3, 6, 11, 17, 19, 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 891, 897, 898, 901, as amended by Secs. 2, 3, 4, 6, 14, 16, 18, Pub. L. 94–29, 89 Stat. 97, 104, 110, 137, 146, 155 (15 U.S.C. 78b, 78c, 78f, 78k, 79q, 78s, 78w, as amended by Pub. L. 94–29 (June 4, 1975)); Sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–1))

As indicated above, interested persons are invited to submit written presentations of views, data and arguments concerning proposed Rule 19c–3 and the issues discussed above (including written presentations responding to written or oral presentations of others). Persons wishing to appear at the public hearings should contact André Weiss, Division of Market Regulation, Room 390, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549, (202) 376–7470, not later than June 1, 1979. The public hearings will be held beginning June 20, 1979, at 10:00 a.m., in Room 776 at the above address. Persons intending to appear at the hearings should submit the text of any prepared statements not later than four business days prior to their appearance and are invited, at the time of their appearance, to make copies of their statements available to interested persons attending the hearings. Written presentations of views, data and arguments should be submitted not later than June 15, 1979 and written presentations responding to the written or oral presentations of others should be submitted not later than July 22, 1979.[27] All submissions, together with the transcripts of the public hearings, will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

[27] Although, as a matter of practice, the Commission has, in its discretion, accepted comments submitted in connection with its rulemaking proceedings after the specified comment period, the Commission wishes to explicitly note that, in connection with this proceeding, comments submitted after July 22, 1979, will not be accepted as a part of the record or considered by the Commission unless the comment period is formally extended.

By the Commission.

George A. Fitzsimmons,

Secretary.

April 26, 1979.

[Release No. 34–15769; File No. 4–220]

[FR Doc. 79–13959 Filed 5–3–79; 8:45 am]

BILLING CODE 8010–01–M

[17 CFR Part 240]

Price Protection for Public Limit Orders

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rulemaking.

SUMMARY: The Commission proposes to adopt a rule providing protection for all displayed public limit orders against executions at inferior prices by requiring satisfaction of those orders at their limit prices (or, under certain circumstances, the transaction price). The proposal is part of the Commission's program to facilitate the establishment of a national market sytem.

DATES: Comments should be submitted on or before July 15, 1979.

ADDRESSES: Persons wishing to submit written views, data and arguments should file ten copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549. All submissions should refer to File No. S7–778 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Brandon Becker, Division of Market Regulation, Securities and Exchange Commission, Room 321, 500 North Capitol Street, Washington, D.C. 20549 (202) 755–8749.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission announced today that, as part of its program to facilitate the establishment of a national market system, it has published for comment proposed Rule 11Ac1–3 (17 CFR § 240.11Ac1–3) under the Securities Exchange Act of 1934 (the "Act") [15 U.S.C. 78a *et seq.*, as amended by Pub. L. No. 94–29 (June 4, 1975)], which, if adopted, would require inter-market price protection for all displayed public limit orders in certain securities. The proposed rule, which would apply to transactions in securities covered by the rule executed by brokers and dealers on and after July 1, 1981, would require any broker or dealer executing a transaction in a security covered by the rule at a price inferior to the price of any displayed public limit orders to satisfy those orders either simultaneously with, or immediately after, such an execution.

I. Background

Protection for limit orders—particularly public limit orders—has been a matter of active Commission concern and study for a number of years. During that time, the Commission has considered, and received substantial public comment on, various regulatory proposals and suggested data processing and communications facilities designed to achieve comprehensive inter-market protection for limit orders. In publishing proposed Rule 11Ac1–3 for comment, the Commission has given careful consideration to those earlier proposals and the comments received in response thereto, and has preliminarily determined that the proposed rule is necessary in order to provide a basis for the type of mandatory inter-market order interaction which is appropriate at this stage in the evolution of a national market system.

As early as 1973, the Commission, in its *Policy Statement on the Structure of a Central Market System*, called for the implementation of certain rules designed to "[tie] the individual market centers together" and thereby "reduce or eliminate market fragmentation." [1] One of those rules, the so-called "auction trading" rule, would have provided for "price priority protection for all public orders through the [national market] system" and would have required satisfaction of public limit orders prior to execution of "any transaction anywhere else in the system at an inferior price (a lower price, in the case of a bid, or a higher price, in the case of an offer)." [2]

In 1975, following enactment of the Securities Acts Amendments of 1975 (the "1975 Amendments"),[3] the

[1] SEC, *Policy Statement on the Structure of a Central Market System*, Securities Exchange Act Release No. 10076 (March 29, 1973), at 17–18 ("Policy Statement").

[2] Policy Statement, *supra* note 1, at 18–19.

[3] Pub. L. No. 94–29 (June 4, 1975). The 1975 Amendments, among other things, amended the Act by adding Section 11A which directed the Commission to facilitate the establishment of a national market system in accordance with certain Congressional findings and objectives. *See* Sections 11A (a) (1) and (2) of the Act [15 U.S.C. 78k–1 (a)(1) and (a)(2)]. The legislative history of the 1975 Amendments indicates a clear Congressional interest in the achievement of protection for public limit orders. The Senate Committee on Banking, Housing and Urban Affairs ("Senate Committee") stated in its report on S. 249 regarding the national market system provisions of that bill (which were incorporated in the 1975 Amendments) that:

[W]ith respect to securities which are suitable for auction trading, the Committee believes every effort

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Commission further addressed the need for inter-market limit order protection. In its release announcing adoption of Rule 19c–1 under the Act (17 CFR § 240.19c–1), which amended exchange off-board trading restrictions to permit exchange members to execute agency transactions in listed securities over-the-counter with qualified third market makers or non-member block positioners, the Commission stated:

> The Commission believes that public limit orders and the intended function of the specialist's limit order book have important roles in our securities markets, and that displacement of proposed transactions between securities customers (or their brokers) and market makers by such orders, under certain circumstances, is appropriate in the public interest and for the protection of investors to ensure the fairness of the markets and an opportunity for public orders to meet without the participation of a dealer.[4]

The Commission then called for the development of a computerized central limit order repository, or

> Composite book [which] would permit the effective integration of existing market makers (both exchange and third market) by ensuring continuation and extension of the public's ability to obtain priority in competing for executions [and] provide brokers and dealers with an efficient and practical means by which all limit orders, regardless of origin, can be protected on a national basis.[5]

The Commission also indicated its belief that, once such a composite book was in place,

> All transactions, regardless of size, should be required to satisfy orders on that book at the same or a a better price either immedately before, simultaneously with or immediately after execution.[6]

In March 1976, the Commission and the National Market Advisory Board ("NMAB") [7] issued a release jointly soliciting public comments on certain issues relating to the development and implementation of a composite book, including the policy and technical questions associated with certain specified characteristics of any composite book.[8] In that release, the Commission and the NMAB also sought comment on possible alternative approaches to achieving "the goals sought in the composite book project. * * *" [9] Extensive written comments were received from numerous individuals, firms and self-regulatory organizations.[10] In addition, the NMAB, following extensive deliberations on issues associated with the development of (and alternatives to) a composite book, provided comprehensive written comments on these issues to the Commission in January 1977.[11]

On January 26, 1978, the Commission issued a statement (the "January Statement") on the development of a national market system in which it set forth its views as to those steps which should be taken to facilitate development of the kind of national market system envisioned by the Congress and mandated by the 1975 Amendments.[12] With respect to the need for limit order protection, the Commission, after considering the numerous comments received concerning the Commission's suggestion for a composite book as well as the views of the NMAB, requested the self-regulatory organizations to take joint action

> To develop and implement a central limit order file (the 'Central File') for public agency orders to buy and sell qualified securities in specified amounts at specified prices ('public limit orders').[13]

The Commission described the objectives and method of operation of the proposed Central File as follows:

> The objectives of a Central File are relatively simple: to make available a mechanism in which public limit orders can be entered and queued for execution in accordance with the auction trading principles of price and time priority and by means of which such orders can be assured of receiving an execution prior to the execution of any other order by a broker of dealer at the same or an inferior price * * *.
>
> Public limit orders would assume their place in, and have an equal opportunity to achieve an execution throughout, that system without regard to the market or geographical location from which those orders were entered or in which other transactions required to yield priority to orders in the Central File were effected. Execution priority for orders entered in the Central File over all other orders would be required by rule.[14]

The Commission then requested each self-regulatory organization to inform the Commission of its willingness to undertake joint implementation of a Central File and urged the self-regulatory organizations to submit a

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should be made to design the national market system in such a way that public investors in these securities receive the benefits and protections associated with auction-type trading.

Senate Comm. on Banking, Housing and Urb. Affs., *Report to Accompany S. 249*, S. Rep. No. 94–75, 94th Cong., 1st Sess. 16 (1975) ("Senate Report"), *reprinted in*, [1975] U.S. Code Cong. & Ad. News 179, 194–95. One important benefit which the Senate Committee found public investors would enjoy when trading in an ideal auction-type market as opposed to a purely dealer market was that

> * * * limited price orders [of investors] would have to be satisfied before any transaction could be effected * * * by any participant in that market at a price less favorable to the other party [than the limit order price].

Id., [1975] U.S. Code Cong. & Ad. News at 194.

[4] Securities Exchange Act Release No. 11942 (December 19, 1975) ("December Release"), at 49, 41 FR 4507, 4519 (footnote omitted).

[5] December Release, *supra* note 4, at 49–50, 41 FR at 4510 (footnote omitted).

[6] *Id.* at 50, 41 FR at 4520.

[7] The NMAB was established by the Commission, in accordance with Section 11A(d)(1) of the Act [15 U.S.C. 78k–1(d)(1)], on September 30, 1975, and conducted public meetings on a regular basis between October 1, 1975, and December 30, 1977.

Section 11A(d) of the Act [15 U.S.C. 78k–1(d)], added by the 1975 Amendments, directed the NMAB to furnish to the Commission its views on significant regulatory proposals made by the Commission or any self-regulatory organization, concerning the establishment, operation or regulation of the securities markets. The 1975 Amendments also directed the NMAB to recommend to the Commission the steps it found appropriate to facilitate the establishment of a national market system and to study the possible need for modifying the Act's scheme of self-regulation so as to adapt it to a national market system (including the possible need to establish a new self-regulatory organization to administer the national market system).

In addition to its report to the Congress of the results of its study of self-regulation, the NMAB submitted to the Commission its views on a number of issues associated with the establishment of a national market system, including the desirability and feasibility of a composite limit order book.

[8] Securities Exchange Act Release No. 12159 (March 2, 1976), 41 FR 19274.

[9] *Id.* at 13, 41 FR at 19277.

[10] These comments are contained in File No. S7–619.

[11] *See* letter from the National Market Advisory Board to the Chairman and the Commissioners of the Securities and Exchange Commission, dated January 28, 1977 ("NMAB Letter"). In that letter, the NMAB strongly endorsed the general concept of limit order protection:

> [P]rotection of limit orders to the maximum extent practical is a desirable objective in and of itself. Limit orders, which constitute a signficant portion of the orders placed with respect to listed securities, not only serve a useful purpose for investors but also contribute to the strength and orderliness of the market. They provide depth and liquidity (i) by facilitating stabilizing trades (sales in rising markets and purchases in falling markets) at prices reasonably related to preceding trades, (ii) by facilitating the assembly of the opposite side of 'block transactions', and (iii) by narrowing the spread between the bid and asked.
>
> Providing system-wide protection of limit orders would also help to reduce market 'fragmentation' (in the sense of failure of the best bid to meet the best offer) by significantly reducing the possibility of a transaction occurring in any market at a price outside the spread of the limit orders in the system without satisfying the better bids and offers represented by such limit orders. Certain means of system-wide protection of limit orders could also serve to enhance competition by affording wider access to information about limit orders and a greater opportunity for specialists and market makers to compete in providing the other side of limit orders.

NMAB Letter at 7–8 (footnote omitted). The NMAB commented favorably on industry efforts to develop alternatives to a composite book but stated that

> * * * [s]ince it is not clear that a suitable alternative can be found and agreed upon within [a few months], the [NMAB] recommends that the Commission pursue its analysis and decision-making process with respect to a composite book while industry efforts are proceeding.

Id. at 26.

[12] Securities Exchange Act Release No. 14416 (January 26, 1978), 43 FR 4354.

[13] *Id.* at 34, 43 FR at 4359 (footnote omitted).

[14] *Id.* at 34–36, 43 FR at 4359 (footnote omitted).

joint plan for its design, construction and operation.[15]

In response to this request, the Commission received several proposals describing alternative means of achieving the goal of inter-market limit order protection. The National Association of Securities Dealers, Inc. ("NASD") submitted a "Technical Plan for the Development of a National Market System" ("Technical Plan") describing an electronic facility (based upon the technology and computer facilities of the existing NASDAQ electronic inter-dealer quotation system) functionally similar to the Central File proposed by the Commission in the January Statement. The Technical Plan proposed that all qualified brokers would be permitted to enter limit orders into the facility for execution by qualified market makers [16] based upon price and time priority within the system. The NASD's Board of Governors, however, expressly reserved judgment on the policy and regulatory issues associated with the implementation of the facility described in the Technical Plan, stating that further study was necessary to determine whether exclusion of non-public limit orders from the Central File and whether protection of orders entered in the File against executions at the same price as well as executions at an inferior price would be appropriate. [17]

Most other self-regulatory organizations opposed creation of a Central File as described in the January Statement. These commentators argued that the kind of priority proposed to be afforded public limit orders entered into the Central File [18] would have significant and deleterious effects on the exchange trading process. In essence, these commentators asserted that such a preference for public limit orders would provide a major trading advantage to those orders, thereby creating a disincentive to the commitment of market making capital by dealers, and would eventually lead to the elimination of exchange trading floors by inexorably forcing all trading into a fully automated trading system.[19] In addition, several self-regulatory organizations suggested that, in lieu of the immediate implementation of a Central File, the Commission should permit the participants in the Intermarket Trading System ("ITS") [20] sufficient time to attempt to provide limit order protection on an inter-market basis using the ITS. Specifically, the New York Stock Exchange, Inc. ("NYSE") and the MSE submitted proposals which envisioned the electronic dissemination and display of limit order information from each market center and use of the ITS to assure inter-market price protection of displayed limit orders in any market.[21]

The NYSE and MSE proposals did, however, differ in their treatment of the question of whether or not intermarket price protection should be mandatory. The NYSE, on the one hand, suggested that such protection should be provided on a voluntary basis rather than by the imposition of a rule. The NYSE stated:

> Undoubtedly competitive pressures will force each market center's participants to reach out through ITS for better prices, rather than to effect executions in their own market centers at inferior prices. The [NYSE], for its part, will also strongly encourage its members to reach through ITS any time a better price is available anywhere in the system. These pressures, consistent with an agent's responsibilities to his customer, will protect limit orders throughout the system against transactions at inferior prices.[22]

The MSE disagreed, arguing that "competitive pressures alone [would not provide] sufficient impetus for market participants to change voluntarily the manner in which and the location at which they trade."[23] Instead, the MSE called for the adoption of a Commission rule requiring protection of all displayed limit orders against executions at inferior prices.[24]

On March 22, 1979, the Commission issued a release on the development of a national market system in which it assessed the progress made during the past year toward achievement of a national market system and indicated the Commission's views as to those issues which next should be resolved and those steps which next should be taken to continue progress towards that system.[25] In that Status Report, the Commission indicated that it was refocusing its attention from immediate implementation of the type of Central File described in the January Statement to near-term achievement of nationwide price protection for all public limit orders. The Commission stated:

> While the Commission cannot predict accurately the consequences of implementing a limit order protection system based on affording orders in a Central File priority over all other buying and selling interest, the Commission recognizes the possibility that introduction of a system based upon the absolute time priority concept could have a radical and potentially disruptive impact on the trading process as it exists today. Therefore, industry and Commission efforts should be concentrated on the achievement of nation-wide price protection for all public limit orders based upon the principle of price priority.
>
> The Commission believes that nationwide price protection—whereby any appropriately diplayed public limit order for a qualified security is assured of receiving an execution prior to any execution by a broker or dealer at an inferior price—should be a basic characteristic of a national market system.[26]

In addition to establishing inter-market limit order price protection as a near-term national market system objective, the Commission indicated its willingness to permit the ITS participants to experiment with and enhance that system as a means of providing price protection. The Commission requested that each of the self-regulatory organizations commit to working actively together to develop and implement a joint plan which, at a minimum, would call for establishing a pilot program for providing price protection for a limited number of

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[15] *Id.* at 36, 43 FR at 4359.

[16] In the January Statement, the Commission stated that: [i]t currently appears that, for technological among other reasons, it may be appropriate to confine the capacity to execute against public limit orders in the Central File to persons performing market making functions in a qualified market. *Id.*, 43 FR at 4359.

[17] *See* letter from Gordon S. Macklin, President, NASD, to George A. Fitzsimmons, Secretary, SEC May 30, 1978, contained in File No. S7–735–A.

[18] In the January Statement, the Commission proposed that public limit orders entered in the Central File would have absolute priority over all other orders at the same price. *See* January Statement, *supra* note 12, at 35–36, 43 FR at 4359.

[19] *See, e.g.*, letter from Richard B. Walbert, President, Midwest Stock Exchange, Inc. ("MSE"), to George A. Fitzsimmons, Secretary, SEC, November 24, 1978 ("MSE Letter"), at 34–38, contained in File No. S7–735–A.

[20] The ITS is an inter-market communications linkage, implemented jointly by several exchanges in 1978 pursuant to a plan approved by the Commission [15 U.S.C. 78k–1(a)(3)(B)], which provides facilities and procedures for the routing of orders for the purchase and sale of multiply-traded securities between market centers for executive. *See* Securities Exchange Act Release Nos. 14661 (April 14, 1978) and 15058 (August 11, 1978), 43 FR 17419 and 36732. All Self-regulatory organizations other than the Cincinnati Stock Exchange ("CSE") and the NASD are participating in the ITS and 405 securities are currently traded through the system. The ITS participants expect that 500–600 securities will be traded in the system by July 1, 1979, and discussions are continuing between the ITS participants and the NASD regarding linking "third market" dealers through the ITS.

[21] *See* letter from James E. Buck, Secretary, NYSE, to George A. Fitzsimmons, Secretary, SEC, May 31, 1978 ("NYSE Letter"); MSE Letter, *supra* note 19. Both letters are contained in File No. S7–735–A.

[22] NYSE Letter, *supra* note 21, at 25.

[23] MSE Letter, *supra* note 19, at 43.

[24] *Id.* at 42–43.

[25] Securities Exchange Act Release No. 15671 (March 22, 1979) ("Status Report"), 44 FR 20360.

[26] *Id.* at 18–19, 44 FR at 20362–63 (footnotes omitted). The Commission stated that, for purposes of determining which orders are to be afforded inter-market price protection, the term "public limit order" should be construed as any limit order to purchase or sell a qualified security not for the proprietary account of a broker or dealer or any person associated with a broker or dealer which is entered into a market center's limit order repository (whether that be a specialist's book or some other similar mechanism) and displayed in other market centers. *Id.* at 19, n. 24, 44 FR at 20362, n. 24.

multiply-traded securities by the end of calendar year 1980.[27]

Finally, the Commission indicated its intention to propose a rule requiring mandatory price protection on an intermarket basis. The Commission stated that the proposed rule

[would have] an effective date sufficiently distant to afford time for the industry to design and put in place procedures and facilities needed to assure price protection for all public limit orders in qualified securities.[28]

II. Discussion

A. Description of Proposed Rule

The proposed price protection rule, Rule 11Ac1–3 under the Act (17 CFR § 240.11Ac1–3), would require that all public limit orders[29] which are collected in a particular market center [30] and disseminated by that market center for display in other market centers ("displayed public limit orders"), receive intermarket price protection against executions at inferior prices. The proposed rule would prohibit any broker or dealer, on and after the effective date of the rule, from executing a transaction in any market center, in any security subject to its provisions, at a transaction price[31] inferior to the price of any displayed public limit order unless that broker or dealer, either simultaneously with or immediately after execution of the transaction, satisfies all such displayed public limit orders which are at superior prices.[32]

The prices at which the displayed public limit orders would be satisfied would depend upon the relation of the proposed transaction price to the best bid and offer made available by a market center under the Commission's quotation rule, Rule 11Ac1–1 under the Act (17 CFR § 240.11Ac1–1). If the transaction price is not more than ⅛ point outside the best quotation (*i.e.*, lower than the highest bid or higher than the lowest offer), all displayed public limit orders at superior prices would be satisfied at their limit prices; if the transaction price is ¼ point or more outside the best quotation, all displayed public limit orders at superior prices would be satisfied at the transaction price.[33]

Coverage of the proposed rule would be limited to reported securities [34] included in a market linkage system implemented or operated in accordance with a plan approved by the Commission under Section 11A(a)(3)(B) of the Act [15 U.S.C. 78k–1(a)(3)(B)].[35] The rule would therefore cover all securities included in the ITS, the only market linkage system implemented thus far pursuant to a Section 11A(a)(3)(B) plan,[36] although the definition of market linkage system contained in the proposed rule is broad enough to cover the automated multiple-dealer trading system of the CSE ("CSE System") [37] if it joins with another self-regulatory organization to file a Section 11A(a)(3)(B) plan covering the implementation or operation of the CSE System.

Finally, the proposed rule contains an exemptive provision permitting the Commission to exempt from the provisions of proposed Rule 11Ac1–3, either unconditionally or on specified terms and conditions, any broker, dealer or reported security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system. The proposed exemptive provision is designed to address only extraordinary circumstances where relief from the operation of the rule would clearly be warranted, such as malfunctions in communication and data processing facilities needed to transmit and display limit order information or to route orders between and among market centers. If the proposed rule is adopted, the Commission does not intend to grant exemptions to the price protection rule which would have the effect of exempting entirely market centers with relatively little trading in securities covered by the rule (and brokers and dealers trading in those markets.[38]

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[27] *Id.* at 23–24, 44 FR at 20363.

[28] *Id.* at 25, 44 FR at 20363.

[29] The term "public limit order" would be defined to mean any limit order for the account of any person other than a registered broker or dealer or an associated person of a registered broker or dealer. As discussed more fully in note 49 *infra*, the Commission specifically solicits public comment on the appropriateness of this definition.

[30] The term "market center" would be defined to mean, with respect to any reported security, (i) any exchange on which or through whose facilities transactions in that security are executed, and (ii) any third market marker who executes, in that capacity, transactions in that security.

[31] The term "transaction price" would be defined to mean, with respect to a transaction in a reported security, the price of that transaction required to be reported pursuant to a transaction reporting plan approved by the Commission pursuant to proposed Rule 11Aa3–1 under the Act [17 CFR § 240.11Aa3–1) (exclusive of any commission, commission equivalent or differential charged in connection with the transaction).

[32] Nothing in the proposed rule, however, would prevent a broker or dealer from satisfying all displayed public limit orders at superior prices to his proposed transaction price prior to the execution of the transaction (sometimes referred to as "walking down the book") so that, at the time of execution, no such orders would remain at superior prices (and, therefore, the broker or dealer would have no obligations under the proposed rule). However, in situations where the proposed transaction price is sufficiently away from the market so that the "gap print pricing" provisions of the price protection rule would be triggered if the broker-dealer did not "walk down the book," the Commission expects, if the proposed rule is adopted, to encourage brokers and dealers to provide displayed limit orders with "gap print pricing" in accordance with proposed Rule 11Ac1–3 rather than executing limit orders first at their limit prices than executing the proposed transaction.

The Commission notes that avoidance of "gap print pricing" by "walking down the book" is, of course, possible today in connection with block transactions executed in the "primary" market center (and which would otherwise be subject to the procedures specified in NYSE Rule 127). Commentators who believe that "walking down the book" prior to effecting a block transaction, to the extent it may occur if the proposed rule is adopted, can, and should, be prevented are requested to describe whatever methods or procedures they believe will be appropriate to ensure that the "gap price printing" requirements of the rule would not be avoided.

[33] The requirement that displayed public limit orders be satisfied at the transaction price (as opposed to the limit prices) is based on, although not identical to, the "gap printing" principle embodied in NYSE Rule 127.

[34] The term "reported security" would be defined to mean (i) any equity security or class of equity securities designated as 'qualified securities' pursuant to Section 11A(a)(2) of the Act and for which transaction reports are required to be collected, processed and made available pursuant to § 240.11Aa3–1 ([proposed] Rule 11Aa3–1 under the Act); and

[35] Section 11A(a)(3)(B) of the Act authorizes the Commission, in furtherance of the statutory directive to facilitate the establishment of a national market system, by rule or order, to authorize or require self-regulatory organizations to act jointly with respect to matters as to which they share authority under [the Act] in planning, developing, operating, or regulating a national market system (or a subsystem thereof) or one or more facilities thereof . . . .

[36] *See* Securities Exchange Act Release Nos. 14661 (April 14, 1978) and 15058 (August 11, 1978), 43 FR 17419 and 36732.

[37] As a practical matter, however, all securities which are currently traded actively in the CSE System would be covered by the proposed rule because they are also included in the ITS.

(ii) any other equity security or class of equity securities for which transaction reports are collected processed and made available pursuant to an effective transaction reporting plan.

The language of the definition of "reported security" is taken from the recently proposed amendments to Rule 17a–15 under the Act (17 CFR § 240.17a–15), which would, among other things, redesignate that rule as Rule 11Aa3–1 under the Act and establish procedures for amendment of transaction reporting plans. Securities Exchange Act Release No. 15250 (October 20, 1978), 43 FR 50606. If the proposed amendments are not adopted, the definition of "reported security," for purposes of proposed Rule 11Ac1–3, would be changed to read as follows: (1) The term "reported security" shall mean any equity security or class of equity securities as to which last sale information is reported in the consolidated transaction reporting system contemplated by § 240.17a–15 (rule 17a–15 under the Act).

[38] The Commission has, in connection with the implementation of the consolidated transaction reporting system pursuant to Rule 17a–15 under the Act (17 CFR § 240.17a–15) and the consolidated quotation system pursuant to Rule 11Ac1–1 under the Act (17 CFR § 240.11Ac1–1), granted exemptions

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B. Major Issues

The following is a dicussion of certain issues raised by proposed Rule 11Ac1–3 which deserve special attention or on which public comment is specificially solicited.

1. *Need for Commission Rulemaking.* As the Commission stated in its recent Status Report, the Commission's first priority for the near term in facilitating the establishment of a national market system is the achievement of "nation-wide price protection for public limit orders against executions at inferior prices," [39] and that, as an initial step towards this end, the Commission would afford the proponents of the ITS "time to experiment with and further enhance that system as a means of providing intermarket price protection for public limit orders." [40]

As the Commission stated in the Status Report, it currently appears that "two types of initiatives are necessary to achieve nation-wide price protection for displayed public limit orders by means of the ITS." [41] The first of these initiatives is collective action on the part of the self-regulatory organizations to (i) provide for the collection, dissemination and display of limit order information from each market center, and (ii) substantially improve the operating characteristics of the ITS.[42] The second of these initiatives is the proposal of a Commission rule requiring inter-market price protection.[43] The Commission believes, as a preliminary matter, that such a rule appears appropriate in the public interest and for the protection of investors and will further facilitate the establishment of a national market system. In particular, it appears that the rule will contribute to ensuring the fairness of the markets and will help provide an opportunity for public orders to meet without the participation of a dealer.[44] In addition, adoption of the proposed rule might increase the potential for competition between and among market centers.[45]

As discussed above, however, the NYSE, in its submission describing its proposal for inter-market price protection, argued that such a rule was not necessary and that competitive forces alone would ensure that public limit orders represented in the various market centers are protected against inferior executions. The Commission believes that such arguments deserve further exploration, and the Commission requests commentators to provide their views as to whether competitive forces alone would be sufficient to ensure inter-market price protection for all displayed public limit orders.

2. *Effective Date.* The proposed effective date for Rule 11Ac1–3 is July 1, 1981. The Commission believes that the proposed effective date is sufficiently distant to afford time for the industry to design and put into place procedures and facilities needed to assure price protection for all public limit orders in securities included in a market linkage system.[46] The Commission wishes to reemphasize, however, that it expects a pilot program in inter-market price protection to begin before the end of calendar year 1980—well before the proposed effective date of Rule 11Ac1–3.[47]

In the Commission's recent national market system Status Report, the Commission requested each self-regulatory organization to inform the Commission in writing, by May 1, 1979, of its commitment to work actively with other such organizations on a plan for the development and implementation of procedures and mechanisms for inter-market price protection.[48] The Commission expects that plan, which is to be submitted to the Commission by September 1, 1979, to specify the steps by which a pilot program will be implemented and provide that, during the period the pilot is in operation, use of the price protection procedures and mechanisms described in the plan will be mandatory for brokers and dealers in market centers participating in the pilot, notwithstanding the fact that Rule 11Ac1–3, if adopted, will not yet be effective.

3. *Coverage of Rule 11Ac1–3.* As discussed above, proposed Rule 11Ac1–3 would provide inter-market price protection only for displayed public limit orders.[49] However, as the Commission noted in the Status Report, the Commission believes it is appropriate to address, in context of this proposal, whether there are any regulatory policy or practical reasons to limit the application of the price protection concept solely to public limit orders.[50] As the Commission stated:

> It may be that, in addition to protection of public limit orders, price protection can easily be afforded to all displayed bids and offers at the market, whether public or professional, such that any displayed quotation would be entitled to price protection up to the amount of its associated quotation size.[51]

In discussing the possible merits of a price protection system affording inter-market protection for all displayed bids and offers at the market (in addition to displayed public limit orders away from

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to certain exchanges based on their trading volume. *See, e.g.*, Securities Exchange Act Release Nos. 11385 (April 30, 1975), 40 FR 1988 (exemption from transaction reporting requirements of Rule 17a–15 for Intermountain Stock Exchange); 15010 (July 28, 1978), 43 FR 33976 (exemption from Rule 11Ac1–1 for CSE in securities not included in the CSE System); 15011 (July 28, 1978), 43 FR 33983 (exemption From Rule 11Ac1–1 for Spokane Stock Exchange); 15012 (July 28, 1978), 43 FR 33978 (exemption from Rule 11Ac1–1 for Intermountain Stock Exchange); 15013 (July 28, 1978), 43 FR 33981 (partial exemption from Rule 11Ac1–1 for Philadelphia Stock Exchange, Inc.). Certain of the exchange to which these exemptions have been granted are also not participants in either of the pilot market linkage systems currently in operation. As further progress is made in the establishment of a national market system, particularly when inter-market price protection for displayed public limit orders is achieved, the Commission intends to reexamine those exemptions to determine whether the existence of trading in securites with multiple trading interest in a market center which does not report its transactions in the consolidated transaction reporting system, does not make its quotations available pursuant to the Commission's quotation rule, and is not linked to other market centers through a market linkage system, is consistent with the goals and objectives of a national market system.

[39] Status Report, *supra* note 25, at 14, 44 FR at 20362.

[40] *Id.* at 20, 44 FR at 20363.

[41] *Id.* at 20–22, 44 FR at 20363.

[42] In addition, if the ITS is used to provide inter-market price protection, it will be necessary either to find a way to provide a link between the CSE System and the ITS or have CSE System terminals available in each market center.

[43] Status Report, *supra* note 25, at 24, 44 FR at 20363.

[44] *See* Section 11A(a)(1)(C)(v) [15 U.S.C. 78k–1(a)(1)(C)(v)]. *See also* note 4 *supra* and accompanying text. The legislative history of the 1975 Amendments indicates that the Commission has clear authority to adopt such a rule. The Senate Committee stated in its report on S. 249 that:

> The Committee is satisfied that S. 249 grants the Commission complete and effective authority to implement a system for the satisfaction of public limit orders.

Senate Report, *supra* note 3, at 18, [1975] U.S. Code Cong. & Ad. News at 196.

[45] *See* Section 11A(a)(1)(C)(ii) of the Act [15 U.S.C. 78k–1(a)(1)(C)(ii)]. *But see* discussion *infra* at pp. 36–40.

[46] *See Status Report, supra* note 25, at 25, 44 FR at 20363.

[47] *Id.* at 23, 44 FR at 20363.

[48] *See id.* at 23–24, 44 FR at 20363.

[49] As noted above, the definition of "public limit order" would not include any order for the account of a registered broker or dealer or a person associated with a registered broker or dealer. *See* note 29 *supra*. The proposed definition would thus exclude from the protections afforded by the rule orders for the account of natural persons associated with registered brokers and dealers, such as registered representatives, as well as broker-dealer proprietary orders which are entered from off-floor and, arguably, are not generated under circumstances where the broker-dealer has a time and place advantage over non-professionals. The Commission specifically solicits comment on whether orders in these categories, or others, should also be treated as "public limit orders" for purposes of determining inter-market price protection. In addition, the Commission solicits the views of interested persons as to whether inter-market price protection should be afforded to all displayed limited price orders—not just public limit orders (however defined).

[50] Status Report, *supra* note 25, at 27, 44 FR at 20364 (footnote omitted).

[51] *Id.*

the market), the Commission stated that it may be that:

> [p]roviding price protection to all buying and selling interest collected by a particular market center and disseminated by that market center as part of its current bid or offer will not only improve liquidity but also avoid a number of practical problems and trading anomalies which seem certain to arise from restricting price protection to public limit orders.
>
> For example, in order to provide price protection for public limit orders at the market, but not for other buying and selling interest displayed as part of the current quotation, it will be necessary to develop a separate composite display of prices and sizes reflecting that portion of each market center's current quotation representing by public limit orders. Second, confinement of nation-wide price protection to public limit orders could result in buying and selling interest at the market in a given market center (*e.g.*, represented dealer interest) being bypassed as public limit orders in that market at inferior prices are required to be filled by orders transmitted from another market.[52]

In light of those factors, the Commission concluded that:

> It would appear that, if nation-wide price protection is to be accomplished in a fair manner consistent with the purposes of the Act, it ultimately should encompass protection for all buying and selling interest displayed by a particular market center as part of its current bid or offer—regardless of whether or not that interest is comprised of public limit orders—as well as all displayed public limit orders away from the market at prices superior to the price of a proposed transaction. In this context, nation-wide price protection for public limit orders should be viewed as an interim step toward, and experiment in, the achievement of price protection for all displayed orders.[53]

The Commission is interested in receiving the views of the self-regulatory organizations, the securities industry and the investing public as to (i) whether the goal of price protection for all displayed quotations is desirable and feasible, and, if so, (ii) whether it would be appropriate to bypass the interim step of providing price protection only for displayed public limit orders and proceed directly to the enhanced goal.[54] Persons favoring modifying proposed Rule 11Ac1–3 to provide for price protection for all published bids and offers comprising a market center's current quotation and for public limit orders away from the market should discuss any unique technical or practical problems arising from such an approach which are not present in achieving price protection only for public limit orders. Commentators should also discuss whether, in their view, achievement of price protection for all displayed buying and selling interests at the market without first achieving the interim goal of price protection only for public limit orders would require a greater lead time than achievement of the interim goal alone and, therefore, whether adjustment of the proposed effective date of the rule, as modified, would be necessary.[55]

4. *Gap Print Pricing.* Proposed Rule 11Ac1–3 would require that, in situations where the proposed transaction price is ¼ point or more outside the best quotation, displayed public limit orders would have to be satisfied at the transaction price rather than at their limit prices.[56] This requirement embodies the principle of "gap price printing," which currently applies to certain block transactions executed on the NYSE and which the Commission identified in its recent Status Report as as feature which should be implemented as part of a program of inter-market price protection for public limit orders. In this regard, the Commission stated:

> As a preliminary matter, the Commission believes that, unless compelling arguments are presented to the contrary, gap price printing for displayed public limit orders away from the market should be a characteristic of price protection in the national market system.[57]

The Commission specifically solicits the views of interested persons as to (i) whether gap price printing should be a characteristic of price protection in a national market system, and, if so, (ii) whether the method of gap price printing provided in proposed Rule 11Ac1–3 is the most appropriate means of achieving that result. Persons favoring alternative methods of gap price printing are requested to provide a justification for each alternative proposed as well as draft language implementing each such alternative.

5. *Size Limitation.* Proposed Rule 11Ac1–3, if adopted, would provide for inter-market price protection for all displayed public limit orders regardless of size. It has been argued that it might be appropriate to impose size limitations on limit orders entered into a particular market center's limit order facility and afforded inter-market protection in order "to avoid possible problems associated with institutional 'step-ins' and other possible trading disruptions. * * *"[58] The Commission specifically solicits comment on whether limitations on the size of public limit orders afforded inter-market price protection are appropriate, and, if so, whether such limitations should (i) be included as part of Rule 11Ac1–3 (instead of being a matter addressed by the rules of each market center which govern the use of that market center's limit order facility), and (ii) be imposed in connection with all transactions at prices inferior to displayed public limit orders or only in connection with block transactions (*e.g.*, if a block were to be executed in a particular market center at a price which would trigger application of proposed Rule 11Ac1–3 and there was a public limit order for 20,000 shares at a better price in that or another market center, only a limited amount of the order (say 2,500 shares) would be required to be satisfied pursuant to the rule).[59]

6. *Effects on Competition.* Section 23(a)(2) of the Act [15 U.S.C. 78w(a)(2)] requires the Commission, in adopting rules under the Act, to consider the anti-competitive effects of such regulation and to balance any anticompetitive impact against the regulatory benefits gained in terms of furthering the purposes of the Act. The Commission has, as an initial matter, examined proposed Rule 11Ac1–3 in light of the standards cited in section 23 (a)(2) and is aware that adoption of the proposed rule may have effects on competition. However, because, in part, the impact of proposed Rule 11Ac1–3 on competition may be to increase the potential for competition between and among markets, and will certainly increase the potential for competition among brokers and dealers and among orders, the Commission is unable to conclude, as a preliminary matter, that adoption of the proposal would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Moreover, because it appears to the Commission that the proposal will facilitate the establishment of a national market system and further other purposes of the Act,[60] the burdens on competition which

[52] *Id.* at 27–28, 44 FR at 20364 (footnote omitted).

[53] *Id.* at 29–30, 44 FR at 20364.

[54] *Id.* at 30, 44 FR at 20364.

[55] *Id.*

[56] *See* note 33 *supra* and accompanying text.

[57] Status Report, *supra* note 25, at 19, n.26, 44 FR at 20363, n.26.

[58] NYSE Letter, *supra* note 21, at 22. The Commission specifically solicits comment on the nature of such possible problems and trading disruptions, and whether such problems or disruptions, should they occur, would have different impacts on various categories of market participants, *e.g.*, members placing proprietary orders from on-floor or off-floor institutional customers or customers who are individuals.

[59] Persons favoring limiting the imposition of size limitations for inter-market price protection to block transactions should also describe with particularity how the term "block" should be defined for this purpose.

[60] *See generally* Policy Statement, *supra* note 1 at 18–21, December Release, *supra* note 4, at 47–53, 41 FR at 4519–21, Securities Exchange Act Release No.

Footnotes continued on next page

arguably would flow from implementation of proposed Rule 11Ac1–3 appear to be justified by the regulatory benefits gained by its adoption.

Proposed Rule 11Ac1–3, if adopted, could affect competition in several ways. First, it would appear that adoption of the proposal would, to some degree, improve the competitive opportunities for specialists on regional exchanges who, in order to attract order flow, currently provide a form of "primary market protection," *i.e.*, they may agree to execute, as principal, a limit order on their book when there has been an execution in the "primary" market at a price inferior to the limit price and, in certain circumstances, where a transaction has occurred in the "primary" market at the limit price.[61] Requiring satisfaction of displayed public limit orders in the manner contemplated by proposed Rule 11Ac1–3 could, in the Commission's view, reduce the burden and risk to regional specialists associated with providing that protection today (although regional specialists would appear to continue to have to provide "primary market protection" against transactions at the limit price), and thereby enhance their ability to compete for order flow.

On the other hand, because the proposed rule, if adopted, would, for all practical purposes, require the clearing of all public limit orders in all markets in connection with any block transaction executed away from the market, it would no longer be possible to avoid limit orders in one market—particularly limit orders on the book in the "primary" market—by executing the block in some other market center where limit order interest may be minimal. As a result, adoption of the proposal arguably may adversely affect the ability of the regional exchanges to continue to attract blocks for execution.

The Commission notes, however, that avoidance of buying and selling interest in the "primary" market is asserted to be only one of a number of factors which may influence the selection of a market center where a particular block transaction is to be executed. Moreover, adoption of the rule would only prevent "transporting" block transactions to a market center to avoid public limit order interest and not "transporting" blocks to avoid buying and selling interests of the specialist acting as dealer and that of other persons represented in the "primary" market which is not on the specialist's book and which may well be much more substantial than the interest requested in that market in the form of limit orders. As a result, it is not possible to determine at this time whether adoption of proposed Rule 11Ac1–3 would have any significant impact on regional exchanges.

Even if the adoption of proposed Rule 11Ac1–3 results in some burdens on competition (which the Commission is not yet prepared to conclude), the Commission believes that such burdens, if they develop, appear to be outweighed by the regulatory purposes to be achieved by the proposal. Adoption of proposed Rule 11Ac1–1 would appear, as a preliminary matter, to further substantiate the purposes of the Act, particularly the Commission's mandate under Section 11A(a) of the Act to facilitate the establishment of a national market system and to assure, consistent with efficient execution capability and the practicability of execution of investors' orders in the best market, an opportunity for investors' orders to be executed without the participation of a dealer.

In addressing proposed Rule 11Ac1–3, commentators are specifically requested to comment on the potential competitive impact of this proposed regulation and the preliminary views expressed herein so that the Commission may further evaluate the proposal in light of section 23(a)(2) of the Act.

III. Request for Public Comment

The Securities and Exchange Commission hereby proposes Rule 11Ac1–3 [17 CFR § 240.11Ac1–3] pursuant to its authority under the Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*, as amended by Pub. L. 94–29 (June 4, 1975)], and particularly Sections 2, 3, 6, 10, 11, 11A, 15, 17, and 23 thereof [15 U.S.C. 78b, 78c, 78f, 78j, 78k, 78k–1, 78*o*, 78q, and 78w]. The text of the proposed rule is as follows:

§ 240.11Ac1–3 Price protection for public limit orders.

(a) *Definitions.* For purposes of this section, (1) The term "reported security" shall mean

(i) Any equity security or class of equity securities designated as "qualified securities" pursuant to section 11A(a)(2) of the Act and for which transaction reports are required to be collected, processed and made available pursuant to § 240.11Aa3–1 ([proposed] Rule 11Aa3–1 under the Act); and

(ii) Any other equity security or class of equity securities for which transaction reports are collected, processed and made available pursuant to any effective transaction reporting plan.

(2) The term "registered broker or dealer" shall mean any person registered as a broker or dealer under section 15 of the Act.

(3) The term "limit order" shall mean an order for the purchase or sale of one or more round lots of a reported security at a specified price, or at a more favorable price if obtainable.

(4) The term "public limit order" shall mean a limit order for the account of a person other than a registered broker or dealer or an associated person of a registered broker or dealer.

(5) The term "displayed public limit order" shall mean a public limit order as to which information regarding its price and size is (i) collected by the market center in which it is represented, and (ii) disseminated by such market center for electronic display in other market centers.

(6) The term "market center" shall mean, with respect to any reported security, (i) any national securities exchange ("exchange") on which or through whose facilities transactions in that security are executed, and (ii) any third market maker who executes, in that capacity, transactions in that security.

(7) The term "third market maker" shall mean any broker or dealer (other than a person making markets exclusively in odd-lots) who holds himself or herself out as being willing to buy and sell a reported security for his or her own account on a regular and continuous basis otherwise than on an exchange in amounts of less than block size (including any such broker who also represents, as agent, otherwise than on an exchange, orders to buy and sell such securities on behalf of any other person).

(8) The term "market linkage system" shall mean any communications and data processing facility which (i) permits orders for the purchase and sale of a reported security, and responses to such orders, to be transmitted from one market center trading in such security to another such market center, or (ii)

Footnotes continued from last page
13662 (June 23, 1977) at 63–69, 42 FR 33510, 33518–19, January Statement, *supra* note 12, at 13–14, 33–37, 43 FR at 4355–56, 4359, Status Report, *supra* note 25, at 14–30, 44FR at 20363–64.

[61] Generally, market protection against "primary" market executions at the limit price (as opposed to protection against executions at prices inferior to the limit price) is "on volume," *i.e.*, the number of shares executed in the regional exchange will be in a specified ratio to the number of round lots executed in the "primary" market; the ratio is negotiated between the regional specialist and the broker placing an order with him and generally ranges between 1:1 (one share is given protection on the regional exchange for each share executed in the "primary" market), and 1:5 (one share is given protection on the regional exchange for each five shares executed in the "primary" market).

provides for electronic storage and execution of orders for the purchase and sale of a reported security entered from more than one market center.

(9) The term "transaction price" shall mean, with respect to a transaction in a reported security, the price of that transaction to be reported pursuant to an effective transaction reporting plan (exclusive of any commission, commission equivalent or differential charged in connection with the transaction).

(10) The term "transaction report" shall mean a report containing the price and volume associated with a completed transaction involving the purchase or sale of a security.

(11) The term "effective transaction reporting plan" shall mean any plan for collecting, processing and making available transaction reports with respect to transactions in reported securities approved by the Commission pursuant to § 240.11Aa3–1 ([proposed] Rule 11Aa3–1 under the Act).

(12) The terms "bid" and "offer" shall have the meaning provided in § 240.11Ac1–1 (Rule 11Ac1–1 under the Act).

(b) *Price protection requirement.* On and after July 1, 1981, no broker or dealer may execute a transaction in any market center, in any reported security which is included in a market linkage system implemented or operated in accordance with a plan approved by the Commission pursuant to section 11A(a)(3)(B) of the Act, at a transaction price inferior to the price of any displayed public limit order unless such broker or dealer, either simultaneously with or immediately after execution of such transaction, satisfies all such displayed public limit orders (i) at their limit prices, or, (ii) in the event the transaction price is more than ⅛ point above the lowest offer for such security made available by any market center trading in such security (in the case of limit orders to sell) or more than ⅛ point below the highest bid for such security made available by any market center trading in such security (in the case of limit orders to buy), at the transaction price.

(c) *Exemptions.* The Commission may exempt from the provisions of this section, either unconditionally or on specified terms and conditions, any broker, dealer or reported security if the Commission determines that such exemption is consistent with the public interest, the protection of investors and the removal of impediments to, and perfection of the mechanisms of, a national market system.

(Secs. 2, 3, 6, 11, 15, 17, 23, Pub. L. 78–291, 48 Stat. 881, 882, 885, 891, 895, 897, 901, as amended by Secs. 2, 3, 4, 6, 11, 14, 18, Pub. L. 94–29, 89 Stat. 97, 104, 110, 121, 137, 155 (15 U.S.C. 78b, 78c, 78k, 78*o*, 78q, 78w, as amended by Pub. L. 94–29 (June 4, 1975)); Sec. 10, Pub. L. 78–291, 48 Stat. 89 (15 U.S.C. 78j); Sec. 7, Pub. L. 94–29, 89 Stat. 111 (15 U.S.C. 78k–1))

Interested persons are invited to submit written presentations of views, data and arguments concerning proposed Rule 11Ac1–3 under the Act and the issues discussed above, including any impact on competition which would result from adoption of the proposal. Persons wishing to make such submissions should file ten copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Room 892, 500 North Capitol Street, Washington, D.C. 20549, not later than July 15, 1979. All submissions should refer to File No. S7–778 and will be available for public inspection at the Commission's Public Reference Room, Room 6101, 1100 L Street, N.W., Washington, D.C.

By the Commission.

George A. Fitzsimmons,

Secretary.

April 26, 1979.

[Release No. 34–15770; File No. S7–778]

[FR Doc. 79–13960 Filed 5–3–79; 8:45 am]

BILLING CODE 8010–01–M

federal register

Friday
May 4, 1979

Part VIII

Securities and Exchange Commission

Statement of Management on Internal Accounting Control; Proposed Rules

SECURITIES AND EXCHANGE COMMISSION

[17 CFR Parts 211, 229, 240, 249]

Statement of Management on Internal Accounting Control

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules.

SUMMARY: Since the enactment of the Foreign Corrupt Practices Act of 1977, interest in the effectiveness of internal accounting controls has been enhanced. To provide information about the effectiveness of systems of internal accounting control, the Commission is proposing for comment rules which would require inclusion of a statement of management on internal accounting control in annual reports on Form 10–K filed with the Commission under the Securities Exchange Act of 1934, and in annual reports to security holders furnished pursuant to the proxy rules. The Commission also is proposing that such statement be examined and reported on by an independent public accountant.

DATES: Comments should be received by the Commission on or before July 31, 1979.

ADDRESS: Comments should be submitted in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549. Comment letters should refer to File No. S7–779. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 1100 L Street, N.W., Washington, D.C. 20549.

FOR FURTHER INFORMATION CONTACT: James J. Doyle, (202–472–3782), Office of the Chief Accountant, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATON: The Securities and Exchange Commission is proposing for public comment amendments to Form 10–K (17 CFR 249.310); Regulation 14A (17 CFR 240.14a–1 et seq.); and Regulation S–K (17 CFR 229.20). The proposed amendments, if adopted, would require inclusion of a statement of management on internal accounting control in Forms 10–K and in annual reports to security holders furnished pursuant to Rule 14a–3 (17 CFR 240.14a–3). To standardize the disclosure requirements, the information to be included in the statement of management on internal accounting control would be specified in proposed new Item 7 of Regulation S–K.

The amendments are proposed to be adopted in two stages. As of dates after December 15, 1979, and prior to December 16, 1980, for which audited balance sheets are required, the statement of management on internal accounting control would be required to include the following:

1. Management's opinion as to whether, as of the date of such audited balance sheet, the systems of internal accounting control of the registrant and its subsidiaries provided reasonable assurances that specified objectives of internal accounting control were achieved; and

2. A description of any material weaknesses in internal accounting control communicated by the independent accountants of the registrant or its subsidiaries which have not been corrected, and a statement of the reasons why they have not been corrected.

For periods ending after December 15, 1980, for which audited statements of income are required, the statement of management on internal accounting control would be required to include management's opinion as to whether, for such periods, the systems of internal accounting control of the registrant and it subsidiaries provided reasonable assurances that the specified objectives of internal accounting control were achieved. In addition, the statement of management on internal accounting control would be required to be examined and reported on by an independent public accountant for such periods.

Thus, initially the management opinion which would be required would extend only to conditions existing as of the balance sheet date, and the statement of management would not be required to be examined and reported on by an independent accountant. There would be a specific disclosure requirement relating to any material weaknesses in internal accounting control communicated by the independent accountants which have not been corrected.

After the initial stage, the management opinion which would be required would extend to conditions which existed during the periods for which audited statements of income are required, and the statement of management would be required to be examined and reported on by an independent public accountant.

I. Background and Basis for Proposed Rules

In December, 1977, Congress enacted the Foreign Corrupt Practices Act of 1977 ("FCPA").[1] Among other things, the FCPA requires that issuers subject to the registration and reporting provisions of the Securities Exchange Act of 1934, as amended, devise and maintain a system of internal accounting control sufficient to provide reasonable assurances that

(i) Transactions are executed in accordance with management's general or specific authorization;

(ii) Transactions are recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (b) to maintain accountability for assets;

(iii) Access to assets is permitted only in accordance with management's general or specific authorization; and

(iv) The recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.[2]

While the FCPA, which was effective upon enactment,[3] contains a specific statutory requirement that certain issuers devise and maintain an effective system of internal accounting control, the establishment and maintenance of such a system have always been important responsibilities of management. An effective system of internal accounting control has always been necessary to produce reliable financial statements and other financial information generated from the accounting system, as well as to assure that assets and transactions of the business are adequately controlled.

The Commission believes that information regarding the effectiveness of an issuer's system of internal accounting control may be necessary to enable investors to better evaluate management's performance of its stewardship responsibilities and the reliability of interim financial statements and other unaudited financial information generated from the accounting system, and that, therefore,

[1] Title I of Pub. L. No. 95–213 (December 19, 1977).

[2] These internal accounting control provisions of the FCPA are codified in Section 13(b)(2)(B) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(b)(2)(B).

[3] The Commission discussed the enactment of the FCPA in Accounting Series Release No. 242 (Securities Exchange Act Release No. 14478, February 16, 1978, 43 FR 7752), in which it stated: "Because the Act became effective upon signing, it is important that issuers subject to the new requirements review their accounting procedures, systems of internal accounting controls and business practices in order that they may take any actions necessary to comply with the requirements contained in the Act." The Commission also discussed the provisions of the FCPA in Securities Exchange Act Release No. 34–15570 (44 FR 10964), February 15, 1979.

the proposed rules may be necessary to the interests of investors and other users of financial information.[4]

In proposing to require a statement of management on internal accounting control, the Commission is not setting forth detailed, prescriptive rules for control procedures and techniques which will ensure compliance with the internal accounting control provisions of the FCPA. The Commission believes that the control procedures and techniques which will provide for compliance with those provisions must be determined in the context of the circumstances of each issuer, and it is the responsibility of management to make those determinations.

As noted above, the Commission is proposing that, for periods ending after December 15, 1980, for which audited statements of income are required, the statement of management on internal accounting control be examined and reported on by an independent public accountant. Because of the independent public accountant's expertise with respect to internal accounting control and the fact that internal accounting control is integral to preparation of financial statements, the Commission believes that an examination by an independent public accountant of a statement of management on internal accounting control would result in increased reliability of such a statement. It should be emphasized, however, that the independent accountant's responsibility will be more limited than that of management. The responsibility for complying with the substantive internal accounting control provisions of the FCPA, as well as with the disclosure requirements of these proposed rules, rests with the issuer and its management.

The Commission notes that increasing attention recently has been focused on the need for a "management report" directed to management responsibilities for financial reporting. The principal initiative in this regard was taken by the Cohen Commission, which recommended, among other things, that companies include with the financial statements a report that acknowledges management's responsibilities with respect to the financial information reported.[5] The Financial Executives Institute ("FEI") responded to the Cohen Commission's recommendation by endorsing the furnishing of a management report and, in June 1978, issued suggested guidelines for preparation of a management report. Those guidelines generally follow the recommendations of the Cohen Commission. In addition, the American Institute of Certified Public Accountants ("AICPA") formed the Reports by Management Special Advisory Committee, consisting of financial executives, attorneys, a financial analyst, and other users of financial information, to consider the Cohen Commission's recommendations pertaining to management reports and to develop guidance on matters that should be included in a management report. In December 1978, the Reports by Management Special Advisory Committee issued, for public comment, a report of its tentative conclusions and recommendations.[6]

The Cohen Commission's report, the FEI guidelines, and the AICPA Special Advisory Committee's tentative report each contain the suggestion that a management report include an assessment of the company's system of internal accounting control.[7] This aspect of a management report has received significantly more attention than any other, in large part as a result of the enactment of the FCPA.

It should be noted that the management statement which the Commission is proposing today does not involve matters other than internal accounting control that might be included in a management report. The Commission intends to follow closely the further initiatives of the private sector and will consider the need to propose additional rules relating to such other matters. In the meantime, the Commission encourages issuers to provide meaningful disclosure regarding management responsibilities. At this time, however, the Commission is proposing to require only the more limited management statement discussed and set forth below.

II. Discussion of Proposed Rules

A. Management Opinion

Proposed Item 7(a) of Regulation S–K would require a statement of management's opinion as to whether, as of any date after December 15, 1979, and prior to December 16, 1980, for which an audited balance sheet is required, and for periods ending after December 15, 1980, for which audited statements of income are required, the systems of internal accounting control of the registrant and its subsidiaries provided reasonable assurances that:

1. Transactions were executed in accordance with management's general or specific authorization:

2. Transactions were recorded as necessary (a) to permit preparation of financial statements in conformity with generally accepted accounting principles (or other applicable criteria), and (b) to maintain accountability for assets;

3. Access to assets was permitted only in accordance with management's general or specific authorization; and

4. The recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

1. Objectives of Internal Accounting Control. Proposed Item 7(a) is based upon the broad objectives of internal accounting control stated in the FCPA. In this regard, the Commission recognizes that systems of internal accounting control must be designed to fit individual circumstances. Numerous factors, such as the types of products or services provided, types of customers, degree of centralization, and methods of data processing, will affect the choice of control procedures that may be necessary or appropriate to achieve the broad control objectives. Consequently, it is not practicable to prepare a comprehensive list of internal accounting control procedures, nor is it possible to prepare a list of certain internal accounting control procedures which would be appropriate for all organizations.

2. Internal Accounting Controls. The Commission believes that it is important to emphasize that the scope of internal accounting control cannot be defined in terms of types of control procedures or in terms of organizational or functional departments. Any factors within an organization which affect the achievement of the objectives of internal

[4] The Commission on Auditor's Responsibilities ("Cohen Commission") concluded that users of financial information are interested in whether controls are adequate to reduce the risk of loss of assets through unauthorized use or misappropriation and to produce reliable financial information, and that users may need to be informed, as part of adequate disclosure, about the condition of controls. See the Commission on Auditor's Responsibilities: "Report, Conclusions, and Recommendations" (1978) (hereinafter cited as "Cohen Commission Report"), p. 55. See also M. V. Brown, "Auditors and Internal Controls: An Analyst's View," *CPA Journal* 47 (September, 1977), pp. 27–31.

[5] Cohen Commission Report. See generally pp. 76–80.

[6] Tentative Conclusions and Recommendations of the Reports by Management Special Advisory Committee, AICPA, December 8, 1978.

[7] The example of a management representation regarding assessment of the company's system of internal accounting control contained in the tentative report of the Reports by Management Special Advisory Committee is limited to "errors or irregularities that could be material to the financial statements" (*id.* at p. 5.). As discussed herein, neither the internal accounting control provisions of the FCPA nor the representations which would be required in the proposed statement of management on internal accounting control are so limited. *See also* Securities Exchange Act Release No. 15570, *supra.*, n.3.

accounting control must be considered in evaluating the effectiveness of a system of internal accounting control, and may often include factors which also are concerned with what the authoritative auditing literature defines as "administrative control."[8]

In this connection, the AICPA's Special Advisory Committee on Internal Accounting Control emphasized the importance to the effectiveness of systems of internal accounting control of factors in addition to specific internal accounting control procedures.

> The internal accounting control environment established by management has a significant impact on the selection and effectiveness of a company's accounting control procedures and techniques.
>
> The control environment is shaped by several factors. Some are clearly visible, like a formal corporate conduct policy statement or an internal audit function. Some are intangible, like the competence and integrity of personnel. Some, like organizational structure and the way in which management communicates, enforces, and reinforces policy, vary so widely among companies that they can be contrasted more easily than they can be compared.
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> Although it is difficult to measure the significance of each factor, it is generally possible to make an overall evaluation. The committee believes that an overall evaluation of a company's internal accounting control environment is a necessary prelude to the evaluation of control procedures and techniques.
>
> A poor control environment would make some accounting controls inoperative for all intents and purposes because, for example, individuals would hesitate to challenge a management override of a specific control procedure. On the other hand, a strong control environment, for example, one with tight budgetary controls and an effective internal audit function, can have an important bearing on the selection and effectiveness of specific accounting control procedures and techniques.[9]

The Commission concurs with the foregoing statements of the Special Advisory Committee regarding the importance of the control environment to the effectiveness of a system of internal accounting control. The Commission also agrees that, in addition to the overall importance of an environment which provides a high level of control consciousness, individual environmental factors, such as strong budgetary controls and an effective, objective internal audit function, can contribute directly to achievement of internal accounting control objectives and must be considered in evaluating whether reasonable assurance of achievement of such objectives is provided.

3. Reasonable Assurance. Like the specified objectives of internal accounting control, the phrase "reasonable assurance" is contained in the FCPA. The concept of reasonable, as opposed to absolute, assurance is incorporated in the proposed rules in recognition that it is not in the interest of shareholders for the cost of internal accounting control to exceed the benefits thereof. Such benefits, and in many cases such costs, are not likely to be precisely quantifiable. Therefore, many decisions on reasonable assurance will necessarily depend in part on estimates and judgments by management which are reasonable under the circumstances.

Consideration of the benefits of internal accounting controls generally will involve some degree of estimation of the possible effects and the likelihood of occurrence of various future conditions and events. In addition, the benefits to be considered often may include not only quantitative benefits, such as reduction in exposure to theft of assets, but also qualitative benefits, such as the reputation of the company and its management. For example, the benefits to be considered in connection with evaluating controls intended to prevent bribes and other illegal payments cannot be meausured solely by the amounts of such payments which might be prevented. Rather, as the Commission repeatedly has emphasized,[10] the relationship between such illegal payments, and other questionable activities—whether or not the amounts are significant—and the reputation of the company and integrity of its management is a significant benefit to be considered. The Commission recognizes that placing a value on such qualitative factors will almost invariably involve judgments by management.

Many managements may decide that it is desirable to discuss in the statement on internal accounting control the concept of reasonable assurance and the extent to which decisions on reasonable assurance depend on management estimates and judgments. Some may believe that such a discussion is essential for informed use of the statement.[11] Comments are requested on whether such a discussion should be required in all statements of management on internal accounting control.

The Commission recognizes that there are limitations upon the effectiveness of any system of internal accounting control.[12] However, limitations upon the effectiveness of a system of internal accounting control do not limit the responsiblility of registrants to maintain a system of internal accounting control which provides reasonable assurances that the objectives of internal accounting control are achieved. Indeed, the fact that errors may arise as a result of human frailties, that systems of internal accounting control may be circumvented as a result of collusion or overridden by management,[13] and that changes in conditions may require changes in control procedures, mandates ongoing review and monitoring of any internal accounting control system if such reasonable assurance is to be provided.

4. Evaluation of Internal Accounting Controls—a. Conceptual Elements. The Commission believes that specific methods of approaching and implementing evaluations of systems of internal accounting control will vary from company to company. Accordingly, the proposed rules do not specify the method of or procedures to be performed in an evaluation of internal accounting control.

However, the Commission believes that evaluations by managements of systems of internal accounting control should encompass certain conceptual

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[8] See Statement on Auditing Standards No. 1, AICPA, Section 320.27, for the definition of administrative control. That statement also recognizes, at Section 320.29, that administrative controls and accounting controls are not mutually exclusive.

[9] Tentative Report of the Special Advisory Committee on Internal Accounting Control, AICPA, September 15, 1978 (hereinafter cited as "Tentative Report"), p. 9. See generally pp. 9–12 for a discussion of the control environment. The Special Advisory Committee was formed to develop criteria for evaluating internal accounting controls. The Tentative Report was issued to solicit comments from interested parties and, thus, is not the final work product of the Special Advisory Committee. The Special Advisory Committee plans to issue a final report in the near future.

[10] See generally Report of the Securities and Exchange Commission on Questionable and Illegal Payments and Practices Submitted to the Committee on Banking, Housing and Urban Affairs, United States Senate (May 12, 1976). Also see, e.g., *S.E.C. v. Sharon Steel Corporation*, Civil No. 77–1631 (D.C.D.C., September 20, 1977) and *S.E.C. v. Ormand Industries, Inc.*, Civil No. 77–0790 (D.C.D.C., May 9, 1977).

[11] The Cohen Commission's example of a management report includes such a discussion. See Cohen Commission Report, p. 79.

[12] Limitations of internal accounting control are discussed in Statement on Auditing Standards No. 1, AICPA, Secton 320.4.

[13] In this regard, in February 1979 the Commission adopted Regulation 13B–2, which expressly prohibits the falsifiction of corporate books, records, or accounts and prohibits the officers and directors of an issuer from making false, misleading or incomplete statements to any accountant in connection with any audit or examination of the issuer's financial statements or the preparation of required reports. See Securities Exchange Act Release No. 15570, *supra.*, n.3.

elements.[14] Determination of whether a system of internal accounting control provides reasonable assurances that the broad objectives of internal accounting control are achieved generally will involve the following:

- First, evaluation of the overall control environment;
- Second, translation of the broad objectives of internal accounting control into specific control objectives applicable to the particular business, organizational and other characteristics of the individual company;
- Third, consideration of the specific control procedures and individual environmental factors which should contribute to achievement of the specific control objectives;
- Fourth, monitoring of control procedures and consideration of whether they are functioning as intended; and
- Finally, consideration of the benefits (consisting of reductions in the risk of failing to achieve the objectives) and costs of additional or alternative controls.

The first element of such a determination is evaluation of the overall control environment. The Commission recognizes that such evaluations will require a careful exercise of management's judgment, generally involving consideration of matters such as the organizational structure, including the role of the board of directors; communication of corporate procedures, policies and related codes of conduct; communication of authority and responsibility; competence and integrity of personnel; accountability for performance and for compliance with policies and procedures; and the objectivity and effectiveness of the internal audit function. The role of the board of directors in overseeing the establishment and maintenance of a strong control environment, and in overseeing the procedures for evaluating a system of internal accounting control, is particularly important. The Commission has often stressed the importance of audit committees to enable boards of directors to better fulfill their oversight responsibilties with respect to an issuer's accounting, financial reporting and control obligations.[15]

A strong control environment will not, in itself, provide a basis for reasonable assurance that the broad objectives of internal accounting control are achieved. However, the Commission agrees with the AICPA's Special Advisory Committee on Internal Accounting Control that

> [i]t is unlikely that management can have reasonable assurance that the broad objectives of internal accounting control are being met unless the company has an environment that establishes an appropriate level of control consciousness.[16]

For that reason, an evaluation of the overall control environment is a necessary first step in evaluating a system of internal accounting control.

The second and third conceptual elements of an evaluation of a system of internal accounting control might be characterized as review of the system. The effectiveness of the design of control procedures in place cannot be evaluated without first relating the broad objectives of internal accounting control to the particular circumstances of a company. The AICPA's Special Advisory Committee on Internal Accounting Control found a transaction cycle approach a convenient way to develop illustrative specific control objectives and examples of specific control procedures and techniques.[17] Some companies might use a transaction cycle approach in reviewing the system; others might organize a review of the system by functional area within the organization or use some other approach or combination of approaches. Regardless of the way in which the review of the system is organized, what is important is that the specific control objectives appropriate for the company, and the specific control procedures and individual environmental factors which should contribute to achievement of those specific objectives, are identified and considered.

The fourth conceptual element of an evaluation of a system of internal accounting control might be characterized as monitoring compliance with control procedures. Management must have reasonable assurance not only that the system of internal accounting control is appropriately designed, but also that it is functioning as designed. In addition, knowledge that adherence to company policies and procedures will be monitored is an important element of an overall control environment. Monitoring compliance with control procedures may take place through observation and supervision and through testing of controls in effect. An objective, effective internal audit function can play an important role in monitoring compliance.

The final conceptual element of an evaluation of a system of internal accounting control might be characterized as determination of reasonable assurance. As discussed previously, determining whether reasonable assurance of achievement of control objectives is provided often will depend in part on estimates and judgments by managements.

b. *Documentation.* Appropriate documentation is important to each aspect of an evaluation of internal accounting control. The overall control environment often will be enhanced by written policies and procedures, formalized reporting responsibilities within the organization, and written descriptions of authority and responsibility. Very few, if any, registrants could perform an effective review of their systems of internal accounting control without documenting their specific control objectives and the control procedures in place which should contribute to achieving those objectives. Documentation of tests of controls in effect is necessary to determine that the tests were appropriately planned and performed and that the results of the tests were appropriately considered. Because of the judgmental aspects of cost-benefit analyses, a record of the bases for management's conclusions with respect to reasonable assurance considerations may be particularly important.

c. *Performance of Evaluation Procedures.* Because of the interaction of numerous factors both within and outside the organization which affects the choice of control procedures necessary to obtain reasonable assurances that the broad objectives of internal accounting control have been achieved, control systems are necessarily dynamic. As a result ot this dynamic nature and the possiblitites

[14] The Commission believes that the conceptual elements discussed herein also are reflected in the Tentative Report of the AICPA's Special Advisory Committee on Internal Accounting Control (see Note 11, *supra*). The Commission believes that the work of the Special Advisory Committee should be very useful to managements by providing a framework which will be helpful to all companies in establishing an approach, or appraising the effectiveness of an existing approach, to evaluate whether the broad objectives of internal accounting control are achieved. However, the Special Advisory Committee's Tentative Report does not represent a manual that can be followed by companies in evaluating their accounting control systems. This was recognized by the Special Advisory Committee (at p. 8 of the Tentative Report): "[T]he approach to an evaluation suggested in this report is not the only way an evaluation can be performed, and the criteria included * * * are not and cannot be detailed rules. However, the committee believes that the recommendations in this report should help management in its continuing evaluation and monitoring of internal accounting control."

[15] See Securities Exchange Act Release No. 14970 (43 FR 31945), July 18, 1978, in which the Commission proposed rules requiring issuers to state whether they have an audit committee and whether it performs "customary functions" of such committees, and which includes a discussion of previous Commission actions regarding audit committees. The Commission adopted the proposal in Securities Exchange Act Release No. 15384 (43 FR 58522), December 6, 1978, after amending it to require disclosure of the functions which the audit committee actually performs.

[16] Tentative Report, p. 8.

[17] See Tentative Report, p. 12.

that controls may be circumvented or overridden and that compliance with control procedures may deteriorate, evaluation of any system of internal accounting control requires ongoing review of the system and monitoring compliance with control procedures.

It should be emphasized that the management opinion which would be required by proposed Item 7(a) for periods ending after December 15, 1980 would encompass reasonable assurances of achievement of the broad objectives of internal accounting control during the periods for which audited statements of income are required. The Commission believes that effective, ongoing evaluations of systems of internal accounting control often may result in identification of the need for and implementation of improvements in a system. To the extent that such improvements are necessitated by changing circumstances (including both circumstances which affect the benefits of controls by changing the risks of failing to achieve the broad objectives of internal accounting control and circumstances which change the costs of controls) and are made on a timely basis, the Commission believes that they do not indicate that the system did not provide reasonable assurances of achievement of the objectives of internal accounting control. In this connection, the Commission encourages the process of interaction between registrants and their independent accountants whereby independent accountants suggest ways in which management might improve its internal accounting controls.

On the other hand, weaknesses which have existed but have not been identified on a timely basis as a result of inadequate procedures for review and monitoring of the system of internal accounting control would indicate that the system did not provide reasonable assurances of achievement of the objectives of internal accounting control throughout the period and, therefore, would preclude an unqualified management opinion under proposed Item 7(a) for periods ending after December 15, 1980. Of course, any weaknesses which have been identified but not appropriately corrected also would preclude such an unqualified opinion.

The Commission recognizes that some registrants may conclude that maintenance of review and monitoring procedures which will be sufficient to obtain reasonable assurances that the objectives of internal accounting control are achieved does not require performance of all such procedures at all locations in each reporting period. Because of the dynamic nature of internal accounting control and the resultant continuing nature of the evaluation process, the extent and timing of the review and monitoring of a system of internal accounting control are among the cost-benefit judgemnts involved in the concept of reasonable assurance. In its determinations regarding the need to take enforcement action with respect to the internal accounting control provisions of the FCPA, among other things the Commission will consider the nature of weaknesses in a system of internal accounting control and efforts to identify and correct such weaknesses.

B. "Material Weaknesses" in Internal Accounting Control

Proposed Item 7(b) of Regulation S–K would require that statements of management on internal accounting control as of dates after December 15, 1979 and prior to December 16, 1980 include a description of any "material weaknesses" in internal accounting control which have been communicated by the independent accountants of the registrant or its subsidiaries which have not been corrected and a statement of the reasons why they have not been corrected.

Present auditing standards with respect to internal accounting control are directed to, and were developed in the context of, examinations of financial statements. Under generally accepted auditing standards, the auditor's purpose in reviewing and evaluating internal accounting control is not to determine whether the broad objectives of internal accounting control have been achieved, but rather to form a basis for determining the scope of the examination of the financial statements. Under present auditing standards,[18] the responsibility of an independent public accountant for reporting on the results of the review and evaluation of internal accounting control performed in connection with an examination of financial statements is limited to reporting to management and the board of directors or audit committee "material weaknesses" which came to the accountant's attention.[19]

[18] See Statement on Auditing Standards No. 20, AICPA.

[19] A "material weakness" is defined in Statement on Auditing Standards No. 1, AICPA, Section 320.68, as [a] condition in which the auditor believes the prescribed procedures or the degree of compliance with them does not provide reasonable assurance that errors or irregularities in amounts that would be material in the financial statements being audited would be prevented or detected within a timely period by employees in the normal course of performing their assigned functions.

The examination by an independent public accountant of the statement of management on internal accounting control which would be required by proposed Item 7(c) of Regulation S–K would be required initially for periods ending after December 15, 1980. The Commission believes it is appropriate in the first, more limited, stage of the proposed rules, wherein an examination by an independent public accountant would not be required by the proposed rules, to require disclosure by management relating to any uncorrected "material weaknesses" communicated by independent accountants as a result of their present responsibilities with respect to examinations of financial statements, including disclosure of the reasons why such "material weaknesses" were not corrected.

It should be noted that the independent accountant will have certain responsibilities, including revision of his report on the financial statements to include an explanatory paragraph, in the event management does not appropriately disclose uncorrected "material weaknesses" under proposed Item 7(b).[20]

C. Examination by Independent Public Accountant

Proposed Item 7(c) of Regulation S–K would require that, for periods ending after December 15, 1980, the statement of management on internal accounting control be examined and reported on by an independent public accountant.

Independent public accountants have long been involved with internal accounting control. The auditing profession's second standard of field work states:

> There is to be a proper study and evaluation of the existing internal control as a basis for reliance thereon and for the determination of the resultant extent of the tests to which auditing procedures are to be restricted.[21]

In addition, the objectives of internal accounting control set forth in the FCPA, which are the same as those in proposed Item 7(a) of Regulation S–K, were taken directly from Section 320.28 of Statement on Auditing Standards No. 1. Because of the independent public accountant's expertise with respect to internal accounting control and the fact that internal accounting control is integral to preparation of financial statements, the Commission believes

[20] Statement on Auditing Standards No. 8, AICPA, sets forth the independent accountant's responsibilities when the accountant is aware of any material inconsistencies or material misstatements of fact in documents containing audited financial statements.

[21] Statement on Auditing Standards No. 1, AICPA, Section 150.02.

that an examination by an independent public accountant of a statement of management on internal accounting control would result in increased reliability of such a management statement.

1. *Objectives of Examination.* Proposed Item 7(c) specifies that the examination be sufficient to enable the independent public accountant to express an opinion as to (1) whether the representations of management in response to proposed Item 7(a) are consistent with the results of management's evaluation of the systems of internal accounting control, and (2) whether such management representations are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the registrant's financial statements. The proposed examination by an independent public accountant of the statement of management on internal accounting control would, therefore, require expansion of the independent public accountant's present responsibilities with respect to internal accounting control.

To reach an opinion, as would be required by proposed Item 7(c)(1), as to whether the management representations were consistent with the results of management's evaluation of the systems of internal accounting control, the independent public accountant would have to review management's procedures for reviewing, monitoring and evaluating the systems of internal accounting control and the results thereof. The purposes of this review would be to determine whether the management representations recognized any conditions which indicated that reasonable assurances of achievement of the objectives of internal accounting control were not provided, and to determine that management's procedures for reviewing, monitoring and evaluating the systems of internal accounting control were not insufficient as a basis for its representations. Although the independent accountant would not necessarily be required to perform independent tests to reach the opinion which would be required under proposed Item 7(c)(1), that opinion would, of course, also have to reflect any other knowledge which the accountant may have as a result of an examination of the financial statements, as a result of the more extensive examination procedures which would be required under proposed Item 7(c)(2), or through other means.

The independent public accountant's responsibilities under proposed Item 7(c)(2) would be more extensive. To reach the reasonableness opinion which would be required under proposed Item 7(c)(2) the independent accountant would, in effect, have to reach independent conclusions as to whether the systems of internal accounting control provided reasonable assurances that transactions were recorded as necessary to permit preparation of annual and interim financial statements in conformity with generally accepted accounting principles; that transactions in amounts which would be material when measured in relation to the registrant's financial statements were appropriately authorized; and that assets in amounts which would be material when measured in relation to the registrant's financial statements were appropriately safeguarded, and there was appropriate accountability for such assets.

The independent public accountant would, therefore, have to independently evaluate and test the underlying bases for management's conclusions as to the effectiveness of the design and functioning of the systems of internal accounting control and as to cost-benefit considerations, to the extent that those conclusions relate to reasonable assurances of achievement of the objectives of internal accounting control with respect to transactions and assets in amounts which would be material when measured in relation to the registrant's financial statements.

It should be emphasized that the materiality limitation contained in proposed Item 7(c)(2) would apply only to the objectives and scope of the independent public accountant's examination. The proposed materiality limitation reflects a cost-benefit judgment by the Commission with respect to the appropriate extent of the independent accountant's examination for purposes of the proposed rule. In contrast, the management representations which would be required by proposed Item 7(a) would not be, and the internal accounting control provisions of the FCPA are not, so limited. Rather each extends to reasonable assurances that the broad objectives of internal accounting control were achieved, without regard to materiality of amounts.

2. *Examination and Reporting Standards.* The Commission recognizes that examinations by independent public accountants of statements of management on internal accounting control will require development of appropriate professional standards with respect to such matters as examination procedures; procedures for consideration of other knowledge, gained from the accountant's examination of the financial statements or other means, which may be inconsistent with management's representations; and procedures when the accountant believes that management does not have a sufficient basis for its representations. The Commission notes that a task force of the AICPA's Auditing Standards Board is currently considering the general issue of reporting to the public on internal accounting control. The Commission believes that it is appropriate to continue its past policy of permitting the accounting profession to determine the standards and procedures underlying accountants' reports as long as this policy is consistent with the interests of investors, the federal securities laws, and the Commission's rules and regulations thereunder.

Since the standards applicable to reporting should be integrated with those applicable to the conduct of the examination, the Commission also believes that it is appropriate to allow the accounting profession to take the lead in determining the standards applicable to the specific form and content of an accountant's report on an examination of a statement of management on internal accounting control.

Accordingly, the Commission urges the AICPA's Auditing Standards Board to continue its study of reporting on internal accounting control in the light of the Commission's proposed requirement for an examination by an independent public accountant of a statement of management on internal accounting control, and to be prepared to adopt, on a timely basis, an authoritative pronouncement which sets forth the standards and procedures to be followed in connection with such an examination, and the form and content of a report thereon. The Commission intends to follow this work closely. If it appears that sufficient progress is not being made toward development of appropriate standards and procedures, the Commission will undertake to develop such standards and procedures.

III. Other Issues

A. Costs of Proposed Rules

The Commission is aware that in most cases an expansion of the independent accountant's work with respect to internal accounting control would be necessitated by this proposal. While such an expansion of work would probably result in additional costs to

registrants,[22] the Commission believes that such costs likely would be in large part of an initial rather than a continuing nature. In addition, the Commission believes that in many instances the additional work of the independent accountant with respect to internal accounting control would result in reductions in costs of the examination of the financial statements, as independent accountants would be able to place more reliance on internal accounting control.[23] The Commission believes that the additional costs of the proposed requirement that the statement of management on internal accounting control be examined by an independent public accountant would be outweighed by the increased reliability of the statement of management which would result from such examination.

The Commission believes that the benefits of new requirements to present and prospective investors should outweigh any additional costs involved. Since the benefits of the proposed examination by an independent public accountant of the statement of management on internal accounting control are not subject to quantification, and the measurement of costs includes many variables which are highly uncertain, the weighing of costs and benefits of such an examination will inevitably require the Commission's judgment. The Commission specifically requests comments on the costs and benefits of the proposed requirement for examination by an independent public accountant, including possible alternatives to the proposed scope of such examination.

In particular, comments are requested on the costs and benefits of the following alternatives to the proposed examination by an independent public accountant:

1. A requirement for an examination which would be sufficient to enable the independent public accountant to express an opinion as to whether the representations of management in response to proposed Item 7(a) are reasonable. In effect, this would require the independent public accountant to reach independent conclusions as to whether the systems of internal accounting control provided reasonable assurances (cost-benefit judgments not limited to material amounts) of achievement of the broad objectives of internal accounting control.

2. No requirement for an examination by an independent public accountant. Rather, require registrants to state whether or not the statement of management on internal accounting control had been examined by an independent public accountant, and require the filing of the relate accountant's report if an affirmative statement is made. This would, of course, also require development of professional standards for examinations of statements of management on internal accounting control. It might also necessitate specific professional standards for responsibilities of an independent accountant as a result of association with such a statement of management which accompanies audited financial statements.

To the extent possible, commentators are requested to supply empirical data in support of their comments.

In addressing this issue, commentators also are requested to consider whether certain registrants should be exempted from the requirement that the proposed statement of management be examined and reported on by an independent public accountant. The costs of such an examination may fall with the greatest severity on smaller registrants; however, systems of internal accounting control of smaller registrants may be generally less sophisticated and less well documented so that examination by an independent public accountant may be particularly needed.

As part of its response to issues relating to the impact on small businesses of the disclosure requirements of the federal securities laws, the Commission recently announced the adoption of a simplified form, Form S–18, under the Securities Act.[24] Form S–18 is available to issuers not subject to the Commission's continuing reporting requirements when they register securities to be sold for cash not exceeding an aggregate offering amount of $5 million. Comments are also specifically requested on whether a registrant filing on Form S–18, and thereby becoming subject to the reporting provisions of section 15(d) of the Securities Exchange Act, should be exempt from the requirement for an examination by an independent public accountant with respect to the statement of management on internal accounting control contained in its initial annual report on Form 10–K.[25]

B. Disclosure of Basis for Management Opinion

In addition to the opinion which would be required by proposed Item 7(a) of Regulation S–K (and, in the initial stage, the disclosures relating to uncorrected "material weakness" which would be required by proposed Item 7(b)), registrants are encouraged to include in the statement of management on internal control whatever information they believe would make the statement most useful. Some may believe that disclosure of the basis for the management opinion, including a description of the general approach applied in evaluating internal accounting controls and the extent to which the procedures comprised by such approach were performed in the periods encompassed by such opinion, should be required. Comments on this issue are specifically requested.

C. Signing of Management Statement

Some may believe that the statement of management should be required to be signed by a certain representative or representatives of management, such as the chief executive officer or the chief financial officer. Comments of this issue are specifically requested.

IV. Proposed Effective Dates

The Commission recognized that the enactment of the FCPA has prompted many registrants to reevaluate their procedures for reviewing, monitoring and evaluating their systems of internal accounting control and that issuance of these rule proposals may provide additional focus for such reevaluation. The Commission also recognizes that, as a result of recently establishing sound procedures for reviewing, monitoring and evaluating their systems for internal accounting control, some registrants may have identified and corrected conditions which had not provided reasonable assurance conditions of achievement of the objectives of internal accounting control.

Accordingly, these amendments are proposed to be effective with respect to reports for fiscal periods ending after December 15, 1979. Statements of

[22] As to the basic proposal for a statement of management on internal accounting control, the Commission believes that this proposal will not establish requirements for maintenance of systems of internal accounting control which exceed those alreaady required by the FCPA. Consequently, the costs of providing the proposed statement of management on internal accounting control should not be substantial.

[23] However, registrants' selections of independent accountants for examinations of statements of management on internal accounting control would not be restricted to the same independent accountants who are engaged to examine the financial statements.

[24] *See* Securities Act Release No. 6049, April 3, 1979 (44 FR 21562).

[25] Similarly, the Commission has amended its requirements to permit Form S–18 registrants to include in their initial filing on Form 10–K, in lieu of similar information called for by Form 10–K, information concerning the registrant's business, the remuneration of its officers and directors, and the interest of management and others in certain transactions which had been provided in the registration statement on Form S–18.

management on internal accounting control would not be required for reports for periods ending prior to December 15, 1979. In addition, by proposing to adopt these amendments in two stages as discussed herein, representations regarding the effectiveness of systems of internal accounting control would be required to encompass only conditions existing as of and after the end of the first fiscal period for which amendments would be effective.

Nevertheless, it again should be emphasized that the FCPA was effective upon enactment in December 1977. Registrants would be well advised to ensure that any weakness in internal accounting control are identified and corrected on the most timely basis.

V. Authority for and Request for Comment on Scope of Proposed Amendments

The Commission is not at this time proposing to require the disclosures outlined in this release in registration statements filed pursuant to the Securities Act on 1933. The Commission recognizes, however, that much of the rationale which supports the furnishing of this information to investors in Securities Exchange Act filings may apply with equal force to Securities Act registration statements. The Commission therefore should be extended to filings under that Act. In that connection, the Commission invites commentators to consider whether the applicability of these proposals to Securities Act registration statements would have any impact—whether favorable or unfavorable—on the capital formation process and whether the Commission should consider exempting any category of issuers from those requirements, should it determine to extend them to Securities Act registration statements.

The Commission also invites comment concerning whether it would be appropriate to extend these requirements to Forms N–1 and N–2 for use by open-end and closed-end management investment companies; Form N–1R for annual reports of registered management investment companies; Form N–5R for annual reports of small business investment companies; and to Forms U5A, U5B, U5S, and U–6B–Z promulgated under the Public Utility Holding Company Act of 1935. Similarly, commentators are requested to consider whether these disclosure items should be incorporated in Forms 20 and 20–K for use by certain foreign private issuers.

The Commission is proposing these amendments pursuant to its general rulemaking authority contained in Section 23(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78w(a). That provision empowers the Commission to promulgate "such rules and regulations as may be necessary or appropriate to implement the provisions" of the Act.

The internal accounting control requirements of the Foreign Corrupt Practices Act—which these amendments would, in part, implement—appear in Section 13(b)(2)(B) of the Securities Exchange Act, 15 U.S.C. 78m(b)(2). The various disclosure forms and schedules which these proposals would amend have been promulgated pursuant to Sections 12, 13, 14 and 15(d) of the 1934 Act, 15 U.S.C. 78*l*, 78m, 78n, 78*o*.

Section 23(a) of the Securities Exchange Act requires the Commission to consider the impact which any proposed rule would have on competition. While the Commission is not aware of any competitive impact likely to result from the proposals described in this release, commentators are invited to address that issue.

VI. Request for Comments

All interested persons are invited to submit their views and comments on the foregoing in triplicate to George A. Fitzsimmons, Secretary, Securities and Exchange Commission, Washington, D.C. 20549 on or before July 31, 1979. Such communications should refer to File S7–779 and will be available for public inspection.

VII. Text of Proposed Rules

In consideration of the foregoing, it is proposed to amend 17 CFR Chapter II as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933 AND SECURITIES EXCHANGE ACT OF 1934—REGULATION S–K

1. By amending § 229.20 by adding Item 7 to read as follows:

§ 229.20 Information required in document.

* * * * *

Item 7. Statement of management on internal accounting control. (a) State management's opinion as to whether, as of any date after December 15, 1979 and prior to December 16, 1980 for which an audited balance sheet is required, and for periods ending after December 15, 1980 for which audited statements of income are required, the systems of internal accounting control of the registrant and its subsidiaries provided reasonable assurances that:

(1) Transactions were executed in accordance with management's general or specific authorization;

(2) Transactions were recorded as necessary (i) to permit preparation of financial statements in conformity with generally accepted accounting principles (or other applicable criteria), and (ii) to maintain accountability for assets;

(3) Access to assets was permitted only in accordance with management's general or specific authorization; and

(4) The recorded accountability for assets was compared with the existing assets at reasonable intervals and appropriate action was taken with respect to any differences.

(b) For statements of management on internal accounting control as of dates after December 15, 1979 and prior to December 16, 1980, describe any material weaknesses in internal accounting control which have been communicated by the independent accountants of the registrant or its subsidiaries which have not been corrected, and state the reasons why they have not been corrected.

(c) For periods ending after December 15, 1980, the statement of management on internal accounting control shall be examined and reported on by an independent public accountant. The examination shall be sufficient to enable the independent public accountant to express an opinion as to (1) whether the representations of management in response to paragraph (a) are consistent with the results of management's evaluation of the systems of internal accounting control; and (2) whether such representations of management are, in addition, reasonable with respect to transactions and assets in amounts which would be material when measured in relation to the registrant's financial statements.

Instructions. 1. The statement of management on internal accounting control should accompany the financial statements.

2. The independent public accountant's report of examination shall accompany or be included within the accountant's report on the financial statements.

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

2. By amending § 240.14a–3 by adding a new paragraph (b)(4), renumbering present paragraphs (b)(4) to (12) as (b)(5) to (13), and amending the references to the renumbered paragraphs as follows (changes italicized):

§ 240.14a–3 Information to be furnished to security holders.

* * * * *

(b) * * *

(4) The report shall contain a statement of management on internal accounting control prepared in accordance with the provisions of Item 7 of Regualtion S–K.

(5) **Note 1:** Subparagraph (b) (*11*) permits * * *.

(6) [No change.]

(7) **Note:** subparagraph (b) (*11*) permits * * *.

(8) [No change.]

(9) [No change.]

(10) **Note:** Pursuant to the undertaking required by the above paragraph, (b) (*10*) * * *.

(11) Subject to the foregoing requirements, the report may be in any form deemed suitable by management and the information required by subparagraphs (b)(*5*) to (b)(*10*) * * *.

(12) Subparagraphs (b)(*5*) through (b)(*11*) shall not apply * * *.

(13) [No change.]

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

3. By amending § 249.310 by renumbering Items 13–15 of Part II as Items 14–16 and by adding a new Item 13 to Part I to read as follows:

§ 249.310 Form 10–K, annual report pursuant to section 13 or 15d of the Securities Exchange Act of 1934.

* * * * *

Item 13. Statement of Management on Internal Accounting Control. A statement of management on internal accounting control shall be furnished in accordance with the provisions of item 7 of Regulation S–K.

* * * * *

By the Commission.

Shirley E. Hollis,

Assistant Secretary.

April 30, 1979.

[Release No. 34–15772, File No. S7–779]

[FR Doc. 79–14013 Filed 5–3–79; 8:45 am]

BILLING CODE 8010–01–M

federal register

Friday
May 4, 1979

Part IX

Department of Energy

Economic Regulatory Administration

Mandatory Petroleum Allocation Regulations; Motor Gasoline Allocation Base Period and Adjustments

DEPARTMENT OF ENERGY

10 CFR Part 211

Mandatory Petroleum Allocation Regulations; Motor Gasoline Allocation Base Period and Adjustments

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Interim Final Rule.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is issuing an interim final rule on an emergency basis that will be effective through September 30, 1979 and provides as follows:

1. The rule continues use of an updated base period beyond May 31, 1979, when Activation Order No. 1 is due to expire.

2. The rule designates the November 1977 through October 1978 period as the base period year. [This is a change from Activation Order No. 1, which proposed using the corresponding months in *1977* during the base period July through October.]

3. This rule provides for an unusual growth adjustment. Beginning in May 1979, retail sales outlets, wholesale purchaser-consumers and bulk purchasers may substitute their average monthly purchases in the period October 1978 through February 1979 as their base period volume if that average was at least ten percent greater than their total purchases in the applicable base period month. Base period suppliers will be required to make these adjustments for qualified purchasers, without any need for DOE approval.

If a purchaser had multiple suppliers in the base period month, each base month supplier will be required to supply the portion of the adjustment attributable to it during the October through February period. Base period suppliers will also be required to supply, on a pro rata basis, volumes not attributable to any base month supplier (such as surplus gasoline purchased from a non-base month supplier during the October through February period). Suppliers responsible for supplying the adjusted volumes will be able to certify the increases upward to their suppliers on a proportional basis.

4. The rule allows substitution of the October 1978 through February 1979 monthly average as the April 1979 base period volume if that average was at least 35 percent greater than purchases in April 1978.

5. The rule codifies the provisions of both the Activation Order and Guidelines (with appropriate modifications to reflect the adoption of the growth adjustment provision and other changes suggested by the comments). As a result, reference need be made to only one document. Because the Activation Order, which was scheduled to run through May 1979, overlaps today's rule, the Activation Order is revoked for May 1979.

For periods after September 30, 1979, we are proposing to adopt on a permanent basis the rule adopted today on an interim basis. Comments are requested on this rule either in writing or at the hearings scheduled as noted below. DOE will review these comments and, if appropriate, modify the rule accordingly.

DATES: Effective date: May 1, 1979; adjustment provision effective for April 1979. Ceases to be effective: September 30, 1979. Requests to speak for Washington hearing by May 25, 1979. Requests to speak for San Francisco hearing by June 8, 1979. Written comments by July 10, 1979. Washington, D.C. hearing date: June 7, 1979; San Francisco, California hearing date: June 19, 1979.

ADDRESSES: Written comments and requests to speak for Washington, D.C. hearing to: Office of Hearings Management, Economic Regulatory Administration, Room 2313, Docket No. ERA–R–79–23, Washington, D.C. 20461. Requests to speak for San Francisco hearing to: Department of Energy, 111 Pine Street, 3rd floor, Attention: Mr. Robert Laffel, San Francisco, California, 94111. Washington, D.C. hearing location: Room 3000A, 12th Street and Pennsylvania Avenue, Washington, D.C.; San Francisco hearing location: Holiday-Golden Gateway Inn, 1500 Van Ness Avenue, San Francisco, California 94109.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Comment Procedures), Economic Regulatory Administration, 2000 M Street NW., Room 2214B, Washington, D.C. 20461. (202) 254–3345.

William Webb (Office of Public Information), Economic Regulatory Administration, 2000 M Street NW., Room B–110, Washington, D.C. 20461. (202) 634–2170.

William Caldwell (Regulations and Emergency Planning), Economic Regulatory Administration, 2000 M Street NW., Room 2304, Washington, D.C. 20461. (202) 254–8034.

Alan Lockard (Office of Fuels Regulation), Economic Regulatory Administration, 2000 M Street NW., Room 6222, Washington, D.C. 20461. (202) 254–7422.

Joel M. Yudson (Office of General Counsel), Department of Energy, 1000 Independence Avenue SW., Room 6A–127, Washington, D.C. 20585. (202) 252–6744.

SUPPLEMENTAL INFORMATION:

I. Background
II. Procedural Requirements
- A. Section 553(b) of the Administrative Procedure Act and Section 501 of the DOE Act
- B. Section 404 of the DOE Act
- C. Section 7 of the FEA Act
- D. Section 553(d) of the Administrative Procedure Act
- E. Executive Order 12044

III. Comments Received
IV. Amendments Adopted
- A. Base period update and relation to Subpart A
- B. Unusual growth adjustment
- C. Notice
- D. Resolution of disputes
- E. New wholesale purchasers
- F. Supplier responsibility for assignments made after November 1, 1977
- G. Reassignments, including three-party agreements
- H. Branded resellers
- I. Temporary exigent circumstances adjustment
- J. Redirection of product
- K. Inter-Refiner Sales
- L. Other matters
- M. Specific comments requested
- N. Revocation of Activation Order

V. Written Comments and Public Hearing Procedures

I. Background

Based on our determination that there was a significant possibility of gasoline shortages and resulting dislocations in the industry for the period of March through May 1979, we issued an order (Activation Order No. 1, 44 FR 11202, February 28, 1978) ("Activation Order") activating for that period the portion of the Standby Petroleum Product Allocation Regulations (44 FR 3928, January 18, 1979) with regard to updating the gasoline base period. The Activation Order provides that the motor gasoline allocation base period for each month will be the corresponding month during the period July 1977 through June 1978 rather than the corresponding month in 1972 as previously provided under the regulations. The updated base period was considered necessary to prevent the significant disruptions in the gasoline distribution system which would occur during a shortage situation if an allocation system based on distribution patterns in effect seven years ago were used.

On March 14, 1979 we issued Guidelines to the Activation Order (44 FR 16480, March 19, 1979) by which we intended to clarify the application of the standby regulations and Activation Order in circumstances not explicitly addressed in those documents. For example, the Guidelines clarified the

manner in which base period volumes would be determined for current months corresponding to base period months in which a firm made no purchases. In the preamble to the Guidelines, we solicited comments as to a mechanism to enable a purchaser with unusually low purchases in one or more months of the base period to receive an upward adjustment to its base period volume to reflect its actual average monthly purchases.

Since the issuance of both the Activation Order and the Guidelines, many gasoline retailers have requested from the ERA Regional Offices adjustments to their base period volumes as established by the Activation Order. DOE's Office of Hearings and Appeals (OHA) has also received a large number of requests for relief from firms experiencing difficulties in obtaining adequate supplies of gasoline. Over 7,000 requests for relief have been submitted to the OHA and the Regional Offices. Although the OHA has granted many requests both individually and by class exception for the three months of the Activation Order, we believe a regulatory change codifying the updated base period and adopting an automatic adjustment provision is necessary to provide relief for May 1979 and for subsequent months. If such a provision is not adopted immediately DOE will not be able to grant relief as quickly as it is needed and many marketers will be unable to obtain adequate supplies of gasoline and will experience financial hardship.

On April 17, 1979, we issued a Notice of Intent to Issue a Final Rule (44 FR 23537, April 20, 1979) which announced our tentative determination, based on the comments received until that date, to issue a new rule on the subject. In the Notice of Intent we stated, among other things, our intent to adopt an unusual growth provision with a ten percent growth threshold beginning for the month of May 1979 and a 35 percent threshold for April 1979.

Following the issuance of the Notice of Intent, and partly in response thereto, on April 19, 1979, the OHA issued a Proposed Decision and Order (DEE 3726) and an Interim Decision and Order (DEN 3726, 44 FR 24025, April 23, 1979) implementing by class exception a growth adjustment for April 1979 for firms whose gasoline purchases grew by 35 percent between April 1978 and the October 1978 through February 1979 period. The OHA action was taken because OHA recognized that the issuance of today's rule would probably be too late to afford actual relief to firms seeking gasoline in the month of April 1979.

Today's amendments are being adopted on an emergency basis effective May 1, 1979 for four months. The public has had notice and an opportunity to comment on the substance of the provisions we are adopting through its comments solicited by DOE on the Activation Order and the Guidelines. In addition, we are soliciting comments and will hold hearings on whether this interim rule should be made permanent. DOE will review the comments and other relevant parts of the record and issue a final rule with whatever modifications are appropriate. The specific statutory requirements applicable to emergency rulemakings have been satisfied as follows:

A. Section 553(b) of the Administrative Procedure Act and Section 501 of the DOE Act

Section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) requires that general notice of proposed rulemaking shall be published in the **Federal Register** unless persons subject to it are named and have actual notice of the proposal. Except when notice or hearing is required by statute, the requirement for a notice of proposed rulemaking does not apply when the agency finds (and incorporates the findings and a brief statement of its reasons) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest.

Under section 501(e) of the Department of Energy Organization Act (Pub. L. 95–91, DOE Act), we may waive the prior notice and hearing requirements of subsections (b), (c) and (d) of section 501 upon our finding that strict compliance with these requirements is likely to cause serious harm or injury to the public health, safety or welfare.

We believe findings waiving the section 553(b) and section 501 requirements can be made. The possibility of our extending the updated base period and other features of the Activation Order and Guidelines and adopting an adjustment mechanism for recent growth has been publicly known for more than thirty days. We have already received substantial public comment on the substance of today's rule. As was stated in the notices announcing the Activation Order and the Guidelines, an updated base period is necessary immediately to reduce the dislocations and competitive imbalances which would likely have been caused by continued use of the 1972 base period. Similarly, the addition of an adjustment mechanism is a necessary component to provide relief in the substantial number of instances where growth has occurred during or after the updated base period and the base period volumes provided by the base period change will be inadequate to prevent the harm which will befall many gasoline marketers and their customers unless gasoline is made quickly available to them.

Finally, to the extent that we are extending the use of an updated base period beyond May 31, 1979 and will use the corresponding months of 1978 as base period months for June through at least September of 1979 rather than the corresponding months of 1977, our action today will enable the petroleum industry to plan gasoline distribution for the summer months. In accordance with section 501, we will receive both oral and written comments on this action within a reasonable period after issuance of this rule.

B. Section 404 of the DOE Act

Section 404(a) of the DOE Act requires that the Federal Energy Regulatory Commission (FERC) be notified whenever the Secretary of Energy proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of functions transferred to him under section 301 or section 306 of the DOE Act. If the FERC determines, within such period as the Secretary may prescribe, that the proposed action may significantly affect any of its functions under sections 402(a)(1), (b) and (c)(1) of the DOE Act, the Secretary shall immediately refer the matter to the FERC.

The FERC has been notified of this rule and has notified the ERA that it has declined to determine that these guidelines may significantly affect one of its functions under the sections noted above.

C. Section 7 of the FEA Act

Under section 7(a) of the Federal Energy Administration Act of 1974 (Pub. L. 93–275, "FEA Act"), the ERA Administrator shall, before promulgating proposed rules, regulations, or policies affecting the quality of the environment, provide a period of not less than five working days during which the Administrator of the Environmental Protection Agency (EPA) may provide written comments concerning the impact of such rules, regulations, or policies on the quality of the environment. Such comments shall be published together with publication of notice of the proposed action.

However, the prior review required may be waived for a period of fourteen days if there is an emergency situation which requires making effective the action proposed to be taken at a date earlier than would permit the EPA Administrator the five working days opportunity for prior comment. Notice of any such waiver shall be given to the EPA Administrator and filed with the **Federal Register** with the publication of notice of proposed or final agency action and shall include an explanation of the reasons for such waiver, together with supporting data and a description of the factual situation in such detail as is determined will apprise the EPA and the public of the reasons for such waiver.

We have determined that the five working days opportunity for prior comment by the EPA Administrator should be waived. The reasons for the waiver are the same ones which support making this rule immediately effective and are set forth in the preceding sections of this preamble. Furthermore, at the time of their issuance, a copy of the Guidelines, which referenced the Activation Order and requested comments on the adoption of an adjustment mechanism, was sent to the EPA Administrator. The Administrator had no comments on that document.

A copy of this rule has been provided to the EPA and the EPA Administrator's comments, if any, will be considered in the promulgation of the final rule.

D. Section 553(d) of the Administrative Procedure Act

Section 553(d) of the Administrative Procedure Act requires that a substantive rule will not become effective less than thirty days after its publication. This requirement will not be applicable if an agency finds good cause to waive this requirement and publishes this finding together with the rule.

The need for immediate adoption of this rule provides good cause to waive the section 553(d) requirement.

E. Executive Order 12044

The sixty-day advance public comment period required for proposed rulemakings pursuant to Executive Order 12044, entitled "Improving Government Regulations" (43 FR 12661, March 23, 1978) and DOE's implementing procedures, DOE Order 2030.1 (44 FR 1032, January 3, 1979), have been waived by the Deputy Secretary of Energy as they relate to the interim final rule. Prior to the issuance of a final rule, the rulemaking procedures, including the preparation of a regulatory analysis if one is required, will be satisfied.

III. Comments Received

A. Introduction

Hearings were held on the Activation Order and the Guidelines on March 21, 22 and 23, 1979. A total of 422 written and oral comments on the Activation Order and the Guidelines were received representing the following groups: major refiners (14); large independent refiners (2); small refiners (18); branded marketers (181); non-branded marketers (149); trade associations (31); industrial users (6); utilities (1); governmental representatives (13) and miscellaneous commenters (7). In addition, a number of recent comments addressed the April 17 Notice of Intent. The issues discussed in the comments are analyzed here. Although a number of the major issues overlap, such as the selection of a base period year and the adoption of a growth provision, we have presented them separately. All comments received up to the preparation of this notice, including those that were late filed, were considered.

B. Selection of a base period year

In the preamble to the Activation Order, we asked whether the use of an updated base period should be extended, what the most appropriate base period is, and whether there would be any merit in preserving firms' actual unadjusted base period uses as a minimum allocation entitlement. Almost all of the commenters addressed these questions.

The specific base period year selected in the Activation Order, July 1, 1977 through June 30, 1978, drew the most attention. Those for and against were almost evenly divided. Those in favor (137) felt that it was the fairest period available in recent market history; those opposed (125) indicated a variety of reasons which ranged from underlifting of allocation entitlements during the period selected (primarily for price consideration) which caused them to favor earlier periods of high purchases, to new businesses with low starting volumes in the base period and growth afterward which caused them to favor more recent periods. Branded (96) and non-branded (104) marketers commenting divided almost evenly on this subject while refiners were almost unanimous in their support for some updated base period.

The second major alternative suggested as a base period year was the calendar year 1978. A 1978 calendar year base period received 82 comments in favor. Those in favor were predominantly marketers (63), both branded and non-branded, who felt that the corresponding months in 1978 more accurately reflected the marketplace than did the base period selected in the Activation Order.

Seventy-eight marketers and trade associations (representing both branded and non-branded firms) were in favor of a choice of volumes from either 1972 or an updated base period, whichever were higher; they alleged that a choice would be the fairest mechanism which would protect their business interests.

The last major alternative suggested was the "rolling" base period, in which a firm's allocation entitlement for a month would be based on its purchases in the corresponding month of the previous year. Refiners (16) and some marketers (17—a few of which included trade associations) were predominantly in favor of a rolling base period.

While many firms favored complete deregulation, others recognized that in a time of shortage, effective allocation regulations are needed. Commenters stated that using 1972 as a base period year worked only when significant volumes of surplus product existed to accommodate shifting demand patterns. Continuing the use of 1972 as the base period year in a time of shortage would cause distortions between regions which grew at different rates since 1972 and would disadvantage those firms which also grew significantly since 1972 but did not receive adjustments to their base period use. Furthermore, they stated, placing 1972-based allocations in the hands of those firms whose needs have declined leads to unwarranted brokering of product.

On the other hand, other commenters pointed out that the complete abandonment of 1972 as the base period year would legitimize the practices of suppliers that sold at uncompetitive prices or used other unfair practices to discriminate against particular classes of purchasers. Firms whose purchases declined generally favored retaining 1972 allocation entitlements as a floor for current entitlements. The independent wholesale marketers and jobbers of Texaco, Inc. pointed out the following specific unfair practices in the 1977–78 base period that reduced their purchases: (a) the reduction of jobber margins, (b) the reduction of commissions to commission agents, (c) directly reduced allocations and limitations on growth for certain classes only, and (d) rebates for direct refiner-supplied retailers but not jobber-supplied retailers.

Commenters opposed to using the choice of either the higher of 1972 or 1978 volumes as base period volumes pointed out that under such a scheme

firms whose needs have grown since 1972 would receive less than if a single current twelve-month period were selected. Some refiners stated that if purchasers were given the choice between the higher of 1972 or 1978 purchases, their supply obligations would be greatly inflated and their allocation fractions would decline significantly.

Those persons commenting in favor of the July 1977 through June 1978 base period stated that the period chosen in the Activation Order was the most recent twelve-month period of "normal" gasoline distribution. They contended that the last half of 1978, and particularly the last two months of 1978, was marked by gasoline shortages, unusually high demand and increasing prices.

On the other hand, marketers from one state indicated that the second half of *1977* was distorted and should not be used as a base period year. Furthermore, the point was made that the transition between June and July of 1979 from June 1978 to July 1977 volumes would cause unnecessarily abrupt dislocations during peak driving months because demand levels were different in the two years and many firms had different suppliers. Persons commenting in favor of calendar year 1978 as the base period year asserted that the aberrations during the second half of 1978 were not as severe as some commenters pictured them and that it is essential that the base year reflect, as closely as possible, the most recent historical period.

Those commenters in favor of a rolling base period pointed out that such a concept will always reflect the most recent pattern of purchases, that it would provide certainty to all firms in that their present actions will determine their future rights and obligations, and that it would be simple to administer. Those opposed to a rolling base period stated that such a scheme would discourage conservation, since no firm would wish to reduce its purchases. Commenters representing independent marketers stated that under such a mechanism, they could be faced with the choice of purchasing product at high prices, which would squeeze their profit margin, or of reducing their purchases, which would cause them to have a lower entitlement the following year. Adoption of a rolling base period would tend to favor refiner and jobber-operated retail sales outlets. As one independent marketer stated, under a rolling base period, he would "roll right out of business."

C. *Growth Adjustment*

There was widespread agreement that some provision was needed to account for significant changes in volumes of gasoline purchased by firms during or after the base period. It was stated that the updated base period did not reflect recent changed circumstances, such as where large capital investments were made, where there was a change in ownership of a firm, where a method of marketing changed or where new businesses or residential areas or a new highway opened in the vicinity of a retail station.

Firms commenting on the large number of applications filed with the OHA stated that the exceptions process is inadequate and relief cannot be obtained as quickly as necessary. Furthermore, requiring individual firms to file for exception relief has placed a large burden on small businesses that, typically, do not have the necessary expertise or resources.

Commenters differed as to the necessary scope of the adjustment procedure. Marketers took the position that to assure compliance by prime suppliers who, it was alleged, were not all acting in accordance with the Guidelines, the adjustment provision should be automatic and mandatory. Certain refiners stated that prime suppliers should not be forced to accept adjustments because that will lead to the inflation of supply obligations without adequate consideration being given to their ability to supply all of their customers. However, giving such discretion to suppliers, it was contended, would provide further opportunity for unfair preferential treatment. One refiner did suggest an adjustment mechanism, similar to the one we are adopting, that would allow firms to substitute as their base period use their October 1978 through January 1979 average monthly purchases in instances where such an average was at least ten percent greater than a firm's base period purchases.

One commenter, a United States Senator, stated that although providing for an automatic growth adjustment is a step in the right direction, the choice of October 1978 through February 1979 as the recent averaging period discriminates in favor of areas that have high winter demands *vis-a-vis* states, such as Nevada, with low historical purchases during the winter months. The Senator stated that in his state, Nevada, the summer months are the peak demand months and a standard measure beyond the base period is needed to measure growth.

Others commenting on an automatic growth adjustment stated that we should clarify which suppliers would be responsible for supplying adjusted volumes and that a firm's eligibility for an adjustment should be based on an increase over its aggregate base period purchases in a month and not on its purchases from a particular supplier. Another commenter indicated that bulk purchasers should be eligible for an adjustment. We also received comments from mid-level marketers who believe that the adjustment provision should apply directly to their increased purchases as well as to the growth of retail sales outlets and wholesale purchaser-consumers.

Lastly, one refiner commented that basing an adjustment on a comparison with purchases in a particular month does not account for monthly fluctuations in deliveries which randomly may occur at the end of one month or the beginning of the next. The typical volume of a delivery was stated to be approximately 8,000 gallons. We believe that the additional volumes required to be supplied as a result of such fluctuations will not have major impact.

D. *Inter-Refiner Sales*

In the preamble to the Activation Order, we solicited comments as to whether the allocation regulations should be changed to relieve refiners and other suppliers of the obligation to supply gasoline to refiners.

Commenters were evenly divided on this issue. Certain refiners stated that in times of shortage, a refiner which sold gasoline in the base period to other refiners will have to reduce the volume of gasoline it makes available to its other customers. In the alternative they asserted that they would be forced to purchase gasoline on the spot market and, under the price rules, would in effect subsidize the refiner and the customers of the refiner purchasing the product, at the expense of their own customers. The firms opposed to continuing such obligations indicated that such sales generally were outside the normal chain of distribution and were done primarily to balance inventories.

Firms in favor of continuing supply obligations to refiners that purchased motor gasoline in the base period asserted that in many instances such sales are essential to their continuing ability to supply gasoline and are a regular, not aberrational, source of their supply. They pointed out that many small and independent refiners are also marketers of gasoline and are

purchasers of substantial volumes of gasoline.

One trade association representing a number of refiners proposed that a rule be adopted which would include as a supply obligation ongoing sales to refiners, but exclude "deviational" sales that do not reflect normal distribution of product. Under this suggestion, regular and recurring spot market purchases by a refiner, even if from different sellers, would give rise to supply obligations.

E. *Temporary Exigent Circumstances*

One of the provisions in the Activation Order and the Guidelines which drew the most attention provided that a purchaser could use his purchases in the corresponding month of the previous year if the purchaser suffered a decrease in purchases during the base period month as a result of a "temporary exigent circumstance." Since the issuance of the Activation Order, there has been difficulty in defining precisely what a temporary exigent circumstance is. The difficulty in defining the term has caused many disputes between purchasers and suppliers. As to the relief provided by the provision, commenters stated that if a temporary exigent circumstance occurred during the base period, purchases in a later period rather than an earlier one would better reflect current needs.

F. *Base Date for Price Regulations*

In the Activation Order, we solicited comments as to whether a more recent date than May 15, 1973 should be used as a base date for the price regulations. The consensus among the commenters was that the current base date was a reference point which firms understand and that changing it would not provide sufficient benefit to outweigh the massive confusion that would occur. Specifically, it was pointed out that an updated base date for pricing purposes, without the retention of 1973 margins as a minimum, would have a disastrous effect on the independent segment of the petroleum industry.

G. *Regulatory Procedures*

There was widespread agreement among the commenters that the updated base period was initially implemented with inadequate notice which was a major cause of the dislocations in March 1979. Many commenters stated that future changes should occur only after giving the industry time to plan and after the receipt of public comment.

There was comment that repeated 90 day activation orders would not provide for a stable regulatory environment and that a permanent rule is necessary and that the confusion was compounded by the need to refer to more than one document. On commenter stated that the adoption of a rule should not be delayed by further hearings. Another stated that a rulemaking proceeding should be instituted to update permanently the base period. Finally, one group questioned our legal authority to promulgate rules without first soliciting the views on the specific regulations proposed.

H. *Unleaded Gasoline*

One commenter specifically pointed out that the allocation rules for unleaded gasoline set forth at 10 CFR 211.108 are not causing great disruptions because they are generally being ignored. It suggested that the allocation of unleaded gasoline should be based on historical requirements for that product.

IV. Amendments adopted

A. *Base Period Update and Relation to Subpart A*

Through September 30, 1979, we have updated the motor gasoline base period and codified the Guidelines by amending Subpart F of 10 CFR Part 211. In § 211.101 we have made clear that the provisions of Subpart F prevail over any inconsistent provisions of Subpart A. In particular, we wish to emphasize that the assignment procedures permitting suppliers to supply new purchasers of motor gasoline on an interim basis pending an ERA assignment and allowing upward certification during that time are effective notwithstanding any inconsistent language in § 211.10 or § 211.12. The only change adopted in Subpart A is in § 211.13(c), which has been amended to provide that the adjustments allowed under §§ 211.104 and 211.105 are certifiable by a wholesale purchaser-reseller to its suppliers in proportion to that part of its base period use received from each supplier.

In § 211.102, the definition of "base period" is changed to mean the month of the period November 1977 through October 1978 corresponding to the current month. This replaces the 1972 base period year of the earlier permanent regulations and the July 1977 through June 1978 base period year of Activation Order No. 1. By excluding the months of November and December 1978, we believe that most of the serious 1978 distortions will not be included in the base period.

B. *Unusual Growth Adjustment*

A significant new feature of this rule is § 211.104, which provides an unusual growth adjustment. It provides the following:

1. *Eligibility and size of adjustment.* Beginning in May 1979, a retail sales outlet, whoesale purchaser-consumer or a bulk purchaser of motor gasoline (or its predecessor whose allocation it received) is eligible for an automatic growth ajustment in any month if it purchased gasoline during at least three of the months during the period October 1978 through February 1979 and the monthly average volume of such purchases from all suppliers during those months was at least ten percent greater than the aggregate amount of its actual motor gasoline purchases during the base period month from all suppliers. In such a case it can substitute as its base period volume its average monthly purchases in those months of the October 1978 through February 1979 period during which it purchased gasoline. The purchaser's base period suppliers will be *required* to supply the adjusted volumes.

While it would always be useful to develop a growth mechanism which is favorable to every firm and state, we are constrained to choose the October 1978—February 1979 period as the period in which to measure growth, since it is the only recent period following the base period but before March 1, 1979 when allocation of gasoline became widespread. By changing the base period to include the corresponding summer months of 1978 rather than 1977, we have provided that firms in all states will, this summer, be entitled to their actual purchases during the most recent corresponding period in which the market situation was relatively normal. For winter months, similarly, firms that qualify for the adjustment will be entitled to volumes based on recent winter purchases rather than the previous winter's purchases. We have added into the 5-month averaging period October 1978, the last month of the base period, because during that month gasoline demand levels continued nationally at levels approaching those of the summer months. In addition, any adjustment provision we could have adopted that would have been based on a case-by-case comparison to specific qualitative standards would inevitably have led to many disputes between suppliers and purchasers which would have delayed the effective implementation of an adjustment mechanism.

The automatic adjustment provisions are available only for retail sales outlets, wholesale purchaser-consumers and bulk purchasers, but not to mid-level marketers. This is because jobber

and other marketer growth will be reflected in their increased sales to retail sales outlets. Since increased sales to retail outlets will increase mid-level marketer supply obligations and these increased obligations can in turn be certified upward to their base period suppliers, mid-level marketers will receive their share of growth adjustments.

The adoption of the growth provision eliminates much of the need for, and problems associated with, a temporary exigent circumstance provision. However, since there are firms which did not experience significant growth after the base period and which experienced a temporary exigent circumstance during the base period, we have decided to continue the use of a temporary exigent circumstance provision which allows a purchaser to substitute its earlier volumes as a base period volume.

As indicated in our Notice of Intent, the rule will also provide relief for the month of April 1979 in extraordinary circumstances thereby confirming what has already been done by OHA through a class exception. If the average monthly gasoline purchases by a retail sales outlet, wholesale purchaser-consumer or bulk purchaser in the months it purchased motor gasoline in the period October 1978 through February 1979 were at least 35 percent higher than its total April 1978 purchases from all suppliers, the October 1978–February 1979 average monthly purchase figure may be substituted for its April 1978 purchases as its base period use.

Any relief a firm is entitled to under an OHA decision, whether issued before or after this rule, the benefits of which exceed that provided by this rule, will be effective notwithstanding this rule unless modified by the OHA.

2. *Apportionment among suppliers.* The portion of the adjustment that each base period supplier is required to supply shall be derived on the following basis: If the amount of the adjustment, i.e., the average monthly volumes supplied during the October 1978 through February 1979 period in excess of actual base period purchases, is attributable to particular base period suppliers, then each such supplier will be responsible for the portion of the adjustment it supplied. If a purchaser's aggregate average monthly purchases in the October 1978 through February 1979 period does not average ten percent greater than its aggregate purchases in the base period month, no base period supplier is required to supply it additional volumes as an adjustment, even though any particular supplier may have provided greater than ten percent more product in the October 1978 through February 1979 period than in the base period month. If a portion of the adjustment is not attributable to any of those suppliers that supplied the purchaser during the base period month, then that portion of the adjustment will be supplied by all the base month suppliers based on the proportional share of gasoline the firm purchased from each supplier in that month.

A supplier shall make the adjustment under section 211.104 without a request by a wholesale purchaser or bulk purchaser to the extent that the supplier's records indicate that the purchaser is eligible for the adjustment. As noted above, adjustment to a purchasers' base period use for a particular month will automatically become part of a supplier's supply obligations that in turn can be certified upward to its base suppliers.

3. *Examples.* A few examples will serve to illustrate the operation of the adjustment provision:

Example 1. Facts. Purchaser P, a retail sales outlet, purchased 50 gallons of gasoline from Firm X and 45 gallons of gasoline from Firm Y during May 1978. During June 1978 it purchased a total of 90 gallons, all from Firm X. It was closed and purchased no gasoline during October and November 1978. During each of the months December 1978 and January 1979 it purchased 100 gallons from Firm X. During February 1979 it purchased 100 gallons from Firm Y.

Analysis. Firm P's average monthly purchases during those months of the October 1978 through February 1979 period that it purchased motor gasoline is 100 gallons per month.

It is not eligible for a growth adjustment for the month of May 1979 because its average monthly purchases during the October 1978 through February 1979 period, 100 gallons, is less than ten percent greater than its total monthly purchases during May 1978, 95 gallons.

For the month of June 1979 it is eligible for a growth adjustment because its average monthly purchases in the October 1978 through February 1979 period, 100 gallons, is ten percent greater than its June 1978 purchases, 90 gallons. Its adjusted base period volume for June 1979 will be 100 gallons. Firm X, its only June 1978 supplier, is responsible for supplying the entire 100 gallons.

Example 2. This example illustrates the situation where a firm purchased gasoline from multiple suppliers during a base period month and during the five-month averaging period. While we recognize that the operation of the rule becomes quite complex where many suppliers are involved, we expect these cases to be rare because most retail sales outlets did not purchase motor gasoline from multiple suppliers in any one month.

Facts. In June 1978, Purchaser P purchased a total of 36,000 gallons; Firm X supplied it 24,000 gallons and Firm Y supplied it 12,000 gallons. In the October 1978 through February 1979 period, its monthly purchases from each supplier were as follows: Firm X supplied 30,000 gallons in each of the five months October 1978 through February 1979. Firm Y supplied it 15,000 gallons in each of the months October 1978 through January 1979. Firm Z supplied it 15,000 gallons during February 1979. Firm P's monthly purchases are tabulated in Table 1.

Table 1.—*Firm P's Monthly Purchases (thousands of gallons)*

	June 1978	Oct. 1978	Nov. 1978	Dec. 1978	Jan. 1979	Feb. 1979
Firm X..	24	30	30	30	30	30
Firm Y..	12	15	15	15	15	0
Firm Z..	0	0	0	0	0	15
Total.	36	45	45	45	45	45

Analysis. Firm P's total purchases in the corresponding base period month of June 1978 was 36,000 gallons. Its total purchases during the October 1978 through February 1979 period is 225,000 gallons, or 45,000 gallons per month. From June 1978 to the averaging period, its purchases grew by 9,000 gallons per month, a 25 percent increase. Therefore, it is eligible for an unusual growth adjustment. Its adjusted base period volume will be 45,000 gallons for the month of June 1979.

The suppliers responsible for supplying the volumes will be its base period suppliers, Firm X and Firm Y. Their respective obligations will each consist of two parts: the adjusted volumes attributable to them and their prorated share of the volumes supplied by Firm Z during the averaging period.

The attributable monthly volumes are calculated as follows: During the October 1978 through February 1979 period, Firm X supplied a total of 150,000 gallons, or 30,000 gallons a month. During that period, Firm Y supplied a total of 60,000 gallons, or an average of 12,000 gallons a month (averaged over the five months that Firm P purchased gasoline and not the four months that Firm Y supplied). Thus, the attributable portions of the adjustment to be supplied by Firm X and Firm Y are

30,000 gallons and 12,000 gallons, respectively.

The total unattributable portion of the adjustment is 3,000 gallons (i.e., the 15,000 gallons supplied by Firm Z divided by five). The 3,000 gallons will be supplied by Firms X and Y in proportion to the volumes they supplied during the base period month, i.e., two to one, respectively. Thus Firm X will supply an additional 2,000 gallons and Firm Y an additional 1,000 gallons.

Therefore, Firm X's obligation to Firm P for June 1979 is 30,000 gallons plus 2,000 gallons or a total of 32,000 gallons. Firm Y's obligation to Firm P for June 1979 is 12,000 gallons plus 1,000 gallons or a total of 13,000 gallons.

C. Notice

Each supplier which, during the base period, sold motor gasoline to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall, under § 211.103(e), report by June 15, 1979 to each of those purchasers the volume of motor gasoline which it sold or otherwise transferred to that purchaser in each month of the base period year. (This is a restatement of the requirement that is contained in § 211.12(c) of Subpart A and in § 211.12(c) as it was amended under the Activation Order, except that the latter required such notification to have been provided by March 26, 1979. With the change in the base period, and the adoption of an adjustment provision, suppliers will be required to reaffirm their supply obligations.)

In addition, under new § 211.104(f), to ensure purchasers will be informed of the size of the growth adjustment that their suppliers recognize, by June 15, 1979 each motor gasoline supplier shall also report to each of its base period purchasers which its records indicate as eligible for a growth adjustment the monthly average gasoline purchases which it supplied during the October 1978 through February 1979 period that were at least ten percent higher than the volumes it supplied during any base period month. Although the notification is not required until June 15, 1979, adjustments are required to be made in May 1979.

Each firm desiring to receive an adjustment for volumes not attributable to a particular base period supplier is required to notify each base period supplier of the additional amount of the adjustment to be added to its base period use from that supplier. A purchaser requesting such an additional amount will be required to notify a base period supplier of the following: (1) Its aggregate purchases in a base period month: (2) its average monthly gasoline purchases for those months, of the October 1978 through February 1979 period, in which it purchased gasoline; (3) the portion of its growth adjustment attributable to the particular supplier; and (4) the amount of the *un*attributable portion of the adjustment required to be supplied by the supplier (i.e., the supplier's prorated share of the unattributable volumes). Because we are concerned that purchasers should not have to disclose proprietary data to their base period suppliers, who in some cases may be their competitors, purchasers will not be required to disclose to one supplier specific volumes which were supplied by other firms.

D. *Resolution of Disputes*

If a supplier and purchaser disagree over the volumes required to be supplied as a base period volume or as an adjusted base period volume, under section 211.103(f), application for resolution of the dispute may be made to the appropriate DOE enforcement division, i.e. to either an ERA Regional Office or the DOE Office of Special Counsel. DOE may require the production of any relevant information necessary to resolve the dispute. If a supplier's position is determined to be incorrect, it will be obligated to make up any volumes it should have supplied but did not.

E. *New Wholesale Purchasers*

Section 211.105(a) incorporates the assignment procedures for new wholesale purchasers that were contained in the Guidelines, Paragraphs No. 2(a) and 7. Appropriate modification has been made to conform volumes that will be assigned to new purchasers to those volumes that purchasers may obtain under the adjustment provision of section 211.104. The section provides that where a firm made no purchases from any supplier during a base period month, a supplier and the purchaser shall attempt to agree mutually to a base-period use. That agreed-upon volume does not formally become effective until an ERA regional office, upon application, issues an assignment order. In the interim, however, pending an assignment order, the supplier may supply agreed-upon volumes, provided application for an assignment has been filed. If those volumes exceed volumes which are later assigned, the difference must be deducted from base period volumes in future months.

If the purchaser purchased motor gasoline during at least three months of the October 1978 through February 1979 period, and the monthly average of those purchases generally reflects an appropriate base period volume, ERA will assign a base-period use which equals those average monthly purchases.

As to firms which purchased motor gasoline in fewer than three months from October 1978 through February 1979, an evaluation will be done by the ERA Regional Office of the base-period volume of comparable firms in the same area before it makes an assignment of a base-period use. Such evaluation and assignment shall be made pursuant to the "Guidelines for Evaluation of Applications for Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets."

If (1) a wholesale purchaser-reseller has accepted and is supplying proposed base period volumes to a purchaser that does not have base period volumes for a base period month; and (2) the purchaser or supplier (on behalf of the purchaser) has applied to ERA for an assignment for those months; then the wholesale purchaser-reseller may, on an interim basis, include such volumes in its sales obligations as a temporary adjustment and may upward certify such volumes to its supplier. In the interim, the wholesale purchaser-reseller's supplier shall include such volumes as part of its base-period supply obligations pending an ERA assignment.

F. *Supplier Responsibility for Assignments Made After November 1, 1977*

Section 211.105(b) provides the means for determining base period suppliers for firms which had no previous base period supplier and received an assignment of a base period volume and supplier from ERA after the beginning of the base period (that is, after November 1, 1977). If such a firm is eligible for a growth adjustment under § 211.104, *i.e.*, it has a monthly average volume in the October 1978 through February 1979 period which is at least ten percent greater than the firm's actual purchases in a base period month, as determined under section 211.104(a), then the firm's base period suppliers will be determined as follows:

(1) The *assigned* supplier must supply the assigned or adjusted base period volumes, whichever are higher, for (a) the base period months between November 1, 1977 and the assignment's effective date and (b) those base period months between the effective date of the assignment and October 31, 1978 in which the firm made no purchases.

(2) The firm's *actual* suppliers must supply the adjusted base period volumes for the base period months between the assignment's effective date and October 31, 1978 in which there were purchases.

The portion of the adjustment each supplier is required to supply shall be derived on the basis described in § 211.104(b).

If such a firm is not eligible to receive an automatic adjustment under section 211.104 (because either its October 1978 through February 1979 average monthly purchases were not at least ten percent higher than its average monthly purchases during the base period month or it purchased motor gasoline in fewer than three months of the October 1978 through February 1979 period), its actual purchases and suppliers during the base period month will determine base period volumes and suppliers.

(3) Assignments made under Activation Order No. 1 and the Guidelines thereto will remain valid, but ERA may, upon application, make and upward adjustment to a firm's base period use based upon the assignment procedures for new wholesale purchasers.

G. *Reassignments, Including Three-Party Agreements*

Section 211.105(c) is the rule which corresponds directly to Paragraph No. 3 of the Guidelines relating to reassignments. It applies to purchasers to whom assignment orders were issued after November 1, 1977 which terminated one supply obligation and established another (i.e., reassignments, including three-party agreements).

For the current months corresponding to base period months prior to the effective date of the assignment order, the newly assigned supplier will be the base-period suppler. Its supply obligation as a result of the reassignment will equal the volumes reassigned, or the actual purchases during the corresponding month of the base period from the supplier whose obligations were terminated, whichever is less. If actual base-period purchases from the supplier whose obligations were terminated exceed the volumes reassigned, the original base period supplier shall be the base-period supplier for the difference. Any other actual suppliers, whether they supplied before or after effectiveness of the assignment order, shall also be base period suppliers for the actual volumes supplied. The newly assigned base period supplier shall also be responsible for supplying the unattributable portion of the adjusted base period volumes determined under section 211.104 which would otherwise be the responsibility of the supplier whose obligations were terminated. If an application is made to the ERA regional office for an assignment, the rule allows—but does not require-the newly-assigned supplier to supply on an interim basis the difference between the assigned volumes and the actual purchases from the supplier whose obligations were terminated for the portion of the base period prior to effectiveness of the assignment. Pending ERA action on the assignment application, it may upward certify such volumes to its supplier. That supplier shall then include such volumes as part of its supply obligations pending ERA action.

For those base-period months after the reassignment order was issued, actual purchases and actual suppliers will determine base-period volumes and supply obligations.

H. *Branded resellers*

Section 211.105(d) adopts the branding section of Paragraph No. 8 of the Guidelines, and also replaces the previous similar provisions of paragraphs (b), (c) and (d) of § 211.105. It provides that any wholesale purchaser-reseller of motor gasoline which is a branded independent marketer and which has a base period supplier different from the firm that was its supplier on February 28, 1979 under whose brand it was selling on that date, may, at its option, designate as its base period supplier that supplier which was its supplier on February 28, 1979 and terminate its supplier/purchaser relationship with all its other base period suppliers. If a designation is so made, the firm that supplied the purchaser on February 28, 1979 will become the purchaser's sole base-period supplier and will supply the purchaser's base period volumes as part of its supply obligations. It may certify upward such volumes to its supplier, which in turn shall include volumes certified as part of its supply obligations.

A wholesale purchaser-reseller which designates a firm as its sole base period supplier pursuant to section 211.105(d) shall provide, by June 15, 1979, written notice of the designation and the corresponding terminations to any suppliers which supplied the wholesale-purchaser reseller during the base period. Such wholesale purchaser-reseller shall also provide written notice by the same date to the designated supplier of the amount of the wholesale purchaser-reseller's base period use which had been supplied by other suppliers during the base period and which is to be supplied by the designated supplier. The notice to the designated supplier shall include the names and addresses of the actual suppliers during the base period and of the wholesale purchaser-reseller and the location of any facility, including any retail sales outlet concerned.

Since this provision was contained in the Guidelines in substantially the same form, in most cases the necessary notices will already have been provided.

I. *Temporary Exigent Circumstance Adjustment*

Section 211.105(e) continues, for retail sales outlets only, the provision in the guidelines relating to temporary exigent circumstances. Middle level marketers, which were eligible to use the provision in the Activation Order and Guidelines, will now have to petition the Office of Hearings and Appeals for relief.

If a retail sales outlet has experienced a temporary exigent circumstance for a month during the base period year causing at least a ten percent reduction in its normal purchases for that month, its base-period volume may be revised to equal those volumes purchased in the corresponding month in the period November 1976 through October 1977. Its base-period supplier for these volumes will be the supplier from whom the purchases were reduced because of the exigency. The purchaser shall notify the supplier, who shall supply the additional volumes if the purchaser is qualified under this rule to receive them.

No assignment by the ERA Regional Office is required. For any month, if it is eligible, a retail sales outlet may, at its option, receive base period volumes determined under the adjustment provision of § 211.104 or the procedures of § 211.105(e), but not both. The upward certification provision of § 211.13(c) discussed above in connection with growth adjustments applies as well to adjustments made under § 211.105(e).

If the supplier is a major refiner subject to the jurisdiction of DOE's Office of Special Counsel, then notification of the temporary exigent circumstance and the use of corresponding months of the November 1976 through October 1977 period must be provided by the refiner to the DOE audit team assigned to that refiner. Notification should be provided by the refiner as soon as practicable after it is informed by its purchaser.

As stated in the rule and in the Guidelines, "temporary exigent circumstances" includes, but is not limited to,

(1) Facility shutdowns, including either the purchaser's facility or the supplier's facility;

(2) Limited access to facility (such as where the street in front of a retail station was being repaired and access to the station was therefore impaired);

(3) Supplier's inability to deliver (a supplier's declaration of an allocation fraction less than one (1.0) will not, by itself, be an adequate demonstration of a supplier's inability to deliver);

(4) Reduced capability of purchaser to function as a normal business, including financial difficulties impacting volume, but does not include an unwillingness of purchaser to purchase because of a lawful price.

If a purchaser believes that its supplier's price during the base period was unlawful, it should file a complaint with the DOE's Office of Enforcement or Office of Special Counsel, as appropriate. If a purchaser was unwilling to purchase product at a price which was determined in an enforcement action by DOE to violate the DOE price regulations, the update of the base period will not affect any enforcement action or any remedy thereunder.

In general, a *prima facie* case for the finding of a temporary exigent circumstance can be made in every instance in which purchases in a base period month were at least 10 percent less than in the corresponding month of the previous year and was abnormally low in comparison to other months during the base period.

J. *Redirection of Product*

The rule provides in § 211.107(c) that pursuant to the procedures of Subpart G of Part 205, if sufficient supplies of gasoline are available to mitigate the adverse impact on firms unable to obtain adequate volumes of product, ERA may redirect product or take other appropriate action to enable a purchaser to obtain in any month up to 75 percent of its base-period volume for that month. This section is also derived from a paragraph in the Guidelines and is independent of the authority contained in § 211.14(a) and § 205.39. However, its adoption is not meant to preclude the use, where appropriate, of other applicable provisions.

K. *Inter-Refiner Sales*

In view of the lack of clear support for such a provision, we have decided not to adopt at this time the exclusion of inter-refinery sales from a refiner's supply obligations. Hardships created by inter-refinery sales for individual refiners can be dealt with, as they have in the past, through case-by-case exceptions relief.

L. *Other Matters*

Section 211.106(c)(2)(ii), relating to the closing of retail sales outlets prior to June 1, 1974, has been deleted. Section 211.106(b)(4), relating to the 1973–1974 growth adjustment in § 211.13(b)(1), has also been deleted.

M. *Specific Comments Solicited*

We solicit comments as to whether firms which shifted volumes from one retail outlet to another under the 30 percent rule of § 211.106(b)(3)(ii) between November 1, 1977 and February 28, 1979 should, in every instance, be allowed to upward certify growth or temporary exigent circumstance adjustments.

Under the rule adopted, suppliers and purchasers will be able to agree on base period volumes for new stations and begin supplying them pending ERA action. However, the one-time growth adjustment we have adopted today will not account for growth of existing retail sales outlets after March 1, 1979. Therefore, without setting forth specific regulatory language, we are proposing and are requesting specific comment on a rule, suggested by a refiner, that would, within certain limitations, allow suppliers without ERA approval, to adjust their branded and unbranded wholesale purchaser-reseller base period volumes to reflect the following:

1. A change in the operator of a retail outlet;

2. A change in ownership in a retail outlet involving the sale of land or the making of improvements (or both) by the supplier to the operator of a retail outlet;

3. Changes in physical characteristics through reconstruction or expansion of a retail outlet resulting in a significant increase in the operator's business;

4. Changes in marketing strategy; such as, conversion from full to self-service, car wash, conversion of stock, etc.;

5. Significant changes in the supply/demand balance in a particular market area served by a retail outlet, such as, closing of other retail outlets, opening of new shopping centers and subdivisions, and building of new roads.

Suppliers would only be permitted to make such adjustments in amounts which would affect suppliers' applicable allocation fractions in any month by less than 2 percent. This would provide limited flexibility within the current regulations while assuring that other purchasers who did not undergo changed circumstances would only be minimally affected.

We are not changing our present regulations on the allocation of unleaded gasoline at this time, but are specifically requesting comment on appropriate modifications to our unleaded gasoline allocation rules so that they may more closely follow current demand patterns and to provide special allocations for the production of "gasohol." In this connection if unleaded gasoline shortages occur, we solicit information, which we intend to share with the Environmental Protection Agency (EPA), as to whether the regulations of the EPA requiring the sale of unleaded gasoline at retail outlets selling leaded gasoline could yield unintended results, such as requiring a station that runs out of unleaded gasoline to close down, even though it has available supplies of leaded gasoline for which there is demand by the motoring public during a period of general gasoline shortages.

Some comments prepared and received subsequent to our April 17 Notice of Intent objected to comparing actual purchases in a base period month to the monthly average in the period October 1978–February 1979 to measure growth. One objection was that, by comparing to a period during the fall and winter months, those regions of the country that have peak demand in the summer may show no growth at all, even though the actual growth on an annual average basis may be well in excess of 10%. We recognize that this may be a problem with the growth adjustment mechanism in this rule. We therefore specifically request comments on an appropriate growth adjustment mechanism that will take into account seasonal demand variations, regional shifts in population and other factors. In particular, suggestions as to an appropriate and equitable means of accounting for growth are requested.

N. *Revocation of Activation Order*

Because the provisions of both the Activation Order and the Guidelines have been incorporated in the rule adopted today, the February 22, 1979 order activating certain portions of the standby product allocation regulations will be revoked for May 1979.

V. Written Comment and Public Hearing Procedures

A. *Written Comments*

You are invited to participate in this proceeding by submitting data, views or arguments with respect to the matters contained in the interim rule or matters which should be included in a final rule. Comments should be submitted by 4:30 p.m., e.d.t., July 10, 1979 to the address

indicated in the "Addresses" section of this notice and should be identified on the outside envelope and on the document with the docket number and the designation: "Motor Gasoline Allocation Base Period." Ten copies should be submitted.

Any information or data submitted which you consider to be confidential must be so identified and submitted in writing, one copy only. We reserve the right to determine the confidential status of such information or data and to treat it according to our determination.

B. *Public Hearings*

1. *Procedure for Requests to Make Oral Presentation.* If you have any interest in the matters discussed in the rule, or represent a group or class of persons that has an interest, you may make a written request for an opportunity to make oral presentation by 4:30 p.m., local time, on the dates set forth in the "Dates" section of this notice for the respective hearings. You should also provide a phone number where you may be contacted through the day before the hearings.

If you are selected to be heard, you will be so notified before 4:30 p.m., e.d.t., May 30, 1979 for the Washington, D.C. hearing and by June 13, 1979 for the San Francisco, California hearing. You will be required to submit one hundred copies of your statement to the hearing location, indicated in the "Addresses" section of this notice, before 4:30 p.m., e.d.t., June 6, 1979 for the Washington, D.C. hearing, and on the morning of the hearing for the San Francisco hearing.

2. *Conduct of the Hearings.* We reserve the right to select the persons to be heard at the hearings, to schedule their respective presentations, and to establish the procedures governing the conduct of the hearings. 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 hearings. These will not be judicial-type hearings. Questions may be asked only by those conducting the hearings. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity 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.

You may submit questions to be asked of any person making a statement at each hearing to the respective addresses indicated above for requests to speak before 4:30 p.m., local time, on the day before each hearing. If you wish to have a question asked at the hearings, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearings, the presiding officer will determine whether the question is relevant, and whether the time limitations permit it to be presented for answer. The question will be asked of the witness by the presiding officer.

Any further procedural rules needed for the proper conduct of the hearings will be announced by the presiding officer.

Transcripts of the hearings will be made and the entire record of the hearings, including the transcripts, will be retained by the ERA and made available for inspection at the DOE Freedom of Information Office, Room GA–152, James 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. You may purchase copies of the transcripts of the hearings from the reporter.

(Emergency Petroleum Allocation Act of 1973, 15 U.S.C. § 751 *et seq.*, 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, 15 U.S.C. § 787 *et seq.*, Pub. L. 93–275, as amended, Pub. L. 94–332, Pub. L. 94–385, Pub. L. 95–70, and Pub. L. 95–91; Energy Policy and Conservation Act, 42 U.S.C. § 6201 *et seq.*, Pub. L. 94–163, as amended, Pub. L. 94–385, and Pub. L. 95–70; Department of Energy Organization Act, 42 U.S.C. § 7101 *et seq.*, Pub. L. 95–91; E.O. 11790, 39 FR 23185; E.O. 12009, 42 FR 46267.)

In consideration of the foregoing, Activation Order No. 1 to the Standby Petroleum Product Allocation Regulations is revoked and Part 211 of Chapter II of Title 10 of the Code of Federal Regulations is amended as set forth below, effective May 1, 1979 and ceasing to be effective midnight, September 30, 1979.

Issued in Washington, D.C., May 1, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. Paragraph (c) of § 211.13 is amended by revising subparagraph (c)(1) to read as follows:

§ 211.13 Adjustments to base period volume.

* * * * *

(c) *Adjustments to a wholesale purchaser-reseller's base period use for new and increased allocation entitlements of purchasers.* (1) A wholesale purchaser-reseller shall be entitled to receive an adjustment to its base period use whenever (i) it is notified pursuant to § 205.36(d) of an assignment to supply a new wholesale purchaser; or (ii) it is notified of an adjustment granted pursuant to § 211.12(h), § 211.13(e), § 211.104, § 211.105, § 211.125(b) or § 211.145(b) to the base period use of a wholesale purchaser entitled to receive an allocation from that wholesale purchaser-reseller, in an amount equal to the increases in the allocation entitlements or new allocation entitlements which the wholesale purchaser-reseller is to supply. * * *

* * * * *

2. Paragraph (a) of § 211.101 is revised to read as follows:

§ 211.101 Scope.

(a) This subpart applies to the mandatory allocation of all motor gasoline produced in or imported into the United States. Unless otherwise specified in, or inconsistent with, this subpart, the provisions of sections 211.9–211.13 of this part apply to this subpart. Where inconsistent with the provisions of Subpart A of this part, the provisions of this subpart shall prevail.

* * * * *

3. Section 211.102 is amended by revising the definition of "base period" to read as follows:

§ 211.102 Definitions.

For purposes of this subpart—

"Base period" means the month of the period November 1977 through October 1978 corresponding to the current month.

* * * * *

4. Section 211.103 is amended by revising paragraph (e) and adding paragraph (f) to read as follows:

§ 211.103 Allocation levels.

* * * * *

(e) *Base period volume.* (1) By June 15, 1979, each supplier which, during the base period, sold motor gasoline to a wholesale purchaser or end-user entitled to an allocation level which is a percentage of a base period use shall report to each of those purchasers, the volume of motor gasoline which it sold to or transferred to that purchaser in each month of the base period year.

(f) *Resolution of disputes.* If a supplier and purchaser disagree over the volumes required to be supplied as a base period volume or as an adjusted base period volume, application for resolution of the dispute should be made to the appropriate DOE enforcement division. DOE may require the production of any relevant information necessary to resolve the dispute. If a supplier's position is determined to be incorrect, it will be obligated to make up any volumes it should have supplied but did not.

5. A new § 211.104 is added to read as follows:

§ 211.104 Unusual growth adjustment.

(a)(1) Beginning in May 1979, if a retail sales outlet, wholesale purchaser-consumer or a bulk purchaser of motor gasoline with an allocation level determined by reference to a base period use, or its predecessor whose allocation it received, purchased gasoline during at least three of the months during the period October 1978 through February 1979 and the monthly average volume of such purchases from all suppliers in the months it purchased gasoline was at least ten percent greater than the aggregate amount of its actual motor gasoline purchases in a base period month from all suppliers, it can substitute as its base period use for the current month corresponding to that base period month its average monthly purchases in those months of the October 1978 through February 1979 period that it purchased motor gasoline. The purchaser's base period suppliers will be required to supply the adjusted volumes as determined in paragraph (b) of this section.

(2) For the month of April 1979, if the average monthly gasoline purchases by a retail sales outlet, wholesale purchaser-consumer or bulk purchaser in the months it purchased motor gasoline in the period October 1978 through February 1979 were at least thirty-five percent higher than its total April 1978 purchases from all suppliers, its October 1978 through February 1979 average monthly purchases of motor gasoline in the months it purchased motor gasoline may be substituted for its April 1978 purchases as its base period use.

(b) The portion of the adjustment that each base period supplier is required to supply shall be derived on the following basis: If the amount of the adjustment, i.e., the average monthly volumes supplied during the October 1978 through February 1979 period in excess of actual base period purchases, is attributable to particular base period suppliers, then each such supplier will be responsible for the portion of the adjustment it supplied. If a portion of the adjustment is not attributable to a particular base period supplier, then that portion of the adjustment will be supplied by all the base period suppliers based on the proportional share of gasoline the firm purchased from each supplier in the base period month.

(c) A supplier shall make the adjustment under paragraph (a) of this section without a request by a wholesale purchaser or bulk purchaser to the extent that the supplier's records indicate that the purchaser is eligible for the adjustment. However, if a purchaser's average monthly purchases in the October 1978 through February 1979 period does not average ten percent greater than its aggregate purchases in the base period month, no base period supplier is required to supply it additional volumes as an adjustment under this section even though the particular supplier may have provided greater than ten percent more product in the October 1978 through February 1979 period than in the corresponding base period month.

(d) Each firm desiring to receive an adjustment for volumes not attributable to particular base period suppliers shall notify each base period supplier of the additional amount of the adjustment to be added to its base period use. For purposes of the notification, a purchaser will certify to its supplier (1) its aggregate purchases in a base period month; (2) its average monthly purchases during the October 1978 through February 1979 period; (3) the portion of the growth adjustment attributable to the particular supplier; and (4) the amount of the unattributable portion of the adjustment requied to be supplied by the supplier. A purchaser is not required to disclose to one supplier the specific volumes supplied by any other supplier.

(e) An adjustment to a purchaser's base period use for a particular month determined under this section will automatically become part of the supplier's supply obligations and that supplier in turn may certify the adjustment upward to its base period suppliers.

(f) By June 15, 1979, each motor gasoline supplier shall report to each of its base period purchasers described in paragraph (a) of this section the monthly average gasoline purchases which it supplied during the October 1978 through February 1979 period that were at least ten percent higher than the volumes it supplied during any base period month.

6. Section 211.105 is amended by deleting paragraphs (a) through (d) and replacing it with a provision to read as follows:

§ 211.105 Supplier/purchaser relationships.

(a) *New wholesale purchasers.* (1) Where a firm made no purchases from any supplier during a base period month, a supplier and the purchaser shall attempt to agree mutually to a base-period use. That agreed-upon volume does not become formally effective until an ERA regional office, upon application, issues an assignment order. In the interim, pending an assignment order, the supplier may supply agreed-upon volumes, provided application for an assignment has been filed. If those volumes exceed volumes which are later assigned, the difference must be deducted from base period volumes in future months.

(2)(i) If the purchaser purchased motor gasoline during at least three months of the October 1978 through February 1979 period, and the monthly average of those purchases reflect an appropriate base period volume, ERA will assign a base-period use which equals those average monthly purchases.

(ii) As to firms which purchased motor gasoline in fewer than three months from October 1978 through February 1979, an evaluation will be done by the ERA Regional Office of the base-period volume of comparable firms in the same area before it makes an assignment of a base-period use. Such evaluation and assignment shall be made pursuant to the "Guidelines for Evaluation of Applications for Assignment of Supplier and Base Period Use to New Gasoline Retail Sales Outlets".

(3)(i) A wholesale purchaser-reseller has accepted and is supplying proposed base period volumes to a purchaser that does not have base period volumes for a a base period month; and (ii) the purchaser or supplier (on behalf of the purchaser) has applied to ERA for an assignment for those months; then the wholesale purchaser-reseller may, on an interim basis, include such volumes in its base-period use as a temporary adjustment and may upward certify such volumes to its supplier. The wholesale purchaser-reseller's supplier shall include such volumes as part of its base-period supply obligations in the interim pending an ERA assignment.

(b) *Supplier responsibility for assignments made after November 1, 1977.* This paragraph applies to firms which had no previous base period supplier and received an assignment of a base period volume and supplier from ERA after the beginning of the base period (that is, after November 1, 1977).

(1) If such a firm is eligible for a growth adjustment under § 211.104, i.e., it has a monthly average volume in the October 1978 through February 1979 period which is at least 10 percent greater than the firm's actual purchases in a base period month (as determined under § 211.104(a)), then the firm's base period suppliers will be determined as follows:

(i) The assigned supplier must supply the assigned or adjusted base period

volumes, whichever is higher, for (A) the base period months between November 1, 1977 and the assignment's effective date and (B) the base period months between the effective date of the assignment and October 31, 1978 in which the firm made no purchases, and

(ii) The firm's actual suppliers must supply the adjusted base period volumes for the base period months between the assignment's effective date and October 31, 1978 in which there were purchases.

The portion of the adjustment each supplier must supply shall be derived on the basis described in § 211.104(b).

(2) If such a firm is not eligible to receive an automatic adjustment in a month under § 211.104 (because either its October 1978 through February 1979 average monthly purchases were not at least ten (10) percent higher than its average monthly purchases during the base period month or it purchased motor gasoline in fewer than three months of the October 1978 through February 1979 period), then actual purchases and suppliers during the base period month will determine base period volumes and suppliers.

(3) Assignments made under Activation Order No. 1 and the Guidelines thereto will remain valid, but ERA may, upon application, make an upward adjustment to a firm's base period use based upon the assignment procedures set forth in paragraph (a) of this section.

(c) *Reassignments.* This paragraph applies to purchasers to whom assignment orders were issued during or after the base period which terminated one supply obligation and established another (i.e., reassignments, including three-party agreements).

(1) For the current months corresponding to base period months prior to the effective date of the assignment order, the newly assigned supplier will be the base-period supplier. Its supply obligation as a result of the reassignment will equal the volumes reassigned, or the actual purchases during the corresponding month of the base period from the supplier whose obligations were terminated, whichever is less. If actual base-period purchases from the supplier whose obligations were terminated exceed the volumes reassigned, the original base period supplier shall be the base-period supplier for the difference. Any other actual suppliers, whether they supplied before or after effectiveness of the assignment order, shall also be base period suppliers for the actual volumes supplied. The newly assigned base period supplier shall also be responsible to supply unattributable adjusted base period volumes determined under § 211.104 which would otherwise be the responsibility of the supplier whose obligations were terminated. The newly-assigned supplier, if it is willing, may, if an application is made to the ERA regional office for an assignment, supply on an interim basis the difference between the assigned volumes and the actual purchases from the supplier whose obligations were terminated for the portion of the base period prior to effectiveness of the assignment, pending ERA action on the assignment application, and may upward certify such volumes to its supplier which will include such volumes as part of its supply obligations pending ERA action.

(2) For those base-period months after the reassignment order was issued, actual purchases and actual suppliers will determine base-period volumes and supply obligations.

(d) *Branded resellers.* (1) Any wholesale purchaser-reseller of motor gasoline which is a branded independent marketer and which has a base period supplier different from the firm that was its supplier on February 28, 1979 under whose brand it was selling on that date, may, at its option, designate as its base period supplier that supplier which was its supplier on February 28, 1979 and terminate its supplier/purchaser relationship with all its other base period suppliers. If a designation is so made, the firm that supplied the purchaser on February 28, 1979 will become the purchaser's sole base-period supplier and will supply the purchaser's base period volumes as part of its supply obligations. It may certify upward such volumes to its supplier, which in turn will include volumes certified as part of its supply obligations.

(2) A wholesale purchaser-reseller which designates a firm as its sole base period supplier pursuant to this section shall provide, by June 15, 1979, written notice of the designation and the corresponding terminations to any suppliers which supplied the wholesale-purchaser reseller during the base period. Such wholesale purchaser-reseller shall also provide written notice by the same date to the designated supplier of the amount of the wholesale purchaser-reseller's base period use which had been supplied by other suppliers during the base period and which is to be supplied by the designated supplier. The notice to the designated supplier shall include the names and addresses of the actual suppliers during the base period and of the wholesale purchaser-reseller and the location of any facility, including any retail sales outlet concerned.

(e) *Temporary exigent circumstance adjustment.* (1) If a retail sales outlet has experienced a temporary exigent circumstance for a month during the base period year causing at least a ten percent reduction in its normal purchases for that month, its base-period volume may be revised to equal those volumes purchased in the corresponding month in the period November 1976 through October 1977. Its base-period supplier for the previous period's volumes will be the supplier from whom the purchases were reduced because of the exigency. The purchaser shall notify the supplier, who shall supply the additional volumes. No assignment by the ERA Regional Office is required. For any month, if it is eligible, a retail sales outlet may, at its option, receive base period volumes determined under the adjustment provision of section 211.104 or the procedures of this paragraph but not both. The upward certification provison of section 211.13(c) applies to adjustments made under this paragraph.

(2) If the supplier is a major refiner subject to the jurisdiction of DOE's Office of Special Counsel, then notification of the temporary exigent circumstance and the use of corresponding months of the November 1976 through October 1977 period should be provided by the refiner to the DOE audit team assigned to that refiner. Notification should be provided by the refiner as soon as practicable after it is informed by its purchaser.

(3) "Temporary exigent circumstances" includes, but is not limited to,

(i) Facility shutdowns, including either the purchaser's facility or the supplier's facility;

(ii) limited access to facility;

(iii) supplier's inability to deliver (a supplier's declaration of an allocation fraction less than one (1.0) will not, by itself, be an adequate demonstration of a supplier's inability to deliver);

(iv) reduced capability of purchaser to function as normal business, including financial difficulties impacting volume, but does not include an unwillingness of purchaser to purchase because of a lawful price.

7. Section 211.106 is amended by deleting subparagraph (b)(4) and subparagraph (c)(2)(ii).

8. Section 211.107 is amended by revising paragraph (c) to read as follows:

§ 211.107 Method of allocation.

* * * * *

(c) Pursuant to the procedures of Subpart G of Part 205, if sufficient supplies of gasoline are available to mitigate the adverse impact on firms unable to obtain adequate volumes of product, ERA may redirect product or take other appropriate action to enable a purchaser to obtain in any month up to 75 percent of its base-period volume for that month.

PART 211 [AMENDED]

9. Part 211 is amended by removing Activation Order No. 1 from the Appendix to Part 211—Special Rule No. 1.

[Docket No. ERA–R–79–23]
FR Doc. 79–14054 Filed 5–2–79; 10:26 am]
BILLING CODE 6450–01–M]

Economic Regulatory Administration

10 CFR Part 211

Motor Gasoline Allocations Base Period and Adjustments

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Public Conference and Notice of Request for Written Comments.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) hereby gives notice that it will hold a public conference on Tuesday, May 8, 1979 to review § 211.104 (Unusual Growth Adjustments) of the Interim Final Rule issued May 1, 1979 entitled "Motor Gasoline Allocation Base Period and Adjustments." DOE is holding this conference to review § 211.104 because information in comments received after the closing date of the rulemaking proceedings concerning the Interim Final Rule suggest that a modification in § 211.104 may be required prior to the expiration date of the above referenced rule. The public is invited to attend the conference. Speakers will be designated by DOE.

DOE will accept written comments concerning § 211.104 of the Interim Final Rule until 4:30 p.m. Friday, May 11, 1979. Comments received thereafter will be considered by DOE in its consideration of the Final Rule proposed in Docket No. ERA–R–79–23.

DATES: Conference date: Tuesday, May 8, 1979, 9:30 a.m. Written comments (10 copies) by 4:30 p.m. Friday, May 11, 1979.

ADDRESSES: Send written comments to Public Hearings Management, Docket No. ERA–R–79–23–A, Room 2313, 2000 M Street, NW., Washington, D.C. 20461

CONFERENCE LOCATION: Room 3000A, 12th and Pennsylvania Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Comment Procedures), 2000 "M" Street NW., Room 2214C, Washington, D.C. 20461, (202) 254–5201.

Joel Yudson (Office of General Counsel), Forrestal Building, 1000 Independance Ave. SW., Room 6–A–127, Washington, D.C. 20585, (202) 252–6744.

Issued in Washington, D.C. on May 1, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

[Docket No. ERA–R–79–23–A]
[FR Doc. 79–14162 Filed 5–2–79; 2:08 pm]
BILLING CODE 6450–01–M

federal register

Friday
May 4, 1979

Part X

Department of State

Agency for International Development

Personnel Regulations

DEPARTMENT OF STATE

Agency for International Development

[22 CFR Parts 220, 221, 222]

Personnel; Proposed Rulemaking

AGENCY: Agency for International Development, Department of State.

ACTION: Proposed rulemaking.

SUMMARY: These proposed regulations are being published pursuant to Section 401 of the International Development and Food Assistance Act of 1978, October 6, 1978, Pub. L. 95–424, 92 Stat. 956, and Section 625 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2385.

The purpose of these proposed regulations is to extend the Foreign Service personnel system to all employees of AID, both in the United States and abroad, who are responsible for planning and implementing AID's overseas development programs and activities.

DATE: It is proposed that the regulations take effect on October 1, 1979.

FOR FURTHER INFORMATION: Contact Mr. Kenneth Fries, Office of the General Counsel at (202) 632–8218.

Dated: May 2, 1979.

Markham Ball,

General Counsel.

CHAPTER II—AGENCY FOR INTERNATIONAL DEVELOPMENT

Subchapter B—Personnel

Part 220 GENERAL PROVISIONS
Part 221 EMPLOYMENT
Part 222 MISCELLANEOUS PROVISIONS

CFR Chapter II—Agency for International Development, Department of State

Subchapter B—Personnel

PART 220—GENERAL PROVISIONS

Sec.
220.01 Statement of authority.
220.02 Purpose.
220.03 Definitions.
220.04 Position management.

PART 221—EMPLOYMENT

Sec.
221.01 Employment in the Foreign Service.
221.02 Tours of assignment.

PART 222—MISCELLANEOUS PROVISIONS

Sec.
222.01 Implementing regulations.
222.02 Construction.
222.03 Effective date.

PART 220—GENERAL PROVISIONS

§ 220.01 Statement of Authority.

This subchapter of Chapter II is promulgated pursuant to section 401 of the International Development and Food Assistance Act of 1978, October 6, 1978, Pub. L. 95–424, 92 Stat. 956, 22 U.S.C. 2385a, and section 625 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2385.

§ 220.02 Purpose.

The purpose of this subchapter is to extend the Foreign Service personnel system to all employees of the Agency for International Development (A.I.D.) in the United States and abroad who are responsible for planning and implementing A.I.D.'s overseas development programs and activities, so that those persons will have significant overseas experience or understanding of the overseas development process. An extended application of the Foreign Service personnel system within A.I.D. is intended to ensure that—

(a) The employees of A.I.D. effectively serve the interests of the United States, both in the United States and abroad;

(b) A.I.D.'s personnel system can better adjust to frequently changing program and work-force composition requirements;

(c) A framework is provided to meet the particular requirements of A.I.D., including the need to have personnel serve overseas and meet language and technical skill requirements; and

(d) All employees who work in the United States and abroad within a single structure of positions, and in common endeavor to plan, carry out and directly support A.I.D.'s overseas program, may be brought within a single personnel system.

§ 220.03 Definitions.

(a) "A.I.D." means the Agency for International Development, or any successor agency primarily responsible for administering programs under part I of the Foreign Assistance Act of 1961, as amended.

(b) "Administrator" means the Administrator of A.I.D.

§ 220.04 Position Management.

(a) Under such regulations as he may prescribe, the Administrator may, notwithstanding the provisions of Chapter 51 of title 5 of the United States Code, classify positions in A.I.D., both abroad and in the United States, that he designates as Foreign Service positions to be occupied by Foreign Service employees of A.I.D., and establish such positions in relation to the grades provided for the Foreign Service of the United States: *Provided,* That such actions shall be carried out in a manner consistent with the purposes of this Subchapter and with the principles of position classification established in Chapter 51 of title 5 of the United States Code.

(b) As of the effective date of this Subchapter, each position in A.I.D. shall be reviewed and redesignated, if necessary, as to the service in which the incumbent should serve. A position shall be designated as a General Schedule position rather than a Foreign Service position only if the position is in the United States, and if it is determined (1) that the functions of such position are primarily of a clerical, administrative or program support character and can be perormed without significant overseas experience or understanding of the overseas development process; or (2) that such position requires continuity of incumbency and specialized knowledge and skill to the extent that it is not practicable for incumbents of such position to be assigned abroad. Any person aggrieved by the designation made pursuant to this subsection of a position in which he or she is serving may appeal the designation to the Administrator. Such designation shall remain in effect pending the appeal provided for herein and pending any other appeal an employee may make, and shall be set aside only if arbitrary or capricious.

(c) A position designated as a Foreign Service position in accordance with paragraph (b) of this section which becomes vacant may be occupied thereafter only by a Foreign Service employee: *Provided, however,* That at any time when the number of non-Foreign Service employees filling positions in A.I.D.'s headquarters office in the United States which are designated as Foreign Service positions does not exceed 10 per centum of the number of such positions, such a position, when it becomes vacant, may, at the discretion of the Administrator, be filled by a non-Foreign Service employee.

(d) A position designated as General Schedule in accordance with paragraph (b) of this section may be temporarily designated Foreign Service whenever the Administrator deems it advisable in order to administer properly the rotation

policies provided for in § 221.02 of this subchapter: *Provided,* That only vacant General Schedule positions may be so redesignated.

(e) In furtherance of the policy of this Subchapter, as provided in § 220.02, to the extent consistent with law, regulation, and staffing and promotion policies generally applicable to AID employees, the Administrator shall encourage employees who are not in the Foreign Service, who serve or wish to serve in positions designated as Foreign Service positions, and who are qualified for appointment in the Foreign Service, to convert to the Foreign Service.

PART 221—EMPLOYMENT

§ 221.01 Employment in the Foreign Service.

The limitation in paragraph (2) of section 625(d) of the Foreign Assistance Act of 1961, as amended, regarding periods of assignment in the United States shall be extended to allow initial assignments in the United States for a period not to exceed three years for the purpose of carrying out any of the functions under the Foreign Assistance Act.

§ 221.02 Tours of Assignment.

(a) Pursuant to such regulations as he may prescribe, the Administrator shall establish tours of assignment for A.I.D.'s Foreign Service employees.

(b) Subject to section 933 of the Foreign Service Act of 1946, as amended, regarding mandatory leave in the United States, the Administrator shall, by such regulations as he may prescribe, establish policies for rotation between assignments, including transfers among positions whether in the United States or abroad.

PART 222—MISCELLANEOUS PROVISIONS

§ 222.01 Implementing Regulations.

(a) notwithstanding the provisions of this Subchapter, existing rules and regulations of or applicable to employment in A.I.D., to the extent not inconsistent with the provisions of this Subchapter, shall remain in effect until revoked or until modified or superseded by implementing regulations promulgated in accordance with the provisions of paragraph (b) of this section.

(b) The Administrator may prescribe such administrative, implementing regulations as are necessary and desirable in order to carry out the provisions of this Subchapter (and such authority may be delegated as he deems necessary). Such implementing regulations may not revoke, suspend, supersede, or otherwise modify this Subchapter.

§ 222.02 Construction.

If any provision of this Subchapter or the application of any provision to any circumstance or persons shall be held invalid, the validity of the remainder of this Subchapter and the applicability of such provision to other circumstances or persons shall not be affected thereby.

§ 222.03 Effective Date.

This Subchapter shall become effective on October 1, 1979.

Description of the Personnel Regulations for the Agency for International Development

Summary

The purpose of these regulations is to bring the employees of AID who are primarily responsible for planning and implementing its overseas development programs and activities into a unified personnel system, which is the Foreign Service personnel system.

Extension of the Foreign Service personnel system within AID is intended to ensure that the employees of AID effectively serve the interests of the United States both in the U.S. and abroad; that AID's personnel system can better adjust to frequently changing program requirements; that the particular personnel requirements of AID can be better met; and that all employees of AID who plan, carry out and directly support AID's overseas activities are employed within a single personnel system.

The regulations provide that AID will expand its Foreign Service in the following ways:

As of the effective date of the regulations, all positions within AID's headquarters office in Washington will be reviewed and designated as to the type of personnel system in which the incumbent should serve.

Positions will be designated as General Schedule (GS) rather than Foreign Service (FS) only if the functions of such positions are primarily clerical, administrative, or support in nature, and if they can be performed without significant overseas experience or understanding of the overseas development process; or if the positions require such continuity and specialized skill that it is not practicable for incumbents to be subject to overseas assignment.

After positions are designated, as vacancies occur, only Foreign Service employees will be allow to fill Foreign Service designated positions (except that once the number of non-Foreign Service incumbents is less than 10%, other than Foreign Service employees may fill up to 10% of the FS-designated positions). Foreign Service employees may be assigned temporarily to GS positions that are vacant, as appropriate in the implementation of the Agency's rotation policies.

During the interim period between position designation and the time when a GS incumbent vacates a position, each GS employee filling an FS-designated position will be encouraged to convert into the Foreign Service under existing rules and regulations regarding such conversion.

Other significant provisions of the regulations are:

AID proposes to extend the current two-year limitation on initial Foreign Service assignments in the U.S. from two to three years. The two-year limit has inhibited the initial hiring of employees into the Foreign Service and is not consistent with the expanded Foreign Service system provided for under these regulations. A three year limit will give the Agency needed extra time to ensure a proper match between overseas position requirements and employees qualifications, while, at the same time, will continue to ensure that Foreign Service employees do serve overseas and obtain the overseas experience that is being sought.

The regulations will give the Administrator of AID direct authority to establish tours of assignment both in and out of Washington, subject to the Foreign Service Act provision regarding mandatory home leave.

The effective date for implementing the regulations is October 1, 1979.

Section-by-Section Description

Part 220—General Provisions

*Section 220.01. Statement of authority.*This section states the source of authority for the promulgation of these regulations. That authority is section 401 of the International Development and Food Assistance Act of 1978 as well as section 625 of the Foreign Assistance Act of 1961.

Section 220.02. Purpose. This section explains the purpose of these regulations: to extend the Foreign Service personnel system to all employees of AID, both in the United States and abroad, who are responsible for planning and implementing AID's overseas development programs and activities. The regulations provide that such extended application of the Foreign Service personnel system within AID is intended to ensure that both the

employees of AID and AID's personnel system can more effectively and more efficiently serve the interests of the United States and the interests of AID in carrying out the overseas development programs of the United States and in adapting to changing requirements in AID's overseas programs and its work force composition.

Section 220.03. Definitions. This section defines the terms "AID" and the "Administrator" of AID.

Section 220.04. Position management. Subsection (a) of this section restates the authority to designate and classify positions as Foreign Service positions which currently exists in section 441 of the Foreign Service Act of 1946, as amended. This authority is restated in these regulations in order to confirm AID's longstanding administrative interpretation of section 441 as applied to personnel and postions in AID. The restatement of authority also makes clear that such authority is to be used in a manner consistent with the purposes of these regulations and with the basic principles of position classification which are used throughout the Federal Government.

Subsection (b) of this section provides for the position designation of each position in AID as of the effective date of the regulations. The position designation is to indicate the service in which the incumbent of such position should be serving. Positions may be designated, for example, as General Schedule, Foreign Service, Senior Executive Service or in some other manner which specifically denotes the nature of the service in which the incumbent should be serving. If the choice of service is between the Foreign Service and General Schedule positions in the Civil Service, the regulations establish specific criteria that must be used in making the choice. Those criteria are that a position may be designated GS rather than FS only if the position is in the United States and if it is determined that the functions of the position are primarily clerical or support in character and that the functions can be performed without significant overseas experience or understanding of the overseas development process, or if it is determined that a position requires continuity of incumbency and specialized knowledge and skill to the extent that it is not practicable for incumbents of the position to be assigned abroad.

These criteria of subsection (b) are designed to increase significantly the use of Foreign Service authorities in positions that are directly related to the functions of policy making, program planning, or program direction of the overseas development functions of AID. It is expected that agency management will confer with representatives of employee unions before making position designations under subsection (b). The regulations provide that individuals may appeal to the Administrator the designations of the positions that they themselves occupy. In addition, they, of course, may appeal to some other authority (e.g., the Merit Systems Protection Board) if they establish the grounds for such authority to consider their case. Designations will not be set aside unless arbitrary or capricious. Designations will remain in effect while appeals are pending.

Subsection (c) of this section provides that positions designated as Foreign Service positions in accordance with subsection (b) may be occupied after they initially become vacant only by a Foreign Service employee, except as provided under a 10 percent formula described hereinafter.

This subsection means that if a position is designated as Foreign Service but is currently occupied by a non-Foreign Service employee, that non-Foreign Service employee will be able to continue his employment as long as he remains in that position. Only after the position becomes vacant would it be reserved for Foreign Service. For example, a position might be a Senior Executive Service position for purposes of the GS person presently filling the position, but would become a Foreign Service position rather than an SES position once the current incumbent vacates the position. Non-Foreign Service employees will be able to be removed from the Civil Service or from positions they occupy only as provided under existing law and regulations. AID has carefully reviewed the option of requiring existing GS employees in Foreign Service-designated positions to convert into the Foreign Service, and has decided that such action would be particularly unfair to its current employees, would subject the Agency to the risk of losing many highly competent employees, would create considerable turmoil in personnel administration both during and long after any transition period, and would be more harmful to the efficient operation of the Agency than the benefits of enforced conversion to the Foreign Service seems to warrant.

The proviso to subsection (c) of this section provides that once the number of non-Foreign Service employees in FS-designated positions reaches a number which is less than 10 percent of the total number of FS-designated positions in the headquarters office in Washington, then the Administrator may make exceptions to the rule that only FS employees may fill FS-designated positions, so long as the number of non-Foreign Service employees in such positions does not exceed 10 percent of the total number of FS-designated positions in Washington. While the objective of having Foreign Service employees fill critical Foreign Service-designated positions in Washington continues to be the main objective of AID's personnel administration, the 10 percent exception will allow the Administrator a measure of flexibility in obtaining personnel to meet particular Agency needs, including persons with special skills, women and members of minorities, when such people are not available as Foreign Service employees.

Subsection (d) provides that Foreign Service employees on rotation may also serve in General Schedule-designated positions if such General Schedule positions are not occupied by General Schedule employees, as is now the case for all of AID's positions in Washington. As a technical matter, the positions would be temporarily redesignated as Foreign Service positions during the incumbency of Foreign Service employees.

Subsection (e) provides that, to the extent consistent with existing law, regulation, and staffing and promotion policies, employees shall continue to be encouraged to convert to the Foreign Service. This encouragement is particularly applicable to GS employees in Foreign Service-designated positions, but will also be applicable to any AID employees who wish to serve in the Foreign Service and are qualified to do so.

Part 221—Employment

Section 221.01. Employment in the Foreign Service. This section amends the existing limitation in paragrph (2) of section 625(d) of the Foreign Assistance Act, to provide that initial assignments of Foreign Service officers within the United States may not exceed a period of three years for the purposes of carrying out any of the functions under the Foreign Assistance Act. The two year limitation as currently in the law is too restrictive in light of the underlying intent of the regulations that AID significantly expand the assignment of its Foreign Service officers to positions in its Washington office. The revised three year limitation will enable AID to make initial assignments to Washington in the same way that it makes rotational assignments to Washington, and will still provide assurance that Foreign Service employees continue to be

assigned abroad after a relatively short time in Washington.

Section 221.02. Tours of Assignment. Subsection (a) of this section authorizes the Administrator to establish tours of duty for AID's Foreign Service employees. This authority currently exists in section 522 of the Foreign Service Act of 1946, as amended, and section 625(d) of the Foreign Assistance Act of 1961, as amended. However, this authority is not so directly stated as provided herein, particularly, as noted above, with regard to initial tours of assignment. Therefore, the Administrator's authority is clearly stated in these regulations.

Subsection (b) of this section authorizes the Administrator to establish policies for rotation between assignments, including transfers to and from the United States, as well as transfers between positions abroad and between positions in the United States. It is expected that different rotational policies will apply to employees in diffeent skill categories, and that the periods of required service overseas in relation to periods of service in Washington will vary among skills categories, depending on the number of overseas and Washington positions available to people in each skill category. The Administrator is expected and authorized to rotate Foreign Service employees in such a way as to put their experience abroad and in the United States to its best use, and to provide each of these employees with a progression of assignments calculated to enhance his professional growth.

The Administrator's authority in subsection (b) regarding rotation policies is made subject to section 933 of the Foreign Service Act, which provides a statutory basis for mandatory "home leave" of Foreign Service officers assigned abroad, to be taken in the United States. Section 933 provides that during the period between 18 months and 36 months of service abroad each Foreign Service employee is required to take "home leave" in the United States. This is a desirable provision and AID intends it to be clear that the provision continues to be applicable to AID's Foreign Service employees.

Part 222—Miscellaneous Provisions

Section 222.01. Implementing Regulations. Subsection (a) of this section provides that existing administrative rules and regulations shall remain in effect until they can be revised in accordance with these new regulations except to the extent they may be clearly inconsistent with these regulations.

Subsection (b) provides that the Administrator is authorized to prescribe administrative regulations to implement the new regulations established in this subchapter. Such administrative regulations will be subordinate to the regulations established pursuant to law in this subchapter and they may not revoke, suspend, supersede or otherwise modify such regulations.

Section 222.02. Construction. This section provides that, if any provision of these regulations or its application to any circumstances or persons is deemed to be invalid, the validity of the remainder of the rest of the regulations and their applicability to other circumstances or persons shall not be affected.

Section 222.03. Effective Date. The effective date of these regulations is October 1, 1979. This date should provide AID sufficient time to analyze its Washington positions and to make the position designations that are required to be completed as of the effective date of the regulations, and also to prepare the revised administrative regulations that will be needed at the time these regulations take effect.

[FR Doc. 79-14239 Filed 5-3-79; 11:09 am]

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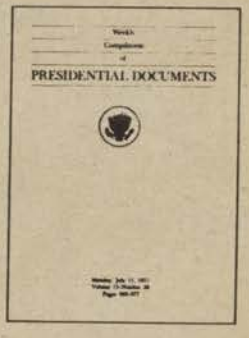
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