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# federal register

FRIDAY, MAY 5, 1978

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# rules and regulations

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

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

[6325-01]

## Title 5—Administrative Personnel

## CHAPTER I—CIVIL SERVICE COMMISSION

## PART 213—EXCEPTED SERVICE

### Department of Commerce, National Endowment for the Arts and the Humanities

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment (1) excepts under Schedule C a position at the Department of Commerce because it is confidential in nature, and (2) changes the title of a position at the National Endowment for the Arts and the Humanities to reflect the current title of the superior.

EFFECTIVE DATES: Department of Commerce April 26, 1978; National Foundation on the Arts and the Humanities April 24, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 202-632-4533.

Accordingly, 5 CFR 213.3314(a)(28) is added and 213.3382(1) is amended as set out below:

**§ 213.3314 Department of Commerce.**

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

(28) One Private Secretary to the Deputy Chief Economist.

* * * * *

**§ 213.3382 National Foundation on the Arts and the Humanities.**

* * * * *

(1) One Staff Assistant to the Deputy Chairman for Policy, Planning and Public Affairs, National Endowment for the Humanities.

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

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

[FR Doc. 78-12339 Filed 5-4-78; 8:45 am]

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[6325-01]

## PART 213—EXCEPTED SERVICE

### Farm Credit Administration

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment revokes the Schedule C exception for the position of Deputy Governor and General Counsel because the position has been cancelled.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION:

On Position Authority Contact: Hugh A. Strehle, Civil Service Commission, 202-632-4625.

On Position Content Contact: Stephen Kirby, Farm Credit Administration, 202-755-4130.

Accordingly, 5 CFR 213.3343(e) is revoked as set out below:

**§ 213.3343 Farm Credit Administration.**

* * * * *

(e) [Revoked]

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

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

[FR Doc. 78-12340 Filed 5-4-78; 8:45 am]

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[6325-01]

## PART 213—EXCEPTED SERVICE

### Department of the Interior, Department of Labor

AGENCY: Civil Service Commission.

ACTION: Final rule.

SUMMARY: This amendment excepts under Schedule C certain positions at the Department of the Interior and the Department of Labor because they are confidential in nature.

EFFECTIVE DATES: Department of the Interior, Special Assistant—April 18, 1978; Department of the Interior, two Special Assistants and Department of Labor, one Motor Vehicle Operator and one Special Assistant—April 20, 1978.

FOR FURTHER INFORMATION CONTACT:

William Bohling, 632-4533.

Accordingly, 5 CFR 213.3312(a)(28) and 213.3315 (a)(28) and (k)(2) are added to read as follows:

**§ 213.3312 Department of the Interior.**

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

(28) Three Special Assistants to the Assistant Secretary for Indian Affairs.

* * * * *

**§ 213.3315 Department of Labor.**

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

(28) One Motor Vehicle Operator to the Secretary.

* * * * *

(k) *Office of Workers' Compensation Programs.* * * *

(2) One Special Assistant to the Director.

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

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

[FR Doc. 78-12338 Filed 5-4-78; 8:45 am]

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[3410-08]

## Title 7—Agriculture

## CHAPTER IV—FEDERAL CROP INSURANCE CORPORATION, DEPARTMENT OF AGRICULTURE

[Amdt. No. 93]

## PART 401—FEDERAL CROP INSURANCE

### Subpart—Regulations for the 1969 and Succeeding Crop Years

CLOSING DATES

AGENCY: Federal Crop Insurance Corporation.

ACTION: Final rule.

SUMMARY: This is an extension of the final dates for the filing of applications for crop insurance for the 1978 crop year on barley, corn, oats, potatoes, sweet corn, and wheat having an

April 30 or earlier closing date in those counties where such insurance is otherwise authorized to be offered. The extension will be until May 1 for all crops listed, except potatoes in North Dakota only, the closing date for which will be May 6, 1978. This extension will coincide with the ASCS Acreage, Offsetting Compliance, and Signup Period of April 30 and allow farmers more time to make decisions on their insurance plans along with signup intentions.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: On January 12, 1978, the Agricultural Stabilization and Conservation Service (ASCS) issued notification of Acreage, Offsetting Compliance, and Signup Period, which indicates the signup period for filing an intention to participate on farms with a crop subject to set-aside will be March 1 through April 30. Since April 30 is on a Sunday, intentions will be accepted by ASCS the following Monday, May 1, 1978.

The ASCS set-aside announcement will have significant impact on farm operations and farmers are presently involved in decision making regarding the set-aside acreage. Since crop insurance is involved in the overall farm operation decision making process and the closing dates for many crops insured by the Federal Crop Insurance Corporation falls long before the end of the ASCS signup date of May 1, 1978, the Corporation has determined that the closing dates for filing applications for crop insurance on barley, corn, oats, sweet corn, and wheat, having an April 30 or earlier closing date, should be extended to coincide with the end of the ASCS signup period. The closing date for potatoes in North Dakota only will be May 6, 1978. This will allow farmers more time to include plans for crop insurance on those crops subject to set-aside.

Accordingly, under the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 et seq.), and in accordance with the applicable provision contained in the Federal Crop Insurance Regulations for the 1969 and Succeeding Crop Years (7 CFR 401.103(c), 32 FR 15911, November 21, 1967), allowing for such extensions, the Federal Crop Insurance Corporation is extending, effective for the 1978 crop year, the closing date for the acceptance of applications for crop insurance on barley, corn, oats, sweet corn, and wheat through May 1, 1978, and for potatoes in North Dakota only through May 6, 1978, as indicated below.

Since these extensions will benefit producers by providing more time to file applications for crop insurance, and since producers need to be informed of these extensions immediately, it is found and determined that compliance with the procedure for notice and public participation in the proposed rule making process would be impracticable and contrary to the public interest. Therefore, this amendment is issued without compliance with such procedure.

FINAL RULE

Accordingly, 7 CFR 401.103(a) is amended by adding at the end thereof the following:

§ 401.103 Application for insurance.

(a) * * * The time for filing applications for the 1978 crop year on the following crops in those states and counties so indicated is hereby extended until the close of business on Monday, May 1, 1978, and on potatoes in North Dakota only until the close of business on Saturday, May 6, 1978. Such applications received during this period will be accepted only after it is determined that no adverse selectivity will result.

BARLEY

Modoc and Siskiyou Counties, Calif. All counties in Colorado, Minnesota, Montana, North Dakota, South Dakota, Utah, and Wyoming. Klamath and Malheur Counties, Oreg. All Idaho counties south of Idaho County.

CORN

All counties in all States.

OATS

All counties in all States.

POTATOES

(Closing Date—In North Dakota only: May 6, 1978) Grant County, Wash., and Canyon County, Ida.

SWEET CORN

Renville County, Minn. and Dodge County, Wis.

WHEAT

All counties in Minnesota and North Dakota. The following counties in South Dakota: Aurora, Beadle, Bon Homme, Brown, Campbell, Clark, Codington, Corson, Day, Deuel, Douglas, Edmunds, Grant, Hamlin, Hutchinson, Jerauld, Kingsbury, McPherson, Marshall, Miner, Perkins, Roberts, and Spink.

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

Dated: April 26, 1978.

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

Approved: May 1, 1978.

BOB BERGLAND,
*Secretary.*

[FR Doc. 78-12293 Filed 5-4-78; 8:45 am]

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[3410-05]

## CHAPTER VII—AGRICULTURAL STABILIZATION AND CONSERVATION SERVICE (AGRICULTURAL ADJUSTMENT), DEPARTMENT OF AGRICULTURE

### SUBCHAPTER B—FARM MARKETING QUOTAS AND ACREAGE ALLOTMENTS

[Amdt. 7]

## PART 724—FIRE-CURED, DARK AIR-CURED, VIRGINIA SUN-CURED, CIGAR-BINDER (TYPES 51 AND 52), AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, 53, 54, AND 55) TOBACCO

### Subpart—Tobacco Allotment and Marketing Quota Regulations 1972-73 and Subsequent Marketing Years

LEASE AND TRANSFER OF TOBACCO ACREAGE ALLOTMENT—CIGAR-BINDER (TYPES 51 AND 52) AND CIGAR-FILLER AND BINDER (TYPES 42, 43, 44, AND 53) TOBACCO

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

ACTION: Final rule.

SUMMARY: This rule permits the lease and transfer (heretofore prohibited) of cigar-binder and cigar-filler and binder farm acreage allotment to a farm if the farm acreage allotment for the receiving farm has been reduced to zero due to a violation of the tobacco marketing quota regulations. This change is being made because the current rule is believed to be unduly restrictive and unnecessary to the effective administration of the Cigar-Binder (Types 51 and 52) and Cigar-Filler and Binder (Types 42, 43, 44, and 53) tobacco marketing quota programs.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Maurice Reddick, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, 202-447-4695.

SUPPLEMENTARY INFORMATION: Since the change provided in this rule is simply a relaxation of the eligibility requirements for transfer of acreage allotment to a farm and producers are making plans for leasing and transferring of allotment for the 1978 crop, it is hereby determined that compliance with the notice of proposed rulemaking, public procedure, and 30-day ef-

fective date provisions of 5 U.S.C. 553 is impracticable, unnecessary, and contrary to the public interest.

FINAL RULE

§ 724.69 [Amended]

Accordingly, 7 CFR part 724 is amended by revoking and reserving paragraph (n) of § 724.69.

AUTHORITY: Sec. 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, 72 Stat. 995; sec. 401, 63 Stat. 1054, as amended, sec. 106, 122, 125, 70 Stat. 191, 195, 198, as amended, sec. 16(e) 76 Stat. 606 (7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836) (16 U.S.C. 590p(e)).

Signed at Washington, D.C., on April 26, 1978.

RAY FITZGERALD,
*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 78-12134 Filed 5-4-78; 8:45 am]

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[3410-05]

[Amdt. 8]

## PART 725—FLUE-CURED TOBACCO

### Subpart—Flue-Cured Tobacco Acreage Allotment and Marketing Quota Regulations, 1973-74, and Subsequent Marketing Years

TRANSFER OF FLUE-CURED TOBACCO FARM MARKETING QUOTAS BY LEASE

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

ACTION: Final rule.

SUMMARY: This rule permits the lease and transfer (heretofore prohibited) of flue-cured tobacco farm marketing quota to a farm if the farm marketing quota for the receiving farm has been reduced to zero due to a violation of the tobacco marketing quota regulations. This change is being made because the current rule is believed to be unduly restrictive and unnecessary to the effective administration of the flue-cured tobacco marketing quota program.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Maurice Reddick, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, 202-447-4695.

SUPPLEMENTARY INFORMATION: Since the change provided in this rule is simply a relaxation of the eligibility requirements for transfer of marketing quota to a farm and producers are making plans for leasing and transferring of quota for the 1978 crop, it is hereby determined that compliance with the notice of proposed rulemaking, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 is impracticable, unnecessary, and contrary to the public interest.

FINAL RULE

§ 725.72 [Amended]

Accordingly, 7 CFR part 725 is amended by revoking and reserving paragraph (r) of § 725.72.

AUTHORITY: Sec. 301, 313, 314, 316, 317, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 47, as amended, 48, as amended, 75 Stat. 469, as amended, 79 Stat. 66, 52 Stat. 63, as amended, 65-66, as amended, 72 Stat. 995; sec. 401, 63 Stat. 1504, as amended, sec. 106, 122, 125, 70 Stat. 191, 195, 198, as amended, sec. 16(e) 76 Stat. 606 (7 U.S.C. 1301, 1313, 1314, 1314b, 1314c, 1363, 1372-1375, 1377, 1378, 1421, 1813, 1824, 1836) (16 U.S.C. 590p(e)).

Signed at Washington, D.C., on April 26, 1978.

RAY FITZGERALD,
*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 78-12132 Filed 5-4-78; 8:45 am]

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[3410-05]

[Amdt. 10]

## PART 726—BURLEY TOBACCO

### Subpart—Burley Tobacco 1971-72 and Subsequent Marketing Years

TRANSFER OF BURLEY TOBACCO FARM MARKETING QUOTAS BY LEASE

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

ACTION: Final rule.

SUMMARY: This rule permits the lease and transfer (heretofore prohibited) of burley tobacco farm marketing quota to a farm if the farm marketing quota for the receiving farm has been reduced to zero due to a violation of the tobacco marketing quota regulations. This change is being made because the current rule is believed to be unduly restrictive and unnecessary to the effective administration of the burley tobacco marketing quota program.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Maurice Reddick, Production Adjustment Division, USDA, P.O. Box 2415, Washington, D.C. 20013, 202-447-4695.

SUPPLEMENTARY INFORMATION: Since the change provided in this rule is simply a relaxation of the eligibility requirements for transfer of marketing quota to a farm and producers are making plans for leasing and transferring of quota for the 1978 crop, it is hereby determined that compliance with the notice of proposed rulemaking, public procedure, and 30-day effective date provisions of 5 U.S.C. 553 is impracticable, unnecessary, and contrary to the public interest.

FINAL RULE

§ 726.68 [Amended]

Accordingly, 7 CFR part 726 is amended by revoking and reserving paragraph (q) of § 726.68.

AUTHORITY: Secs. 301, 312, 313, 314, 316, 318, 319, 362, 363, 372-375, 377, 378, 52 Stat. 38, as amended, 46, as amended, 47, as amended, 48, as amended, 62, as amended, 75 Stat. 469, as amended, 81 Stat. 120, as amended, 52 Stat. 63, as amended, 85 Stat. 23, 70 Stat. 206, as amended, 72 Stat. 995, as amended (7 U.S.C. 1301, 1312, 1313, 1314, 1314b, 1314d, 1314e, 1363, 1372-1375, 1377, 1378).

Signed at Washington, D.C., on April 26, 1978.

RAY FITZGERALD,
*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 78-12133 Filed 5-4-78; 8:45 am]

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[3410-05]

### SUBCHAPTER D—PROVISIONS COMMON TO MORE THAN ONE PROGRAM

## PART 795—PAYMENT LIMITATION

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

ACTION: Final rule.

SUMMARY: This document amends the regulations which imposed a $20,000 payment limitation on disaster payments for the 1977 program year for wheat, feed grains, and upland cotton as required by the Agriculture Act of 1970 as amended by the Agriculture and Consumer Protection Act of 1973 and $55,000 for rice as required by the Rice Production Act of 1975.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Robert Coplin, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013, 202-447-4542.

SUPPLEMENTARY INFORMATION: This change will benefit producers who earned in excess of $20,000 in payments for wheat, feed grains, upland cotton and in excess of $55,000 for rice under the 1977 Disaster Program but because of the limitation imposed by

the Agricultural Act of 1970 and the Rice Production Act of 1975 received only $20,000 for wheat, feed grains, and upland cotton and $55,000 for rice. Pub. L. 95-156, signed into law on November 8, 1977, exempted disaster payments from these limitations.

Since ASCS county offices are prepared to issue supplemental payments to producers earning payments in excess of these limitations it is essential that the amendment be made effective as soon as possible. It is hereby determined that compliance with the notice of proposed rulemaking, public procedure, and 30-day effective date provision of 5 U.S.C. 553 is impractical and contrary to public interest. Therefore, this amendment shall become effective upon publication in the FEDERAL REGISTER.

FINAL RULE

Effective as to the 1977 and prior year crops, 7 CFR 795.1 (a) and (b) are amended to read as follows:

**§ 795.1 Basis and purpose.**

(a) Section 101 of the Agricultural Act of 1970, as amended by the Agriculture and Consumer Protection Act of 1973 and the Food and Agriculture Act of 1977, provides that the total amount of payments a person shall be entitled to receive under one or more of the annual programs for wheat, feed grains, and upland cotton for the 1974 through 1977 crops under the Act shall not exceed $20,000. Pub. L. 95-156, 91 Stat. 921, approved November 8, 1977, provides, however, that the term "payments" as used in the 1970 Act, shall not include any part of any payment which is determined by the Secretary to represent compensation for disaster loss with respect to the 1977 crops of wheat, feed grains, and upland cotton.

(b) Section 101 of the Agricultural Act of 1949, as amended by the Rice Production Act of 1975, provides that the total amount of payments which a person shall be entitled to receive during a crop year under the rice program for 1976 or 1977 under the Act shall not exceed $55,000. Pub. L. 95-156, 91 Stat. 921, approved November 8, 1977, provides, however, that the term "payments," as used in the 1970 Act shall not include any part of any payment which is determined by the Secretary to represent compensation for disaster loss with respect to the 1977 crop of rice.

* * * * *

AUTHORITY: Sec. 101, Pub. L. 91-524, 84 Stat. 1358 (7 U.S.C. 1307), as amended by Pub. L. 93-86, 87 Stat. 221, and Pub. L. 95-113, 91 Stat. 913; sec. 101, Pub. L. 81-439, 63 Stat. 1051 (7 U.S.C. 1441), as amended by sec. 102, Pub. L. 94-214, 90 Stat. 181; Pub. L. 95-156, 91 Stat. 1264 (7 U.S.C. 1307) note.

Signed at Washington, D.C., on April 26, 1978.

RAY FITZGERALD,
*Administrator.*

[FR Doc. 78-12128 Filed 5-4-78; 8:45 am]

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[3410-02]

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

## PART 944—FRUITS; IMPORT REGULATIONS

### Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection and Certification

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule designates the Federal or Federal-State Inspection Service, Food Safety and Quality Service, United States Department of Agriculture as the agencies to perform required inspection and certification for compliance with regulations applicable to imported avocados, grapefruit, limes, and oranges, and provides instructions for obtaining inspection.

EFFECTIVE DATE: June 15, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, Deputy Director, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, 202-447-3545.

SUPPLEMENTARY INFORMATION: Section 8e of the Agricultural Marketing Agreement Act of 1937, as amended, requires that whenever specified commodities, including avocados, grapefruit, limes, and oranges are regulated under a Federal marketing order imports of that commodity must meet the same or comparable grade, size, quality or maturity requirements as those in effect for the domestic commodity. Inspection and certification for compliance by imports of such commodities is required. Heretofore, it has been customary to publish the detailed instructions for obtaining inspection in each import regulation. Publication of such procedure separate from the regulation will enable incorporation by reference and avoid the necessity of such publication each time a regulation is issued.

The designations and procedure are as follows:

**§ 944.400 Designated inspection services and procedure for obtaining inspection and certification of imported avocados, grapefruit, limes, and oranges regulated under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.**

(a) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality/Division, Food Safety and Quality Service, United States Department of Agriculture, is hereby designated as the governmental inspection service for the purpose of certifying the grade, size, quality, and maturity of avocados, grapefruit, limes and oranges that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with appropriate evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of the specified fruit, is required on all imports. Such inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) but, since inspectors are not located in the immediate vicinity of some of the small ports of entry, such as those in southern California, importers of avocados, grapefruit, limes, and oranges should make arrangements for inspection, through the applicable one of the following offices, at least the specified number of days prior to the time when the fruit will be imported:

*Ports, Office, and Advance Notice*

All Texas points; Officer-in-Charge, 1301 West Expressway, Alamo, Tex. 78516, phone—512-787-4091, or Officer-in-Charge, 724 East Overland, El Paso, Tex. 79901, phone—915-543-7723; 1 day.

All New York points; Officer-in-Charge, Room 28A, Hunts Point Market, Bronx, N.Y. 10474, phone—212-991-7668 and 7669, or Officer-in-Charge, 176 Niagara Frontier Food Terminal, Room 8, Buffalo, N.Y. 14206, phone—716-824-1585; 1 day.

All Arizona points; Officer-in-Charge, 3150 Tucson-Nogales Highway, P.O. Box 1485, Nogales, Ariz. 85621, phone—602-287-4783; 1 day.

All Florida points; Officer-in-Charge, 1350 Northwest 12th Avenue, Room 530, Miami, Fla. 33136, phone—305-324-6116, or Officer-in-Charge, 550 Third Street NW., P.O. Box 1232, Winter Haven, Fla. 33880, phone—813-294-3511, extension 33, or Officer-in-Charge, Unit 46, 3335 North Edgewood Avenue, Jacksonville, Fla. 33205, phone—904-354-5983; 1 day.

All California points; Officer-in-Charge, 784 South Central Avenue, Room 266, Los Angeles, Calif. 90021, phone—213-688-2489; 3 days.

All Louisiana points; Officer-in-Charge, 5027 U.S. Postal Service Building, 701 Loyola Avenue, New Orleans, La. 70113, phone—504-589-6741; 1 day.

All other points; Chief, Fresh Products Branch, FVQD, FSQS, USDA, Washington, D.C. 20250, phone—202-447-5870; 3 days.

(b) Inspection certificates shall cover only the quantity of fruit that is being imported at a particular port of entry by a particular importer.

(c) The inspection performed, and certificates issued, by the Federal or Federal-State Inspection Service shall be in accordance with the rules and regulations of the Department governing the inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851). The cost of any inspection and certification shall be borne by the applicant therefor.

(d) Each inspection certificate issued with respect to any of the specified fruits to be imported into the United States shall set forth, among other things:

(1) The date and place of inspection;

(2) The name of the shipper, or applicant;

(3) The commodity inspected;

(4) The quantity of the commodity covered by the certificate;

(5) The principal identifying marks on the container;

(6) The railroad car initials and number, the truck and the trailer license number, the name of the vessel, the name of the air carrier, or other identification of the shipment; and

(7) The following statement if the facts warrant: Meets U.S. import requirements under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended.

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

Dated: May 2, 1978, to become effective June 15, 1978.

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

[FR Doc. 78-12318 Filed 5-4-78; 8:45 am]

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[3410-02]

## CHAPTER X—AGRICULTURAL MARKETING SERVICE (MARKETING AGREEMENTS AND ORDERS: MILK), DEPARTMENT OF AGRICULTURE

[Milk Order No. 68]

## PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

### Orders Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This order suspends a requirement under the Upper Midwest milk marketing order that handlers make a partial payment to producers by the 25th day of the month for milk received from them during the first 15 days of the month. Handlers indicated that their producers want such payments to be made about 8 days later so that their partial payments and final payments for milk will be spaced about 15 days apart. The proposed suspension would be for the period May 1978 through April 1979.

DATE: Effective upon publication in the FEDERAL REGISTER.

FOR FURTHER INFORMATION CONTACT:

Martin J. Dunn, Marketing Specialist, Dairy Division, Agricultural Marketing Service, United States Department of Agriculture, Washington, D.C. 20250, 202-447-7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of proposed suspension-issued March 30, 1978, published April 4, 1978 (43 FR 14025).

This suspension order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and of the order regulating the handling of milk in the Upper Midwest marketing area.

Notice of proposed rulemaking was published in the FEDERAL REGISTER (43 FR 14025) concerning a proposed suspension of certain provisions of the order. Interested persons had an opportunity to comment on the proposed suspension in writing. A trade association of proprietary plants, two proprietary handlers and a cooperative association filed comments supporting the suspension. Two producers commented in opposition to the suspension.

After consideration of all relevant material, including the proposal in the notice, the comments received and other available information, it is found and determined that for the months of May 1978 through April 1979 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1068.73(a), subparagraph (4) in its entirety.

STATEMENT OF CONSIDERATION

The Upper Midwest milk order, which became effective June 1, 1976, initially required a partial payment to producers and cooperative associations on the 25th day of the month for milk received during the first 15 days of the month. Final payment was due, and still is, by the 18th day of the following month. These were the dates provided in the prior order for the Minneapolis-St. Paul area.

Many of the producers who were brought under the merged order, particularly those in Wisconsin, had been accustomed to receiving payments 15 days apart. They preferred such payments to being paid on the 18th and 25th of the month. To accommodate this, the pertinent provisions of the order have been suspended since November 1976 (41 FR 51389, 42 FR 22360 and 42 FR 59747). As requested, the suspensions were limited to payments to producers for whom a cooperative was not collecting payments.

A continuation of the suspension through April 1979 is supported by a trade association of proprietary handlers, two proprietary handlers and a cooperative association.

Two producers commented in opposition to the suspension. Their views centered on the need, in their opinion, to provide a partial payment on the 20th of the month for milk received the first 15 days of the month and the final payment on the 5th of the following month. This change cannot be considered in connection with this suspension action, which can apply only to existing provisions for a temporary period. The payment dates preferred by the two producers might be appropriate for consideration at a future amendment hearing.

The suspension should be extended for an additional period of twelve months pending a hearing at which proposals to amend the partial payment provisions may be considered. The suspension will enable handlers to continue to accommodate their producers who request that their payments be spaced about 15 days apart.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that the suspension does not require of persons affected substantial or extensive preparation prior to the effective date and notice of proposed rulemaking was given interested parties and thay were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective May 5, 1978.

*It is therefore ordered*, That the aforesaid provisions of the order are hereby suspended for the months of May 1978 through April 1979.

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

Effective date: May 5, 1978.

Signed at Washington, D.C., on May 2, 1978.

P. R. "ROBBY" SMITH,
*Assistant Secretary.*

[FR Doc. 78-12294 Filed 5-4-78; 8:45 am]

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[3410-07]

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

### SUBCHAPTER A—GENERAL REGULATIONS

[FmHA Administration Letter 856(440)]

## PART 1811—BONDS AND NOTES FOR INSURED ASSOCIATION AND ORGANIZATION LOANS

### Deletion

AGENCY: Farmers Home Administration, USDA.

ACTION: Final Rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations by deleting a regulation previously incorporated into another Part. The intended effect of this action is to eliminate duplicate regulations from the Code of Federal Regulations. This action is taken as a result of an administrative study by the Agency.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. LaVerne Isenberg, telephone: 202-447-2852.

SUPPLEMENTARY INFORMATION: Part 1811 of Subchapter A, Chapter XVIII, title 7 in the Code of Federal Regulations is deleted. The regulations contained in Part 1811 were previously incorporated into Part 1933, Subpart A of this chapter. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 533, with respect to such rules. This amendment however, is not published for proposed rulemaking since the purpose of the change is to remove duplication in the regulations and publication is therefore unnecessary.

Part 1811 is hereby deleted and reserved.

(Delegation of authority by the Secretary of Agriculture (7 CFR 2.23); delegation of authority by the Assistant Secretary for Rural Development (7 CFR 2.70).)

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

Dated: April 14, 1978.

GORDON CAVANAUGH,
*Administrator,*
*Farmers Home Administration.*

[FR Doc. 78-12292 Filed 5-4-78; 8:45 am]

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[3410-07]

### SUBCHAPTER J—LOAN AND GRANT PROGRAMS (GROUP)

## PART 1933—LOAN AND GRANT PROGRAMS (GROUP)

### Subpart A—Community Facility Loans

AGENCY: Farmers Home Administration, USDA.

ACTION: Interim rule.

SUMMARY: The Farmers Home Administration amends its regulations regarding easements for cable television. This action is being taken because in some cases an applicant for a loan for a cable television facility cannot get the required easements to insure the security of the loan. The intended effect is to relax the easement requirements and to point out that applicants may hook their cables to poles of an existing utility by signing a joint use agreement with the utility.

EFFECTIVE DATES: May 5, 1978. However, comments must be received on or before June 5, 1978.

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

FOR FURTHER INFORMATION CONTACT:

Mr. John Bowles, 202-447-7667.

SUPPLEMENTARY INFORMATION: FmHA amends 1933.17(a)(6)(i)(E)(*1*) of Subpart A, Part 1933, Chapter XVIII, Title 7 in the Code of Federal Regulations. Even though § 1933.20 indicates that the guides are not published, this guide is being published in the daily issue, but not codified, entitled "Agreement for Joint Use of Electric System Poles" so that interested parties have an opportunity to review the specific implications of this amendment. There have been situations where an applicant for a loan for a cable television utility could not get the required easements thus placing a burden on the applicant and the agency. This situation will be corrected by relaxing the easement requirements and pointing out that joint use agreements between the applicant and an existing utility are authorized. It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment notwithstanding the exemption in 5 U.S.C. 553 with respect to such rules. This amendment, however, is being published effective on an interim basis. This action is being taken to relax an easement requirement on the public and at the same time permit public participation in the rulemaking process. Any delay in implementing this amendment would be contrary to the public interest because it would prevent certain members of the public from benefitting from this assistance. Comments made pursuant to this notice will be considered in the development of the final rule. Therefore, § 1933.17(a)(6)(i)(E)(*1*) is amended and a guide is published under § 1933.20 only in the daily issue and not codified and read as follows:

(1) Section 1933.17(a)(6)(i)(E)(*1*) is amended as follows:

**§ 1933.17 Appendix A—Community facilities.**

(a) * * *
(6) *Security.* * * *
(i) * * *

(E) *Public bodies and other than public bodies. (1) Title for right-of-way or easement.* (i) Applicants are responsible for obtaining continuous and adequate rights-of-way and interests in land needed for the construction, operation and maintenance of the facility. When a lien will be taken on a site for structures such as a reservoir or pumping station, and the applicant is able to obtain only a right-of-way or easement on such site rather than a fee simple title, the applicant will furnish a title report thereon by the applicant's attorney showing the ownership of the land and all mortgages or other lien defects, or encumbrances, if any. Consents, releases or subordinations will be obtained from the holders of outstanding liens or mortgages as may be necessary to give FmHA the required security. The applicant will take such title clearance steps as may be necessary or required by FmHA.

(ii) In those instances where it is feasible for Cable Television (CATV) to utilize poles of an existing utility through a joint use agreement this may be done in lieu of § 1933.17(a)(6)(i)(E)(*1*)(*i*). Such joint use agreement must be for a period not less than the terms of the loan and be approved by FmHA prior to its execution. Such an agreement does not relieve the borrower of its responsibility to assure FmHA that it can construct, operate, and maintain the facilities for which the loan is being sought. Appropriate permits should be obtained from public bodies. In the event difficulties ever arise relating to construction, operation or maintenance of any jointly used facilities the borrower must promptly take the necessary steps to adequately remedy the matter. The borrower's attorney will furnish an opinion that the borrower has fulfilled its responsibility under this paragraph and that any joint use agreement is sufficient and valid for its purpose. Section 1933.20 Guide 23

(available in any FmHA office) would be an acceptable agreement for this purpose.

* * * * *

(2) A guide is published under § 1933.20 only in the daily issue and not codified and reads as follows:

**§ 1933.20 Guides—Community facilities.**

## AGREEMENT FOR JOINT USE OF ELECTRIC SYSTEM POLES

### PREAMBLE

_____, a corporation organized under the laws of the State of _____, (hereinafter called the "Owner"), and _____, a corporation organized under the laws of the State of _____ (hereinafter called the "Licensee"), desiring to cooperate in the joint use of poles and right-of-way clearing incident thereto, whenever and wherever such use shall, in the estimation of both parties, be compatible with their respective needs, do hereby, in consideration of the premises and the mutual covenants herein contained, covenant and agree for themselves and their respective successors and assigns as follows:

### ARTICLE I

### SCOPE OF AGREEMENT

(a) This Agreement shall be in effect in the areas in which both of the parties render service in the State(s) of _____, and shall cover all poles of the Owner now existing or hereafter erected when said poles are brought under this Agreement in accordance with the procedure hereinafter provided.

(b) The Owner reserves the right to exclude any of its facilities from joint use.

(c) It is the intention of the parties that adequate _____ service shall be made available to the widest practicable number of rural users in the above areas.

### ARTICLE II

### SPECIFICATIONS

(a) The joint use of the poles covered by this Agreement shall at all times be in conformity with accepted modern methods, such as those set forth in Edison Electric Institute Publication No. M 12, and shall at all times conform to the requirements of the National Electrical Safety Code, Fifth Edition, and subsequent revisions thereof, except where the lawful requirements of public authorities may be more stringent, in which case the latter will govern.

(b) The strength of poles covered by this Agreement shall be sufficient to withstand the transverse and vertical loads imposed upon them under the storm loadings of the National Electrical Safety Code assumed for the area in which they are located, without exceeding fifty (50%) percent of their ultimate stress. In the case of existing pole lines, the strength of poles shall be assumed to be the same as when new.

### ARTICLE III

### ESTABLISHING JOINT USE OF POLES

(a) Before the Licensee shall make use of any of the poles of the Owner under this Agreement, it shall request permission therefor in writing on the application form attached hereto and identified as Appendix A, and shall comply with the procedure set forth therein and in this Article III.

(b) If, in the judgment of the Owner, joint use under the circumstances is undesirable, the Owner shall have the right to reject the application. In any event, within ___ ___ days after the receipt of such application the Owner shall notify the Licensee in writing whether the application is approved or rejected.

(c) After receipt of notice from the Owner that the application has been approved, the Licensee shall furnish the Owner detailed construction plans and drawings for each pole line, together with necessary maps, indicating specifically the poles of the Owner to be used jointly, the number and character of the circuits to be placed on such poles, any rearrangement of the Owner's fixtures and equipment necessary for joint use, any relocations or replacements of existing poles, and any additional poles that may be required. The Owner shall, on the basis of such detailed construction plans and drawings, submit to the Licensee within _____ days a cost estimate (including overhead and less salvage value of materials) for all changes that may be required in each such pole line, including an estimated completion date for such changes. Upon written notice by the Licensee to the Owner that the cost estimate is approved, the Owner shall immediately proceed with the necessary changes in the pole line covered by the cost estimate and shall diligently expedite the completion thereof within the time specified in the estimate. Nothing in the foregoing shall preclude the parties hereto from making any mutually agreeable arrangement for contracting for or otherwise accomplishing the necessary changes. Upon completion of all changes, the Licensee shall have the right hereunder to jointly use the poles and to make attachments in accordance with the terms of the application and of this Agreement. The Licensee shall, at its own expense, make attachments in such manner as not to interfere with the service of the Owner, and place guys and anchors to sustain any unbalanced loads caused by its attachments.

(d) Upon completion of all changes in each pole line to be used jointly, the Licensee shall pay to the Owner the actual cost (including overhead and less salvage value of materials) of making such changes but in no event, however, shall the Licensee be required to pay for such changes more than 120% of the cost estimate provided for in Section (c) of this Article. An itemized statement of the actual cost of all such changes shall be submitted by the Owner to the Licensee, in form mutually agreed upon.

(e) Any reclearing of existing rights-of-way and any tree trimming necessary for the establishment of joint use hereunder shall be performed by the parties as may be mutually agreed upon. The cost of any such right-of-way reclearing and trimming shall be borne by the parties as follows: for a right-of-way of up to twenty (20) feet in width, 50% by the Licensee and 50% by the Owner; for a right-of-way in excess of twenty (20) feet the Licensee shall pay the same proportion of the cost as ten (10) feet bears to the width of the right-of-way and the Owner shall pay the balance of the cost.

(f) All poles jointly used under this Agreement shall remain the property of the Owner, and any payments made by the Licensee for changes in pole lines under this Agreement shall not entitle the Licensee to the Ownership of any of said poles.

(g) In order that the parties may effectively coordinate their efforts with respect to joint use of any pole lines to be constructed in the future, the parties shall, insofar as practicable, make known to each other its plans for future construction. If joint use is contemplated with respect to such future construction, the parties shall cooperate in planning such construction so that joint use may be accomplished in a manner mutually satisfactory to the parties within the objectives of this Agreement.

### ARTICLE IV

### EASEMENTS AND RIGHTS-OF-WAY FOR LICENSEE'S ATTACHMENTS

While the Owner will cooperate as far as may be practicable in obtaining rights-of-way for joint use of poles, the Owner does not warrant or assure to the Licensee any rights-of-way privileges or easements, and if the Licensee shall at any time be prevented from placing or maintaining its attachments on the Owner's poles, no liability on account thereof shall attach to the Owner. Each party shall be responsible for obtaining its own easements and rights-of-way.

The Licensee during the term of this agreement shall have all the necessary rights to construct, operate and maintain its facilities as provided by this agreement.

## ARTICLE V

## MAINTENANCE OF POLES, ATTACHMENTS AND RIGHT-OF-WAY

*(a) The Owner shall, at its own expense, maintain the jointly used poles in a safe and serviceable condition and in accordance with the specifications mentioned in Article II and shall replace, reinforce or repair such of these poles as become defective.*

*(b) When replacing a jointly used pole carrying terminals of aerial cable or underground connections, the new pole shall be set in the same hole which the replaced pole occupied unless special conditions make it necessary or mutually desirable to set it in a different location.*

*(c) Whenever right-of-way considerations or public regulations make relocation of a pole, or poles, necessary such relocations shall be made by the Owner at its own expense, except that each party shall bear the cost of transferring its own attachments.*

*(d) Whenever it is necessary to replace or relocate a jointly used pole, the Owner shall, before making such replacement or relocation, give 20 days notice thereof in writing (except in case of emergency, when verbal notice will be given and subsequently confirmed in writing) to the Licensee, specifying in such notice the time of such proposed replacement or relocation, and the Licensee shall, at the time so specified, transfer its attachments to the new or relocated joint pole. Should the Licensee fail to transfer its attachments to the new or relocated joint pole at the time specified for such transfer of attachments, the Owner may elect to do such work, and the Licensee shall pay the Owner the cost thereof.*

*(e) Except as otherwise provided in Section (f) of this Article, each party shall at all times maintain all of its attachments in accordance with the specifications mentioned in Article II and shall keep them in safe condition and in thorough repair. All necessary right-of-way maintenance, including tree trimming or cutting, shall be performed by the parties as may be mutually agreed upon and the cost thereof shall be borne by the parties as provided in Article III (e).*

*(f) Any existing joint use construction of the parties which does not conform to the specifications mentioned in Article II shall be brought into conformity therewith as soon as practicable.*

*When such existing construction shall have been brought into conformity with said specifications, it shall at all times thereafter be maintained as provided in Sections (a) and (e) of this Article.*

## ARTICLE VI

## PROCEDURE WHEN CHARACTER OF CIRCUITS IS CHANGED

*(a) When either party desires to change the character of its circuits, such party shall give _____ days notice to the other party of such contemplated change in the character of its circuits and in the event that the party agrees in writing to joint use with such changed circuits then, subject to the procedure hereinafter provided for in Sections (c) and (d) of this Article, the joint use of poles shall be continued with such changes in construction as may be required to meet the terms of the specifications mentioned in Article II for the character of circuits involved.*

*(b) In the event, however, that the other party fails within _____ days from receipt of such notice to agree in writing to continue the joint use of such poles with such changed circuits, then both parties shall cooperate in accordance with the following plan:*

1. *The parties hereto shall determine and agree upon the most practical and economical method of effectively providing for separate lines, either overhead or underground, and the party whose circuits are to be moved shall promptly carry out the necessary work.*

2. *The net cost involved in re-establishing such circuits in the new location as are necessary to furnish the same service facilities that exist in the joint use at the time such change was decided upon, shall be equitably apportioned between the parties hereto.*

*(c) If the change in character of circuits requires pole replacements for the sole benefit of the Owner, the pole replacements shall be made by and at the expense of the Owner. Before making such replacements the Owner shall give 20 days notice thereof in writing to the Licensee, specifying in such notice the time of such proposed replacements, and the Licensee shall, at the time so specified, transfer its attachments to the replaced pole or poles. Should the Licensee fail to transfer its attachments to the replaced pole or poles at the time specified for such transfer of attachments, the Owner may elect to do such work, and the Licensee shall pay the Owner the cost thereof.*

*(d) If the change in character of circuits requires pole replacements for the sole benefit of the Licensee, the Licensee shall, with respect to pole replacements necessitated by a change in the character of its circuits, follow the procedure provided for in Article III - Establishing Joint Use of Poles.*

## ARTICLE VII

## ABANDONMENT OF JOINTLY USED POLES

*(a) If the Owner desires at any time to abandon any jointly used pole, it shall give the Licensee notice in writing to that effect at least 60 days prior to the date on which it intends to abandon such pole. If at the expiration of said period the Owner shall have no attachments on such pole but the Licensee shall not have removed all of the attachments therefrom, such pole shall thereupon become the property of the Licensee, and the Licensee shall save harmless the Owner from all obligation, liability, damages, cost, expenses or charges incurred thereafter, and not arising out of anything theretofore occurring, because of, or arising out of, the presence or condition of such pole or of any attachments thereon; and shall pay the Owner for such pole an amount as may be mutually agreeable to the parties, but in no case shall the payment exceed the net salvage value of the pole to the Owner. The Owner shall further evidence transfer to the Licensee of title to the pole by means of a bill of sale.*

*(b) The Licensee may at any time abandon the use of a joint pole by giving due notice thereof in writing to the Owner and by removing therefrom any and all attachments it may have thereon. The Licensee shall in such case pay to the Owner the full rental for said pole for the then current year.*

## ARTICLE VIII

## RENTALS

*(a) On or about _____ of each year the parties acting in cooperation shall tabulate the total of the number of poles in joint use as of the preceding day and the number of poles on which the Licensee removed all of its attachments during the twelve preceding months, which tabulation shall indicate the number of poles on which rentals are to be paid.*

*(b) The rental per pole due from the Licensee to the Owner shall be $_____ per annum which shall be paid by the Licensee to the Owner for each jointly used pole as shown by the annual tabulation of joint poles provided for herein.*

*(c) At any time after 5 years from the date of this Agreement and at intervals of not less than 5 years thereafter, upon the written request of either party, the annual rental rate applicable under this Agreement shall be reviewed and, if the parties mutually agree, an adjusted annual rental rate shall be established by an amendment to this Agreement which shall apply starting with the next annual tabulation of poles provided for in Section (a) of this Article. All adjustments of the rental rate shall take into account the cost factors originally involved in all joint use existing at the time of the review.*

## ARTICLE IX

## RIGHTS OF OTHER PARTIES

*(a) If the Owner, prior to the execution of this Agreement, has conferred, or hereafter confers, upon others, not parties to this Agreement, by contract or otherwise, rights or privileges to use any poles covered by this Agreement, nothing herein contained shall be construed as affecting such rights or privileges, and the Owner shall have the right, by contract or otherwise, to continue or extend such existing rights or privileges, it being expressly understood, however, that for the purpose of this Agreement, the attachments of any such outside party shall be treated as attachments belonging to the Owner, and the rights, obligations, and liabilities hereunder of the Owner in respect to such attachments shall be the same as if it were the actual owner thereof.*

*(b) Where municipal regulations require the Owner to allow the use of its poles for street lighting and fire alarm, police, or other like signal systems, such use shall be permitted under the terms of this Article, provided attachments of such parties are placed and maintained in accordance with the specifications mentioned in Article II.*

ARTICLE X

ASSIGNMENT OF RIGHTS

*Except as otherwise provided in this Agreement, neither party hereto shall assign or otherwise dispose of this Agreement or any of its rights or interests hereunder, or in any of the jointly used poles, or the attachments or rights-of-way covered by this Agreement, to any firm, corporation or individual, without the written consent of the other party, except to the United States of America or any agency thereof; provided, however, that nothing herein contained shall prevent or limit the right of either party to mortgage any or all of its property, rights, privileges, and franchises, or lease or transfer any of them to another corporation organized for the purpose of conducting a business of the same general character as that of such party, or to enter into any merger or consolidation; and, in case of the foreclosure of such mortgage; or in case of lease, transfer, merger, or consolidation, its rights and obligations hereunder shall pass to, and be acquired and assumed by, the purchaser on foreclosure, the transferee, lessee, assignee, merging or consolidating company, as the case may be.*

ARTICLE XI

WAIVER OF TERMS OR CONDITIONS

*The failure of either party to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.*

ARTICLE XII

PAYMENT OF TAXES

*Each party shall pay all taxes and assessments lawfully levied on its own property upon said jointly used poles, and the taxes and the assessments which are levied on said joint poles shall be paid by the owner thereof, but any tax, fee, or charge levied on the Owner's poles solely because of their use by the Licensee shall be paid by the Licensee.*

ARTICLE XIII

INTEREST AND PAYMENTS

*All amounts to be paid by one party to the other under this Agreement shall be due and payable within 30 days after an itemized statement shall have been presented to the party required to make such payment. Any payment not made within 30 days from the due date shall thereafter bear interest at the rate of 6% per annum until paid.*

ARTICLE XIV

SERVICE OF NOTICES

*Whenever in this Agreement notice is provided to be given by either party hereto to the other, such notice shall be in writing and given by letter mailed, or by personal delivery, to the Owner at its office at* _____

_____

_____,

*or to the Licensee at its office at* _____ _____

_____ *as the case may be, or to such other address as either party may from time to time designate in writing for that purpose.*

ARTICLE XV

TERM OF AGREEMENT

*This Agreement shall remain in effect until terminated at the end of* _____ *years from the date hereof or thereafter upon the giving of written notice to the other party not less than three years prior to the date of termination.*

ARTICLE XVI

EXISTING CONTRACTS

→ ***** *All existing agreements between the parties hereto for the joint use of poles shall remain in full force and effect with respect to those facilities being jointly used by the parties hereto as of the date of this Agreement. From and after the date of this Agreement, future granting of joint use between the parties shall be governed by and shall be subject to the terms and conditions of this Agreement.*

→ ***** *All existing agreements between the parties hereto for the joint use of poles are by mutual consent hereby abrogated and superseded by this Agreement.*

*Nothing in the foregoing shall preclude the parties to this Agreement from preparing such supplemental operating routines or working practices as they mutually agree to be necessary or desirable to effectively administer the provisions of this Agreement.*

ARTICLE XVII

APPROVAL OF ADMINISTRATOR

*This Agreement, and any amendment thereof, shall be effective subject to the condition that, during any period in which the Owner or the Licensee is a borrower from the Farmers Home Administration, the Agreement and any amendment thereof shall have the approval in writing of the Administrator of the Farmers Home Administration*

*In witness whereof, the parties hereto, have caused these presents to be executed in quadruplicate, and their corporate seals to be affixed thereto by their respective officers thereunto duly authorized, on the* _____ *day of* _____, *19* ____

[SEAL]

*ATTEST:* _____

_____ *By* _____

[SEAL]

*ATTEST:* _____

_____ *By* _____

→ ***The inapplicable paragraph should be stricken and initialed by the parties at the time this Agreement is executed.**

APPENDIX A

To _____ _____
NAME OF ELECTRIC SYSTEM — DATE

_____ _____
ADDRESS — REQUEST NUMBER

*This is to request permission for this Company to use jointly certain of your poles under the terms and conditions of our Agreement for Joint Use of Electric System Poles, dated* _____.

*The poles, including the number and character of circuits to be placed thereon, for which this permission is requested are those included in the pole lines indicated on the attached map, which also bears the above date and Request Number.*

*Our present plan is to start this work about* _____, 19____, *and complete the work about* _____, 19____.

*If permission to use these poles is given by you, this Company will prepare and furnish to you, after engineering is complete, detailed construction plans and drawings, together with necessary maps, to indicate specifically your poles that we wish to use jointly, the number and character of the circuits to be placed on such poles, and any rearrangements of fixtures and equipment necessary, as well as any relocations or replacements of existing poles, and any additional poles that may be required, in accordance with the procedure provided in Article III of the Agreement.*

*If the joint use proposed is agreeable, please signify your approval of this request in the space provided and return the second copy to us.*

_____ _____
NAME OF LICENSEE — SIGNATURE OF LICENSEE REPRESENTATIVE

_____ _____
ADDRESS — TITLE

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To _____ _____
NAME OF LICENSEE — DATE

_____
ADDRESS

*This is to advise you that the above request to use jointly certain poles of this system is approved. You may proceed with such joint use of poles on the terms and conditions of the Agreement referred to above, and under the conditions outlined in your request.*

_____ _____
TITLE OF ELECTRIC SYSTEM REPRESENTATIVE — SIGNATURE OF ELECTRIC SYSTEM REPRESENTATIVE

(7 U.S.C. 1989; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by Assistant Secretary for Rural Development, 7 CFR 2.70.)

NOTE.—The Farmers Home Administration had determined that this document does not contain a major proposal requiring preparation of an Economic Impact Statement under Executive Order 11821 and OMB Circular A-170.

Dated: April 26, 1978.

GORDON CAVANAUGH,
*Administrator, Farmers Home Administration.*

[FR Doc. 78-12341 Filed 5-4-78; 8:45 am]

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[3410-02]

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

[Lemon Reg. 144]

## 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 7-13, 1978. Such action is needed to provide for orderly marketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: May 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: *Findings.* Pursuant to the marketing agreement, as amended, and order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and upon the basis of the recommendations and information submitted by the Lemon Administrative Committee, and upon other information, it is found that the limitation of handling of lemons, as hereafter provided, will tend to effectuate the declared policy of the act.

The comittee met pm May 2, 1978, to consider supply and market conditions and other factors affecting the need for regulation and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues good with all sizes being requested.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the FEDERAL REGISTER (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

§ 910.444 Lemon Regulation 144.

*Order.* (a) The quantity of lemons grown in California and Arizona which may be handled during the period May 7, 1978, through May 13, 1978, is established at 285,000 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 3, 1978.

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

[FR Doc. 78-12477 Filed 5-4-78; 8:45 am]

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[3410-34]

## Title 9—Animals and Animal Products

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

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

## PART 78—BRUCELLOSIS

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

BRUCELLOSIS AREAS

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

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

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The amendments delete the following areas from the list of Noncertified Areas in § 78.22 and add such areas to the list designated as Modified Certified Brucellosis Areas in § 78.21 because it has been determined that they again come within the definition of a Modified Certified Brucellosis Area in § 78.1(m): Barry County in Missouri.

The amendments delete the following areas from the list of Modified Certified Brucellosis Areas in § 78.21 and add such areas to the list designated as Certified Brucellosis-Free Areas in § 78.20 because it has been determined that they now come within the definition of a Certified Brucellosis-Free Area in § 78.1(l): Anderson, Clay, Douglas, Finney, Stevens, and Wyandotte Counties in Kansas; and Banner County in Nebraska.

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

§ 78.20 Certified Brucellosis-Free Areas.

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

(a) *Entire States.*

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

(b) *Specific counties within States.*

*Alabama.* Dale, Geneva.

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

*Colorado.* Adams, Alamosa, Arapahoe, Archuleta, Baca, Bent, Boulder, Chaffee, Cheyenne, Clear Creek, Conejos, Costilla, Crowley, Custer, Delta, Denver, Dolores, Douglas, Eagle, Elbert, El Paso, Fremont,

Garfield, Gilpin, Grand, Gunnison, Hinsdale, Huerfano, Jackson, Jefferson, Kiowa, Kit Carson, Lake, La Plata, Larimer, Las Animas, Lincoln, Logan, Mineral, Moffat, Montezuma, Montrose, Morgan, Otero, Ouray, Park, Phillips, Pitkin, Prowers, Pueblo, Rio Blanco, Rio Grande, Routt, Saguache, San Juan, San Miguel, Sedgwick, Summit, Teller, Washington, Weld, Yuma.

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

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

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

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

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

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

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

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

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

*Nebraska.* Banner, Box Butte, Cheyenne, Dakota, Deuel, Thurston.

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

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

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

*Texas.* Armstrong, Borden, Brewster, Childress, Comal, Crane, Culberson, Ector, Gillespie, Glasscock, Gray, Hansford, Hartley, Hemphill, Hudspeth, Hutchinson, Irion, Jeff Davis, Kendall, Kerr, Kimble, Lipscomb, Llano, Loving, Martin, Mason, Menard, Midland, Moore, Newton, Ochiltree, Pecos, Presidio, Reagan, Real, Roberts, Schleicher, Sherman, Sterling, Sutton, Terrell, Val Verde, Ward, Winkler, Yoakum.

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

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

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

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

**§ 78.21 Modified Certified Brucellosis Areas.**

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

(a) *Entire States.*

Alaska, Louisiana, Oklahoma.

(b) *Specific Counties Within States.*

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

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

*Colorado.* Mesa.

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

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

*Idaho.* Bannock, Bingham, Bonneville, Caribou, Cassia, Elmore, Franklin, Fremont,

Gooding, Jefferson, Jerome, Lincoln, Madison, Oneida, Teton, Twin Falls.

*Illinois.* Massac.

*Iowa.* Adams, Appanoose, Guthrie, Ringgold, Wayne.

*Kansas.* Allen, Atchison, Barton, Bourbon, Butler, Chautauqua, Cherokee, Cloud, Coffey, Cowley, Crawford, Dickinson, Elk, Ellis, Franklin, Geary, Greenwood, Harper, Harvey, Jackson, Jefferson, Labette, Leavenworth, Lincoln, Linn, Lyon, McPherson, Miami, Mitchell, Montgomery, Morris, Morton, Nemaha, Neosho, Osage, Osborne, Ottawa, Reno, Rice, Russell, Sedgwick, Seward, Stafford, Sumner, Wabaunsee, Wilson, Woodson.

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

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

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

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

*New Mexico.* Bernalillo, Chaves, Curry, De Baca, Eddy, Guadalupe, Lea, Mora, Quay, Roosevelt, San Miguel, Union, Valencia.

*South Dakota.* Jones, Stanley.

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

*Texas.* Anderson, Andrews, Angelina, Aransas, Archer, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Chambers, Cherokee, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comanche, Concho, Cooke, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, De Witt, Dickens, Dimmitt, Donley, Duval, Eastland, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Goliad, Gonzales, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hardeman, Hardin, Harris, Harrison, Haskell, Hays, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hunt, Jack, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kenedy, Kent, King, Kinney, Kleberg, Knox, Lamar, Lamb, Lampasa, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Lubbock, Lynn, McCulloch, McLennan, McMullen, Madison, Marion, Matagorda, Maverick, Medina, Milam, Mills, Mitchell, Montague, Montgomery, Morris, Motley, Nacogdoches, Navarro, Nolan, Nueces, Oldham, Orange, Palo Pinto, Panola, Parker, Parmer, Polk, Potter, Rains, Randall, Red River, Reeves, Refugio, Robertson, Rockwall, Runnels, Rusk, Sabine, San Augustine, San Jacinto, San Patricio, San Saba, Scurry, Shackelford, Shelby, Smith, Somervell, Starr, Stephens, Stonewall, Swisher, Tarrant, Taylor, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Tyler, Upshur, Upton, Uvalde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Wise, Wood, Young, Zapata, Zavala.

*Utah.* Box Elder.

*Vermont.* Addison, Chittenden, Franklin, Orleans.

*Wyoming.* Lincoln.

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

**§ 78.22 Noncertified areas.**

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

(a) *Entire States.*

Yellowstone National Park.

(b) *Specific Counties Within States.*

*Florida.* Okeechobee.
*Missouri.* Newton.
*South Dakota.* Harding.

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

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

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

Done at Washington, D.C., this 1st day of May 1978.

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

PIERRE A. CHALOUX,
*Deputy Administrator*
*Veterinary Services.*

[FR Doc. 78-12295 Filed 5-4-78; 8:45 am]

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[3410-34]

**SUBCHAPTER D—EXPORTATION AND IMPORTATION OF ANIMALS (INCLUDING POULTRY) AND ANIMAL PRODUCTS**

## PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

### Commuted Traveltime Allowances

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: This document amends administrative instructions prescribing

commuted traveltime. This amendment establishes commuted traveltime periods as nearly as may be practicable to cover the time necessarily spent in reporting to and returning from the place at which an employee of Veterinary Services performs overtime or holiday duty when such travel is performed solely on account of overtime or holiday duty. Such establishment depends upon facts within the knowledge of the Animal and Plant Health Inspection Service.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Dr. H. L. Arnold, USDA, APHIS, VS, Federal Building, Room 867, Hyattsville, Md. 20782, 301-436-8684.

Therefore, pursuant to the authority conferred upon the Deputy Administrator, Veterinary Services, Animal and Plant Health Inspection Service by § 97.1 of the regulations concerning overtime services relating to imports and exports (9 CFR 97.1), administrative instructions 9 CFR 97.2 (1977 ed.), as amended April 26, 1977 (42 FR 21269), May 27, 1977 (42 FR 27218), July 5, 1977 (42 FR 34276), October 28, 1977 (42 FR 56719), November 15, 1977 (42 FR 59062), and December 20, 1977 (42 FR 63770), prescribing the commuted traveltime that shall be included in each period of overtime or holiday duty, are hereby amended by adding to the respective list therein as follows:

**§ 97.2 Administrative instructions prescribing commuted traveltime.**

* * * * *

OUTSIDE METROPOLITAN AREA

THREE HOURS

Tarzana, Calif. (served from Lawndale, Calif.).

(64 Stat. 561 (7 U.S.C. 2260).)

It is to the benefit of the public that this instruction be made effective at the earliest practicable date. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to 5 U.S.C. 553, it is found upon good cause that notice and public procedure on this instruction are impracticable, unnecessary, and contrary to the public interest and good cause is found for making it effective less than 30 days after publication in the FEDERAL REGISTER.

Done at Washington, D.C., this 27th day of April 1978.

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

PIERRE A. CHALOUX,
*Deputy Administrator,*
*Veterinary Services.*

[FR Doc. 78-12027 Filed 5-4-78; 8:45 am]

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[3410-02]

## CHAPTER II—AGRICULTURAL MARKETING SERVICE (PACKERS AND STOCKYARDS), DEPARTMENT OF AGRICULTURE

## RULES OF PRACTICE, STATEMENTS OF GENERAL POLICY, AND STATEMENT OF ORGANIZATION AND FUNCTIONS

### Conforming Amendments

AGENCY: Agricultural Marketing Service (Packers and Stockyards), United States Department of Agriculture.

ACTION: Final rules, rules of practice, statements of general policy, and statement of organization and functions.

SUMMARY: This document makes conforming amendments to reflect the merger of the Packers and Stockyards Administration into the Agricultural Marketing Service.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

John J. Casey, Attorney, Office of the General Counsel, United States Department of Agriculture, Washington, D.C. 20250, telephone 202-447-7357.

SUPPLEMENTARY INFORMATION: By documents published in the FEDERAL REGISTER on December 30, 1977, 42 FR 65131-2, 65223, the delegations of authority from the Assistant Secretary of Agriculture for Marketing Services were revised to reflect the merger of the Packers and Stockyards Administration into the Agricultural Marketing Service. This document makes conforming amendments to the regulations issued under the Packers and Stockyards Act, the Rules of Practice governing proceedings under that Act, the statements of general policy under that Act, and the statement of organization and functions of the Packers and Stockyards Administration, to reflect that merger.

Accordingly, Chapter II of Title 9 of the Code of Federal Regulations is hereby redesignated, Parts 201, 202, and 203 are hereby amended by adding footnotes to the captions thereof, and § 204.1 is hereby revised, to read as set forth below.

It is hereby found that notice of proposed rulemaking and public procedure on this document are unnecessary, and good cause is found for making these amendments effective less than thirty days after publication, in that this document only conforms various provisions to reflect an action previously taken.

(Section 407, 42 Stat. 169; section 4, 72 Stat. 1750; 77 Stat. 79; section 11, 90 Stat. 1252; 7 U.S.C. 228; 7 CFR 2.17, 2.50; 42 FR 65131-2, 65223.)

Done at Washington, D.C. on April 28, 1978.

CHAS B. JENNINGS,
*Acting Deputy Administrator,*
*Packers and Stockyards, Agricultural Marketing Service.*

## PART 201—REGULATIONS UNDER THE PACKERS AND STOCKYARDS ACT [1]

## PART 202—RULES OF PRACTICE GOVERNING PROCEEDINGS UNDER THE PACKERS AND STOCKYARDS ACT [2]

## PART 203—STATEMENTS OF GENERAL POLICY UNDER THE PACKERS AND STOCKYARDS ACT [3]

## PART 204—ORGANIZATION AND FUNCTIONS

**§ 204.1 Introduction.**

The Agricultural Marketing Service hereby describes that part of its central and field organization which is

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[1] References in these regulations to the Packers and Stockyards Administration shall be deemed to refer to those divisions and offices of the Agricultural Marketing Service which are charged with administration of the Packers and Stockyards Act, and references in these regulations to the Administrator of the Packers and Stockyards Administration shall be deemed to refer to the Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service.

[2] References in these rules to the Packers and Stockyards Administration shall be deemed to refer to those divisions and offices of the Agricultural Marketing Service which are charged with administration of the Packers and Stockyards Act, and references in these rules to the Administrator of the Packers and Stockyards Administration shall be deemed to refer to the Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service.

[3] References in these statements to the Packers and Stockyards Administration shall be deemed to refer to those divisions and offices of the Agricultural Marketing Service which are charged with administration of the Packers and Stockyards Act, and references in these statements to the Administrator of the Packers and Stockyards Administration shall be deemed to refer to the Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service.

charged with administration of the Packers and Stockyards Act and, with respect to the administration of that Act, indicates the established places at which and methods whereby the public may secure information, directs attention to the general course and method by which its functions are channeled, and determines and sets forth the procedures governing the availability of opinions, orders, and other records in the files of said Service. References in this Part 204 to the Packers and Stockyards Administration shall be deemed to refer to those divisions and offices of the Agricultural Marketing Service which are charged with administration of the Packers and Stockyards Act. References in this Part 204 to the Administrator and the Associate Administrator of the Packers and Stockyards Administration shall be deemed to refer, respectively, to the Deputy Administrator and the Assistant Deputy Administrator, Packers and Stockyards, Agricultural Marketing Service. The Deputy Administrator reports to the Administrator, Agricultural Marketing Service.

[FR Doc. 78-12303 Filed 5-4-78; 8:45 am]

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[8025-01]

**Title 13—Business Credit and Assistance**

**CHAPTER I—SMALL BUSINESS ADMINISTRATION**

[Revision 13, Amdt. 20]

**PART 121—SMALL BUSINESS SIZE STANDARDS**

**Definition of Small Business for Purpose of SBA Loans—Radio and Television Broadcasting**

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: This rule establishes size standards for small radio and television firms to receive SBA financial or loan assistance. It is necessary because there are no size standards for these two industries. This new rule is intended to establish the eligibility criteria for small radio and TV firms for SBA assistance.

EFFECTIVE DATE: May 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Harvey D. Bronstein, 202-653-6373.

SUPPLEMENTARY INFORMATION: On February 10, 1978 (43 FR 5846), the SBA published a proposed rule in the FEDERAL REGISTER to establish small business size standards for radio and television broadcasting firms of, respectively, $2 million and $5 million in annual receipts. Since that time, the Agency has received only one comment. It stated that the proposed standards are too low because they would eliminate the possibility of purchasing broadcasting facilities in major markets. The Agency's response to this comment is that the purpose of size standards is to define small business on an industry-by-industry basis for the country as a whole. A size standard high enough to include broadcasting firms in a major market would include some of the largest broadcasting firms in the nation. This would defeat the purpose of size standards, which is to make distinctions between small and non-small.

Accordingly, Part 121 of Chapter I, Title 13, of the Code of Federal Regulations is amended by:

Revising § 121.3-10 by adding a new paragraph (l) to read as follows, and by deleting paragraph (d)(12):

**§ 121.3-10 Definition of small business for SBA loans.**

* * * * *

(l) *Communications.* (1) Any firm primarily engaged in radio broadcasting, SIC-4832, is small if its annual receipts do not exceed $2 million.

(2) Any firm primarily engaged in television broadcasting, SIC-4833, is small if its annual receipts do not exceed $5 million.

(3) Any firm primarily engaged in providing cable television service rental to homes is small if its annual receipts do not exceed $3 million is small.

* * * * *

Dated: April 25, 1978.

PATRICIA M. CLOHERTY,
*Deputy Administrator.*

[FR Doc. 78-12298 Filed 5-4-78; 8:45 am]

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[6320-01]

**Title 14—Aeronautics and Space**

**CHAPTER II—CIVIL AERONAUTICS BOARD**

**SUBCHAPTER F—POLICY STATEMENTS**

[Regulation PS-76, Amdt. 55]

**PART 399—STATEMENTS OF GENERAL POLICY**

**Role of Staff in Route Proceedings; Amendment of Part**

AGENCY: Civil Aeronautics Board.

ACTION: Statement of policy.

SUMMARY: This Policy Statement establishes the role we direct our staff to assume in hearing cases involving the award of route authority. In a recent order issued by the Board (Order 78-4-28, April 6, 1978) the issue arose as to the proper role of staff in route cases. The intent of this policy statement is to establish standards applicable to staff participation in such cases.

DATES: Effective: May 2, 1978. Adopted: May 2, 1978.

FOR FURTHER INFORMATION CONTACT:

Philip J. Bakes, Jr., General Counsel, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5233.

SUPPLEMENTARY INFORMATION: In several proceedings pending before the Board, administrative law judges have ordered all parties to file prehearing statements of position on the merits. Judge William Dapper dismissed the Bureau of Pricing and Domestic Aviation (BPDA) from the *Transcontinental Low-Fare Route Proceeding*, Docket 30356, for failing to comply with his directive that they file a prehearing statement of position and, in Order 78-4-28, we directed that BPDA be permitted to continue to participate in the traditional way in that important case. We said that we would undertake to consider the important issues raised by Judge Dapper's directive, and review the merits of a change in the traditional role of our staff in route cases.

We were and continue to be sensitive to the problems our staff faces when we are changing our procedures to accelerate our decisions, undertaking extensive revisions of our rules, and considering major departures from past regulatory policy. Although traditionally the staff has not stated its position until after the receipt of all evidence and the close of the hearing, the recent actions of several administrative law judges have focused our attention on the broader question of the proper staff role in a changing policy environment, and we have concluded that a change is in order. Consequently, pursuant to our powers under sections 204 and 1001 of the Act, this policy statement establishes the role we direct our staff to assume in hearing cases involving the award of route authority.

There is no question that the filing of prehearing[1] statements of position on the merits in some types of cases can be an effective trial technique. Such statements of position help define the scope of each party's interest in the case, provide a basis for testing and confining the relevance of cross/examination during the hearing, and suggest the type of evidence ger-

[1] That is, before cross/examination but after the submission of evidence.

mane to the proceeding. All of these benefits can contribute to the efficiency of a hearing and enhance the opportunities for develoment of the most complete trial record. In certain types of cases, in fact, such as enforcement cases, pretrial disclosure of the staff's position may be required in the interest of fairness. The staff role in rate cases by and large follows this pattern. Prehearing statement of the staff's position does not preclude a change of position during or after the hearing should the course of evidence testing suggest it.

Our staff, however, has by long practice refrained from taking a preliminary position on how the issues and proposals in a route case should be finally adjudicated, but has instead taken a position at the close of the hearing after the evidence has been tested but before other parties have filed briefs. The staff's role during such hearings has been not to function exactly as every other party, primarily because its role and interest is defined by the broad public interest, not by a particular private or local interest. Rather its role has been to assure that essential evidence is introduced to resolve the public interest issues, that the evidence submitted by the parties is subject to adversary testing, and that the decisional options are developed with the public interest in mind. This is a very valuable function and we believe that it should be continued.

We expect, however, that there will be certain route licensing cases where a prehearing presentation by our staff will contribute to a better trial record, be consistent with the staff's traditional role and notions of fundamental fairness, and better serve the Board's decisionmaking needs and, ultimately, the public interest. We have in mind those route cases that offer the opportunity for developing new policies we are attempting to adapt to the administration of the Federal Aviation Act. In certain of those types of cases, we believe our staff should make a prehearing presentation of the decisional options which they believe are available to the decisionmaker, and describe the type of evidence needed or available to develop each option. If the staff believes that there are certain options for which no probative evidence can be developed or produced, they should identify such options at the outset of the proceeding. Also, the staff need not and should not be required to produce evidence on each option. Identification by our staff at the outset of the alternative ways in which the decisions in an important route case would relate to substantive policies and regulatory objectives will better insure that these alternatives will be well tested on the record; that the types of evidence necessary to evaluate them are introduced into the hearing; and that all parties have the fullest opportunity to examine them.

The Board sees no substantive or procedural need to require as a general practice that the staff advocate the adoption of one of the decisional options at the outset of the case. We expect the staff, after close of a case and before briefs, however, to advocate a position based on one or more of the decisional options identified earlier in its prehearing presentation, or upon such other options as the trial of the case may develop. We will require our staff to participate in these kinds of route hearing cases in the fashion we have just outlined. To the extent possible, we will identify the cases we believe offer such new policy opportunities in our instituting orders.

We believe the kind of participation in route certification proceedings we have outlined here for our staff is consistent with both its more traditional role as a public interest advocate and also the needs of the Board of insuring that all of the evidence essential to the adjudication of issues and the requirements of law is introduced into the record and subject to full testing. We would expect in these cases that this would more than suffice to provide the judge and the parties with ample opportunity to explore staff positions.

In those routine cases where the staff participates,[2] we see no compelling reason to require nor do we desire it to participate in a manner different from its traditional participation, particularly where the presence of competing applicants in those cases may assure adequate identification and examination of issues and testing of evidence. In those cases where the staff participates but the Board has not imposed a requirement for presenting decisional options at the outset, the staff shall present a prehearing presentation of decisional options if the administrative law judge finds that there exists unusual policy or evidentiary issues which clearly require such a presentation.

Since we are resolving here the general issues raised in Order 78-4-28 we want to emphasize that neither that Order nor this policy statement should be read in any way as an effort generally to circumscribe the permissible and legitimate independence and discretion of administrative law judges in their role as presiding officers in hearing cases. We did not intend any language in Order 78-4-28 to be so interpreted. Order 78-4-28 was the product of highly expedited action by the Board to maintain the historical status quo in a case that, in the Board's firm view, required staff participation. We will not dwell on this issue except to say that the independence accorded administrative law judges under the Administrative Procedure Act (see section 556(c)) is something we will continue to protect and maintain. We intend to monitor closely the effect of this Policy Statement on our proceedings.

[2]Board policy on staff participation in Board proceedings is set forth in § 543.2 of the Civil Aeronautics Board Manual.

O'MELIA, MEMBER, CONCURRING STATEMENT

The adoption of this policy statement is an effort to resolve an issue which is considered to be of great importance and significance by both the Bureau of Administrative Law Judges and the operating bureaus of the Board. The statement does not fully satisfy either side's view of the institutional priorities nor of what determination can best contribute to achievement of the agency's objectives without causing damage to the integrity of the agency's procedures. However, it is an effort to satisfy the legitimate concerns of each interested Bureau, and, more importantly an effort to satisfy those concerns in a framework that also takes into consideration the Board's decisionmaking responsibility. I personally would prefer to see a solution that all elements of the Board could endorse without reservation, and perhaps further reflection will help produce such a solution. Nevertheless, in the meantime, in order to provide guidance in a number of pending proceedings in which a similar issue may arise, I concur to its issuance, but with the following observations and qualifications.

I am not satisfied that a less hurried study of this problem would not furnish the Board with a better understanding of the issues. While there is apparently no question (1) that an agency is free to promulgate its own procedural rules in whatever manner best permits the fair and orderly adjudication of cases before it, and (2) that Constitutional due process requirements do not demand any particular technique or procedure, and (3) that the Board has the power to prescribe how its staff is to participate in route cases, and (4) that it can properly limit the delegation of authority to its judges, it must do so in a manner that ensures that its procedures are fair to the parties in the proceeding and allow development of a full record. Thus, the Board's promulgated procedural rules must, on the one hand, permit the administrative law judge to exercise the necessary control over the case in which he is presiding, but, on the other hand, must protect its staff resources.

The answer to this problem, I believe, is more to be drawn from policy considerations, than from legal precepts that are fairly well established. The Board is clearly entering a period—if not already fairly deeply into it—in which novel and complex cases will arise, perhaps requiring novel proposals, or a number of alternative solutions, to be advanced and explored. The Board's rules must afford its operating bureaus participating in particular cases opportunity to defer definitive commitments to any single course until a factual predicate has been developed, and must therefore make it possible for them to outline decisional alternatives, to assist in developing an evidentiary record on which a proper selection can be made, and, at an appropriate time, to define its recommendations to the judge on the basis of the evidence brought forth in the hearing. The proposed policy statement attempts to do this without prejudicing those prerogatives of the administrative law judge necessary for proper control of the proceeding and to accord the administrative process a full measure of respect. I am less sure that in an attempt to create a privileged position for our staff, we have not gone too far in

creating an unfair situation for the other parties.

We cannot be absolutely certain that this policy statement will properly accomplish our procedural and policy objectives, as we see them, and will not lead us to other now unforseen problems. In concurring that we should now adopt this formulation, I propose that the Board continue to follow closely the effect of this policy directive. Should our experience under this policy declaration be found, after a suitable period of time, to be detracting in any way from the high standards of fairness and effectiveness that we want to maintain in the Board's administrative proceedings, I would then urge the Board to reconsider its policy and make the necessary modifications. I am confident that my colleagues on the Board would, in such circumstances, be equally ready to review the present decision.

(s) RICHARD J. O'MELIA.

In light of the foregoing, a new § 399.63 is made to 14 CFR Part 399, Statements of General Policy:

1. Amend the table of contents by adding § 399.63 to the table to read as follows:

399.63 Role of staff in route proceedings.

2. Amend subpart E of part 399 by adding a new section 399.63 to read as follows:

**§ 399.63 Role of staff in route proceedings.**

(a) *General.* This policy statement establishes the standards applicable to staff participation in oral hearing cases involving award of route authority.

(b) *Standards.* The staff's role during such hearings, primarily because it acts in the broad public interest, and not for a particular private or local interest, is to assure that essential evidence is introduced to resolve the public interest issues; that the evidence submitted by the parties is subject to adversary testing, and that decisional options are developed with the public interest in mind. In route cases designated by the Board that offer the opportunity for developing new policies to adapt to the administration of the Federal Aviation Act or that raise unusual evidentiary issues, a prehearing presentation by staff of decisional options will contribute to a better trial record, be consistent with traditional notions of fundamental fairness, better serve the Board's decisionmaking needs and ultimately serve the public interest. In any route case where the Board has not required the staff to participate by making a prehearing presentation, the staff shall present a prehearing presentation of decisional options if the administrative law judge finds that there exists unusual policy or evidentiary issues which clearly require such a presentation. We believe it is not desirable for the staff to advocate the adoption of a single decisional option at the outset of a case. Accordingly,

(1) In route cases designated by the Board that offer the opportunity for developing new policies, the staff shall make a prehearing presentation of the decisional options available, and describe the kinds of evidence needed or available to develop each option. The staff need not and should not be required to develop evidence on each option. In every case, after the close of the hearing, however, the staff shall advocate a position based upon one or more of the decisional options identified in its prehearing presentation or developed at trial.

(2) In any route case in which the administrative law judge finds that there exists unusual policy or evidentiary issues clearly requiring a prehearing presentation, the staff shall submit a prehearing statement of the decisional options available.

(3) To the extent possible, the Board, in its instituting orders, will identify or designate the cases which involve the development of new policies or unusual evidentiary issues that will require the type of staff participation described in § 399.63(b)(1).

(Secs. 204 and 1001 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743 and 788, 49 U.S.C. 1324 and 1481.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
*Secretary.*

[FR Doc. 78-12358 Filed 5-4-78; 8:45 am]

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[6740-02]

## Title 18—Conservation of Power and Water Resources

## CHAPTER I—FEDERAL ENERGY REGULATORY COMMISSION DEPARTMENT OF ENERGY

[Docket No. RM77-21; Order No. 6]

## PART 141—STATEMENTS AND REPORTS (SCHEDULES)

## PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS A AND CLASS B)

## PART 216—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS TO AND RETIREMENTS OF GAS PLANT

## PART 260—STATEMENTS AND REPORTS (SCHEDULES)

## Order Amending the Uniform Systems of Accounts for Natural Gas Companies and Related Regulations To Provide for Base Load Liquefied Natural Gas Facilities

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: By this order, the Commission is adopting amendments to its regulations necessary to provide for the recognition of base load liquefied natural gas facilities. Amendments are also ordered for related report forms. The amendments are being ordered to provide accounting and reporting classifications for base load liquefied natural gas facilities for which no such appropriate classifications existed prior to this order.

EFFECTIVE DATE: January 1, 1978.

FOR FURTHER INFORMATION CONTACT:

M. Wayne McDanal, Office of Chief Accountant, 202-275-4052.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565, approved August 4, 1977 and Executive Order No. 12009, dated September 13, 1977 (42 FR 46267, September 15, 1977), the Federal Power Commission (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent Commission within the Department of Energy, was activated on October 1, 1977.[1]

Before Commissioners: Charles B. Curtis, Chairman; Don S. Smith, Georgiana Sheldon, and Matthew Holden, Jr., and George R. Hall.

Revisions to uniform system of accounts for natural gas companies to provide accounts for base load liquefied natural gas terminaling and processing facilities; order adopting amendments to uniform system of accounts for natural gas companies (Docket No. RM77-21, Order No. 6).

APRIL 28, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565, approved August 4, 1977 and Executive Order No. 12009, dated September 13, 1977 (42 FR 46267, September 15, 1977), the Federal Power Commission (FPC) ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent Commission within the De-

[1] The term "Commission" when used in the context of an action taken prior to Oct. 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

partment of Energy, was activated on October 1, 1977.[1]

Section 0.4(h) of part 0 of chapter I, title 18 of the Code of Federal Regulations, which was promulgated by the FERC's order No. 1, docket No. RM78-1, issued October 6, 1977 (42 FR 55450, October 17, 1977), provides that all persons or jurisdictional entities required to file periodic or other reports with any agency or commission whose functions were transferred under the DOE Act to the FERC shall file such reports relating to the transferred functions with the Secretary of the FERC and provides further that the FERC affirms, adopts and continues in effect all previously approved forms as amended herein, for making periodic or other reports.

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) or 402(a)(2) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary of Energy and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the Federal Energy Regulatory Commission," 10 CFR part 1000, provided that this proceeding would be continued before the FERC.[2] The FERC takes action in this proceeding in accordance with the above-mentioned authorities.

Pursuant to the notice of proposed rulemaking issued in this docket, the Commission is hereby adopting amendments to its Uniform System of Accounts for Natural Gas Companies (Class A and Class B) to accommodate the accounting for base load liquefied natural gas facilities. The amendments include the adoption of a number of new accounts including a liquefied natural gas inventory account, plant accounts and the necessary operation and maintenance expense accounts. In addition thereto, two new definitions prompted by this proceeding are being added. The appropriate annual report form changes have also been made.

[1]The term "Commission" when used in the context of an action taken prior to Oct. 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2]10 CFR 1000.1(d). The joint regulation was published in the FEDERAL REGISTER on Oct. 17, 1977 (42 FR 55534).

On June 8, 1977, the Commission issued a notice of proposed rulemaking in docket No. RM77-21 (42 FR 30846, June 17, 1977). This rulemaking proposed to establish a separate accounting classification for base load liquefied natural gas (LNG) terminaling and processing facilities and to make revisions to FPC form No. 2, Annual Report for Natural Gas Companies, in order to reflect the amended accounting classification.

Comments were invited from interested persons no later than August 8, 1977. In response to the rulemaking notice, the Commission received comments from 11 respondents.[3] In general, the responses to the proposed rulemaking were favorable with several of the respondents suggesting modifications to the rulemaking as follows:

The use of five digit account numbers, instead of four digit account numbers presently being used, was objected to by several respondents on the ground that this change would require the reprogramming of existing computer systems entailing significant outlays of funds. The Commission recognizes the respondents' position and has amended the proposal and certain existing account numbers in order to retain the four digit system.

Several respondents suggested that Account 804.2, Liquefied Natural Gas Held for Processing—Net, be repositioned and classified with deliveries and withdrawals from storage. We have adopted this reclassification believing it to be more meaningful, and have divided the account into delivery and withdrawal accounts.

Based upon suggestions from three respondents, we have also added provisions for liquefaction equipment to recognize the possibility of base load liquefaction operations. Numerous other minor revisions also have been incorporated into the accounts and schedules.

Pursuant to the request in the notice in this proceeding, suggested retirement units for the properties classified in the LNG plant accounts were received and have been incorporated in the Units of Property for Use in Accounting for Additions to and Retirements of Gas Plant under part 216 of the Commission's regulations. Comparable lists have also been added for the existing LNG peaking plant accounts.

The Commission is also amending the schedule of the FPC form No. 1 regarding the distribution of salaries and wages. Although prior notice was not provided with respect to the amendment, the change is minor and concerns a schedule which FPC form No. 1 has in common with FPC form No. 2 with respect to which notice was given. The amendment is minor and technical in nature consistent with the purpose of the rulemaking and does not impose additional requirements on reporting entities. Therefore, the Commission believes that prior notice and public procedures are unnecessary.

The Commission finds: (1) The notice and opportunity to participate in this rulemaking proceeding with respect to the matters presently before this Commission; through the submission in writing of data, views, comments, and suggestions; are consistent and in accordance with the procedural requirements prescribed by 5 U.S.C. 553.

(2) The amendments are necessary and appropriate for the administration of the Natural Gas Act.

(3) Because the amendments ordered herein, which were not included in the notice of this proceeding, are consistent with the prime purpose of the proposed rulemaking, further notice thereof and opportunity for comment thereon are unnecessary.

(4) Good cause exists for making the amendments to the Uniform System of Accounts for Natural Gas Companies and to the Units of Property for Use in Accounting for Additions to and Retirements of Gas Plant which are ordered herein effective on January 1, 1978, and the amendments to FPC form No. 1 and form No. 2 which are ordered herein to become effective for the 1978 reporting year.

The Commission orders:[4] (1) Effective January 1, 1978, part 201, the Uniform System of Accounts Prescribed for Natural Gas Companies (Class A and Class B), and part 216, Units of Property for Use in Accounting for Additions to and Retirements of Gas Plant, of subchapter F, chapter I, title 18 of the Code of Federal Regulations are amended to establish separate ac-

[3]Interstate Natural Gas Association of America (INGAA), Public Service Electric & Gas Co., San Diego Gas & Electric Co., Columbia LNG Corp. (late filing), Consolidated Natural Gas Service Co., Michigan Wisconsin Pipe Line Co., Northwest Pipeline Corp., Southern Natural Gas Co., (late filing), Tennessee Gas Pipeline Co., Western LNG Terminal Co., et al., and Public Service Commission of the State of New York.

[4]The Commission is acting under authority, pursuant to the provisions of the Federal Power Act as amended, particularly secs. 301, 302, 304, 309, and 311; (49 Stat. 838, 854, 855, 858, 859; 16 U.S.C. 796, 825, 825a, 825c, 825h, and 825j) and the provisions of the Natural Gas Act, as amended, particularly secs. 8, 9, 10, and 16 (52 Stat. 825-826, 1830, 15 U.S.C. 717g, 717h, 717i and 717o).

counting classifications and retirement units for base load liquefied natural gas plant, all as set forth in the attachment A hereto, which is an integral part of this order.

(2) Effective for the reporting year 1978, applicable schedule pages of FPC form No. 2, Annual Report for Natural Gas Companies (Class A and Class B), prescribed by § 260.1 of part 260, subchapter G, chapter I, title 18 of the Code of Federal Regulations and the applicable schedule page of FPC form No. 1, Annual Report for Electric Utilities and Licensees (Class A and Class B), prescribed by § 141.1 part 141, subchapter D, chapter I, title 18 of the Code of Federal Regulations are amended, all as set forth in attachment B hereto, which is an integral part of this order.

(3) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

(4) The Secretary shall cause copies of the schedules, as modified by this order, to be transmitted to the Director of the Office of Management and Budget.

By direction of the Commission.

LOIS D. CASHELL,
*Acting Secretary.*

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## PART 201—UNIFORM SYSTEM OF ACCOUNTS FOR NATURAL GAS COMPANIES (CLASS A AND CLASS B)

AMENDMENTS TO THE REGULATIONS UNDER THE NATURAL GAS ACT, 18 CFR, PURSUANT TO ORDER NO. 6

(A) Part 201—Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (Class A and Class B) of Subchapter F, Chapter I, Title 18 of the Code of Federal Regulations is amended as follows:

(1) The gas plant instructions are amended by adding new subparagraphs 20 and 21 under instruction "3. Components of Construction Cost" entitled "(20) Line Pack" and "(21) LNG Heel Gas."

As amended, this portion of the gas plant instructions reads:

**Gas Plant Instructions**

* * * * *

3. *Components of construction cost.*

* * * * *

(20) "Line pack gas." Line pack includes the first cost of that quantity of gas introduced into the utility's system necessary to bring the system up to its designed operating capacity or increases therein and which must be maintained in the system in order to sustain such design operating capacity.

(21) LNG "heel" is the first cost of that minimum quantity of liquefied natural gas necessary to be retained in holding tanks and other facilities for purposes of temperature and/or pressure maintenance.

* * * * *

(2) The balance sheet chart of accounts is amended by adding new "Account 164.3, Liquefied Natural Gas Held for Processing" immediately following "Account 164.2, Liquefied Natural Gas Stored."

As amended, the balance sheet chart of accounts reads:

**Balance Sheet Chart of Accounts**

* * * * *

ASSETS AND OTHER DEBITS

* * * * *

3. CURRENT AND ACCRUED ASSETS

* * * * *

164.3 Liquefied natural gas held for processing.

* * * * *

(3) The text of the balance sheet accounts is amended as follows:

(a) The second sentence of paragraph C of "Account 108, Accumulated Provision for Depreciation of Gas Utility Plant," and "Account 111, Accumulated Provision for Amortization and Depletion of Gas Utility Plant" is amended, by adding new classification "(6) Base Load LNG Terminaling and Processing Plant" and renumbering present functions 6 through 8 as 7 through 9.

(b) Amend paragraph C of "Account 164.2, Liquefied Natural Gas Stored" by changing account numbers 809 and 808 mentioned therein to 808.2 and 808.1 respectively.

(c) Add new "Account 164.3, Liquefied Natural Gas Held for Processing" immediately following "Account 164.2, Liquefied Natural Gas Stored."

As amended, this portion of the balance sheet accounts reads:

**Balance Sheet Accounts**

* * * * *

ASSETS AND OTHER DEBITS

1. UTILITY PLANT

* * * * *

**108 Accumulated provision for depreciation of gas utility plant.**

* * * * *

C. * * * For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregating according to the following functional classification for gas plant: (1) Production—manufactured gas, (2) production and gathering—natural gas, (3) products extraction—natural gas, (4) underground gas storage, (5) other storage, (6) base load LNG terminaling and processing plant, (7) transmission, (8) distribution, and (9) general. * * *

* * * * *

**111 Accumulated provision for amortization and depletion of gas utility plant.**

* * * * *

C. * * * For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for gas plant: (1) Production—manufactured gas, (2) production and gathering—natural gas, (3) products extraction—natural gas, (4) underground gas storage, (5) other storage, (6) base load LNG terminaling and processing plant, (7) transmission, (8) distribution, and (9) general. * * *

* * * * *

3. CURRENT AND ACCRUED ASSETS

* * * * *

**164.2 Liquefied natural gas storage.**

* * * * *

C. Amounts debited to this account for natural gas placed in stored shall be credited to account 808.2, Gas Delivered to Storage—Credit. Amounts credited to this account for gas withdrawn from storage shall be debited to account 808.1, Gas Withdrawn from Storage—Debit.

* * * * *

**164.3. Liquefied natural gas held for processing.**

* * * * *

A. This account shall include the cost of base load liquefied natural gas available for vaporization and injection into the utility's natural gas system.

B. Natural gas purchased in a liquefied form shall be priced at the cost of such gas to the utility.

C. Amounts debited to this account for liquefied natural gas purchased for processing shall be credited to account 809.2, Deliveries of Natural Gas for Processing—Credit. Amounts credited for liquefied natural gas processed shall be debited to account 809.1, Withdrawals of Liquefied Natural Gas Held for Processing—Debit.

D. Withdrawals of gas held for vaporization may be priced according to the first-in-first-out, last-in-first-out or weighted average cost method provided the method adopted by the utility is used consistently from year to year and inventory records are maintained in accordance therewith. Commission approval must be obtained for any other pricing method or for any change from the pricing method adopted by the utility. Separate records shall be maintained for Mcf (or Btu) of gas purchased for processing, processed, and remaining for processing.

E. Adjustments for inventory losses shall be charged to account 846.1, Gas Losses.

* * * * *

(4) The gas plant chart of accounts is amended by changing the title of subsection "3. Natural Gas Storage Plant" and by adding immediately following account 363.5, Other Equipment, a new subsection "C. Base Load Liquefied Natural Gas Terminaling and Processing Plant" and related accounts thereunder.

As amended, this portion of the gas plant chart of accounts reads:

**Gas Plant Chart of Accounts**

* * * * *

3. NATURAL GAS STORAGE AND PROCESSING PLANT

* * * * *

C. BASE LOAD LIQUEFIED NATURAL GAS TERMINALING AND PROCESSING PLANT

364.1 Land and land rights.
364.2 Structures and improvements.
364.3 LNG processing terminal equipment.
364.4 LNG transportation equipment.
364.5 Measuring and regulating equipment.
364.6 Compressor station equipment.
364.7 Communication equipment.
364.8 Other equipment.

* * * * *

(5) In the text of the gas plant accounts:

(a) The title and instruction thereto of subsection "3. Natural Gas Storage Plant" is amended.

(b) Add new subsection "C. Base Load Liquefied Natural Gas Terminaling and Processing Plant" and related accounts immediately following "Account 363.5, Other Equipment."

As amended, this portion of the text of the gas plant accounts reads:

**Gas Plant Accounts**

* * * * *

3. NATURAL GAS STORAGE AND PROCESSING PLANT

The accounts under subsections A and B hereunder are to be used by the transmission and distribution companies for the classification of storage facilities used for peak shaving operations. The accounts shall be subdivided to classify the peak shaving storage facilities according to the transmission or distribution function, if the utility operates both transmission and distribution systems. Only base load liquefied natural gas terminaling and processing facilities are to be classified under subsection C, Base Load Liquefied Natural Gas Terminaling and Processing Plant.

* * * * *

C. BASE LOAD LIQUEFIED NATURAL GAS TERMINALING AND PROCESSING PLANT

**364.1 Land and land rights.**

A. This account shall include the cost of land and land rights used in connection with liquefied natural gas terminaling and processing operations. (See gas plant instruction 7.)

**364.2 Structures and improvements.**

A. This account shall include the cost in place of structures and improvements used in connection with liquefied natural gas terminaling and processing operations. (See gas plant instruction 8.)

B. This account shall be subdivided as follows:

1. Docking and harbor facilities.
2. LNG processing terminal structures.
3. Measuring and regulating structures.
4. Compressor station structures.
5. Other structures.

**364.3 LNG processing terminal equipment.**

This account shall include the cost installed of equipment used to receive, hold, and regasify liquefied natural gas for delivery into the utility's transmission or distribution system.

ITEMS

1. Aftercoolers.
2. Air compressors.
3. Air coolers.
4. Alarm systems.
5. Blowers.
6. Cold box, condensers.
7. Controls and control apparatus.
8. Dikes.
9. Drums.
10. Electrical power and ignition circuits including wiring and conduits.
11. Emission control equipment.
12. Fire control devices and equipment.
13. Foundations.
14. Generators.
15. Heat exchangers.
16. Heaters and reheaters.
17. Instrumentation.
18. Intercoolers.
19. Liquefaction compressors.
20. Liquefied gas holders and storage tanks.
21. Nitrogen system equipment.
22. Plant piping including pipe supports.
23. Pollution control facilities.
24. Pumps and driving units.
25. Stacks.
26. Tanks, other than LNG storage tanks (including ladders, stairs, walkways, and lighting).
27. Unloading and loading arms, and appurtenant equipment.
28. Valves.
29. Vaporizers.
30. Waste heat recovery units.
31. Water craft not to include LNG tankers and barges.
32. Miscellaneous other equipment.

**364.4 LNG transportation equipment.**

This account shall include the cost of vehicles used for the transportation of liquefied natural gas.

ITEMS

1. LNG barges.
2. LNG maritime tankers.
3. LNG tank trucks.
4. Other LNG transportation equipment.

**364.5 Measuring and regulating equipment.**

This account shall include the cost installed of meters, gauges and other equipment used in base load LNG operations for measuring or regulating natural gas prior to its entrance into the utility's transmission or distribution system.

ITEMS

1. Automatic control equipment.
2. Boilers, heaters, etc.
3. Foundation, pits, etc.
4. Gas analyzer equipment.
5. Gas cleaners, scrubbers, separators, dehydrators, etc.
6. Gauges and instruments, including piping, fittings, wiring, etc., and panel boards.
7. Headers.
8. Meters, orifice or positive, including piping and connections.
9. Oil fogging equipment.
10. Odorizing equipment.
11. Regulators or governors, including controls and instruments.
12. Stabilization equipment.
13. Structures of a minor or portable type.
14. Other equipment.

**364.6 Compressor station equipment.**

This account shall include the cost installed of compressor station equipment and associated appliances used in connection with liquefied natural gas operations prior to entrance of vaporized gas into the utility's transmission or distribution system.

ITEMS

1. Boiler plant, coal handling, and ash handling equipment for steam powered compressor station.
2. Compressed air system equipment.
3. Compressor equipment and driving units, including auxiliaries, foundations, guard rails, and enclosures, etc.
4. Electric system equipment, including generating equipment and driving units, power wiring, transformers, regulators, battery equipment, switchboard, etc.
5. Fire fighting equipment.
6. Gas lines and equipment, including fuel supply lines, cooling tower and pond and as-

sociated equipment, dehydrators, fuel gas mixers, special pipebends and connections, and associated scrubbers, separators, tanks, gauges, and instruments.
7. Laboratory and testing equipment.
8. Lubricating oil system, including centrifuge, filter, tanks, purifier, and lubricating oil piping, etc.
9. Office furniture and fixtures and general equipment such as steel lockers, first-aid equipment, gasoline dispensing equipment, lawn mowers, incinerators, etc.
10. Shop tools and equipment.
11. Water supply and circulation system, including water well, tank, water pipeline, cooling tower, spray fence, and water treatment equipment, etc., but not including water system equipment used solely for domestic and general use.
12. Other equipment.

**364.7 Communication equipment.**

This account shall include the cost installed of radio, telephone, microwave, and other equipment used wholly or predominantly in connection with the operation and maintenance of the liquefied natural gas system. (See also accounts 370 and 397, Communication Equipment.)

ITEMS

1. Carrier terminal equipment including repeaters, power supply equipment, transmitting and receiving sets.
2. Microwave equipment, including power supply equipment, transmitters, amplifiers, paraboloids, towers, reflectors, receiving equipment, etc.
3. Radio equipment, fixed and mobile, including antenna, power equipment, transmitter units.
4. Telephone equipment including switchboards, power and testing equipment, conductors, pole lines, etc.
5. Other equipment.§

**364.8 Other equipment.**

This account shall include the cost installed of equipment used in liquefied natural gas operations, when not assignable to any of the foregoing accounts.

ITEMS

1. Garage and service equipment.
2. General tools, including power operated equipment.
3. Laboratory equipment.
4. Materials handling equipment.
5. Office furniture and equipment.
6. Power generation equipment.
7. Shop equipment.
8. Tools, other than small hand tools.
9. Other equipment.

* * * * *

(6) The operation and maintenance expense chart of accounts is amended as follows:

(a) New account "804.1, Liquefied Natural Gas Purchased" is added immediately following account "804, Natural Gas City Gate Purchases."

(b) Accounts "808, Gas Withdrawn from Storage—Debit" and "809, Gas Delivered to Storage—Credit" are renumbered as accounts "808.1, Gas Withdrawn from Storage—Debit" and "808.2, Gas delivered to Storage—Credit."

(c) New accounts "809.1, Withdrawals of Liquefied Natural Gas Held for Processing—Debit" and "809.2, Deliveries of Natural Gas for Processing—Credit" are added immediately following account "808.2, Gas Delivered to Storage—Credit."

(d) Expense function title "2. Natural Gas Storage Expenses" is amended to read "2. Natuaral Gas Storage, Terminaling and Processing Expenses."

(e) Accounts 843 through 848.3 are renumbered 843.1 through 843.9.

(f) New expense subsection "C. Liquefied Natural Gas Terminaling and Processing Expenses" and related accounts are added immediately following account "843.9, Maintenance of Other Equipment."

As amended, the operation and maintenance expense chart of accounts reads:

**Operation and Maintenance Expense Chart of Accounts**

* * * * *

1. PRODUCTION EXPENSES

* * * * *

D. OTHER GAS SUPPLY EXPENSES

* * * * *

804.1 Liquefied natural gas purchased.

* * * * *

808.1 Gas withdrawn from storage—Debit.
808.2 Gas delivered to storage—Credit.
809.1 Withdrawals of liquefied natural gas held for processing—Debit.
809.2 Deliveries of natural gas for processing—Credit.

* * * * *

2. NATURAL GAS STORAGE, TERMINALING, AND PROCESSING EXPENSES

* * * * *

B. OTHER STORAGE EXPENSES

* * * * *

Maintenance

843.1 Maintenance supervision and engineering.
843.2 Maintenance of structures and improvements.
843.3 Maintenance of gas holders.
843.4 Maintenance of purification equipment.
843.5 Maintenance of liquefaction equipment.
843.6 Maintenance of vaporizing equipment.
843.7 Maintenance of compressor equipment.
843.8 Maintenance of measuring and regulating equipment.
843.9 Maintenance of other equipment.

* * * * *

C. LIQUEFIED NATURAL GAS TERMINALING AND PROCESSING EXPENSES

OPERATION

844.1 Operation supervision and engineering.
844.2 LNG processing terminal labor and expenses.
844.3 Liquefaction processing labor and expenses.
844.4 LNG transportation labor and expenses.
844.5 Measuring and regulating labor and expenses.
844.6 Compressor station labor and expenses.
844.7 Communication system expenses.
844.8 System control and load dispatching.
845.1 Fuel.
845.2 Power.
845.3 Rents.
845.4 Demurrage charges.
845.5 Wharfage receipts—credit.
845.6 Processing liquefied or vaporized gas by others.
846.1 Gas losses.
846.2 Other expenses.

MAINTENANCE

847.1 Maintenance supervision and engineering.
847.2 Maintenance of structures and improvements.
847.3 Maintenance of LNG processing terminal equipment.
847.4 Maintenance of LNG transportation equipment.
847.5 Maintenance of measuring and regulating equipment.
847.6 Maintenance of compressor station equipment.
847.7 Maintenance of communication equipment.
847.8 Maintenance of other equipment.

* * * * *

(7) The text of the Operation and Maintenance Expense Accounts is amended as follows:

(a) New account "804.1, Liquefied Natural Gas Purchases" is added immediately following account "804, Natural Gas City Gate Purchases."

(b) Accounts "808, Gas Withdrawn from Storage—Debit" and "809 Gas Delivered to Storage—Credit" are renumbered as account "808.1, Gas Withdrawn from Storage—Debit" and "808.2, Gas Delivered to Storage—Credit," and the parenthetical note in paragraph B of each account is amended.

(c) New accounts "809.1, Withdrawals of Liquefied Natural Gas Held for Processing—Debit." and "809.2, Deliveries of Natural Gas for Processing—Credit" are added immediately following account "808.2, Gas Delivered to Storage—Credit."

(d) Expense function title "2. Natural Gas Storage Expenses" is amended to read "2. Natural Gas Storage, Terminaling and Processing Expenses."

(e) Accounts 843 through 848.3 are renumbered 843.1 through 843.9.

(f) New expense subsection to the expense function "2. Natural Gas Storage, Terminaling and Processing Expenses," entitled "C. Liquefied Natural Gas Terminaling and Processing Expenses," and related accounts are added immediately following account "843.9, Maintenance of Other Equipment."

As amended, the text of the Operation and Maintenance Expense Accounts reads:

## Operation and Maintenance Expense Accounts

PRODUCTION EXPENSES

* * * * *

D. OTHER GAS SUPPLY EXPENSES

* * * * *

**804.1 Liquefied natural gas purchases.**

A. This account shall include the cost, including transportation, at point of receipt by the utility, of liquefied natural gas purchased for the purpose of vaporization and injection into the utility's transmission or distribution system for resale.

B. The records supporting this account shall be so maintained that there shall be readily available for each vendor and point of receipt, the quantity of liquefied natural gas purchased, basis of charges, the amount paid for the liquefied gas, and transportation charges incurred up to the point of receipt of the liquefied gas.

* * * * *

**808.1 Gas withdrawn from storage—Debit.**

* * * * *

B. * * * (See Account 808.2)

**808.2 Gas delivered to storage—Credit.**

* * * * *

B. * * * (See Account 808.1)

**809.1 Withdrawals of liquefied natural gas held for processing—Debit.**

A. This account shall include debits for the cost of liquefied gas withdrawn during the year. Contra credits for entries to this account shall be made to account 164.3, Liquefied Natural Gas Held for Processing.

B. Withdrawals of liquefied natural gas held for processing shall not be netted against deliveries. (See account 809.2).

NOTE.—Adjustments for gas inventory losses due to cumulative inaccuracies in gas measurement, or from other causes, shall be entered in account 846.1, Gas Losses, in the month determined, if, however, any adjustment is substantial, the utility may, with approval of the Commission, amortize the amount of the adjustment to account 846.1 over future operating periods.

**809.2 Deliveries of natural gas for processing—Credit.**

A. This account shall include credits for the cost of gas delivered for processing during the year. Contra debits for entries to this account shall be made to account 164.3, Liquefied Natural Gas Held for Processing.

B. Deliveries of natural gas for processing shall not be netted against withdrawals from processing. (See account 809.1).

* * * * *

2. NATURAL GAS STORAGE, TERMINALING AND PROCESSING EXPENSES

* * * * *

B. OTHER STORAGE EXPENSES

Maintenance

**843.1 Maintenance supervision and engineering.**

* * * * *

**843.2 Maintenance of structure and improvements.**

* * * * *

**843.3 Maintenance of gas holders.**

* * * * *

**843.4 Maintenance of purification equipment.**

* * * * *

**843.5 Maintenance of liquefaction equipment.**

* * * * *

**843.6 Maintenance of vaporizing equipment.**

* * * * *

**843.7 Maintenance of compressor equipment.**

* * * * *

**843.8 Maintenance of measuring and regulating equipment.**

* * * * *

**843.9 Maintenance of other equipment.**

* * * * *

C. LIQUEFIED NATURAL GAS TERMINALING AND PROCESSING EXPENSES

Operation

**844.1 Operations supervision and engineering.**

This account shall include the cost of labor and expenses incurred in the general supervision and direction of operations of liquefied natural gas facilities. Direct supervision of specific activities shall be charged to the appropriate operations accounts.

**844.2 LNG processing terminal labor and expenses.**

This account shall include the cost of labor, materials used and expenses incurred in operating liquefied natural gas processing equipment.

ITEMS

*Labor*

1. Supervising.
2. Operating, checking, lubricating, cleaning, and polishing equipment, machinery, valves, instruments, and other processing equipment.
3. Reading meters, gauges and other instruments, changing charts, preparing operating reports, etc.
4. Inspecting and testing equipment when not specifically for repairs or replacement of parts.
5. Cleaning structures housing equipment, cutting grass and weeds, and doing minor grading work around structures and equipment.
6. Cleaning and repairing hand tools used for operations, etc.
7. Operating offshore facilities such as piers, docks, loading and unloading arms, water craft, etc.

*Materials and expenses*

8. Charts for pressure gauges and meters, printed forms, office supplies, etc.
9. Lubricants, wiping rags, cleaning materials, etc.
10. Janitor and washroom supplies, landscaping supplies, etc.
11. Employee travel and transportation expenses.
12. Freight, express, parcel post, trucking, and other transportation.
13. Utility services: light, water, and telephone.
14. Chemicals.
15. Refrigerants.
16. Small hand tools.

**844.3 Liquefaction processing labor and expenses.**

This account shall include the cost of labor, materials used and expenses incurred in operating natural gas liquefaction equipment.

ITEMS

*Labor*

1. Supervising.
2. Operating, checking, lubricating, cleaning, and polishing equipment, machinery, valves, instruments, and other processing equipment.
3. Reading meters, gauges and other instruments, changing charts, preparing operating reports, etc.

4. Inspecting and testing equipment when not specifically for repairs or replacement of parts.
5. Cleaning structures housing equipment, cutting grass and weeds, and doing minor grading work around structures and equipment.
6. Cleaning and repairing hand tools used for operations, etc.
7. Operating offshore facilities such as piers, docks, loading and unloading arms, water craft, etc.

*Materials and expenses*

8. Charts for pressure gauges and meters, printed forms, office supplies, etc.
9. Lubricants, wiping rags, cleaning materials, etc.
10. Janitor and washroom supplies, landscaping supplies, etc.
11. Employee travel and transportation expenses.
12. Freight, express, parcel post, trucking, and other transportation.
13. Utility services: light, water, and telephone.
14. Chemicals.
15. Refrigerants.
16. Small hand tools.

**844.4 LNG transportation labor and expenses.**

This account shall include the cost of labor, materials used and expenses incurred in operating LNG transportation equipment.

ITEMS

*Labor*

1. Supervision.
2. Operating LNG maritime tankers, LNG barges, LNG tank trucks and other LNG transportation equipment.
3. Cleaning and lubricating equipment.
4. Inspecting and testing equipment.

*Materials and expenses*

5. Charts, printed forms, office supplies, etc.
6. Dry dock charges.
7. Lubricants, wiping rags, cleaning materials, etc.
8. Employee's transportation travel and temporary housing expenses.

**844.5 Measuring and regulating labor and expenses.**

This account shall include the cost of labor, materials used and expenses incurred in operating, measuring and regulating stations in connection with liquefied natural gas operations.

ITEMS

*Labor*

1. Supervising.
2. Recording pressures and changing charts, reading meters, etc.
3. Estimating lost meter registrations, etc., except gas purchases and sales.
4. Calculating gas volumes from meter charts, except gas purchases and sales.
5. Adjusting and calibrating measuring equipment, changing meters, orifice plates, gauges, clocks, etc., not in connection with construction or maintenance.
6. Testing gas samples, determining specific gravity and Btu content of gas.
7. Inspecting and testing equipment not specifically to determine necessity for repairs including pulsation tests.
8. Cleaning and lubricating equipment.
9. Keeping log and other operating records, preparing records of operations, etc.
10. Attending boilers and operating other accessory equipment.
11. Installing and removing district gauges for pressure survey.
12. Thawing freeze in gauge pipe.
13. Inspecting and pumping drips, dewatering manholes and pits, inspecting sumps, cleaning pits, blowing meter drips, etc.
14. Moving equipment, minor structures, etc., not in connection with maintenance or construction.

*Materials and expenses*

15. Charts and printed forms.
16. Lubricants, wiping rags, waste.
17. Employees' transportation and travel expense.
18. Freight, express, parcel post, trucking and other transportation.
19. Utility services: light, water, telephone.

**844.6 Compressor station labor and expenses.**

This account shall include the cost of labor, materials used and expenses incurred, including fuel and power, in operating compressor stations in connection with liquefied natural gas operations.

ITEMS

*Labor*

1. Supervising.
2. Operating and checking engines, equipment valves, machinery, gauges, and other instruments, including cleaning, wiping, polishing, and lubricating.
3. Operating boilers and boiler accessory equipment, including fuel handling, recording fuel used, etc.
4. Repacking valves and replacing gauge glasses, etc.
5. Recording pressures, replacing charts, keeping logs, and preparing reports of station operations.
6. Pumping drips at the station.
7. Taking dew point readings.
8. Testing water.
9. Cleaning structures housing equipment, cutting grass and weeds, and minor grading around station.
10. Cleaning and repairing hand tools used in operations.
11. Driving trucks.
12. Watching during shutdowns.
13. Clerical work at station.

*Materials and expenses*

14. Scrubber oil.
15. Lubricants, wiping rags, waste.
16. Charts and printed forms, etc.
17. Gauge glasses.
18. Chemicals to treat water.
19. Water tests and treatment by other than employees.
20. Janitor and washroom supplies, first aid supplies, landscaping supplies, etc.
21. Employees' transportation and travel expenses.
22. Freight, express, parcel post, trucking, and other transportation.
23. Utility services: light, water, telephone.

**844.7 Communication system expenses.**

This account shall include the cost of labor, materials used and expenses incurred in connection with the operation of liquefied natural gas communications facilities, such as radio, telephone, microwave and other communication systems, including payments to others for communications services.

ITEMS

*Labor*

1. Supervising.
2. Operating switchboards, radio equipment, power generators, microwave equipment, etc. (except general office switchboards).
3. Tagging telephone poles.
4. Testing and replacing telephone batteries, radio tubes, etc.
5. Cutting weeds and grass along telephone rights-of-way and around structures and equipment.
6. Changing radio frequencies.
7. Securing FCC authorization to change frequencies.
8. Taking FCC radio operator tests.
9. Transferring mobile radios between vehicles and/or vessels.
10. Changing locations of telephones and other communications equipment not in connection with maintenance or construction.
11. Inspecting and testing not specifically to determine necessity for repairs.
12. Cleaning and lubricating equipment.
13. Cleaning structures housing equipment.

*Materials and expenses*

14. Payments to others for communications services.
15. Telephone batteries, radio tubes and other electronic components.
16. Radio crystals and other materials used in changing radio frequencies.
17. Lubricants, wiping rags, and waste.
18. Employees' transportation and travel expenses.
19. Freight, express, parcel post, trucking and other transportation.

**844.8 System control and load dispatching.**

This account shall include the cost of labor and expenses incurred in dispatching and controlling the supply and flow of liquefied gas and vaporized gas prior to introduction of such vaporized gas into the utility's transmission or distribution system.

ITEMS

*Labor*

1. Supervising.
2. Analysis of pressures for irregularities, as received.
3. Collecting pressures by telephone and radio.
4. Controlling mixture of various gases to maintain proper Btu content.
5. Correspondence and records, typing and maintaining files.
6. Controlling inputs and withdrawals of liquefied gas for processing.
7. Instructing field men to increase or decrease pressures at regulators.
8. Maintaining pressures at compressor stations, key line junctions and regulating stations to divide the available gas during heavy demand periods.
9. Maintaining pressure log sheets.
10. Maintaining proper compression ratios at compressor stations, consistent with economical operations.
11. Maintaining lowest necessary line pressures consistent with satisfactory service.

12. Requesting pressure changes at compressor stations, regulating stations, and key line junctions.
13. Rerouting gas during emergencies and planned shutdowns.

*Materials and expenses*

14. Consultants' fees and expenses.
15. Meals, traveling and incidental expenses in connection with system load dispatching.
16. Office supplies, stationery and printed forms.
17. Transportation: company and rental vehicles.
18. Utility services: light, water, telephone.

**845.1 Fuel.**

A. This account shall include the cost of gas or other fuel used for the operation of liquefied natural gas terminaling and processing facilities, except compressor station fuel.

B. Concurrent credits offsetting charges to this account for natural gas used for fuel shall be made to account 812, Gas Used for Other Utility Operations—Credit.

**845.2 Power.**

This account shall include the cost of purchased power used in operation of liquefied natural gas processing facilities, except compressor station power.

**845.3 Rents.**

This account shall include rents for property of others used, occupied or operated in connection with liquefied natural gas processing operations. (See operating expense instruction 3.)

**845.4 Demurrage charges.**

This account shall include demurrage charges incurred by the utility relative to LNG shipments received or processed by the utility.

**845.5 Wharfage receipts—Credit.**

This account shall include wharfage receipts received or receivable from LNG shippers or other parties relative to LNG shipments received or processed by the utility.

**845.6 Processing of liquefied or vaporized gas by others.**

A. This account shall include amounts paid to others for the processing of liquefied or vaporized gas of the utility.

B. Records supporting this account shall be so maintained that there shall be readily available for each agreement, the name of the other party, Mcf or Btu, as appropriate, of gas delivered to the other party for processing and the Mcf or Btu, as appropriate, of gas received back by the utility after processing, points of delivery to and receipt of gas from the other party, amount and basis of charges for the processing service.

NOTE.—If in connection with any gas delivered to another for processing such other party also processes the gas for extraction of gasoline or other salable products, credits attributable to the products so extracted shall be made to account 491, Revenues from Natural Gas Processed by Others, to the end that amounts recorded in this account shall only be charges for processing other than for extraction of salable products.

**846.1 Gas losses.**

This account shall include the amounts of inventory adjustments representing the cost of gas lost or unaccounted for in liquefied natural gas operations due to cumulative inaccuracies of gas measurements or other causes. (See paragraph E of account 164.3, Liquefied Natural Gas Held for Processing.) If, however, any adjustment is substantial, the utility may, with approval of the Commission, amortize the amount of the adjustment to this account over future operating periods.

**846.2 Other expenses.**

This account shall include the cost of labor, materials used, and expenses incurred in operating liquefied natural gas plant not includible elsewhere.

Maintenance

**847.1 Maintenance supervision and engineering.**

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of liquefied natural gas terminaling and processing facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance accounts. (See operating expense instruction 1.)

**847.2 Maintenance of structures and improvements.**

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of structures and improvements, the book cost of which is included in account 364.2, Structures and Improvements. (See operating expense instruction 2.)

**847.3 Maintenance of LNG processing terminal equipment.**

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of LNG terminal processing equipment, the book cost of which is included in account 364.3, LNG Processing Terminal Equipment. (See operating expense instruction 2.)

**847.4 Maintenance of LNG transportation equipment.**

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of transportation equipment, the book cost of which is included in account 364.4, LNG Transportation Equipment. (See operating expense instruction 2.)

**847.5 Maintenance of measuring and regulating equipment.**

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of measuring and regulating equipment, the book cost of which is included in account 364.5, Measuring and Regulating Equipment. (See operating expense instruction 2.)

**847.6 Maintenance of compressor station equipment.**

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of compressor station equipment, the book cost of which is included in account 364.6, Compressor Station Equipment. (See operating expense instruction 2.)

**847.7 Maintenance of communication equipment.**

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of communication equipment, the book cost of which is included in account 364.7, Communication Equipment. (See operating expense instruction 2.)

**847.8 Maintenance of other equipment.**

This account shall include the cost of labor, materials used and expenses incurred in the maintenance of equipment, the book cost of which is included in account 364.8, Other Equipment. (See operating expense instruction 2.)

* * * * *

## PART 216—UNITS OF PROPERTY FOR USE IN ACCOUNTING FOR ADDITIONS TO AND RETIREMENTS OF GAS PLANT

(B) Part 216—Units of Property for Use in Accounting for Additions to and Retirements of Gas Plant, Subchapter F, Chapter I, Title 18 of the Code of Federal Regulations, is amended as follows:

(1) Subheading "3. Storage Plant" is amended to read "3. Natural Gas Storage Plant."

(2) Subheading "B. Local Storage Plant" is amended to read "B. Other Storage Plant."

(3) Account "362, Gas Holder" is amended to read "362, Gas Holders" and Account "363, Other Equipment" is deleted.

(4) New accounts "363, Purification Equipment," "363.3, Liquefaction Equipment," "363.2, Vaporizing Equipment," "363.3, Compressor Equipment," "363.4, Measuring and Regulating Equipment," and "363.5, Other Equipment" and lists of retirement units under each are added immediately following account "362, Gas Holders."

(5) A new subsection entitled "C. Base Load Liquefied Natural Gas Ter-

minaling and Processing Plant" and accounts thereunder are added immediately following account "363.5, Other Equipment."

As amended, this portion of the Units of Property for Use in Accounting for Additions to and Retirements of Gas Plant reads:

* * * * *

LIST OF RETIREMENT UNITS

* * * * *

3. NATURAL GAS STORAGE PLANT

* * * * *

B. OTHER STORAGE PLANT

* * * * *

362 Gas Holders.

* * * * *

363 Purification equipment.

(See Acct. 336—Natural Gas Production Purification Equipment for applicable retirement units of property.)

363.1 Liquefaction equipment.

1. Cold box.
2. Heat exchanger.
3. Compressors.
4. Condensers.
5. Instrumentation.
6. Pumps.
7. Separators.
8. Tanks.

363.2 Vaporizing equipment.

1. Compressors.
2. Instrumentation.
3. Piping.
4. Pumps.
5. Valves.
6. Vaporizers.

363.3 Compressor equipment.

(See Acct. 368—Compressor Station Equipment for applicable retirement units of property.)

363.4 Measuring and regulating equipment.

(See Acct. 369—Transmission Measuring and Regulating Station Equipment for applicable retirement units of property.)

363.5 Other equipment.

(See Acct. 371—Transmission Other Equipment for applicable retirement units of property.)

C. BASE LOAD LIQUEFIED NATURAL GAS TERMINALING AND PROCESSING PLANT

364.2 Structures and improvements.

1. Air conditioning system, ventilating system, heating system, or any combination thereof.
2. Bin or bunker (when part of structure framework).
3. Bridge, trestle, etc.
4. Bulkhead, retaining wall, etc.
5. Canal or dam.
6. Dock, pier, platform or wharf.
7. Drainage and sewerage system.
8. Elevator, crane, hoist, etc., complete with operating mechanism.
9. Fence complete with gates.
10. Fire escape system, nonmarine.
11. Fire protection system.
12. Foundation (equipment) when includible in structure.
13. Light and power system complete.
14. Plumbing system.
15. Railroad or track system, including culverts, etc.
16. Roof, with or without supporting members. (A structure of irregular shape having more than one roof level may have several isolated roofs, each of which shall be considered an entire roof. In the case of structures to which lateral extensions have been made, even though having but one roof level, that part of the roof covering an entire section built at one time shall be considered an entire roof.)
17. Structure complete, with or without stack or chimney.
18. Tunnel, pipe line.
19. Tunnel, marine.
20. Vacuum cleaning system.
21. Water basin or reservoir.
22. Water supply system, including well.
23. Yard drainage system.
24. Yard lighting system.

364.3 LNG processing terminal equipment.

*Liquefaction processing equipment*

1. Cooling units.
2. Heat exchanger.
3. Compressor.
4. Condensor.
5. Instrumentation.
6. Pumps.
7. Separators.
8. Tanks.

*Transfer system*

1. Holders.
2. Blowers.
3. Instrumentation.
4. Piping.
5. Pumps.
6. Unloading arms.
7. Valves.

*Storage facilities*

1. Berm or Dike.
2. Holders (Tanks).
3. Instrumentation.
4. Piping.
5. Valves.

*Vaporization system*

1. Compressors.
2. Instrumentation.
3. Piping.
4. Pumps.
5. Valves.
6. Vaporizers.

*BTU stabilization equipment*

1. Compressors.
2. Heat exchangers.
3. Instrumentation.
4. Piping.
5. Pumps.
6. Valves.

*Electric system*

1. Battery.
2. Generator.
3. Switchgear.
4. Motor control center.

*Nitrogen system*

1. Compressor.
2. Holders (Tanks).
3. Instrumentation.
4. Piping.
5. Pumps.
6. Valves.

*Truck loading system*

1. Loading racks.
2. Piping.
3. Pumps.
4. Tanks.
5. Other equipment.

*Marine facilities*

1. Capstran.
2. Control power/pulpit.
3. Evacuation Systems.
4. Unloading arms.

364.4 LNG transportation equipment.

1. LNG barge.
2. LNG maritime tankers.
3. LNG tank truck.
4. Other LNG transportation equipment.

364.5 Measuring and regulating equipment.

(See Acct. 369—Transmission Measuring and Regulating Station Equipment for applicable retirement units of property.)

364.6 Compressor station equipment.

(See Acct. 368—Transmission Compressor Station Equipment for applicable retirement units of property.)

364.7 Communication equipment.

(See Acct. 397—General Communication Equipment for applicable retirement units of property.)

364.8 Other equipment.

(See Acct. 371—Transmission Other Equipment for applicable retirement units of property.)

* * * * *

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Annual Report of . . . . . Year ending December 31, 19 . .

## STATEMENT A COMPARATIVE BALANCE SHEET
### Assets and Other Debits

| Line No. | Title of Account (a) | Page No. (b) | Balance Beginning of Year (c) | Balance End of Year (d) | Increase or (Decrease) (e) |
|---|---|---|---|---|---|
| | Utility Plant* | | $ | $ | $ |
| 1 | Utility plant (101-106, 114) | 113 | | | |
| 2 | Construction Work in Progress (107) | 113 | | | |
| 3 | Total Utility Plant | | $ | $ | $ |
| 4 | Less Accumulated Provision for Depreciation, Amortization and Depletion (108-111, 115) | 113 | | | |
| 5 | Net Utility Plant | 113 | $ | $ | $ |
| 6 | Gas Stored Underground-Noncurrent (117) | 207A | | | |
| 7 | Utility Plant Adjustments (116) | 112 | | | |
| | Other Property and Investments | | | | |
| 8 | Nonutility Property (121) (less Accum. Prov. for Depr. & Amort. included in (122) $ ) | 201 | | | |
| 9 | Investment in Associated Companies (123) | 202 | | | |
| 10 | Investment in Subsidiary Companies (Cost $ ) (123.1) | 203 | | | |
| 11 | Other Investments (124) | 202 | | | |
| 12 | Special Funds (125 - 128) | — | | | |
| 13 | Total Other Property and Investments | | $ | $ | $ |
| | Current and Accrued Assets | | | | |
| 14 | Cash (131) | — | | | |
| 15 | Special Deposits (132 - 134) | — | | | |
| 16 | Working Funds (135) | — | | | |
| 17 | Temporary Cash Investments (136) | 202 | | | |
| 18 | Notes and Accounts Receivable (less Accumulated Provision for Uncoll. Accts.) (141 - 144) | 204 | | | |
| 19 | Receivables from Assoc. Companies (145, 146) | 206 | | | |
| 20 | Materials and Supplies (151 - 156, 163) | 207 | | | |
| 21 | Gas Stored Underground-Current (164.1) | 207A | | | |
| 22 | Liquefied Natural Gas Stored (164.2) | 207A | | | |
| 23 | Liquefied Natural Gas Held for Processing (164.3) | 207A | | | |
| 24 | Prepayments (165) | 210 | | | |
| 25 | Advances for Gas Exploration, Development and Prod. (166) | 210B | | | |
| 26 | Other Advances for Gas (167) | 210B | | | |
| 27 | Interest and Dividends Receivable (171) | — | | | |
| 28 | Rents Receivable (172) | — | | | |
| 29 | Accrued Utility Revenues (173) | — | | | |
| 30 | Misc. Current and Accrued Assets (174) | ~~210~~ | | | |
| 31 | Total Current and Accrued Assets | | $ | $ | $ |
| | Deferred Debits | | | | |
| 32 | Unamortized Debt Expense (181) | 211 | | | |
| 33 | Extraordinary Property Losses (182) | 210 | | | |
| 34 | Prelim. Survey and Investigation Charges (183.1, 183.2) | 212 | | | |
| 35 | Clearing Accounts (184) | — | | | |
| 36 | Temporary Facilities (185) | — | | | |
| 37 | Miscellaneous Deferred Debits (186) | 214 | | | |
| 38 | Deferred Losses from Disposition of Utility Plant (187) | 214A | | | |
| 39 | Research & Development Expenditures (188) | 572 | | | |
| 40 | Unamortized Loss on Reacquired Debt (189) | 214B | | | |
| 41 | Accumulated Deferred Income Taxes (190) | 214C | | | |
| 42 | Unrecovered Purchased Gas Costs (191) | — | | | |
| 43 | Total Deferred Debits | | $ | $ | $ |
| 44 | Total Assets and Other Debits | | $ | $ | $ |

*These accounts are conformed to NARUC accounts in which amounts recorded in FPC accounts 119 and 119 are classified to the accounts indicated under this caption.

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Annual report of.....Year ended December 31, 19...

## GAS STORED (Account 117, 164.1, 164.2 and 164.3)

1 Report below the information called for concerning inventories of gas stored.

2 The Uniform System of Accounts provides that inventory cost records be maintained on a consolidated basis for all storage projects with separate records showing the Mcf of inputs and withdrawals and balance for each project, except under certain specified circumstances. If the respondent's inventory cost records are not maintained on a consolidated basis for all storage projects, furnish an explanation of the accounting followed and reason for any deviation from the general basis provided by the Uniform System of Accounts. Separate schedules on this schedule form should be furnished for each group of storage projects for which separate inventory cost records are maintained.

3 If during the year adjustment was made of the stored gas inventory, such as to correct for cumulative inaccuracies of gas measurements, furnish an explanation of the reason for the adjustment, the Mcf and dollar amount of adjustment and account charged or credited.

4 Give a concise statement of the facts and the accounting performed with respect to any encroachment of withdrawals during the year, or restoration of previous encroachment, upon *native* gas constituting the "gas cushion" of any storage reservoir.

5 If the respondent uses a "base stock" in connection with its inventory accounting, give a concise statement of the basis of establishing such "base stock" and the inventory basis and the accounting performed with respect to any encroachment of withdrawals upon "base stock," or restoration of previous encroachment, including brief particulars of any such accounting during the year.

6 If respondent has provided accumulated provision for stored gas which may not eventually be fully recovered from any storage project furnish a statement showing (a) date of Commission authorization of such accumulated provision (b) explanation of circumstances requiring such provision (c) basis of provision and factors of calculation (d) estimated ultimate accumulated provision accumulation (e) a summary showing balance of accumulated provision and entries during year.

7. Pressure base of gas volumes reported in this schedule is 14.73 psia at 60° F.

| Line No | Description | Noncurrent (Account 117) (a) | Current (Account 164.1) (b) | LNG (Account 164.2) (c) | LNG (Account 164.3) (d) | Total (e) |
|---|---|---|---|---|---|---|
| 1 | Balance, beginning of year | $ | $ | $ | $ | $ |
| 2 | Gas delivered to storage | | | | | |
| 3 | (contra Account) | | | | | |
| 4 | Gas withdrawn from storage | | | | | |
| 5 | (contra Account) | | | | | |
| 6 | Other debits or credits | | | | | |
| 7 | (Explain) | | | | | |
| 8 | | | | | | |
| 9 | | | | | | |
| 10 | | | | | | |
| 11 | | | | | | |
| 12 | Balance, end of year | $ | $ | $ | $ | $ |
| 13 | Mcf | | | | | |
| 14 | Amount per mcf | | | | | |
| 15 | State basis of segregation of inventory between current and noncurrent portions | | | | | |
| 16 | | | | | | |
| 17 | Gas delivered to storage: | | | | | |
| 18 | Mcf | | | | | |
| 19 | Amount per Mcf | | | | | |
| 20 | Cost basis of gas delivered to storage: | | | | | |
| 21 | Specify: Own production (give production area, see uniform system of accounts), average system purchases, specific | | | | | |
| 22 | purchases (state which purchases). | | | | | |
| 23 | | | | | | |
| 24 | Does cost of gas delivered to storage include any expenses for | | | | | |
| 25 | use of respondent's transmission, storage, or other facilities? | | | | | |
| 26 | ..... If so, give particulars and date of Com- | | | | | |
| 27 | mission approval of the accounting. | | | | | |
| 28 | | | | | | |
| 29 | Gas withdrawn from storage: | | | | | |
| 30 | Mcf | | | | | |
| 31 | Amount per Mcf | | | | | |
| 32 | Cost basis of withdrawals: | | | | | |
| 33 | Specify: average cost, lifo, fifo. (Explain any change in | | | | | |
| 34 | inventory basis during year and give date of Commission | | | | | |
| 35 | approval of the change or approval of an inventory basis | | | | | |
| 36 | different from that referred to in uniform system of ac- | | | | | |
| 37 | counts.) | | | | | |
| 38 | | | | | | |
| 39 | | | | | | |
| 40 | | | | | | |
| 41 | | | | | | |

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Annual report of Year ended December 31, 19

## DISTRIBUTION OF SALARIES AND WAGES

Report below the distribution of total salaries and wages for the year. Amounts originally charged to clearing accounts should be segregated as to *Utility Departments*, *Construction*, *Plant Removals*, *and Other Accounts*, and shown in the appropriate lines and spaces provided for such amounts on pages 355 and 356. In determining this segregation of salaries and wages originally charged to clearing accounts a method of approximation giving substantially correct results may be used.

| Line No. | Classification (a) | Direct Payroll Distribution (b) | Allocation of Payroll Charged Clearing Accounts (c) | Total (d) |
|---|---|---|---|---|
| 1 | ELECTRIC | $ | $ | $ |
| 2 | Operation: | | | |
| 3 | Production | | | |
| 4 | Transmission | | | |
| 5 | Distribution | | | |
| 6 | Customer Accounts | | | |
| 7 | Customer Service and Informational | | | |
| 8 | Sales | | | |
| 9 | Administrative and General | | | |
| 10 | Total Operation | | | |
| 11 | Maintenance: | | | |
| 12 | Production | | | |
| 13 | Transmission | | | |
| 14 | Distribution | | | |
| 15 | Administrative and General | | | |
| 16 | Total Maintenance | | | |
| 17 | Total Operation and Maintenance: | | | |
| 18 | Production | | | |
| 19 | Transmission | | | |
| 20 | Distribution | | | |
| 21 | Customer Accounts | | | |
| 22 | Customer Service and Informational | | | |
| 23 | Sales | | | |
| 24 | Administrative and General | | | |
| 25 | Total Operation and Maintenance | | | |
| 26 | GAS | | | |
| 27 | Operation: | | | |
| 28 | Production—Manufactured Gas | | | |
| 29 | Production—Natural Gas (incl Expl and Dev.) | | | |
| 30 | Other Gas Supply | | | |
| 31 | Storage, LNG Terminaling and Processing | | | |
| 32 | Transmission | | | |
| 33 | Distribution | | | |
| 34 | Customer Accounts | | | |
| 35 | Customer Service and Informational | | | |
| 36 | Sales | | | |
| 37 | Administrative and General | | | |
| 38 | Total Operation | | | |
| 39 | Maintenance: | | | |
| 40 | Production—Manufactured Gas | | | |
| 41 | Production—Natural Gas | | | |
| 42 | Other Gas Supply | | | |
| 43 | Storage, LNG Terminaling and Processing | | | |
| 44 | Transmission | | | |
| 45 | Distribution | | | |
| 46 | Administrative and General | | | |
| 47 | Total Maintenance | | | |
| 48 | | | | |
| 49 | | | | |
| 50 | | | | |

Continued

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Annual report of Year ended December 31, 19

## DISTRIBUTION OF SALARIES AND WAGES (Continued)

| Line No | Classification (a) | Direct Payroll Distribution (b) | Allocation of Payroll Charged Clearing Accts (c) | Total (d) |
|---|---|---|---|---|
| | GAS (Continued) | $ | $ | $ |
| 51 | Total Operation and Maintenance: | | | |
| 52 | Production—Manufactured Gas | | | |
| 53 | Production—Natural Gas (incl. Expl. and Dev.) | | | |
| 54 | Other Gas Supply | | | |
| 55 | Storage, LNG Terminaling and Processing | | | |
| 56 | Transmission | | | |
| 57 | Distribution | | | |
| 58 | Customer Accounts | | | |
| 59 | Customer Service and Informational | | | |
| 60 | Sales | | | |
| 61 | Administrative and General | | | |
| 62 | Total Operation and Maintenance | | | |
| 63 | OTHER UTILITY DEPARTMENTS | | | |
| 64 | Operation and Maintenance | | | |
| 65 | Total All Utility Departments | | | |
| 66 | UTILITY PLANT | | | |
| 67 | Construction (by utility departments): | | | |
| 68 | Electric Plant | | | |
| 69 | Gas Plant | | | |
| 70 | Other | | | |
| 71 | Total Construction | | | |
| 72 | Plant Removal (by utility departments): | | | |
| 73 | Electric Plant | | | |
| 74 | Gas Plant | | | |
| 75 | Other | | | |
| 76 | Total Plant Removal | | | |
| 77 | Other Accounts (Specify): | | | |
| 78 | | | | |
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| 101 | | | | |
| 102 | | | | |
| 103 | | | | |
| 104 | | | | |
| 105 | TOTAL SALARIES AND WAGES | | | |

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## GAS PLANT IN SERVICE (Continued)

| Line No. | Account (a) | Balance beginning of year (b) | Additions (c) | Retirements (d) | Adjustments (e) | Transfers (f) | Balance end of year (g) |
|---|---|---|---|---|---|---|---|
| | 2. PRODUCTION PLANT—Continued | $ | $ | $ | $ | $ | $ |
| | Products Extraction Plant-Continued | | | | | | |
| 33 | 345 Compressor equipment | | | | | | |
| 34 | 346 Gas meas. and reg. equipment | | | | | | |
| 35 | 347 Other equipment | | | | | | |
| 36 | Total Products Extraction Plant | | | | | | |
| 37 | Total Nat. Gas Production Plant | | | | | | |
| 38 | Manufactured Gas Prod. Plant(submit sched.) | | | | | | |
| 39 | Total Production Plant | | | | | | |
| 40 | | | | | | | |
| 41 | 3. Natural Gas Storage and Processing Plant | | | | | | |
| 42 | Underground Storage Plant | | | | | | |
| 43 | 350.1 Land | | | | | | |
| 44 | 350.2 Rights-of-way | | | | | | |
| 45 | 351 Structures and improvements | | | | | | |
| 46 | 352 Wells | | | | | | |
| 47 | 352.1 Storage leaseholds and rights | | | | | | |
| 48 | 352.2 Reservoirs | | | | | | |
| 49 | 352.3 Non-recoverable natural gas | | | | | | |
| 50 | 353 Lines | | | | | | |
| 51 | 354 Compressor station equipment | | | | | | |
| 52 | 355 Measuring and reg. equipment | | | | | | |
| 53 | 356 Purification equipment | | | | | | |
| 54 | 357 Other equipment | | | | | | |
| 55 | Total Underground Storage Plant | | | | | | |
| 56 | | | | | | | |
| 57 | Other Storage Plant | | | | | | |
| 58 | 360 Land and land rights | | | | | | |
| 59 | 361 Structures and improvements | | | | | | |
| 60 | 362 Gas holders | | | | | | |
| 61 | 363 Purification equipment | | | | | | |
| 62 | 363.1 Liquefaction equipment | | | | | | |
| 63 | 363.2 Vaporizing equipment | | | | | | |
| 64 | 363.3 Compressor equipment | | | | | | |
| 65 | 363.4 Meas. and reg. equipment | | | | | | |
| 66 | 363.5 Other equipment | | | | | | |
| 67 | Total Other Storage Plant | | | | | | |

| | | | | | | | | |
|---|---|---|---|---|---|---|---|---|
| 68 | | Base Load Liquefied Natural Gas Terminaling and Processing Plant | | | | | | |
| 69 | 364.1 | Land and land rights | | | | | | |
| 70 | 364.2 | Structures and improvements | | | | | | |
| 71 | 364.3 | LNG processing terminal equipment | | | | | | |
| 72 | 364.4 | LNG transportation equipment | | | | | | |
| 73 | 364.5 | Measuring and regulating equipment | | | | | | |
| 74 | 364.6 | Compressor station equipment | | | | | | |
| 75 | 364.7 | Communications equipment | | | | | | |
| 76 | 364.8 | Other equipment | | | | | | |
| 77 | | Total Base Load Liquefied Natural | | | | | | |
| 78 | | Gas, Terminaling and Processing Plant | | | | | | |
| 79 | | Total Natural Gas Storage and Processing Plant | | | | | | |
| 80 | | 4. Transmission Plant | | | | | | |
| 81 | 365.1 | Land and land rights | | | | | | |
| 82 | 365.2 | Rights-of-way | | | | | | |
| 83 | 366 | Structures and improvements | | | | | | |
| 84 | 367 | Mains | | | | | | |
| 85 | 368 | Compressor station equipment | | | | | | |
| 86 | 369 | Measuring and reg. sta. equipment | | | | | | |
| 87 | 370 | Communication equipment | | | | | | |
| 88 | 371 | Other equipment | | | | | | |
| 89 | | Total Transmission Plant | | | | | | |
| 90 | | 5. Distribution Plant | | | | | | |
| 91 | 374 | Land and land rights | | | | | | |
| 92 | 375 | Structures and improvements | | | | | | |
| 93 | 376 | Mains | | | | | | |
| 94 | 377 | Compressor station equipment | | | | | | |
| 95 | 378 | Meas. and reg. sta. equip.—General | | | | | | |
| 96 | 379 | Meas. and reg. sta. equip.—City gate | | | | | | |
| 97 | 380 | Services | | | | | | |
| 98 | 381 | Meters | | | | | | |
| 99 | 382 | Meter installations | | | | | | |
| 100 | 383 | House regulators | | | | | | |
| 101 | 384 | House reg. installations | | | | | | |
| 102 | 385 | Industrial meas. and reg. sta. equipment | | | | | | |
| 103 | 386 | Other prop. on customers' premises | | | | | | |
| 104 | 387 | Other equipment | | | | | | |
| 105 | | Total Distribution Plant | | | | | | |

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## ACCUMULATED PROVISION FOR DEPRECIATION OF GAS UTILITY PLANT (Account 108)

1. Report below the information called for concerning provision for depreciation of gas utility plant.
2. Explain any important adjustments during year.
3. Explain any difference between the amount for book cost of plant retired, line 11, column (c), and that reported in the schedule for gas plant in service, pages 501-504, column (d) exclusive of retirements of nondepreciable property.
4. The provisions of account 108 in the Uniform System of Accounts contemplate that retirements of depreciable plant be recorded when such plant is removed from service. If the respondent has a significant amount of plant retired at year end which has not been recorded and/or classified to the various reserve functional classifications, preliminary closing entries should be made to tentively functionalize the book cost of the plant retired. In addition, all costs included in retirement work in progress at year end should be included in the appropriate functional classifications.
5. Show separately interest credits under a sinking fund or similar method of depreciation accounting.
6. In section B show the amounts applicable to prescribed functional classifications.

### A. Balances and Changes During Year

| Line No. | Item (a) | Total (b) | Gas plant in service (c) | Gas plant held for future use (d) | Gas plant leased to others (e) |
|---|---|---|---|---|---|
| 1 | Balance beginning of year | $ | $ | $ | $ |
| 2 | Depreciation provisions for year, charged to: | | | | |
| 3 | (403) Depreciation expense | | | | |
| 4 | (413) Expenses of gas plant leased to others | | | | |
| 5 | Transportation expenses-clearing | | | | |
| 6 | Other clearing accounts | | | | |
| 7 | Other accounts (specify): | | | | |
| 8 | | | | | |
| 9 | Total depreciation provisions for year | | | | |
| 10 | Net charges for plant retired: | | | | |
| 11 | Book cost of plant retired | | | | |
| 12 | Cost of removal | | | | |
| 13 | Salvage (credit) | | | | |
| 14 | Net charges for plant retired | | | | |
| 15 | Other debit or credit items (describe): | | | | |
| 16 | | | | | |
| 17 | Balance end of year | | | | |

### B. Balances at End of Year According to Functional Classifications

| | | | | | |
|---|---|---|---|---|---|
| 18 | Production—manufactured gas | | | | |
| 19 | Production and gathering—natural gas | | | | |
| 20 | Products extraction—natural gas | | | | |
| 21 | Underground gas storage | | | | |
| 22 | Other storage plant | | | | |
| 23 | Base load LNG terminaling and processing plant | | | | |
| 24 | Transmission | | | | |
| 25 | Distribution | | | | |
| 26 | General | | | | |
| 27 | Total | | | | |

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GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

| Line No. | Account (a) | Amount for Year (b) | Increase or Decrease from preceding year (c) |
|---|---|---|---|
| | B2. Products Extraction (Continued) | | |
| | Maintenance: | | |
| 48 | 784 Maintenance supervision and engineering | | |
| 49 | 785 Maintenance of structures and improvements | | |
| 50 | 786 Maintenance of extraction and refining equipment | | |
| 51 | 787 Maintenance of pipe lines | | |
| 52 | 788 Maintenance of extracted products storage equipment | | |
| 53 | 789 Maintenance of compressor equipment | | |
| 54 | 790 Maintenance of gas measuring and reg. equipment | | |
| 55 | 791 Maintenance of other equipment | | |
| 56 | Total maintenance | | |
| 57 | Total products extraction | | |
| 58 | C. Exploration and Development | | |
| | Operation: | | |
| 59 | 795 Delay rentals | | |
| 60 | 796 Nonproductive well drilling | | |
| 61 | 797 Abandoned leases | | |
| 62 | 798 Other exploration | | |
| 63 | Total exploration and development | | |
| 64 | D. Other Gas Supply Expenses | | |
| | Operation: | | |
| 65 | 800 Natural gas well head purchases | | |
| 66 | 801 Natural gas field line purchases | | |
| 67 | 802 Natural gas gasoline plant outlet purchases | | |
| 68 | 803 Natural gas transmission line purchases | | |
| 69 | 804 Natural gas city gate purchases | | |
| 70 | 804.1 Liquefied natural gas purchases | | |
| 71 | 805 Other gas purchases | | |
| 72 | 805.1 Purchased gas cost adjustments | | |
| 73 | Total purchased gas | | |
| 74 | 806 Exchange gas | | |
| | Purchased gas expenses: | | |
| 75 | 807.1 Well expenses - Purchased gas | | |
| 76 | 807.2 Operation of purchased gas measuring stations | | |
| 77 | 807.3 Maintenance of purchased gas measuring stations | | |
| 78 | 807.4 Purchased gas calculations expenses | | |
| 79 | 807.5 Other purchased gas expenses | | |
| 80 | Total purchased gas expenses | | |
| 81 | 808.1 Gas withdrawn from storage - Debit | | |
| 82 | 808.2 Gas delivered to storage - Credit | ( ) | |
| 83 | 809.1 Withdrawals of liquefied natural gas for processing - Debit | | |
| 84 | 809.2 Deliveries of natural gas for processing - Credit | ( ) | |
| 85 | Gas used in utility operations - Credit: | | |
| 86 | 810 Gas used for compressor station fuel - Credit | ( ) | |
| 87 | 811 Gas used for products extraction - Credit | ( ) | |
| 88 | 812 Gas used for other utility operations - Credit | ( ) | |
| 89 | Total gas used in utility operations - Credit | ( ) | |
| 90 | 813 Other gas supply expenses | | |
| 91 | Total other gas supply expenses | | |
| 92 | Total production expenses | | |

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## GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

| Line No. | Account (a) | Amount for year (b) | Increase or (decrease) from preceding year (c) |
|---|---|---|---|
| | | $ | $ |
| | C. Natural Gas Storage, Terminaling and Processing Expenses | | |
| | 2A. Underground Storage Expenses | | |
| | Operation: | | |
| 93 | 814 Operation supervision and engineering | | |
| 94 | 815 Maps and records | | |
| 95 | 816 Wells expenses | | |
| 96 | 817 Lines expense | | |
| 97 | 818 Compressor station expenses | | |
| 98 | 819 Compressor station fuel and power | | |
| 99 | 820 Measuring and regulating station expenses | | |
| 100 | 821 Purification expenses | | |
| 101 | 822 Exploration and development | | |
| 102 | 823 Gas losses | | |
| 103 | 824 Other expenses | | |
| 104 | 825 Storage well royalties | | |
| 105 | 826 Rents | | |
| 106 | Total operation | | |
| | Maintenance: | | |
| 107 | 830 Maintenance supervision and engineering | | |
| 108 | 831 Maintenance of structures and improvements | | |
| 109 | 832 Maintenance of reservoirs and wells | | |
| 110 | 833 Maintenance of lines | | |
| 111 | 834 Maintenance of compressor station equipment | | |
| 112 | 835 Maintenance of measuring and regulating station equipment | | |
| 113 | 836 Maintenance of purification equipment | | |
| 114 | 837 Maintenance of other equipment | | |
| 115 | Total maintenance | | |
| 116 | Total underground storage expenses | | |
| | 2B. Other Storage Expenses | | |
| | Operation: | | |
| 117 | 840 Operation supervision and engineering | | |
| 118 | 841 Operation labor and expenses | | |
| 119 | 842 Rents | | |
| 120 | 842.1 Fuel | | |
| 121 | 842.2 Power | | |
| 122 | 842.3 Gas losses | | |
| 123 | Total operation | | |
| | Maintenance: | | |
| 124 | 843.1 Maintenance supervision and engineering | | |
| 125 | 843.2 Maintenance of structures and improvements | | |
| 126 | 843.3 Maintenance of gas holders | | |
| 127 | 843.4 Maintenance of purification equipment | | |
| 128 | 843.5 Maintenance of liquefaction equipment | | |
| 129 | 843.6 Maintenance of vaporizing equipment | | |
| 130 | 843.7 Maintenance of compressor equipment | | |
| 131 | 843.8 Maintenance of measuring and regulating equipment | | |
| 132 | 843.9 Maintenance of other equipment | | |
| 133 | Total maintenance | | |
| 134 | Total other storage expenses | | |

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## GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

| Line No | Account No. | Account (a) | Amount for year (b) | Increase or (decrease) from preceding year (c) |
|---|---|---|---|---|
| | | 2C. LIQUEFIED NATURAL GAS TERMINALING AND PROCESSING EXPENSES | $ | $ |
| | | Operation | | |
| 135 | 844.1 | Operation supervision and engineering | | |
| 136 | 844.2 | LNG processing terminal labor and expenses | | |
| 137 | 844.3 | Liquefaction processing labor and expenses | | |
| 138 | 844.4 | Liquefaction transportation labor and expenses | | |
| 139 | 844.5 | Measuring and regulating labor and expenses | | |
| 140 | 844.6 | Compressor station labor and expenses | | |
| 141 | 844.7 | Communication system expenses | | |
| 142 | 844.8 | System control and load dispatching | | |
| 143 | 845.1 | Fuel | | |
| 144 | 845.2 | Power | | |
| 145 | 845.3 | Rents | | |
| 146 | 845.4 | Demurrage charges | | |
| 147 | 845.5 | Wharfage receipts — credit | | |
| 148 | 845.6 | Processing liquefied or vaporized gas by others | | |
| 149 | 846.1 | Gas losses | | |
| 150 | 846.2 | Other expenses | | |
| 151 | | Total operation | | |
| | | Maintenance: | | |
| 152 | 847.1 | Maintenance supervision and engineering | | |
| 153 | 847.2 | Maintenance of structures and improvements | | |
| 154 | 847.3 | Maintenance of LNG processing terminal equipment | | |
| 155 | 847.4 | Maintenance of LNG transportation equipment | | |
| 156 | 847.5 | Maintenance of measuring and regulating equipment | | |
| 157 | 847.6 | Maintenance of compressor station equipment | | |
| 158 | 847.7 | Maintenance of communication equipment | | |
| 159 | 847.8 | Maintenance of other equipment | | |
| 160 | | Total maintenance | | |
| 161 | | Total liquefied natural gas terminaling and processing expenses | | |
| 162 | | Total natural gas storage | | |
| | | 3. TRANSMISSION EXPENSES | | |
| | | Operation: | | |
| 163 | 850 | Operation supervision and engineering | | |
| 164 | 851 | System control and load dispatching | | |
| 165 | 852 | Communication system expenses | | |
| 166 | 853 | Compressor station labor and expenses | | |
| 167 | 854 | Gas for compressor station fuel | | |
| 168 | 855 | Other fuel and power for compressor stations | | |
| 169 | 856 | Mains expenses | | |
| 170 | 857 | Measuring and regulating station expenses | | |
| 171 | 858 | Transmission and compression of gas by others | | |
| 172 | 859 | Other expenses | | |
| 173 | 860 | Rents | | |
| 174 | | Total operation | | |
| | | Maintenance: | | |
| 175 | 861 | Maintenance supervision and engineering | | |
| 176 | 862 | Maintenance of structures and improvements | | |
| 177 | 863 | Maintenance of mains | | |
| 178 | 864 | Maintenance of compressor station equipment | | |
| 179 | 865 | Maintenance of measuring and reg. station equipment | | |
| 180 | 866 | Maintenance of communication equipment | | |
| 181 | 867 | Maintenance of other equipment | | |
| 182 | | Total maintenance | | |
| 183 | | Total transmission expenses | | |

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## GAS OPERATION AND MAINTENANCE EXPENSES (Continued)

| Line No. | Account No. | Account (a) | Amount for year (b) | Increase or (decrease) from preceding year (c) |
|---|---|---|---|---|
| | | 4. DISTRIBUTION EXPENSES | $ | $ |
| | | Operation: | | |
| 184 | 870 | Operation supervision and engineering | | |
| 185 | 871 | Distribution load dispatching | | |
| 186 | 872 | Compressor station labor and expenses | | |
| 187 | 873 | Compressor station fuel and power | | |
| 188 | 874 | Mains and services expenses | | |
| 189 | 875 | Measuring and regulating station expenses—General | | |
| 190 | 876 | Measuring and regulating station expenses—Industrial | | |
| 191 | 877 | Measuring and regulating station expenses—City gate check station | | |
| 192 | 878 | Meter and house regulator expenses | | |
| 193 | 879 | Customer installations expenses | | |
| 194 | 880 | Other expenses | | |
| 195 | 881 | Rents | | |
| 196 | | Total operation | | |
| | | Maintenance: | | |
| 197 | 885 | Maintenance supervision and engineering | | |
| 198 | 886 | Maintenance of structures and improvements | | |
| 199 | 887 | Maintenance of mains | | |
| 200 | 888 | Maintenance of compressor station equipment | | |
| 201 | 889 | Maintenance of meas and reg sta equip—General | | |
| 202 | 890 | Maintenance of meas and reg. sta. equip. Industrial | | |
| 203 | 891 | Maintenance of meas and reg sta equip—City gate check station | | |
| 204 | 892 | Maintenance of services | | |
| 205 | 893 | Maintenance of meters and house regulators | | |
| 206 | 894 | Maintenance of other equipment | | |
| 207 | | Total maintenance | | |
| 208 | | Total distribution expenses | | |
| | | 5. CUSTOMER ACCOUNTS EXPENSES | | |
| | | Operation: | | |
| 209 | 901 | Supervision | | |
| 210 | 902 | Meter reading expenses | | |
| 211 | 903 | Customer records and collection expenses | | |
| 212 | 904 | Uncollectible accounts | | |
| 213 | 905 | Miscellaneous customer accounts expenses | | |
| 214 | | Total customer accounts expenses | | |
| | | 6. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES | | |
| | | Operation: | | |
| 215 | 907 | Supervision | | |
| 216 | 908 | Customer assistance expenses | | |
| 217 | 909 | Informational and instructional expenses | | |
| 218 | 910 | Miscellaneous customer service and informational expenses | | |
| 219 | | Total customer service and informational expenses | | |
| | | 7. SALES EXPENSES | | |
| | | Operation: | | |
| 220 | 911 | Supervision | | |
| 221 | 912 | Demonstrating and selling expenses | | |
| 222 | 913 | Advertising expenses | | |
| 223 | 916 | Miscellaneous sales expenses | | |
| 224 | | Total sales expenses | | |

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| Line No. | | GAS OPERATION AND MAINTENANCE EXPENSES (Continued) | | |
|---|---|---|---|---|
| | | 8. ADMINISTRATIVE AND GENERAL EXPENSES | | |
| | | Operation: | | |
| 225 | 920 | Administrative and general salaries | | |
| 226 | 921 | Office supplies and expenses | | |
| 227 | 922 | Administrative expenses transferred—Credit | ( ) | |
| 228 | 923 | Outside services employed | | |
| 229 | 924 | Property insurance | | |
| 230 | 925 | Injuries and damages | | |
| 231 | 926 | Employee pensions and benefits | | |
| 232 | 927 | Franchise requirements | | |
| 233 | 928 | Regulatory commission expenses | | |
| 234 | 929 | Duplicate charges—Credit | ( ) | |
| 235 | 930.1 | General advertising expenses | | |
| 236 | 930.2 | Miscellaneous general expenses | | |
| 237 | 931 | Rents | | |
| 238 | | Total operation | | |
| | | Maintenance: | | |
| 239 | 932 | Maintenance of general plant | | |
| 240 | | Total administrative and general expenses | | |
| 241 | | Total gas operation and maintenance expenses | | |

## SUMMARY

| | Functional Classification (a) | Operation (b) | Maintenance (c) | Total (d) |
|---|---|---|---|---|
| | Production: | $ | $ | $ |
| 242 | Manufactured gas | | | |
| 243 | Natural gas: | | | |
| 244 | Production and gathering | | | |
| 245 | Products extraction | | | |
| 246 | Exploration and dev | | | |
| 247 | Total natural gas | | | |
| 248 | Other gas supply expenses | | | |
| 249 | Total production | | | |
| 250 | Underground storage | | | |
| 251 | Other Storage | | | |
| 252 | LNG terminaling and processing | | | |
| 253 | Transmission | | | |
| 254 | Distribution | | | |
| 255 | Customer accounts | | | |
| 256 | Customer service and informational | | | |
| 257 | Sales | | | |
| 258 | Administrative and general | | | |
| 259 | TOTAL | | | |

## NUMBER OF GAS DEPARTMENT EMPLOYEES

Number of gas department employees, payroll period ended _____

1. Total regular full-time employees _____
2. Total part-time and temporary employees _____
3. Total employees _____

The data on number of employees should be reported for the payroll period ending nearest to October 31, or any payroll period ending 60 days before or after October 31.

If the respondent's payrolls for the reported period include any special construction forces include such employees as part-time and temporary employees and show the number of such special construction employees so included.

The number of employees assignable to the gas department from joint functions of combination utilities may be determined by estimate, on the basis of employee equivalents. Show the estimated number of equivalent employees attributed to the gas department from joint functions.

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## DEPRECIATION, DEPLETION, AND AMORTIZATION OF GAS PLANT (Accounts 403, 404.1, 404.2, 404.3, 405)

(Except Amortization of Acquisition Adjustments)

1. Report in Section A for the year the amounts of depreciation expense, depletion and amortization for the accounts indicated, classified according to the plant functional groups shown.

2. Report in Section B the bases and rates used by the respondent to determine charges for depletion and amortization of gas plant for the year for accounts 404.1, 404.2, 404.3 and 405 and whether any changes have been made in the bases or rates from those used for the preceding year.

3. Complete reporting of all available information called for in columns (a) through (g) of Section C shall be made for report year 1971, thereafter report only annual changes to columns (c) through (g). Complete reporting is again required for report year 1974 and every fifth year thereafter with only annual changes to columns (c) through (g) to be shown in the intervals between complete reporting.

Unless composite depreciation accounting for total depreciable plant is followed, list numerically in column (a) each plant subaccount, account or functional classification, as appropriate, to which a rate is applied. Identify at the bottom of Section C the type of plant included in any subaccounts used. In column (b) report all depreciable plant balances to which rates are applied showing subtotals by functional classifications and showing a composite total. Indicate at the bottom of Section C the manner in which column (b) balances are obtained. If average balances, state the method of averaging used. For columns (c), (d) and (e) report available information for each plant subaccount, account or functional classification listed in column (a). Identify those accrual periods shown in column (c) which are based upon the life of associated gas reserves or gas supply contracts. If mortality studies are prepared to assist in estimating service lives or to develop remaining life rates, show in column (f) the type mortality curve selected as most appropriate for the account and in column (g) the weighted average remaining life of surviving plant. If composite depreciation accounting is used, report available information called for in columns (b) through (g) on this basis. Where the unit-of-production method is used to determine depreciation charges, show at the bottom of Section C any revisions made to estimated gas reserves.

4. If provisions for depreciation were made during the year in addition to depreciation provided by application of reported rates, state at the bottom of Section C the amounts and nature of the provisions and the plant items to which related.

### A. SUMMARY OF DEPRECIATION, DEPLETION, AND AMORTIZATION CHARGES

| Line No. | Functional Classification (a) | Depreciation Expense (Account 403) (b) | Amortization and depletion of producing natural gas land and land rights (Acct. 404.1) (c) | Amortization of underground storage land and land rights (Acct 404.2) (d) | Amortization of other limited-term gas plant (Acct. 404.3) (e) | Amortization of other gas plant (Acct. 405) (f) | Total (g) |
|---|---|---|---|---|---|---|---|
| 1 | Intangible plant | $ | $ | $ | $ | $ | $ |
| 2 | Production plant, manufactured gas | | | | | | |
| 3 | Production and gathering plant, natural gas | | | | | | |
| 4 | Products extraction plant | | | | | | |
| 5 | Underground gas storage plant | | | | | | |
| 6 | Other storage plant | | | | | | |
| 7 | Base load LNG terminaling and processing plant | | | | | | |
| 8 | Transmission plant | | | | | | |
| 9 | Distribution plant | | | | | | |
| 10 | General plant | | | | | | |
| 11 | Common plant-gas | | | | | | |
| 12 | | | | | | | |
| 13 | | | | | | | |
| 14 | | | | | | | |
| 15 | | | | | | | |
| 16 | | | | | | | |
| 17 | | | | | | | |
| 18 | | | | | | | |
| 19 | TOTAL | $ | $ | $ | $ | $ | $ |

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## GAS STORAGE

1. Report particulars for each gas storage project.
2. Total storage plant should agree with amounts reported by the respondent in Acct's 350.1 to 364.8 inclusive.
3. Give particulars of any gas stored for the benefit of another company under a gas exchange arrangement or on basis of purchase and resale to other company. Designate if other company is an associated company.
4. Designate each storage field or project by type of

| Line No. | Item (a) | Total (b) | Project / Type / Location (c) | Project / Type / Location (d) | Project / Type / Location (e) |
|---|---|---|---|---|---|
| 1 | Natural Gas Storage Plant | $ | $ | $ | $ |
| 2 | Land and land rights | | | | |
| 3 | Structures and improvements | | | | |
| 4 | Storage wells and holders | | | | |
| 5 | Storage lines | | | | |
| 6 | Other storage equipment | | | | |
| 7 | Total | | | | |
| 8 | Storage Expenses | | | | |
| 9 | Operation | | | | |
| 10 | Maintenance | | | | |
| 11 | Rents | | | | |
| 12 | Total | | | | |
| 13 | Storage Operations | Mcf | Mcf | Mcf | Mcf |
| 14 | Gas delivered to storage: | | | | |
| 15 | January | | | | |
| 16 | February | | | | |
| 17 | March | | | | |
| 18 | April | | | | |
| 19 | May | | | | |
| 20 | June | | | | |
| 21 | July | | | | |
| 22 | August | | | | |
| 23 | September | | | | |
| 24 | October | | | | |
| 25 | November | | | | |
| 26 | December | | | | |
| 27 | Total | | | | |
| 28 | Gas withdrawn from storage: | | | | |
| 29 | January | | | | |
| 30 | February | | | | |
| 31 | March | | | | |
| 32 | April | | | | |
| 33 | May | | | | |
| 34 | June | | | | |
| 35 | July | | | | |
| 36 | August | | | | |
| 37 | September | | | | |
| 38 | October | | | | |
| 39 | November | | | | |
| 40 | December | | | | |
| 41 | Total | | | | |

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## GAS STORAGE (Continued)

Reservoir, i.e., UE, underground expansion; UW, underground waterdive; UA, underground aquifer; PL, peakload LNG; BL, baseload LNG; O, all other storage (all other storage may be reported lumped in one vertical column).

5. Pressure base of gas volumes reported below is 1473 psia at 60° F.

| Project / Type / Location (f) | Project / Type / Location (g) | Project / Type / Location (h) | Project / Type / Location (i) | Project / Type / Location (j) | Project / Type / Location (k) | Line No. |
|---|---|---|---|---|---|---|
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| | | | | | | 10 |
| | | | | | | 11 |
| | | | | | | 12 |
| Mcf | Mcf | Mcf | Mcf | Mcf | Mcf | 13 |
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Annual report of.....

## GAS STORAGE (Continued)

1. Report particulars for each gas storage project.
2. Total storage plant should agree with amounts reported by the respondent in Acct's 350.1 to 364.8 inclusive.
3. Give particulars of any gas stored for the benefit of another company under a gas exchange arrangement or on basis of purchase and resale to other company. Designate if other company is an associated company.
4. Designate each storage field or project by type of

| Line No. | Item (a) | Total (b) | Project / Type / Location (c) | Project / Type / Location (d) | Project / Type / Location (e) |
|---|---|---|---|---|---|
| | Storage Operations | Mcf | Mcf | Mcf | Mcf |
| 42 | Top or working gas end of year - Mcf | | | | |
| 43 | Cushion gas (including native gas) - Mcf | | | | |
| 44 | Total gas in reservoir Mcf (42 plus 43) | | | | |
| 45 | Certificated Storage capacity - Mcf | | | | |
| 46 | Reservoir pressure at which storage | | | | |
| 47 | capacity computed | | | | |
| 48 | Number of injection - withdrawal wells | | | | |
| 49 | Number of observation wells | | | | |
| 50 | Maximum day's withdrawal from storage | | | | |
| 51 | Date of maximum day's withdrawal | | | | |
| 52 | Year storage operations commenced | | | | |
| 53 | LNG Terminal companies: | | | | |
| 54 | Number of Tanks: | | | | |
| 55 | Capacity of Tanks: MCF | | | | |
| 56 | LNG Volumes: MCF | | | | |
| 57 | a) Received at "Ship rail" | | | | |
| 58 | b) Transferred to tanks | | | | |
| 59 | c) Withdrawn from tanks | | | | |
| 60 | d) "Boil off" Vaporization Loss | | | | |
| 61 | e) Converted to MCF at tailgate of terminal | | | | |

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Annual report of.....Year ended December 31, 19....

GAS STORAGE (Continued)

Reservoir, i.e., UE, underground expansion; UW, underground waterdive; UA, underground aquifer; PL, peakload LNG; BL, baseload LNG; O, all other storage (all other storage may be reported lumped in one vertical column).

5. Pressure base of gas volumes reported below is 1473 psia at 60° F.

| Project / Type / Location (f) | Project / Type / Location (g) | Project / Type / Location (h) | Project / Type / Location (i) | Project / Type / Location (j) | Project / Type / Location (k) | Line No. |
|---|---|---|---|---|---|---|
| Mcf | Mcf | Mcf | Mcf | Mcf | Mcf | |
| | | | | | | 42 |
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Annual report of

Year ended December 31, 19

## GAS ACCOUNT—NATURAL GAS

1. The purpose of this schedule is to account for the quantity of natural gas received and delivered by the respondent taking into consideration differences in pressure bases used in measuring Mcf of natural gas received and delivered.

2. Natural gas means either natural gas unmixed or any mixture of natural and manufactured gas.

3. Enter in column (c) the Mcf as reported in the schedules indicated for the respective items of receipts and deliveries.

| Line No. | Item (a) | Schedule Page No. (b) | Mcf (14.73 psia at 60° F.) (c) |
|---|---|---|---|
| 1 | GAS RECEIVED | | |
| 2 | Natural gas produced | 552 | |
| 3 | LPG gas produced and mixed with natural gas | 564 | |
| 4 | Manufactured gas produced and mixed with natural gas | 563 | |
| 5 | Purchased gas: | | |
| 6 | a. Wellhead | 535 | |
| 7 | b. Field lines | 535 | |
| 8 | c. Gasoline plants | 535 | |
| 9 | d. Transmission line | 535 | |
| 10 | e. City gate under FERC rate schedules | 535 | |
| 11 | f. LNG | 535 | |
| 12 | g. Other | 535 | |
| 13 | Total, Gas purchased | 535 | |
| 14 | Gas of others received for transportation | 524 | |
| 15 | Receipts of respondents' gas transported or compressed by others | 541 | |
| 16 | Exchange gas received | 537 | |
| 17 | Gas withdrawn from underground storage | 560 | |
| 18 | Gas received from LNG storage | | |
| 19 | Gas received from LNG processing | | |
| 20 | Other receipts: (specify) | | |
| 21 | Total receipts | | |

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Annual Report of ..... Year ended December 31, 19

## GAS ACCOUNT—NATURAL GAS (Continued)

5. In a footnote report the volumes of gas from respondent's own production delivered to respondent's transmission system and included in natural gas sale.

6. If the respondent operates two or more systems which are not interconnected, separate schedules should be submitted. Insert pages should be used for this purpose.

| Line No. | Item (a) | Schedule Page No. (b) | Mcf (14.73 psia at 60° F.) (c) |
|---|---|---|---|
| 21 | GAS DELIVERED | | |
| 22 | Natural gas sales: | | |
| 23 | a. Field sales: | | |
| 24 | (i) To interstate pipeline companies for resale pursuant to | | |
| 25 | FERC rate schedules | 521 | |
| 26 | (ii) Retail industrial sales | 519 | |
| 27 | (iii) Other field sales | 521 | |
| 28 | Total, field sales | | |
| 29 | b. Transmission systems sales: | | |
| 30 | (i) To interstate pipeline co. for resale under FERC rate schedules | 521 | |
| 31 | (ii) To intrastate pipeline co. and gas utilities for resale under | | |
| 32 | FERC rate schedules | 521 | |
| 33 | (iii) Mainline industrial sales under FERC certification | 519 | |
| 34 | (iv) Other mainline industrial sales | 519 | |
| 35 | (v) Other transmission system sales | 521 | |
| 36 | Total, transmission system sales | | |
| 37 | c. Local distribution by respondent: | | |
| 38 | (i) Retail industrial sales | 517 | |
| 39 | (ii) Other distribution system sales | 517 | |
| 40 | Total, distribution system sales | | |
| 41 | d. Interdepartmental sales | 523 | |
| 42 | TOTAL SALES | | |
| 43 | | | |
| 44 | Deliveries of gas transported or compressed for: | | |
| 45 | a. Other interstate pipeline companies | 524 | |
| 46 | b. Others | 524 | |
| 47 | Total, Gas transported or compressed for others | 524 | |
| 48 | Deliveries of respondent's gas for transportation or compression by others | 541 | |
| 49 | Exchange gas delivered | 537 | |
| 50 | Natural gas used by respondent | 539 | |
| 51 | Natural gas delivered to underground storage | 560 | |
| 52 | Natural gas delivered to LNG storage | | |
| 53 | Natural gas delivered to LNG processing | | |
| 54 | Natural gas for franchise requirements | 542 | |
| 55 | Other deliveries: (specify) | | |
| 56 | TOTAL SALES AND OTHER DELIVERIES | | |
| 57 | UNACCOUNTED FOR | | |
| 58 | Production system losses | | |
| 59 | Storage losses | | |
| 60 | Transmission system losses | | |
| 61 | Distribution system losses | | |
| 62 | Other losses (specify in so far as possible) | | |
| 63 | Total unaccounted for | | |
| 64 | TOTAL SALES, OTHER DELIVERIES AND UNACCOUNTED FOR | | |

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FPC Form No. 1 RM77-21 Attachment E, Page 20 of 21

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Year ended December 31, 19

## DISTRIBUTION OF SALARIES AND WAGES

Report below the distribution of total salaries and wages for the year. Amounts originally charged to clearing accounts should be segregated as to *Utility Departments*, *Construction*, *Plant Removals*, and *Other Accounts*, and shown in the appropriate lines and spaces provided for such amounts on pages 355 and 356. In determining this segregation of salaries and wages originally charged to clearing accounts a method of approximation giving substantially correct results may be used

| Line No. | Classification (a) | Direct Payroll Distribution (b) | Allocation of Payroll Charged Clearing Accounts (c) | Total (d) |
|---|---|---|---|---|
| 1 | ELECTRIC | $ | $ | $ |
| 2 | Operation: | | | |
| 3 | Production | | | |
| 4 | Transmission | | | |
| 5 | Distribution | | | |
| 6 | Customer Accounts | | | |
| 7 | Customer Service and Informational | | | |
| 8 | Sales | | | |
| 9 | Administrative and General | | | |
| 10 | Total Operation | | | |
| 11 | Maintenance: | | | |
| 12 | Production | | | |
| 13 | Transmission | | | |
| 14 | Distribution | | | |
| 15 | Administrative and General | | | |
| 16 | Total Maintenance | | | |
| 17 | Total Operation and Maintenance: | | | |
| 18 | Production | | | |
| 19 | Transmission | | | |
| 20 | Distribution | | | |
| 21 | Customer Accounts | | | |
| 22 | Customer Service and Informational | | | |
| 23 | Sales | | | |
| 24 | Administrative and General | | | |
| 25 | Total Operation and Maintenance | | | |
| 26 | GAS | | | |
| 27 | Operation: | | | |
| 28 | Production - Manufactured Gas | | | |
| 29 | Production - Natural Gas (incl Expl and Dev.) | | | |
| 30 | Other Gas Supply | | | |
| 31 | Storage, LNG Terminaling and Processing | | | |
| 32 | Transmission | | | |
| 33 | Distribution | | | |
| 34 | Customer Accounts | | | |
| 35 | Customer Service and Informational | | | |
| 36 | Sales | | | |
| 37 | Administrative and General | | | |
| 38 | Total Operation | | | |
| 39 | Maintenance: | | | |
| 40 | Production - Manufactured Gas | | | |
| 41 | Production - Natural Gas | | | |
| 42 | Other Gas Supply | | | |
| 43 | Storage, LNG Terminaling and Processing | | | |
| 44 | Transmission | | | |
| 45 | Distribution | | | |
| 46 | Administrative and General | | | |
| 47 | Total Maintenance | | | |
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| 49 | | | | |
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Continued

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Annual report of Year ended December 31, 19

## DISTRIBUTION OF SALARIES AND WAGES (Continued)

| Line No. | Classification (a) | Direct Payroll Distribution (b) | Allocation of Payroll Charged Clearing Accts (c) | Total (d) |
|---|---|---|---|---|
| | Gas (Continued) | $ | $ | $ |
| 51 | Total Operation and Maintenance: | | | |
| 52 | Production--Manufactured Gas | | | |
| 53 | Production--Natural Gas (incl. Expl and Dev.) | | | |
| 54 | Other Gas Supply | | | |
| 55 | Storage, LNG Terminaling and Processing | | | |
| 56 | Transmission | | | |
| 57 | Distribution | | | |
| 58 | Customer Accounts | | | |
| 59 | Customer Service and Informational | | | |
| 60 | Sales | | | |
| 61 | Administrative and General | | | |
| 62 | Total Operation and Maintenance | | | |
| 63 | Other Utility Departments | | | |
| 64 | Operation and Maintenance | | | |
| 65 | Total All Utility Departments | | | |
| 66 | Utility Plant | | | |
| 67 | Construction (by utility departments): | | | |
| 68 | Electric Plant | | | |
| 69 | Gas Plant | | | |
| 70 | Other | | | |
| 71 | Total Construction | | | |
| 72 | Plant Removal (by utility departments): | | | |
| 73 | Electric Plant | | | |
| 74 | Gas Plant | | | |
| 75 | Other | | | |
| 76 | Total Plant Removal | | | |
| 77 | Other Accounts (Specify): | | | |
| 78 | | | | |
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| 101 | | | | |
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| 103 | | | | |
| 104 | | | | |
| 105 | TOTAL SALARIES AND WAGES | | | |

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[FR Doc. 78-12054 Filed 5-4-78; 8:45 am]

[4110-03]

Title 21—Food and Drugs

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

SUBCHAPTER B—FOOD FOR HUMAN CONSUMPTION

[Docket No. 76P-0500]

PART 135—FROZEN DESSERTS

## Standards of Identity for Frozen Desserts; Stay of Revocation of Certain Stayed Provisions; Reinstatement of Previous Stay

AGENCY: Food and Drug Administration.

ACTION: Stay of revocation.

SUMMARY: Requests for hearing have been received on the revocation of the provisions concerning the use of safe and suitable milk-derived ingredients in the revised standards of identity for frozen desserts. This document stays the revocation of those provisions pending a determination of the need for a hearing. This stay has the effect of reinstating the July 8, 1977 stay of those provisions concerning the use of safe and suitable milk-derived ingredients. This document does not change the currently effective requirements for frozen desserts; thus the use of safe and suitable milk-derived ingredients in frozen desserts, other than those specified in the currently effective regulations, is not permitted. A notice specifying any issues on which a hearing is justified and other pertinent information will be published in the FEDERAL REGISTER at a later date.

DATES: The stay of the revocation is effective May 3, 1978. The effective dates of other provisions are stated in the "Supplementary Information" of this document.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued a final regulation, published in the FEDERAL REGISTER of April 12, 1977 (42 FR 19127), to amend the standards of identity for frozen desserts that, among other changes, would have provided for replacing the long-standing use of a nonfat milk solids minimum with a milk protein minimum. The change would have permitted the use of safe and suitable milk-derived ingredients to meet the milk protein minimum. Written objections and requests for hearing were received. As a result of these objections, the Commissioner issued in the FEDERAL REGISTER of July 8, 1977 (42 FR 35152) a document staying portions of the standards of identity for ice cream, frozen custard, ice milk, and sherbet pending the receipt and review of information considered necessary to make a final decision on the merits of granting requests for hearing. The stay related primarily to the provisions concerning the milk protein minimum and the use of safe and suitable milk-derived ingredients. The same document confirmed the effective date of other provisions of the regulation, to which no objections were received.

In the FEDERAL REGISTER of February 3, 1978 (43 FR 4596), the Commissioner revoked the provisions of the final regulation that had been published in the FEDERAL REGISTER of April 12, 1977 (42 FR 19127) and stayed in the FEDERAL REGISTER of July 8, 1977 (42 FR 35152). The agency stated that it had reviewed the data submitted and had in addition conducted its own studies which indicated that under the revoked provisions some ice cream formulations could have lesser amounts of some nutrients than under the current standard. The agency also determined that no hearing was justified on the objections concerning bulky flavors in ice milk and confirmed the effectiveness of these provisions.

### OBJECTIONS TO REVOCATION AND REQUESTS FOR HEARING

Three objections and requests for hearing and two petitions for reconsideration were received in response to the February 3, 1978 order revoking the stayed provisions that provided for the use of safe and suitable milk-derived ingredients subject to a milk protein minimum requirement. The petitions for reconsideration are presently being reviewed and will be acted upon separately. The basis for the objections is that the revoked provisions, if in effect, would not cause a decrease in the nutritional value of frozen desserts.

The objections and requests for hearings related to revocation of the following provisions:

1. Sections 135.110(a)(1) (21 CFR 135.110(a)(1)) and 135.140(a)(1) (21 CFR 135.140(a)(1)) to the extent that these provisions would have permitted the use of safe and suitable milk-derived ingredients not specifically listed as permitted in former § 135.30 (c) and (e) (21 CFR 135.30 (c) and (e));

2. Sections 135.110(a) (2) and (3) (21 CFR 135.110(a) (2) and (3)) and 135.120(a)(2) (21 CFR 135.120(a)(2)) to the extent that these provisions would have established minimum milk protein requirements;

3. Section 135.110(b) (2) and (3) (21 CFR 135.110(b) (2) and (3)), which would have specified the method of analysis for milk protein and PER; and

4. Section 135.140(a)(2) (21 CFR 135.140(a)(2)) with respect to the provisions for "nonfat milk-derived solids" and "milk-derived solids."

### STAY OF REVOCATION OF CERTAIN PROVISIONS

Under section 701(e) of the act (21 U.S.C. 371(e)) and § 12.26 of the Code of Federal Regulations (21 CFR 12.26), the Commissioner hereby announces a stay of the revocation of the provisions to which objections and requests for hearing were received pending further review of the objections and requests for hearing under § 12.24 (21 CFR 12.24). If a hearing is determined to be justified on any issues, a notice of hearing under § 12.35 (21 CFR 12.35) will be published in the FEDERAL REGISTER. If a determination is made that a hearing is not justified in whole or in part, a notice of such determination under § 12.28 (21 CFR 12.28) will be published in the FEDERAL REGISTER.

This stay has the effect of reinstating the July 8, 1977 stay of the provisions concerning the use of safe and suitable milk-derived ingredients, pending a determination of whether a public hearing is necessary to resolve the issues raised by objections concerning safe and suitable ingredients.

The Commissioner emphasizes that the currently effective standards of identity for ice cream and other frozen desserts will remain in effect. After July 1, 1979, full ingredient labeling will be required and a reduction of milk solids will be permited when bulky flavors are added to ice milk. Both the currently effective regulations and the regulation to become effective on July 1, 1979, require a minimum amount of nonfat milk solids in the finished food, limit the use of cheese whey to a maximum of 25 percent of the nonfat milk solids present in the food, and permit the use of casein and caseinates only after the minimum requirement for nonfat milk solids has been met. Thus, the use in frozen desserts of safe and suitable milk-derived ingredients other than those specified in the currently effective regulations is not permitted. Any notices concerning the objections and requests for hearing regarding the use of safe and suitable milk-derived ingredients will be published in the FEDERAL REGISTER.

The final regulations published in the February 3, 1978 FEDERAL REGISTER are an edited and recodified form of the existing standard of identity incorporating the revisions which will go

into effect on July 1, 1979 concerning ingredient labeling, bulky flavors in ice milk, and certain other provisions to which no objections requiring a hearing were received. These final regulations will go into effect in accordance with the effective dates already announced and restated below.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to him (21 CFR 5.1), the Commissioner gives notice that objections under section 701(e) were received, and, pending a determination of whether a hearing has been justified, the revocation is stayed and the July 8, 1977 stay of all the provisions concerning the use of safe and suitable milk-derived ingredients is reinstated.

*Effective dates.* This stay of revocation shall become effective on May 3, 1978. Compliance with the final regulations for the standards of identity for frozen desserts published in the FEDERAL REGISTER of February 3, 1978, including any required labeling changes, may have begun on June 13, 1977, and all products initially introduced into interstate commerce on or after July 1, 1979, shall fully comply.

(Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)).)

Dated: May 2, 1978.

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

[FR Doc. 78-12367 Filed 5-3-78; 9:51 am]

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[4110-03]

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

[Docket No. 77N-0392]

## SULFAMETHAZINE-CONTAINING DRUGS: REVISED WITHDRAWAL PERIOD

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the regulations regarding sulfonamide-containing drugs for animals to reflect current labeling for sulfamethazine products for use in swine feed or drinking water. The revised labeling provides that treated animals are not to be slaughtered for food within 15 days of the last treatment.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

David N. Scarr, Bureau of Veterinary Medicine (HFV-210), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3183.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of December 9, 1977 (42 FR 62211), the Commissioner of Food and Drugs announced that all firms marketing sulfamethazine-containing products for use in swine feed or drinking water had been requested by letter to submit labeling providing that such products bear a 15-day withdrawal period prior to slaughtering treated animals for food.

Currently, approximately 57 such products may be marketed by approximately 27 firms under interim provisions pursuant to 21 CFR 510.450 or on the basis of published approvals provided for in 21 CFR Parts 546 and 558. The firms were requested to submit copies of revised labeling in supplemental applications for products that are the subject of approved new animal drug applications or in amendments to pending applications if the products are marketed under the interim provisions of 21 CFR 510.450. Each of the firms has submitted supplemental applications or amendments.

Amendment of the regulations to reflect this change does not constitute a reaffirmation of the drug's safety and effectiveness.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i))) and under authority delegated to the Commissioner (21 CFR 5.1), Chapter I of Title 21 of the Code of Federal Regulations is amended as follows:

### PART 510—NEW ANIMAL DRUGS

1. Section 510.450 is amended by redesignating paragraph (e) as paragraph (f) and adding a new paragraph (e) to read as follows:

**§ 510.450 Sulfonamide-containing drugs for oral, injectable, intramammary, or intrauterine use in food-producing animals.**

* * * * *

(e) To assure that edible products from treated swine are safe for human consumption, the labeling of preparations which contain sulfamethazine intended for use in swine feed or drinking water shall, in lieu of the labeling requirement set forth in paragraph (a) of this section, bear a statement that the use of the drug must be discontinued 15 days before treated animals are slaughtered for food.

* * * * *

### PART 546—TETRACYCLINE ANTIBIOTIC DRUGS FOR ANIMAL USE

**§ 546.113b [Amended]**

2. Section 546.113b *Chlortetracycline bisulfate-sulfamethazine bisulfate soluble powder* is amended in paragraph (c)(6)(iii) by deleting the number "7" and inserting the number "15."

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### PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

**§ 558.145 [Amended]**

3. Section 558.145 *Chlortetracycline, procaine penicillin, and sulfamethazine* is amended in paragraph (f)(2) by deleting the number "7" and inserting the number "15."

**§ 558.630 [Amended]**

4. Section 558.630 *Tylosin and sulfamethazine* is amended in paragraph (f)(3) by deleting the number "5" and inserting the number "15."

*Effective date.* These regulations are effective May 5, 1978.

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

Dated: April 28, 1978.

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

[FR Doc. 78-12259 Filed 5-4-78; 8:45 am]

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[4910-22]

## Title 23—Highways

## CHAPTER I—FEDERAL HIGHWAY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

### SUBCHAPTER C—CIVIL RIGHTS

### PART 230—EXTERNAL PROGRAMS

### Amendments Concerning Reporting Requirements for EEO Employment and Training Reports

AGENCY: Federal Highway Administration, DOT.

ACTION: Final rule.

SUMMARY: The Federal Highway Administration (FHWA) provides public notice of amendments concerning reporting requirements for EEO employment and training reports required on Federal and Federal-aid construction contracts, and minority business enterprise reports required on Federal-aid construction contracts.

EFFECTIVE DATE: May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

K. L. Ziems, Chief, Contract Admin-

istration Branch, Construction and Maintenance Division, Office of Highway Operations, 202-426-4847; Wilbert Baccus, Office of the Chief Counsel, 202-426-0786, Federal Highway Administration, 400 Seventh Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t. Monday through Friday.

SUPPLEMENTARY INFORMATION: The amendments either reduce the reporting frequency or eliminate employment and training reports which were required on a rather frequent basis during the implementation stages of the FHWA EEO Program when the need for such information was much greater than it is now. Since the issuance of these reporting requirements, FHWA has obtained a substantial amount of EEO data and the proposed deletion or revisions will permit an adequate amount of data to be gathered to meet current needs.

The benefit to be achieved by this change in the regulations will be to cut red tape and relieve highway construction contractors, State highway agencies and FHWA of unnecessary costly reporting requirements.

These regulation amendments were not issued in proposed form, and no comments were solicited, as the matters affected relate to grants, benefits, or contracts within the purview of 5 U.S.C. 553(a)(2), thus general notice of proposed rulemaking was not required.

NOTE.—The Federal highway Administration has determined that this document does not contain a major proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

Issued on: April 24, 1978.

KARL S. BOWERS,
*Deputy Administrator.*

In consideration of the foregoing, the Federal Highway Administration is amending Chapter I of Title 23, Code of Federal Regulations as follows:

(1) The Table of Sections of Part 230 is amended by:

(a) Deleting the word "Monthly" in the Appendix C caption and inserting in lieu thereof the word "Annual".

(b) Deleting the word "Quarterly" in the Appendix E caption and inserting in lieu thereof the word "Semiannual".

(c) Deleting the word "Quarterly" in the Appendix F caption and inserting in lieu thereof the word "Semiannual".

§ 230.121 [Amended]

(2) Section 230.121 *Reports* of Subpart A is amended by:

(a) Deleting the word "monthly" in the first sentence of paragraph "(a)(1)" and inserting in lieu thereof the word "Annual."

(b) Deleting the words "directive for the first three months after construction begins and" in the first sentence of paragraph "(a)(2)" and inserting in lieu thereof the word "part."

(c) Deleting the word "quarterly" in the second sentence of paragraph "(d)(1)" each time it appears and inserting in lieu thereof the word "semiannual."

(d) Revising the fourth sentence of paragraph "(d)(1)" to read as follows: "The contractor is to submit the semiannual reports by the 20th of each July and January."

(e) Deleting the word "quarterly" in the first sentence of paragraph "(d)(2)" each time it appears and inserting in lieu thereof the word "semiannual."

(f) Deleting the word "quarter" in the second sentence of paragraph "(d)(2)" and inserting in lieu thereof the words "reporting period".

(g) Rescinding paragraph (e) of § 230.121 in its entirety and redesignating the present paragraph (f) to read "(e)".

APPENDIX A [AMENDED]

(3) The first sentence of paragraph "10.c." of Appendix A "Special Provisions" of Part 230, Subpart B, is amended to read as follows: "The contractors will submit an annual report to the State highway agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work."

APPENDIX C [AMENDED]

(4) Appendix C of Part 230, Subpart B, is amended by deleting "Form PR-1391 (Rev. 8-73)" and inserting in lieu thereof "Form PR-1391 (Rev. 9-77)." [See attached form.]

APPENDIX E [AMENDED]

(5) Appendix E of Part 230, Subpart B, is amended by deleting "Form FHWA-1409 (Rev. 11-74)" and inserting in lieu thereof "Form FHWA-1409 (Rev. 1-78)." [See attached form.]

APPENDIX F [AMENDED]

(6) Appendix F of Part 230, of Subpart B, is amended by deleting "Form FHWA-1410 (Rev. 12-74)" and inserting in lieu thereof "Form FHWA-1410 (Rev. 1-78)." [See attached form.]

(23 U.S.C. § 315; 49 CFR 1.48(b).)

Appendix C

OMB NO. 04-R2428

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

RSC HCR 01-02

# FEDERAL-AID HIGHWAY CONSTRUCTION CONTRACTORS ANNUAL EEO REPORT

REPORT FOR JULY _____ 19____

## INSTRUCTIONS

This report should be submitted to the State Highway Agency by each contractor and covered subcontractor for the Month of July. Subcontractors should report contract and employment data pertaining to their subcontract work only. The staffing figures to be reported under employment data should represent the project work force on board in whole or in part for the last payroll period preceding the end of the month.

The staffing figures to be reported in Table A should include journey-level men and women, apprentices, and on the job trainees. Staffing figures to be reported in Tables B and C should only include apprentices and on the job trainees as indicated.

| 1. CHECK APPROPRIATE BLOCK ☐ CONTRACTOR ☐ SUBCONTRACTOR | 2. NAME AND ADDRESS OF FIRM | 3. FEDERAL-AID PROJECT NUMBER |
|---|---|---|
| TYPE OF CONSTRUCTION | COUNTY AND STATE | PERCENT COMPLETE |
| 4. DOLLAR AMOUNT OF CONTRACT | 5. BEGINNING CONSTRUCTION DATE | 6. ESTIMATED PEAK EMPLOYMENT: MONTH AND YEAR / NUMBER OF EMPLOYEES |

7. EMPLOYMENT DATA

| JOB CATEGORIES | Table A: TOTAL EMPLOYEES | | TOTAL MINORITIES | | NEGRO | | ORIENTAL | | AMERICAN INDIAN | | SPANISH SURNAMED AMERICAN | | Table B: APPRENTICES | | ON THE JOB TRAINEES | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | M | F | M | F | M | F | M | F | M | F | M | F | M | F | M | F |
| OFFICIALS (Managers) | | | | | | | | | | | | | | | | |
| SUPERVISORS | | | | | | | | | | | | | | | | |
| FOREMEN & WOMEN | | | | | | | | | | | | | | | | |
| CLERICAL | | | | | | | | | | | | | | | | |
| EQUIPMENT OPERATORS | | | | | | | | | | | | | | | | |
| MECHANICS | | | | | | | | | | | | | | | | |
| TRUCK DRIVERS | | | | | | | | | | | | | | | | |
| IRONWORKERS | | | | | | | | | | | | | | | | |
| CARPENTERS | | | | | | | | | | | | | | | | |
| CEMENT MASONS | | | | | | | | | | | | | | | | |
| ELECTRICIANS | | | | | | | | | | | | | | | | |
| PIPEFITTERS PLUMBERS | | | | | | | | | | | | | | | | |
| PAINTERS | | | | | | | | | | | | | | | | |
| LABORERS SEMI SKILLED | | | | | | | | | | | | | | | | |
| LABORERS UNSKILLED | | | | | | | | | | | | | | | | |
| TOTAL | | | | | | | | | | | | | | | | |
| Table C | | | | | | | | | | | | | | | | |
| APPRENTICES | | | | | | | | | | | | | | | | |
| ON THE JOB TRAINEES | | | | | | | | | | | | | | | | |

8. REMARKS

| 9. PREPARED BY (Signature and Title of Contractors Representative) | 9a. DATE |
|---|---|
| 10. REVIEWED BY (Signature and Title of State Highway Official) | 10a. DATE |

Form PR 1391
(Rev. 9-77)

PREVIOUS EDITIONS ARE OBSOLETE

Appendix E

OMB NO. 04-R2434

| U.S. DEPARTMENT OF TRANSPORTATION<br>FEDERAL HIGHWAY ADMINISTRATION<br><br>FEDERAL-AID HIGHWAY CONSTRUCTION<br>CONTRACTOR'S SEMIANNUAL TRAINING REPORT | REPORTS CONTROL SYMBOL<br>~~HHO-30-16~~<br><br>FEDERAL-AID PROJECT NO. |
|---|---|

INSTRUCTIONS: This report is to be completed by the contractor semiannually for each individual employed on this contract *(including any subcontracts under it who has received training during the reporting period under the training special provision (attachment 2 FHPM 6-4-1.2)).* The report is to be submitted by the 20th of the month following the reporting period, *(July 20, and January 20).* The original of this report is to be furnished to the trainee and two copies submitted to the State Highway Department.

| 1. NAME OF CONTRACTOR | | 1A. ADDRESS |
|---|---|---|
| 2. NAME OF TRAINEE | 2A. SEX ☐ M ☐ F | 2B. ADDRESS |
| 3. AGE OF TRAINEE | 4. SOCIAL SECURITY NUMBER | 5. EMPLOYEE STATUS *(CHECK ONE)* ☐ NEW HIRE ☐ UP-GRADE |

6. ETHNIC GROUP DESIGNATION *(CHECK ONE)*

☐ NEGRO ☐ ORIENTAL ☐ AMERICAN INDIAN ☐ SPANISH AMERICAN ☐ OTHER

7. SUMMARY OF PREVIOUS TRAINING: *(ENTER AMOUNT AND TYPE OF TRAINING RECEIVED BY TRAINEE ON OTHER CONTRACTS UNDER APPROVED TRAINING PROGRAMS)*

| 8. JOB CLASSIFICATION OF TRAINEE | 9. DATE TRAINING STARTED ON THIS CONTRACT | 10. TYPE OF ON THE JOB TRAINING *(CHECK ONE)* ☐ APPRENTICESHIP ☐ OTHER |
|---|---|---|

REPORTING PERIODS

INSTRUCTIONS: One vertical column is to be completed for each succeeding reporting period and the form submitted. Enter June 30, Dec. 30, as applicable in columns A thru H below.

| | HOURS OF TRAINING DATA | A 19 ___ | B 19 ___ | C 19 ___ | D 19 ___ | E 19 ___ | F 19 ___ | G 19 ___ | H 19 ___ |
|---|---|---|---|---|---|---|---|---|---|
| 11. | PROVIDED DURING REPORT PERIOD | | | | | | | | |
| | PROVIDED TO DATE | | | | | | | | |
| 13. | REMAINING TO COMPLETE THE APPROVED PROGRAM | | | | | | | | |

14. TERMINATION *(IF TRAINING WAS TERMINATED PRIOR TO COMPLETION OF APPROVED PROGRAM EXPLAIN REASON FOR TERMINATION)*

| 15. REPORT PREPARED BY *(SIGNATURE AND TITLE OF CONTRACTOR'S REPRESENTATIVE)* | 16. DATE |
|---|---|
| 16. REPORT REVIEWED BY *(SIGNATURE AND TITLE OF STATE HIGHWAY OFFICIAL)* | 17. DATE |

Form FHWA-1409
(Rev. 1-78)

PREVIOUS EDITIONS ARE OBSOLETE

FORM APPROVED
OMB NO. 04-R2434

# FEDERAL - AID HIGHWAY CONSTRUCTION SEMIANNUAL TRAINING REPORT

U.S. DEPARTMENT OF TRANSPORTATION
FEDERAL HIGHWAY ADMINISTRATION

*REPORTS CONTROL SYMBOL HHO-30-16*

NOTE: TO BE COMPLETED BY STATE HIGHWAY DEPARTMENT *(See instructions on reverse side)*

STATE [1-4] PERIOD ENDING [5-7]

LEGEND
N-NEGRO
OR-ORIENTAL
O-OTHER
I-AMERICAN INDIAN
S-SPANISH AMERICAN

| LINE NO. | TRAINING CLASSIFICATION | NUMBER RECEIVING TRAINING DURING REPORT PERIOD | | | | | | NUMBER STARTING TRAINING DURING REPORT PERIOD | | | | | | NUMBER COMPLETING TRAINING DURING REPORT PERIOD | | | | | | TOTAL HOURS OF TRAINING DURING REPORT PERIOD |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | A | B | | | | | | C | | | | | | D | | | | | | E |
| [8-9] | | TOTAL | N [10-12] | OR [13-15] | I [16-18] | S [19-21] | O [22-24] | TOTAL | N [25-27] | OR [28-30] | I [31-33] | S [34-36] | O [37-39] | TOTAL | N [40-42] | OR [43-45] | I [46-48] | S [49-51] | O [52-54] | TOTAL [55-60] |
| 03 | EQUIPMENT OPERATORS | | | | | | | | | | | | | | | | | | | |
| 04 | MECHANICS | | | | | | | | | | | | | | | | | | | |
| 05 | TRUCK DRIVERS | | | | | | | | | | | | | | | | | | | |
| 06 | IRON WORKERS | | | | | | | | | | | | | | | | | | | |
| 07 | CARPENTERS | | | | | | | | | | | | | | | | | | | |
| 08 | CEMENT MASONS | | | | | | | | | | | | | | | | | | | |
| 09 | ELECTRICIANS | | | | | | | | | | | | | | | | | | | |
| 10 | PIPEFITTERS PLUMBERS | | | | | | | | | | | | | | | | | | | |
| 11 | PAINTERS | | | | | | | | | | | | | | | | | | | |
| 12 | OTHER SKILLS | | | | | | | | | | | | | | | | | | | |
| 13 | TOTAL | | | | | | | | | | | | | | | | | | | |

| | | | | | |
|---|---|---|---|---|---|
| 14 | NUMBER OF FEMALES RECEIVING TRAINING [10-12] | NUMBER OF FEMALES STARTING TRAINING [13-15] | NUMBER OF FEMALES COMPLETING TRAINING [16-18] | | |
| NUMBER OF NEW-HIRES RECEIVING TRAINING [19-21] | | NUMBER IN APPRENTICESHIP TRAINING [22-24] | NUMBER OF TERMINATIONS PRIOR TO COMPLETION OF TRAINING [25-27] | | |
| NUMBER OF UP-GRADES RECEIVING TRAINING [28-30] | | NUMBER IN OTHER ON-JOB-TRAINING [31-33] | NUMBER OF PROJECTS UNDER WAY DURING REPORTING PERIOD AND CONTAINING TRAINING SPECIAL PROVISIONS [34-36] | | |

COMMENTS

REPORT PREPARED BY *(SIGNATURE)* AND TITLE OF STATE OFFICIAL | DATE

FORM FHWA-1410
(Rev. 1-78)

PREVIOUS EDITIONS ARE OBSOLETE

[FR Doc. 78-12265 Filed 5-4-78; 8:45 am]

[4910-22]

[FHWA Docket No. 78-2]

SUBCHAPTER H—RIGHT-OF-WAY AND ENVIRONMENT

## PART 752—LANDSCAPE AND ROADSIDE DEVELOPMENT

## PART 753—ACQUISITION PROCEDURES FOR LANDSCAPING AND SCENIC ENHANCEMENT

### Interim Regulations

AGENCY: Federal Highway Administration, DOT.

ACTION: Interim Regulation.

SUMMARY: These interim regulations establish procedures by which States may participate in landscape and roadside development including the development of information centers and systems. These procedures are necessitated by the enactment of, and are intended to implement the Federal-Aid Highway Act of 1976. Also, this document makes certain other editorial and technical changes to clarify and simplify procedures governing scenic enhancement.

DATES: Comments must be received on or before July 5, 1978. Effective date: May 5, 1978.

ADDRESS: Comments should be addressed to FHWA Docket No. 78-2, Federal Highway Administration, Room 4230, 400 7th Street SW., Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT:

Mr. Kenneth A. Rickerson, Chief, Landscape Branch, Room 3124, Office of Engineering, 202-426-0314; Edward V. Kussy, Office of the Chief Counsel, 202-426-0791, Federal Highway Administration, 400 7th Street SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t. Monday through Friday.

SUPPLEMENTAL INFORMATION: Section 122(c) of the Federal-Aid Highway Act of 1976, Pub. L. 94-280, May 5, 1976, 90 Stat. 425, amended 23 U.S.C. 131(i) to permit the establishment of information systems located within the highway right-of-way to complement information facilities located at safety rest areas. Section 136 of the 1976 Highway Act amended 23 U.S.C. 319 by eliminating the separate funding category of landscaping and scenic enhancement and permitting expenditures for this purpose out of normal construction costs.

In order to implement these statutory amendments and to clarify existing procedures, the Federal Highway Administration is issuing interim regulations, pursuant to which States may proceed with landscape and roadside development. The most significant changes are as follows:

Expenditures for landscaping and scenic enhancement may be made from normal construction funds. The separate funding category for these purposes has been eliminated. The Federal share provided will be in accordance with that provided for the highway project involved.

In addition to constructing and operating or leasing the construction and/or operation of information facilities at safety rest areas, States may also establish or permit, subject to Federal Highway Administration approval, information systems within the right-of-way of federally funded highways. Such systems may not visually intrude upon the main-traveled way of the highway.

Where plant survival is extremely critical as in junkyard screening and urban landscaping, plant establishment periods may be extended to a maximum of 3 years.

Those desiring to comment on these interim regulations are asked to submit their views, data, and arguments in writing. Communications should identify the docket number (FHWA Docket No. 78-2). Comments will be available both before and after the closing date at the above address. It is the intention of the Federal Highway Administration to issue final rules in this matter after the program under the interim rules has been reviewed and comments received pursuant to this notice have been analyzed.

The material in these regulations relates only to a grant program of the Federal Highway Administration. The relevant provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of rulemaking, opportunity for public participation, and delay in effective date are inapplicable.

The Federal Highway Administration has determined that this document does not contain a major proposal according to the criteria established by the Department of Transportation pursuant to E.O. 12044.

Issued on: April 26, 1978.

KARL S. BOWERS,
*Deputy Administrator.*

Chapter I of Title 23 of the Code of Federal Regulations is amended by combining Parts 752 and 753 into a revised Part 752, as follows: (Part 752 codifies material contained in Volume 6, Chapter 2, section 5, Subsection 1, of the Federal Aid Highway Program Manual):

Sec.

752.1 Purpose.
752.2 Policy.
752.3 Definitions.
752.4 Landscape development.
752.5 Safety rest areas.
752.6 Scenic overlooks.
752.7 Information centers and systems.
752.8 Privately operated information centers and systems.
752.9 Scenic lands.
752.10 Abandoned vehicles.
752.11 Federal participation.

AUTHORITY: 23 U.S.C. 131, 315, 319; 42 U.S.C. 4321 *et seq.*; 49 CFR 1.48(b).

### § 752.1 Purpose.

The purpose of this Part is to furnish guidelines and prescribe policies regarding (a) landscaping and scenic enhancement programs under 23 U.S.C. 319 and the National Environmental Policy Act, 42 U.S.C. 4321, et sec.; (b) safety rest areas and scenic overlooks under 23 U.S.C. 319, and (c) information centers and systems under 23 U.S.C. 131(i).

### § 752.2 Policy.

(a) Highway esthetics is a most important consideration in the Federal-aid highway program. Highways must not only blend with our natural social, and cultural environment, but also provide pleasure and satisfaction in their use.

(b) The FHWA will cooperate with State and local agencies and organizations to provide opportunities for the display of original works of art within the highway rights-of-way.

(c) The development of the roadside to include landscape development, safety rest areas, and the preservation of valuable adjacent scenic lands is a necessary component of highway development. Planning and development of the roadside should be concurrent with or closely follow that of the highway. Further, the development of travel information centers and systems is encouraged as an effective method of providing necessary information to the traveling public.

### § 752.3 Definitions.

(a) *Safety rest area.* A roadside facility safely removed from the traveled way with parking and such facilities for the motorist deemed necessary for his rest, relaxation, comfort and information needs. The term is synonymous with "rest and recreation areas."

(b) *Scenic overlook.* A roadside improvement for parking and other facilities to provide the motorist with a safe opportunity to stop and enjoy a view.

(c) *Information centers.* Facilities located at safety rest areas which provide information of interest to the traveling public.

(d) *Information systems.* Facilities located within the right-of-way which provide information of interest to the traveling public. An information system is not a sign, display or device otherwise permitted under 23 U.S.C. 131 or prohibited by any local, State or Federal law or regulation.

§ 752.4 Landscape development.

(a) Landscape development within the right-of-way of all federally funded highways or on adjoining scenic lands shall be in general conformity with accepted concepts and principles of highway landscaping and environmental design.

(b) Highway planting programs should have provisions for plant establishment periods of a duration sufficient for expected survival in the highway environment. Normal 1-year plant establishment periods may be extended to 3-year periods where survival is considered essential to their function, such as junkyard screening or urban landscaping projects.

(c) In urban areas new and major reconstructed highways and completed Interstate and expressway sections are to be landscaped as appropriate for the adjacent existing or planned environment.

(d) In rural areas new and major reconstructed highways should be landscaped as appropriate for the adjacent environment. Planning should include the opportunity for natural regeneration of native growth and the management of that growth.

§ 752.5 Safety rest areas.

(a) Safety rest areas should provide facilities reasonably necessary for the comfort, convenience, relaxation, and information needs of the motorist. Caretakers' quarters may be provided in conjunction with a safety rest area at such locations where accommodations are deemed necessary. All facilities within the rest area are to provide full consideration and accommodation for the handicapped.

(b) Access from the safety rest areas to adjacent publicly owned conservation and recreation areas may be permitted if access to these areas is only available through the rest area and if these areas or their usage does not adversely affect the facilities of the safety rest area.

(c) The scenic quality of the site, its accessibility and adaptability, and the availability of utilities are the prime considerations in the selection of rest area sites. A statewide safety rest area system plan should be maintained. This plan should include development priorities to ensure safety rest areas will be constructed first at locations most needed by the motorist. Proposals for safety rest areas or similar facilities on Federal-aid highways in suburban or urban areas shall be special case and must be fully justified before being authorized by the FHWA Regional Administrator.

(d) Facilities within newly constructed safety rest areas should meet the forecast needs of the design year. Expansion and modernization of older existing rest areas that do not provide adequate service should be considered.

(e) No charge to the public may be made for goods and services at safety rest areas, except telephone.

§ 752.6 Scenic overlooks.

Scenic overlooks shall be located and designed as appropriate to the site and the scenic view with consideration for safety, access, and convenience of the motorist. Scenic overlooks may provide facilities equivalent to those provided in safety rest area.

§ 752.7 Information centers and systems.

(a) The State may establish at existing or new safety rest areas information centers for the purpose of providing specific information to the motorist as to services, as to places of interest within the State and such other information as the State may consider desirable.

(b) The State may construct and operate the facilities, may construct and lease the operation of information facilities, or may lease the construction and operation of information facilities.

(c) Where the information center or system includes an enclosed building, the identification of the operator and all advertising must be restricted to the interior of the building. Where a facility is in the nature of a bulletin board or partial enclosure, none of the advertising, including the trade name, logo, or symbol of the operator shall be legible from the main traveled way.

(d) Subject to FHWA approval, States may establish or permit information systems within the right-of-way of federally funded highways which provide information of specific interest to the traveling public which do not visually intrude upon the main-traveled way of the highway in a manner violating 23 U.S.C. 131 and other applicable local, State, and Federal laws, rules, and regulations.

§ 752.8 Privately operated information centers and systems.

(a) Subject to the FHWA Regional Administrator's approval of the lease or agreement, the State may permit privately operated information centers and systems which conform with the standards of this directive.

(b) There shall be no violation of control of access, and no adverse effect on traffic in the main traveled way.

(c) The agreement between the State and the private operator shall provide that:

(1) The State shall have title to the information center or system upon completion of construction or termination of the lease.

(2) Advertising must be limited to matters relating to and of interest to the traveling public.

(3) Equal access must be provided at reasonable rates to all advertisers considered qualified by the State.

(4) Forty percent or more of all display areas and audible communications shall be devoted free of charge to providing information to the traveling public and public service announcements.

(5) No charge to the public may be made for goods or services except telephone.

(6) Nondiscrimination provisions must be included in accordance with the State assurance with regard to 42 U.S.C. 2000d–2000d–5 (Civil Rights Act of 1964). The private operator may not permit advertising from advertisers who do not provide their services without regard to race, color, or national origin.

(7) The center or system shall be adequately maintained and kept clean and sanitary.

(8) The State may promulgate reasonable rules and regulations on the conduct of the information center or system in the interests of the public.

(9) The State may terminate the lease or agreement for violation of its terms or for other cause.

§ 752.9 Scenic Lands.

(a) Acquisition of interests in and improvement of strips of land or water areas adjacent to Federal-aid highways may be made as necessary for restoration, preservation, and enhancement of scenic beauty.

(b) Scenic strip interests may be acquired in urban or rural areas, combined in one or more projects, authorized separately whether or not there is or has been a Federal-aid project on the adjoining Federal-aid highway.

(c) Approval of acquisition and development of scenic strips on completed Interstate should be conditioned on a showing that the acquisition of scenic strips was considered under the Highway Beautification Program for that particular section of Interstate.

§ 752.10 Abandoned Vehicles.

(a) Abandoned motor vehicles may be removed from the right-of-way and from private lands adjacent to Federal-aid highways for the restoration, preservation, or enhancement of scenic beauty as seen from the traveled way of the highway as a landscape or roadside development project.

(b) The State shall obtain permission or sufficient legal authority to go on private land to carry out this program. Where feasible, an agreement should be made with the owner that he will not in the future place junk, or allow junk to be placed, on his land so as to create an eyesore to the traveling public. The permission or authority and the agreement may be informal.

(c) The collection of abandoned motor vehicles from within the right-of-way must be a development project and not a maintenance operation. Once a State completes a development project for the removal of abandoned motor vehicles from within the high-

way right-of-way, it is obligated to continue the removal of future abandoned motor vehicles from within the development project limits without further participation.

§ 752.11 Federal Participation.

(a) Federal-aid highway funds are available for landscape development, the acquisition and development of safety rest areas, scenic overlooks, and scenic lands, for the development of information centers and systems, and for the removal of abandoned motor vehicles.

(b) Federal-aid participation may be made in plant establishment periods in or associated with landscaping projects and in the planting of flowering materials supplied by garden clubs and other organizations or individuals.

(c) Federal-aid Interstate funds may participate in necessary rest area expansion to accommodate the probable usage which can now be expected during the design year of the original rest area construction, for any rest area project authorized prior to January 1, 1970. In addition, on any project where basic safety rest area Federal-aid construction was authorized prior to January 1, 1964, deficient safety rest areas may be expanded or improved with Federal Interstate participation to accommodate usage as a result of 1976 traffic.

(d) Federal-aid Interstate funds may participate in facilities for new or enlarged information centers or systems within existing rest areas regardless of the year basic rest area construction was authorized. Federal-aid funds may not be used for the assemblage, printing, or distribution of informational materials. Federal-aid funds may not be used for temporary or portable information facilities.

[FR Doc. 78-12297 Filed 5-4-78; 8:45 am]

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[4830-01]

Title 26—Internal Revenue

## CHAPTER I—INTERNAL REVENUE SERVICE, DEPARTMENT OF TREASURY

SUBCHAPTER A—INCOME TAX

[T.D. 7543; LR-1810]

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

### Abatement of Income Taxes of Certain Members of the Armed Forces of the United States Upon Death

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulaltions.

SUMMARY: This document provides final regulations relating to the abatement of income taxes of members of the Armed Forces of the United States who die while serving in a combat zone or as a result of wounds, disease, or injury incurred while serving in a combat zone. The document conforms the regulations to the per curiam decision of the Supreme Court in *Marcelle* v. *Estate of Lupia*, 348 U.S. 956 (1955), which held the abatement extends to income received by the individual's estate during any remaining portion of the twelve-month period corresponding to the individual's final taxable year. The amendment affects those survivors of a serviceman who receives income that would have been received by the serviceman during the balance of his taxable year had he lived.

DATES: The regulations are effective for taxable years ending after June 24, 1950.

FOR FURTHER INFORMATION CONTACT:

Fred E. Grundeman of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224, Attention CC:LR:T, 202-566-3737, not a toll-free number.

SUPPLEMENTAL INFORMATION:

BACKGROUND

On December 19, 1977, the FEDERAL REGISTER published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 692 of the Internal Revenue Code of 1954. The amendments were proposed to conform the regulations to the per curiam decision of the Supreme Court in *Marcelle* v. *Estate of Lupia*, 348 U.S. 956 (1955), affirming 214 F. 2d 942 (2d., Cir. 1954). As no comments from the public were received, this document adopts the proposed amendments without change.

PROVISIONS OF THE REGULATIONS

Under section 692(a), if an individual dies while serving as an active member of the Armed Forces of the United States in a combat zone, no income tax is imposed for the taxable year containing the date of his death. Also, no income tax is imposed for any previous taxable year during which he served in a combat zone. Section 1.692-1(a)(1) of the existing regulations provides that the tax liability cancelled under section 692(a) consists of the liability for the taxable year (generally a short taxable year of less than 365 days) ending on the date of a serviceman's death and for any prior taxable year during which he served in a combat zone. That position was based on the general rule that the last taxable year of an individual ends on the date he dies. In *Estate of Lupia*, the Supreme Court held that the phrase "taxable year in which falls the date of his death" means the entire taxable year in which death occurs, that is, the 12-month period beginning on the first day of the decedent's taxable year in which falls the date of his death. The amendment contained in this document conforms the regulations to that decision.

The amendment also removes all references to service "during an induction period" because that language was retroactively removed from the statute by the Act of January 2, 1975 (Pub. L. 93-597, 88 Stat. 1953), to reflect the expiration on June 30, 1973, of the Military Selective Service Act of 1967 (the draft law).

DRAFTING INFORMATION

The principal author of these proposed amendments was Fred E. Grundeman of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the amended regulation, both on matters of substance and style.

ADOPTION OF AMENDMENTS TO THE REGULATIONS

Accordingly, 26 CFR Part 1 is amended as follows:

Paragraph 1. Section 1.692 is deleted.

Par. 2. Paragraph (a) of § 1.692-1 is amended to read as follows:

**§ 1.692-1 Abatement of income taxes of certain members of the Armed Forces of the United States upon death.**

(a) (1) This section applies if—

(i) An individual dies while in active service as a member of the Armed Forces of the United States, and

(ii) His death occurs while he is serving in a combat zone (as determined under section 112), or at any place as a result of wounds, disease, or injury incurred while he was serving in a combat zone.

(2) If an individual dies as described in paragraph (a)(1), the following liabilities for tax, under subtitle A of the Internal Revenue Code of 1954 or under chapter 1 of the Internal Revenue Code of 1939, are canceled:

(i) The liability of the deceased individual, for his last taxable year, ending on the date of his death, and for any prior taxable year ending on or after the first day he served in a combat zone in active service as a member of the U.S. Armed Forces after June 24, 1950, and

(ii) The liability of any other person to the extent the liability is attributable to an amount received after the individual's death (including income in

respect of a decedent under section 691) which would have been includible in the individual's gross income for his taxable year in which the date of his death falls (determined as if he had survived).

If the tax (including interest, additions to the tax, and additional amounts) is assessed, the assessment will be abated. If the amount of the tax is collected (regardless of the date of collection), the amount so collected will be credited or refunded as an overpayment.

(3) If an individual dies as described in paragraph (a)(1), there will not be assessed any amount of tax of the individual for taxable years preceding the years specified in paragraph (a)(2), under subtitle A of the Internal Revenue Code of 1954, chapter 1 of the Internal Revenue Code of 1939, or corresponding provisions of prior revenue laws, remaining unpaid as of the date of death. If any such unpaid tax (including interest, additions to the tax, and additional amounts) has been assessed, the assessments will be abated. If the amount of any such unpaid tax is collected after the date of death, the amount so collected will be credited or refunded as an overpayment.

(4) As to what constitutes active service as a member of the Armed Forces, service in a combat zone, and wounds, disease, or injury incurred while serving in a combat zone, see section 112. As to who are members of the Armed Forces, see section 7701(a)(15). As to the period of time within which any claim for refund must be filed, see sections 6511(a) and 7508(a)(1)(E).

* * * * *

This Treasury decision is issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U.S. 7805).

JEROME KURTZ,
*Commissioner of Internal Revenue.*

Approved: April 3, 1978.

ROBERT H. MUNDHEIM,
*General Counsel of the Treasury.*

[FR Doc. 78-12354 Filed 5-4-78; 8:45 am]

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[4510-30]

## Title 29—Labor

## SUBTITLE A—OFFICE OF THE SECRETARY

## PREFERENCE IN GOVERNMENT PROCUREMENT TO COMPANIES IN HIGH UNEMPLOYMENT AREAS

### Revocation of Rules

AGENCY: Department of Labor.

ACTION: Deletion of rules.

SUMMARY: The Department of Labor is deleting its obsolete regulations governing preference in Government procurement to companies in high unemployment areas. These have been superseded by new regulations implementing the successor Defense Manpower Policy DMP-4A. The Department is also deleting certain parts which had provided for the limited application of certain Work Incentive Program regulations past the date of their recision. Since there is no further adjudication pending (nor has any been pending for some time) as to which the former regulations would apply, these savings clauses are no longer necessary.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Davis A. Portner, Office of Policy and Planning, 601 D Street NW., Room 9420, Washington, D.C. 20213, 202-376-6274.

SUPPLEMENTARY INFORMATION:

DEFENSE MANPOWER POLICY No. 4

On August 4, 1977, the President signed into law the Small Business Act Amendments of 1977 (Pub. L. 95-89). In pertinent part these amendments modified Defense Manpower Policy No. 4 (DMP-4), the labor surplus procurement program implemented by the Federal Preparedness Agency of the General Services Administration (GSA) through regulations at 32A CFR Part 134.

On November 3, 1977, GSA issued new regulations implementing Defense Manpower Policy No. 4A (DMP-4A) to reflect the changes wrought by Pub. L. 95-89. The regulations were made effective retroactive to October 27, 1977. (42 FR 57457.)

Under the former DMP-4 program the Department of Labor was responsible for identification and classification of eligible labor surplus areas, the establishment of an order of preference among such areas, and the certification of eligible employing establishments. In contrast, the new DMP-4A program specifies the order of preference among employers in labor surplus areas and eliminates the certification requirement formerly imposed on employing establishments. The Department is still responsible, however, for classifying labor surplus areas.

These changes in the Department's responsibilities were carried out through the adoption of a new set of regulations at 20 CFR Part 654. The regulations were first published as proposed rulemaking on December 16, 1977, at 42 FR 63428. While proposing new regulations, the Department explained that it would continue to follow its existing regulations under DMP-4 at 29 CFR Part 8 to the extent necessary to implement the revised DMP-4A labor surplus program. The Department gave notice, however, that:

> Those sections [of 29 CFR Part 8] pertaining to order of preference among employers in labor surplus areas and certification of eligible employers, which sections are abrogated by DMP-4A, have lost their legal effect. (42 FR 63429.)

These provisions of 29 CFR Part 8 were technically void as of October 27, 1977, the effective date of the GSA regulations implementing DMP-4A.

The final regulations at 29 CFR Part 654 were adopted on March 3, 1978, effective immediately (43 FR 9102). Since the new regulations supersede the former rules at 29 CFR Part 8, the latter set of rules is no longer necessary. The Department is therefore rescinding 29 CFR Part 8 in its entirety.

THE WORK INCENTIVE PROGRAM REGULATIONS

On September 18, 1975, at 40 FR 43170 the Department rescinded its regulations at 29 CFR Parts 57 and 58 concerning administrative hearings and appeals, and rules of practice of the National Review Panel under the Work Incentive Program. Headings for the two parts have been retained in the Code of Federal Regulations at Title 29, however, with an explanation that the rescinded regulations would continue to apply to all adjudication under them commenced prior to November 1, 1975. Since there is no further adjudication pending (nor has any been pending for some time) as to which the former regulations would apply, these savings clauses are no longer necessary. The Department is therefore deleting in their entirety both Parts 57 and 58 of Title 29.

Accordingly, 29 CFR Subtitle A is amended as follows:

1. Part 8, *Preference in Federal Procurement under Defense Manpower Policy No. 4 and Executive Order 10582*, is removed in its entirety.

2. Part 57, *Administrative Hearings and Appeals under the Work Incentive Program*, is removed in its entirety.

3. Part 58, *Rules of Practice of the National Review Panel, Work Incentive Program*, is removed in its entirety.

Signed this 27th day of April 1978.

ERNEST G. GREEN,
*Assistant Secretary for Employment and Training.*

[FR Doc. 78-12459 Filed 5-4-78; 8:45 am]

[6315-01]

Title 45—Public Welfare

## CHAPTER X—COMMUNITY SERVICES ADMINISTRATION

[CSA Instruction 6802-5a, Ch. 1]

## PART 1068—GRANTEE FINANCIAL MANAGEMENT

### Subpart—Non-Federal Share Contribution; Eligibility for Waiver of Increase for Fiscal Year 1978 Grants

AGENCY: Community Services Administration.

ACTION: Final rule.

SUMMARY: The Community Services Administration is filing its final rule notifying all grantees that the non-Federal share waiver criteria promulgated under 45 CFR 1068.22 (CSA Instruction 6802-5a) has been extended to cover fiscal year 1978 grants. This rule will enable grantees to apply for waivers where conditions so warrant.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Maryann J. Fair, Community Services Administration, 1200 19th Street NW., Washington, D.C. 20506, telephone, 202-254-5047.

SUPPLEMENTARY INFORMATION: On January 4, 1975, the Economic Opportunity Act was amended by the Community Services Act. The new legislation mandated an increase in the percentage of non-Federal share contributions for certain Title II programs beginning with funds granted in fiscal year 1976 with an additional increase for grants made with fiscal year 1977 funds and for each succeeding year. One of the objectives of this increase was to encourage more State and local cooperation.

In April 1977, the Acting Director of CSA exercised his authority under Section 225(c) of the Economic Opportunity Act to develop additional objective criteria under which part or all of the additional non-Federal share could be waived. These criteria were published under 45 CFR 1068.22 (CSA Instruction 6802-5a). Since many communities remain in difficult financial situations the Director of CSA has choosen to continue the waiver provisions promulgated under this subpart (CSA Instruction 6802-5a) and is hereby notifying grantees of this decision.

This regulation is effective immediately since there is no policy change and it is in the best interest of grantees.

AUTHORITY: Sec. 602, 78 Stat. 530; 42 U.S.C. 2942.

GRACIELA (GRACE) OLIVAREZ,
*Director.*

45 CFR 1068.22 is amended to add a new subpart as follows:

**Subpart—Non-Federal Share Contribution; Eligibility for Waiver of Increase for Fiscal Year 1978 Grants**

Sec.
1068.22-6 Policy Re: Fiscal year 1978 grants.

### Subpart—Non-Federal Share Contribution; Eligibility for Waiver of Increase for Fiscal Year 1978 Grants

§ 1068.22-6 Policy Re: Fiscal year 1978 grants.

This subpart will cover all fiscal year 1978 grants made from October 1, 1977 and is retroactive for all fiscal year 1978 grants.

[FR Doc. 78-12317 Filed 5-4-78; 8:45 am]

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[6730-01]

Title 46—Shipping

## CHAPTER IV—FEDERAL MARITIME COMMISSION

### SUBCHAPTER A—GENERAL PROVISIONS

[General Order 16, Amdt. 23, Docket No. 77-59]

## PART 502—RULES OF PRACTICE AND PROCEDURE

### Conduct of Rulemaking Proceedings

AGENCY: Federal Maritime Commission.

ACTION: Final rules.

SUMMARY: The Rules of Practice and Procedure are amended to provide for a single round of comments in rulemaking proceedings unless particular circumstances warrant the filing of replies to comments and to provide for the participation of the Bureau of Hearing Counsel. Multiple rounds of comments and participation of Hearing Counsel have proven unnecessary in some instances. The new procedure provides desirable flexibility.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Francis C. Hurney, Secretary, 1100 L Street NW., Washington, D.C. 20573, 202-523-5725.

SUPPLEMENTARY INFORMATION: The Commission instituted this proceeding by Notice of Proposed Rulemaking published in the FEDERAL REGISTER on December 14, 1977, (42 FR 62939) to amend Rules 42 and 53 of the Commission's Rules of Practice and Procedure, 46 CFR 502.42 and 502.53. The purpose of the proposed amendments was to simplify the conduct of rulemaking proceedings by limiting them to a single round of comments unless there are particular circumstances in which this format would hinder the Commission's ability to formulate a just and reasonable rule. Specifically, Rule 42 would be amended to provide that the Director, Bureau of Hearing Counsel would be party to a rulemaking proceeding only by designation of the Commission. Rule 53 would be amended to provide that no replies to comments would be allowed unless the Commission determined that the nature of the proceeding warranted replies in order to fashion an adequate rule.

In response to the notice, comments were submitted by the Maritime Administrative Bar Association (MABA), the law firm of Lillick, McHose, and Charles (Lillick), Sea-Land Service, Inc. (Sea-Land), and Wade S. Hooker, Jr. (Hooker), an attorney who practices before the Commission. We have considered these comments carefully and have determined to publish the rules in final form as originally proposed. An analysis of the comments follows.

1. Rule 42. MABA takes no position with respect to the participation of Hearing Counsel although some of its members believe that Hearing Counsel should be permitted to request leave of the Commission to participate. Lillick similarly has no comment on this proposal while submitting that Hearing Counsel's participation is often beneficial. Sea-Land supports the proposal. Hooker has no comment but believes a second round of comments is essential.

As indicated, no commenter opposes this revision. The Bureau of Hearing Counsel always has the power to request an opportunity to participate and, of course, the proposal itself contemplates the Commission's designation of their participation.

2. Rule 53. MABA opposes this proposal on several grounds. First, no criteria are established to determine which proceedings are considered by the Commission to warrant a reply round. Second, the parties would be denied the views of others and the opportunity to comment on alternate recommendations made in response to the notice of proposed rulemaking. Third, MABA is of the opinion that a reply round serves to narrow the controverted issues. Last, some members suggest that the Commission require that all comments be served on all other commentators to facilitate the filing of meaningful replies.

Lillick urges retention of the current system, expressing concern that the use of one round of comments would not afford a fair opportunity to be

heard. Lillick also criticizes the lack of criteria for determining which proceedings will be limited to one round of comments.

Similarly, Sea-Land would have us definitively set forth which proceedings will be limited to one round of comments.

Hooker also expresses concern that the proposals would limit participation in formulation of a rule, urging that the Commission supplement the proposed changes herein to the effect that, should the Commission make substantial amendments to a proposal, another opportunity should be given for comment.

The instant proposals are designed to give the Commission flexibility in the type of rulemaking proceedings it conducts. In this context, we feel that the concerns expressed by the commentators are unfounded. As indicated in the notice instituting this proceeding, the one-round procedure would not be followed in proceedings involving factual disputes or complex issues. Moreover, the determinations as to what type of proceeding will be employed will not be made necessarily in the initial proposal. It may well be that we will determine to have further submissions after seeing the initial comments. Similarly, the Commission would not make substantive changes to a proposal and finalize without further opportunity for comment; such a procedure would not be permitted by the Administrative Procedure Act.

In summary, we reiterate that the single-round proceeding will not be employed where complex or factual issues are involved. We are therefore adopting the rules as proposed.[1]

Therefore, pursuant to section 4 of the Administrative Procedure Act (5 U.S.C. 553), and section 43 of the Shipping Act, 1916 (46 U.S.C. 841a), Part 502 of Title 46, Code of Federal Regulations, is amended as set forth below:

§ 502.42 [Amended]

1. Section 502.42 is amended by changing all references to "he" and "his" to "the Director" and "the Director's" and by changing the period at the end of the first sentence to a comma and adding the following: * * * and in rulemaking proceedings the Director may become a party by designation if the Commission determines that the circumstances of the proceeding warrant such participation. * * *

§ 502.53 [Amended]

2. Section 502.53 is amended by changing the colon appearing after the word "manner" in the first sentence to a period and adding the following: * * * No replies to the written submissions will be allowed unless, because of the nature of the proceeding, the Commission indicates that replies would be necessary or desirable for the formulation of a just and reasonable rule:

* * * * *

*Effective date:* Inasmuch as the expeditious adoption of these rules is desirable and inasmuch as they are procedural in nature, they shall be effective May 5, 1978.

By the Commission.

FRANCIS C. HURNEY,
*Secretary.*

[FR Doc. 78-12302 Filed 5-4-78; 8:45 am]

[1] Gender specific references in the existing and proposed rules have been eliminated.

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[7035-01]

## Title 49—Transportation

## CHAPTER X—INTERSTATE COMMERCE COMMISSION

### SUBCHAPTER A—GENERAL RULES AND REGULATIONS

[Service Order No. 1324]

## PART 1033—CAR SERVICE

### Chicago, Rock Island and Pacific Railroad Company Authorized To Operate Over Tracks of Burlington Northern Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Service Order No. 1324.

SUMMARY: The line of the Chicago, Rock Island and Pacific Railroad between Eldon, Iowa, and Keokuk, Iowa, has become inoperable because of track conditions. An alternative route between Keokuk and other stations on the Chicago, Rock Island and Pacific exists by use of the tracks of the Burlington Northern between Keokuk and Burlington, Iowa. Service Order No. 1324 authorizes the Chicago, Rock Island and Pacific to operate over these tracks of the Burlington Northern in order to provide continued railroad service to shippers served by the Chicago, Rock Island and Pacific at Keokuk.

DATES: Effective 12:01 a.m., May 2, 1978. Expires 11:59 p.m., September 30, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

At a Session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 28th day of April 1978.

The line of the Chicago, Rock Island and Pacific Railroad (RI) between Eldon, Iowa and Keokuk, Iowa, is inoperable because of track conditions. Shippers served by this line at Keokuk, Iowa, require the continued services of the RI in order to conduct their operations. An alternate route between Keokuk and other lines of the RI is available via the Burlington Northern Inc. (BN) between Keokuk and Burlington, Iowa. Use of this route by the RI would enable the RI to continue to provide needed rail service to shippers located adjacent to its tracks in Keokuk. The BN has consented to use of its tracks by the RI.

It is the opinion of the Commission that an emergency exists requiring operation of RI trains over these tracks of the BN 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 30 days' notice.

*It is ordered,* That:

§ 1033.1324 Service Order 1324.

(a) *Chicago, Rock Island and Pacific Railroad Company authorized to operate over tracks of Burlington Northern Inc.* The Chicago, Rock Island and Pacific Railroad Company (RI) is authorized to operate over tracks of the Burlington Northern Inc. (BN) between Keokuk, Iowa, and Burlington, Iowa, a distance of approximately 43.08 miles.

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

(c) *Rates applicable.* Inasmuch as this operation by the RI over tracks of the BN is deemed to be due to carrier's disability, the rates applicable to traffic moved by the RI over the tracks of the BN 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 2, 1978.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., September 30, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1(10-17).)

*It is further ordered,* That copies of this order 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; 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.

H. G. HOMME, Jr.,
*Acting Secretary.*

[FR Doc. 78-12336 Filed 5-4-78; 8:45 am]

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[7035-01]

[Service Order No. 1325]

## PART 1033—CAR SERVICE

### The Atchison, Topeka and Santa Fe Railway Company Authorized To Operate Unit-Grain Train Comprised of 60 Cars

AGENCY: Interstate Commerce Commission.

ACTION: Emergency Order Service Order No. 1325.

SUMMARY: There is a severe shortage of both covered hopper cars and locomotives on the Atchison, Topeka and Santa Fe Railroad (ATSF) for transporting shipments of grain and related commodities. Service Order No. 1325 authorizes the ATSF to waive certain tariff requirements requiring the shipment of 75 carloads of grain in a single train and to apply in lieu thereof a minimum weight of 5,700 net tons per shipment in not to exceed 60 cars from ATSF origins in rate zone F and west to California destinations. The reduced train size will enable the ATSF to make a more equitable distribution of its covered hopper cars and to secure more efficient utilization of its locomotives.

DATES: Effective 12:01 a.m., May 2, 1978. Expires 11:59 p.m., August 31, 1978.

FOR FURTHER INFORMATION CONTACT:

C. C. Robinson, Chief, Utilization and Distribution Branch, Interstate Commerce Commission, Washington, D.C. 20423, telephone 202-275-7840, telex 89-2742.

SUPPLEMENTARY INFORMATION: The Order is printed in full below.

At a session of the Interstate Commerce Commission, Railroad Service Board, held in Washington, D.C., on the 1st day of May 1978.

An acute shortage of covered hopper cars and of locomotives for transporting trainload shipments of grain, grain products, soybeans or soybean meal exists on the line of the Atchison, Topeka and Santa Fe Railway Company (ATSF). That line has published certain rates in Transcontinental Freight Bureau Tariff 29-P, ICC 1958 which require the use of seventy-five (75) covered hopper cars to transport 7,125 net tons of these commodities for movement from all origins on the ATSF in rate zone F and west to points in California. Because of the heavy demands for covered hopper cars from shippers served by it the ATSF is unable to assemble and furnish seventy-five (75) such cars to a single shipper without serious adverse effects on other shippers also having need for such cars. The operation of seventy-five (75) car grain trains over the mountainous terrain between the origin points and the California destinations requires the use of additional locomotive units over the entire route. A reduction in train size to sixty (60) cars will enable the ATSF to make more effective use of its motive power and a more equitable distribution if its covered hopper cars.

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 30 days' notice.

*It is ordered,* That:

§ 1033.1325 Service Order No. 1325.

(a) *The Atchison, Topeka and Santa Fe Railway Company authorized to operate unit-grain train comprised of 60 cars.* The Atchison, Topeka and Santa Fe Railway Company is authorized to waive the seventy-five (75) car requirement provided in Item 2502 of Transcontinental Freight Bureau Tariff 29-P, I.C.C. 1958 for application of Column 7 rates and to apply in lieu thereof a minimum weight of 5,700 net tons to be loaded into not more than sixty (60) covered hopper cars for shipments of grain or related items from origins on the ATSF in rate zone F and west to points in California. All other provisions of that tariff shall remain in effect.

(b) *Rules and Regulations Suspended.* The operation of all other tariff provisions or of other rules and regulations insofar as they conflict with the provisions of this order, is hereby suspended.

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

(d) *Effective date.* This order shall become effective at 12:01 a.m., May 2, 1978.

(e) *Expiration date.* The provisions of this order shall expire at 11:59 p.m., August 31, 1978, unless otherwise modified, changed, or suspended by order of this Commission.

(49 U.S.C. 1(10-17).)

*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 Service Board, members Joel E. Burns, Robert S. Turkington and John R. Michael. Member Joel E. Burns not participating.

H. G. HOMME, Jr.,
*Acting Secretary.*

[FR Doc. 78-12337 Filed 5-4-78; 8:45 am]

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[3510-22]

## Title 50—Wildlife and Fisheries

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

## PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

### Correction

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Errata sheet.

SUMMARY: This errata sheet corrects the amendment to the final regulations published on Friday, March 31, 1978, (43 FR 13582) which specified the effort restrictions for fishing for surf clams in the fishery conservation zone.

EFFECTIVE DATE: These corrections are effective immediately.

FOR FURTHER INFORMATION CONTACT:

Richard Schaefer, Chief, Fisheries Management Operations, Division 31, National Marine Fisheries Service, Washington, D.C. 20235, telephone: 202-634-7454.

SUPPLEMENTARY INFORMATION: On February 17, 1978, final regulations were published implementing the Atlantic surf clam and ocean quahog fishery management plan (see 50 CFR Part 652, 43 FR 6953). This plan was prepared by the Mid-Atlantic Fishery Management Council and approved by the Secretary of Commerce pursuant to the Fishery Conservation and Management Act of 1976, 16 U.S.C. 1801 et seq., as amended.

On March 31, 1978, amendments to the final regulations were published (50 CFR 652.7(a)(1), 43 FR 13582) revising fishing effort restrictions. Due to a typographical error § 652.7(a) was amended, rather than § 652.7(a)(1), as intended. This errata sheet corrects that mistake so that only § 652.7(a)(1) was amended on March 31, 1978, as intended. The remainder of § 652.7(a) remains in effect as originally published on February 17, 1978.

Signed at Washington, D.C., this 2d day of May 1978.

JACK W. GEHRINGER,
*Deputy Director, National Marine Fisheries Service.*

[FR Doc. 78-12342 Filed 5-4-78; 8:45 am]

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[3510-22]

## PART 652—ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES

### Reduction of Fishing Hours

AGENCY: National Oceanic and Atmospheric Administration/Commerce.

ACTION: Notice of reduction of fishing hours.

SUMMARY: This notice specifies new effort restrictions under the Fishery Conservation and Management Act of 1976, for fishing for surf clams in the fishery conservation zone by reducing the present 48-hour fishing period to 24 hours.

EFFECTIVE DATE: 0001 hours, May 8, 1978, through June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Mr. William G. Gordon, Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Gloucester, Mass. 01930, telephone 617-281-3600.

SUPPLEMENTARY INFORMATION: Section 652.7(a)(3) provides that when 50 percent of a quarterly quota of surf clams is caught the Regional Director shall determine the appropriate action necessary, such as closure or a reduction in fishing time, and he shall publish notice of such determination in the FEDERAL REGISTER. Catch statistics through April 21, 1978, indicate that 50 percent of the adjusted quarterly quota of 529,107 bushels will be caught by April 27, 1978. The Regional Director has estimated if the catch and effort continues at the present rate, the entire quarterly quota may be caught as soon as May 25, 1978. This would necessitate a closure of the fishery for five weeks. At the hearings held jointly by the National Oceanic and Atmospheric Administration, and the Mid-Atlantic Fishery Management Council in February concerning fishing day selection, a number of individuals indicated that a 2- to 3-week closure of the fishery was acceptable. However, a 5-week closure would cause a far greater hardship to the industry than a 2- to 3-week closure. The Assistant Administrator for Fisheries has determined that the reduction in the fishing period from 48 to 24 hours specified in this notice will cause the least amount of hardship and is consistent with the public comments received in February. Therefore, at 0001 hours, May 8, 1978 the present 48-hour fishing period will be reduced to 24 hours. This notice will be effective from May 8, through June 30, 1978, at which time the new quarter will begin and the fishery will revert back to a 48-hour week.

Signed at Washington, D.C., this 2d day of May 1978.

JACK W. GEHRINGER,
*Deputy Director, National Marine Fisheries Service.*

[FR Doc. 78-12343 Filed 5-4-78; 8:45 am]

# proposed rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

[3410-02]

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

[7 CFR Parts 911 and 915]

[Docket Nos. AO-267-A9 and AO-254-A8]

### LIMES GROWN IN FLORIDA AND AVOCADOS GROWN IN SOUTH FLORIDA

### Decision on Proposed Further Amendment of the Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This decision would amend the Federal marketing agreements and orders for fresh limes and avocados grown in Florida. Growers of these fruits will vote in a referendum to determine if they favor the proposed changes in the order. The principal changes would: Authorize addition of a public member to each committee; allow an assessment rate exceeding 20 cents per bushel when recommended by a specified majority of the committee; change the financial reserve provision to permit the carryover of up to three years' expenses; authorize regulations for export shipments that are different from regulations for shipments to domestic markets; delete the provision allowing compensation to committee members for performing program duties; and, for limes, exclude export shipments from volume control and handler prorate base calculations.

DATES: Grower referenda—June 21 through June 30, 1978.

FOR FURTHER INFORMATION CONTACT:

Charles R. Brader, 202-447-6393.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Notice of Hearing—Issued January 12, 1978; published January 17, 1978 (43 FR 2401); Notice of Recommended Decision—Issued March 23, 1978; published March 29, 1978 (43 FR 13067).

PRELIMINARY STATEMENT

A public hearing was held upon proposed further amendment of the marketing agreements and orders (7 CFR Parts 911 and 915) (hereinafter referred to collectively as the "orders"), regulating, respectively, the handling of limes grown in Florida and avocados grown in South Florida. The hearing was held, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice (7 CFR Part 900), at Homestead, Fla., on February 7, 1978, pursuant to notice thereof issued on January 12, 1978.

Upon the basis of the evidence introduced at the hearing and the record thereof, the Deputy Administrator, Marketing Program Operations, on March 23, 1978, filed with the Hearing Clerk, United States Department of Agriculture, his recommended decision containing notice of the opportunity to file written exceptions thereto. No exceptions were filed.

The material issues, findings and conclusions, rulings, and general findings of the recommended decision published Wednesday, March 29, 1978, in the FEDERAL REGISTER (43 FR 13067), are hereby incorporated herein and made a part hereof, subject to correction of inadvertent, grammatical or obvious errors.

*Marketing Agreements and Orders.* Annexed hereto and made a part hereof are four documents entitled, respectively, "Order Amending the Order, as Amended, Regulating the Handling of Limes Grown in Florida" and "Marketing Agreement, as Further Amended, Regulating the Handling of Limes Grown in Florida", "Order Amending the Order, as Amended, Regulating the Handling of Avocados Grown in South Florida" and "Marketing Agreement, as Further Amended, Regulating the Handling of Avocados Grown in South Florida", which have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

*It is hereby ordered,* That this entire decision, except the two annexed marketing agreements, be published in the FEDERAL REGISTER. The regulatory provisions of the marketing agreements are identical with those contained in the orders as hereby proposed to be amended by the annexed orders which are published with this decision.

*Referendum Order.* It is hereby directed that referenda be conducted in accordance with the procedure for the conduct of referenda (7 CFR 900.400 et seq.), to determine whether the issuance of the annexed orders, as amended and as hereby proposed to be amended, regulating the handling of limes grown in Florida and the handling of avocados grown in South Florida, respectively, are approved or favored by producers, as defined under the terms of the orders, who during the representative period were engaged in the production of the regulated commodity for market.

The representative period for the conduct of such referenda is hereby determined to be April 1, 1976, through March 31, 1977.

The agents of the Secretary to conduct such referenda, jointly or severally, are hereby designated to be William C. Knope and John R. Toth, Fruit and Vegetable Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 9, Lakeland, Fla. 33802.

Signed at Washington, D.C., on May 2, 1978.

P. R. "BOBBY" SMITH,
*Assistant Secretary.*

ORDER[1] AMENDING THE ORDER, AS AMENDED, REGULATING THE HANDLING OF LIMES GROWN IN FLORIDA

*Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911), regulating the handling of limes grown in Florida.

Upon the basis of the record it is found that:

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

(2) The order, as amended, and as hereby further amended, regulates the handling of limes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) There are no differences in the production and marketing of limes grown in the production area which make necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of limes grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

ORDER RELATIVE TO HANDLING

*It is therefore ordered*, That on and after the effective date hereof the handling of limes shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended as follows:

The provisions of the proposed marketing agreement and order, amending the order, contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on March 23, 1978, and published in the FEDERAL REGISTER on March 29, 1978 (43 FR 13067; FR Doc. 78-8207), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. Add a new § 911.12 *Export* as follows:

**§ 911.12 Export.**

"Export" means to ship limes to any destination which is not within the 48 contiguous States or the District of Columbia of the United States or Canada.

* * * * *

Revise § 911.48 by adding a new paragraph (a)(7). As amended, § 911.48 reads as follows:

**§ 911.48 Issuance of regulations.**

(a) * * *

(7) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of limes which are different from those applicable to the handling of the same variety to other destinations.

* * * * *

2. Revise § 911.20 by designating the first paragraph as paragraph (a) and by adding a new paragraph (b). As amended, § 911.20 reads as follows:

**§ 911.20 Establishment and membership.**

* * * * *

(b) The committee may be increased by one public member and alternate. Persons for the public member positions would be nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the public member and alternate.

Revise paragraph (a) of § 911.30 and add a new paragraph (d) to such section. As amended, § 911.30 reads as follows:

**§ 911.30 Procedure.**

(a) Except as provided in paragraphs (c) and (d), of this section, six members of the committee, including alternates acting for members, shall constitute a quorum and any decision, recommendation or other action of the committee shall require not less than five concurring votes, including one by a handler, or an alternate acting as such: *Provided*, That if the committee is increased by one, the quorum requirement shall be increased to seven and any decision, recommendation or other action of the committee shall require not less than six concurring votes, including one by a handler or an alternate acting as such.

* * * * *

(d) For any recommendation of the committee for an assessment rate exceeding $0.20 per bushel to be applied pursuant to § 911.41, the quorum requirement shall be eight members or alternates acting for members and eight concurring votes shall be required.

3. Revise paragraph (b) of § 911.41 to read as follows:

**§ 911.41 Assessments.**

* * * * *

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance.

4. Revise § 911.31 to read as follows:

**§ 911.31 Expenses.**

The members of the committee and their respective alternates when performing duties at the direction of the committee, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

5. Revise paragraph (a)(2) of § 911.42. As amended § 911.42 reads as follows:

**§ 911.911.42 Accounting.**

(a) * * *

(2) The secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal year which are in excess of the expenses necessary for committee operation during such a year may be carried over into following years as a reserve. Such reserve may be established at an amount not to exceed approximately 3 fiscal years' operational expenses. Funds in the reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal year when there is crop failure, or during any period of suspension of any or all the provisions of this part. Such reserve may also be used by the committee to finance its operations during any fiscal year prior to the time that assessment income is sufficient to cover such expenses and to cover deficits incurred during any fiscal year when income is less than expenses. Upon termination of this part any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

* * * * *

6. Revise paragraph (a) of § 911.53, so that after revision such paragraph reads as follows:

**§ 911.53 Recommendation for volume regulation.**

(a) The committee may, during any week, recommend to the Secretary the total quantity of limes which it deems

advisable to be handled to destinations within the forty-eight contiguous States of the United States, the District of Columbia and Canada during the next succeeding week: *Provided,* That such volume regulations shall not be recommended for any week except during the 18-week regulatory period beginning with the week preceding the first full week in May: *Provided, further,* That no such regulation shall be recommended after such regulations have been in effect for an aggregate of eight (8) weeks during the aforesaid period.

* * * * *

Revise § 911.54 to read as follows:

**§ 911.54 Issuance of volume regulations.**

Whenever the Secretary finds from the recommendation and information submitted by the committee, or from other available information, that to limit the quantity of lines which may be handled to destinations within the 48 contiguous States of the United States, the District of Columbia and Canada during a specified week of a regulatory period will tend to effectuate the declared policy of the act, he shall fix such quantity: *Provided,* That such regulations during a regulatory period shall not in the aggregate limit the volume of lime shipments for more than eight (8) weeks. The quantity so fixed for any week may be increased by the Secretary at any time during such week. Such regulations may, as authorized by the act, be made effective irrespective of whether the season average price of limes is in excess of the parity price. The Secretary may, upon the recommendation of the committee, or upon other available information, terminate or suspend any regulation pursuant to this section at any time.

* * * * *

Revise paragraph (d) of § 911.55 to read as follows:

**§ 911.55 Prorate bases.**

* * * * *

(d) Each week during the regulatory period when volume regulation is likely to be recommended for the following week, the committee shall compute a prorate base for each handler who has made application in accordance with the provisions of the section. The prorate base for each such handler shall be computed by adding together the handler's shipments of limes in the current season and his shipments in the immediately preceding seasons, if any, within the representative period in which he shipped limes and dividing such total by a divisor computed by adding together the number of weeks elapsed in the current season and the eighteen weeks for each of such immediately preceding seasons within the representative period in which the handler shipped limes. For purposes of this section "shipments" shall include only those limes which were shipped to destinations within the forty-eight contiguous States of the United States, the District of Columbia and Canada; "representative period" means the two preceding seasons together with the current season; the term "season" means the eighteen-week period beginning with the week preceding the first full week in May of any fiscal year; and the term "current season" means the period beginning with the week preceding the first full week in May of the current fiscal year through the fourth full week preceding the week of regulation: *Provided,* That when official shipping records are available to the committee the said "current season" shall extend through the third full week preceding the week of regulation.

7. Section 911.110 contains erroneous references to § 911.54. The correct reference is § 911.50. As corrected, § 911.110 reads as follows:

**Subpart—Rules and Regulations**

**§ 911.110 Exemption certificates.**

Exemption certificates under § 911.50 shall be issued by the Florida Lime Administrative Committee pursuant to the following rules and regulations:

* * * * *

(c) Approval of the application shall be evidenced by the issuance to the applicant, by the Manager of the Florida Lime Administrative Committee on its behalf, of one or more exemption certificates which shall authorize the handling of such quantity of the applicant's limes as may be necessary to accomplish the purposes of § 911.50.

* * * * *

Section § 911.130(a) contains erroneous references to §§ 911.52 and 911.55. The correct references are §§ 911.48, 911.54 and 911.55. Paragraph (b) contains erroneous refernece to §§ 911.52 and 911.55. The correct references are 911.48 and 911.51. Paragraph (c) contains an incorrect reference to § 911.56. The correct reference is § 911.52. As corrected, § 911.130 reads as follows:

**§ 911.130 Limes not subject to regulation.**

(a) *Minimum quantity.* During any one day any handler may handle not to exceed 55 pounds total of limes exempt from the provisions of §§ 911.41, 911.48, 911.51 and 911.54, and the regulations issued thereunder: * * *

(b) *Gift shipments.* Any handler may, exempt from the provisions of §§ 911.41, 911.48, and 911.51, and the regulations issued thereunder, * * *

(c) *Commercial processing into products.* The term "commercial processing into products," as used in § 911.52(c) means the manufacture of any lime product which has been preserved by any recognized commercial process, * * *

In § 911.311(a)(2) change the word "marketing" which appears in the proviso to "marking". As corrected, the proviso reads as follows:

**Subpart—Pack Regulation**

**§ 911.311 Lime Regulation 9.**

(a) (1) * * *

(2) * * * *Provided,* That in lieu of such marking requirement, any handler may affix to the container a label, brand, or trademark, registered with the Florida Lime Administrative Committee in accordance with the following, which appropriately identifies the grade:

* * * * *

ORDER[1] AMENDING THE ORDER, AS AMENDED, REGULATING THE HANDLING OF AVOCADOS GROWN IN SOUTH FLORIDA

*Findings and determinations.* The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 et. seq.), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed amendment of the marketing agreement, as amended, and Order No. 915, as amended (7 CFR Part 915), regulating the handling of avocados grown in South Florida.

Upon the basis of the record it is found that:

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the act;

---

[1]This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

(2) The order, as amended, and as hereby further amended, regulates the handling of avocados grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commerical and industrial activity specifed in, the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) The order, as amended, and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production areas as are necessary to give due recognition to the difference in the production and marketing of avocados grown in the production area; and

(5) All handling of avocados grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

ORDER RELATIVE TO HANDLING

*It is therefore ordered*, That on and after the effective date hereof the handling of avocados shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended as follows:

The provisions of the proposed marketing agreement and order, amending the order, contained in the recommended decision issued by the Deputy Administrator, Marketing Program Operations, on March 23, 1978, and published in the FEDERAL REGISTER on March 29, 1978 (43 FR 13067; FR Doc. 78-8207), shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

1. Add a new § 915.12 Export as follows:

**§ 915.12 Export.**

"Export" means to ship avocados to any destination which is not within the 48 continuous States or the District of Columbia of the United States or Canada.

* * * * *

Amend § 915.51(a) by adding a new subparagraph (7). As amended, § 915.51 reads as follows:

**§ 915.51 Issuance of regulations.**

(a) * * *

(7) Prescribe requirements, as provided in this paragraph, applicable to exports of any variety of avocados which are different from those applicable to the handling of the same variety to other destinations.

* * * * *

2. Revise § 915.20 by designating the first paragraph as paragraph (a) and by adding a new paragraph (b). As amended, § 915.20 reads as follows:

**§ 915.20 Establishment and membership.**

* * * * *

(b) The committee may be increased by one public member and an alternate. Persons for the public member positions would be nominated by the committee and selected by the Secretary. The committee, with the approval of the Secretary, shall prescribe qualifications, term of office and the procedure for nominating the public member and alternate.

Revise paragraph (a) of § 915.30 and add a new paragraph (c) to such section. As amended, § 915.30 reads as follows:

**§ 915.30 Procedure.**

(a) Except as provided in paragraph (c) of this section, six members of the committee, including alternates acting for members, shall constitute a quorum and any decision, recommendation or other action of the committee shall require not less than five concurring votes including one by a handler, or an alternate acting as such; *Provided*, That if the committee is increased by one, the quorum requirement shall be increased to seven and any decision, recommendation or other action of the committee shall require not less than six concurring votes including one by a handler, or an alternate acting as such.

* * * * *

(c) For any recommendation of the committee for an assessment rate exceeding $0.20 per bushel to be applied pursuant to § 915.41, the quorum requirement shall be eight members or alternates acting for members and eight concurring votes shall be required.

3. Revise paragraph (b) of § 915.41 to read as follows:

**§ 915.41 Assessments.**

* * * * *

(b) The Secretary shall fix the rate of assessment per 55-pounds of fruit or equivalent in any container or in bulk, to be paid by each such handler. At any time during or after a fiscal year, the Secretary may increase the rate of assessment, in order to secure sufficient funds to cover any later finding by the Secretary relative to the expense which may be incurred. Such increase shall be applied to all fruit handled during the applicable fiscal year. In order to provide funds for the administration of the provisions of this part, the committee may accept the payment of assessments in advance.

4. Revise § 915.31 to read as follows:

**§ 915.31 Expenses.**

The members of the committee and their respective alternates when performing duties at the direction of the committee, shall be reimbursed for expenses necessarily incurred by them in the performance of their duties under this part.

5. Revise paragraph (a)(2) of § 915.42. As amended § 915.42 reads as follows:

**§ 915.42 Accounting.**

(a) * * *

(2) The Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that the funds remaining at the end of a fiscal year which are in excess of the expenses necessary for committee operations during such year may be carried over into following years as a reserve. Such reserve may be established at an amount not to exceed approximately 3 fiscal years' operational expenses. Funds in the reserve may be used to cover the necessary expenses of liquidation, in the event of termination of this part, and to cover the expenses incurred for the maintenance and functioning of the committee during any fiscal year when there is crop failure, or during any period of suspension of any or all of the provisions of this part. Such reserve may also be used by the committee to finance its operations during any fiscal year prior to the time that assessment income is sufficient to cover such expenses and to cover deficits incurred during any fiscal year when income is less than expenses. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

* * * * *

7. Section 915.205(a) refers to a reserve fund not to exceed the amount of "$10,000". Amendment 5 would increase the authorized reserve to an amount not to exceed approximately 3 fiscal years' operational expenses. Accordingly, § 915.205 should be revised. As revised, § 915.205 reads as follows:

**Subpart—Budget of Expenses, Rate of Assessment and Carryover of Unexpended Funds**

**§ 915.205 Reserve fund.**

(a) The establishment of a reserve fund at an amount not to exceed ap-

proximately 3 fiscal years' operational expenses is appropriate and necessary to the maintenance and functioning of the Avocado Administrative Committee. Such reserve, including funds carried forward from prior fiscal years, shall be used to provide for the maintenance and functioning of the committee in accordance with the provisions of the marketing agreement, as amended, and this part.

(b) Terms used in this section shall have the same meaning as when used in said marketing agreement and order.

[FR Doc. 78-12304 Filed 5-4-78; 8:45 am]

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[3410-34]

**Animal and Plant Health Inspection Service**

**[9 CFR Part 51]**

**ANIMALS DESTROYED BECAUSE OF BRUCELLOSIS**

**Proposed Brucellosis Indemnity for Cattle**

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed Rule.

SUMMARY: This document proposes to amend regulations for the payment of indemnity for cattle destroyed because of brucellosis. This action is needed to bring indemnities paid for such animals closer in line with fair market values. The effect of this action will be to encourage and ensure closer cooperation by livestock owners with the Brucellosis Eradication Program.

DATE: Comments on or before July 5, 1978.

ADDRESS: Comments to Deputy Administrator, USDA, APHIS, VS, Federal Building, Room 805, Hyattsville, Md. 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. A. D. Robb, USDA, APHIS, VS, Federal Building, Room 805, Hyattsville, Md. 20782, 301-436-8711.

SUPPLEMENTARY INFORMATION: The elimination of diseased and exposed animals from the livestock population is an essential part of the National Brucellosis Eradication Program. As a part of that program, indemnities are paid to owners of livestock whose animals are destroyed because of brucellosis. Heretofore, generally there has been a wide spread between the amount of indemnities paid for cattle plus their salvage value and their replacement or true market value. As a result, owners in some instances, have been reluctant to cooperate with the eradication program, and efforts to eradicate the disease have been seriously hampered. This proposal would amend the rate presently in effect for cattle to reflect a change in the fair market value for cattle which has occurred subsequent to the publication of the present rates. Further, a separate rate of indemnity for nonregistered dairy cattle is proposed to reflect the present market situation in which the fair market value for nonregistered dairy cattle substantially differs from other nonregistered cattle. A separate rate has not been established for nonregistered dairy cattle in Alaska, Hawaii, Puerto Rico, and the Virgin Islands because it is believed that the proposed rate for nonregistered cattle also reflects the fair market value for nonregistered dairy cattle in such jurisdictions.

Additionally, a separate indemnity rate is proposed for exposed female calves because such animals constitute a threat to disseminate burcellosis, and therefore they should be disposed of by the owner in cooperation with the Department. It should be noted that a separate rate is not proposed for exposed male calves because such calves are not carriers of brucellosis, and therefore they do not represent a threat to disseminate the disease. The proposed indemnity rate of $25 for the disposal of such animals appears to reflect the fair market value for such animals throughout the United States.

It is anticipated that by reducing the financial losses incurred by livestock owners whose animals are destroyed, cooperation as well as herd management practices will be greatly improved and eradication efforts will be expedited.

Definitions of the terms "dairy cattle" and "exposed female calves" would be added to the regulations to further clarify the classes of cattle which would be subject to a particular rate of indemnity.

Accordingly, Part 51, Title 9, Code of Federal Regulations, would be amended in the following respects:

1. Section 51.1 is amended by adding the new paragraphs (z) and (aa) to read as follows:

* * * * *

(z) *Dairy cattle.* A female bovince of a recognized dairy breed over 20 months of age, which has calved or is within 90 days of parturation, and which is a member of a dairy herd used to produce milk for commercial use.

(aa) *Exposed female calf.* A female bovine less than 6 months of age which is nursed by a brucellosis reactor at the time such reactor is condemned.

2. Paragraph (a) of § 51.3 is revised to read as follows:

**§ 51.3 Payment to owners for animals destroyed.**

(a) *Cattle.*—(1) *Brucellosis reactor cattle.* The Deputy Administrator may authorize the payment of Federal indemnity by the Department to owners whose cattle are destroyed as brucellosis reactors. The indemnity shall not exceed $250 for any registered cattle or $50 for any nonregistered cattle, except that, for nonregistered dairy cattle the indemnity shall not exceed $150, and except that, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands indemnity shall not exceed $250 for any registered cattle or $150 for any nonregistered cattle. Prior to payment of indemnity, proof of destruction shall be furnished to the Veterinarian in Charge.

(2) *Herd depopulations.* The Deputy Administrator may authorize the payment of Federal indemnity by the Department to any owner whose herd of cattle is destroyed because of brucellosis. The indemnity shall not exceed $250 for any registered cattle or $50 for any nonregistered cattle, except that, for nonregistered dairy cattle the indemnity shall not exceed $150, and except that, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands indemnity shall not exceed $250 for any registered cattle or $150 for any nonregistered cattle. Indemnity payment shall only be made for brucellosis exposed cattle or for cattle from a herd known to be affected, and only when the Deputy Administrator determines that the destruction of all cattle in the herd will contribute to the Brucellosis Eradication Program. Prior to payment of indemnity, proof of destruction shall be furnished to the Veterinarian in Charge.

(3) *Exposed cattle.* Except as provided in subparagraph (4) of this paragraph, the Deputy Administrator may authorize the payment of Federal indemnity by the Department to any owner whose cattle are destroyed because of exposure to brucellosis. The indemnity shall not exceed $250 for any registered cattle or $50 for any nonregistered cattle, except that, for dairy cattle the indemnity shall not exceed $150, and except that, in Alaska, Hawaii, Puerto Rico, and the Virgin Islands indemnity shall not exceed $250 for any registered cattle or $150 for any nonregistered cattle. Indemnity payment shall be made only for brucellosis exposed cattle and only when the Deputy Administrator determines that the destruction of such cattle will contribute to the Brucellosis Eradication Program. Prior to payment of indemnity, proof of destruction shall be furnished to the Veterinarian in Charge.

(4) *Exposed female calves.* The Deputy Administrator may authorize the payment of Federal indemnity to any owner whose exposed female calf or calves are destroyed because of brucellosis. The indemnity for such animals shall not exceed $25 per head. Indemnity payment shall be made only for exposed female calves and only when the Deputy Administrator determines that the destruction of such

calves will contribute to the Brucellosis Eradication Program. Prior to payment of indemnity, proof of destruction shall be furnished to the Veterinarian in Charge.

* * * * *

All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 805, Hyattsville, Md., during regular hours of business (8 a.m. to 4:30 p.m., Monday to Friday, except holidays) in a manner convenient to the public business (7 CFR 1.27(b)).

Comments submitted should bear a reference to the date and page number of this issue in the FEDERAL REGISTER.

Done at Washington, D.C., this 5th day of May 1978.

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

PIERRE A. CHALOUX,
*Deputy Administrator,*
*Veterinary Services.*

[FR Doc. 78-12296 Filed 5-4-78; 8:45 am]

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[7535-01]

## NATIONAL CREDIT UNION ADMINISTRATION

[12 CFR Part 701]

### ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

#### Real Estate Lending; Extension of Comment Period

AGENCY: National Credit Union Administration.

ACTION: Extension of comment period.

SUMMARY: In conjunction with its recently issued final rule on real estate lending (43 FR 14924), the National Credit Union Administration published proposed amendments to the rule (43 FR 14929) which would (i) prohibit origination fees and (ii) require notification to the borrower if early payment might require a refund or adjustment in order to bring the true interest rate within the one per cent per month limitation of the Federal Credit Union Act. The comment period on that proposal was to expire May 8, 1978. In response to public request, the comment period is hereby extended to June 7, 1978.

DATES: Comments must be received on or before June 7, 1978.

FOR FURTHER INFORMATION CONTACT:

Either Joseph Bellenghi, Assistant Administrator, Office of Examination and Insurance, or Steve Bisker, Attorney-Advisor, office of General Counsel, at 2025 M Street NW., Washington D.C. 20456, telephone 202-254-8760 (Mr. Bellenghi) or 202-632-4878 (Mr. Bisker).

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

LORENA C. MATTHEWS,
*Acting Administrator.*

APRIL 27, 1978.

[FR Doc. 78-12267 Filed 5-4-78; 8:45 am]

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[6320-01]

## CIVIL AERONAUTICS BOARD

[14 CFR Part 302]

[PDR-54 Docket 32466; Dated: April 18, 1978]

### RULES OF PRACTICE IN ECONOMIC PROCEEDINGS

#### Expedited Procedures for Licensing and Rates Cases

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice, undertaken on the Board's own initiative to reduce regulatory delay, invites comments from the public on proposed rules to establish expedited hearing procedures for (a) processing applications for new or modified route authority by U.S. and foreign carriers and (b) ratemaking cases. Basically, the new procedures would require the submission of all evidence in written form and would dispense with an oral hearing and an initial or recommended decision by an administrative law judge. The Board would, instead, receive and review the evidence itself and issue an agency decision. Whether, and to what extent, the Board would proceed under these expedited procedures in any particular case will be within the Board's discretion.

DATES: Comments by June 5, 1978. Reply comments by June 20, 1978. Comments and other relevant information received after these dates will be considered by the Board only to the extent practicable.

ADDRESSES: Twenty copies of comments should be sent to Docket 32466, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Individuals may submit their views as consumers without filing multiple copies. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Gary J. Edles, Deputy General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5234.

SUPPLEMENTARY INFORMATION:

THE NEED FOR NEW PROCEDURES

We propose to amend part 302 of the Board's procedural regulations to provide for a documentary hearing procedure to be used in some licensing and ratemaking cases. Current Board procedures and practice by and large contemplate, first, that the Board institute most investigations under the power conferred by sections 204 and 1002 of the Act after examining applications filed by interested carriers under section 401 or tariffs submitted under section 403. Departures from this approach include Subpart M and N cases and the consideration of applications by foreign air carriers, where the Board simply adjudicates applications presented to it by interested parties. Second, hearings have traditionally meant the full panoply of trial procedures, including two rounds of decisions, one by a presiding judge and another by the Board itself. Orders to Show Cause, where the Board tentatively indicates the scope of relief it will grant and does away with all procedural steps short of final decision, have been employed in noncontroversial cases, where there is no objection, or where the interest at stake is small—but we have been reluctant to expand its use. See *Application of Western Air Lines,* Order 77-11-74, November 17, 1977, pp. 6-9 and concurring statement of Chairman Kahn.

Conventional Board procedures are both expensive and time-consuming. The Board's Procedural Reform Committee surveyed all hearing cases decided between 1970 and 1972 and two facts clearly emerged. First, in an absolute sense, cases take many months, even years, to process under current procedures. Second, the trend was toward an increase, rather than a decrease, in the time required to process all applications and complete all categories of cases.[1] Recent efforts have speeded up the decisional process. Nonetheless, weeks or months routinely go by between the time an application is filed and the time it is set for hearing, and an internal survey of cases closed during the twenty-seven months ended September 30, 1977 indicates that an average of 568 days is required even between the time a domestic licensing case is set for hearing and the time it is decided by the Board. Rate cases take even longer—almost three years. Even foreign air carrier cases, which are relatively simple, take 356 days—almost a year—

[1] See Report of the CAB Advisory Committee on Procedural Reform, filed December 31, 1975.

to process. In our judgment, employment of conventional processes in all cases is simply no longer acceptable. This agency has a responsibility to the public, the industry it regulates, and the Congress to take responsible steps to reduce regulatory delay.

The Board's increasing workload, moreover, makes it imperative that we now explore new methods for processing cases. Applications for new certificates, or changes in existing certificates—which constitute the most significant area of increasing work—increased from 153 filings in 1975 to 193 filings in 1976 to 240 filings in 1977. Further increases can be anticipated. During the fiscal year ended September 30, 1976, the Board's administrative law judges, who preside at all hearings, disposed of seventy-eight cases; of these, twenty-two involved route awards. During the following fiscal year ended September 30, 1977, the judges disposed of ninety-nine cases, a more than 25 percent increase, including thirty-one routes matters. Despite this impressive increase in output, 117 cases were nonetheless on hand at the end of fiscal year 1977, and current projections call for the institution of 45-60 new routes cases alone—or nearly twice the current number—in fiscal year 1978 and fiscal year 1979. While further improvements in productivity can be expected, backlogs cannot be reduced and increasing case levels cannot be accommodated under conventional budget and staffing increases. On the contrary, a continuation of current practices can lead only to increasing backlogs and delays.

Of equal concern is the Board's inability to entertain this increasing number of applications and other requests because it simply lacks the staff to process all these applications and requests in a timely fashion under conventional procedures. To be sure, we have the legal authority to dismiss applications which, in our judgment, do not merit consideration given the Board's other statutory responsibilities and current resources. See, for example, *City of San Antonio* v. *CAB*, 374 F.2d 326 (D.C. Cir. 1967). But the fact that we may, in our discretion, dismiss less important matters does not mean that we should dismiss them if means could be found for giving deserving applicants an opportunity to be heard.

The need for expedited procedures in licensing cases is particularly important because the length of time and complexity of the current hearing process works to discourage applications by imposing the substantial likelihood of delay; it also increases the risk that even if an application wins approval, the economic conditions giving rise to the filing will have changed, thus frustrating the Board's attempt to meet constantly changing consumer demands. We also fear that the procedural delays and the expense associated with our existing procedures are increasingly becoming an all but insurmountable bar to entry into the air transportation system by small entrepreneurs seeking to provide new services, without Federal subsidy, on a relatively limited scale or tailored to specific needs.

Despite our emphasis on routes cases, we solicit comments from the public on employment of expedited, documentary hearing procedures in foreign air carrier and ratemaking cases as well. We want to emphasize, in this connection, that the expeditious handling for foreign carrier permit cases has become an important bilateral issue for foreign governments and that our ability to process these cases promptly increases our credibility and bargaining power. We are already moving to speed up the processing of foreign carrier applications—notably through the use of self-executing Show Cause orders—and nothing in this rule would bar continued use of those procedures.

### NEW PROCEDURES

We are proposing to amend Part 302 of the Board's Procedural Regulations to establish a separate track for documentary hearing cases. We will order the submission of all evidence directly to the Board in written form. We plan to eliminate the delay now connected with the scoping of investigations and the ordering of priorities and will, instead, simply move forward to consider a carrier's application much as we now do with Subpart M or N cases or foreign carrier cases. Furthermore, we plan to eliminate an oral hearing and the initial or recommended decision of the administrative law judge where these steps are not necessary to permit a valid decision in a given case. The Board will review the evidence itself and issue an agency decision. Whether the Board will proceed under these expedited procedures in any particular case will be within its discretion.

Applications involving a single market, and cases with fewer parties, would seem to lend themselves more readily to the use of our proposed documentary procedures. Cases which involve simply an application of established policies to a new set of circumstances would likewise seem candidates for expedited processing. But the mere fact that issues are of special importance, novelty, or complexity need not alone justify elaborate scoping procedures, a trial, or an initial or recommended decision, see *Virgin Islands Hotel Ass'n* v. *Virgin Island Water and Power Authority*, 476 F.2d 1263 (3d Cir.), *cert. denied* 414 U.S. 1067 (1973), although such issues may, at times, warrant Board consideration at a pre-trial stage, ventilation at a trial, or initial consideration by an administrative law judge. Cf: *American Airlines, Inc.* v. *CAB*, 359 F.2d 624 (D.C. Cir.), *cert. denied* 385 U.S. 843 (1966).

Our procedures contemplate that in licensing cases applicants will take the initiative in seeking expedited processing. Once an application is received, we will give notice of it in the FEDERAL REGISTER; interested persons will have 10 days from FEDERAL REGISTER publication date to advise the Board, in general terms, why a particular application should not move forward expeditiously. We will dispose of these preliminary objections within 20 days. As in cases processed under Subparts M and N of the Board's Regulations, this threshold procedure is designed to avoid substantial work by interested persons by allowing the Board summarily to dismiss or stay proceedings where the application appears on its face to be ill-suited to expedited procedures. Once an application passes this threshold step, interested persons will have approximately one month more—or a total of 60 days from the FEDERAL REGISTER publication date—to prepare their substantive answers in support, or in opposition. Requests to consolidate competing applications will also be received during this period. Applicants will have 15 days to reply to answers to their applications but interested persons will have 30 days to file answers where new applications have been offered for consolidation. Once all materials are received, the Board will decide whether or not to employ its documentary procedures to decide the case on the merits.

Rates cases will follow a somewhat different track. Ordinarily, following the institution of an investigation in response to a tariff filing, the Board will issue an order proposing to employ expedited procedures, soliciting comments, and requesting evidence. Although the rules does not so specify, we expect to allow the evidence and initial comments to come in within 45 days and provide interested persons an additional 45 days for rebuttal, with a view toward bringing the case before the Board in about 90 days from the date or our order proposing to use expedited procedures.

We have successfully employed documentary procedures in the past and see no reason why they could not be successful in a larger category of cases in the future. The proposed rule more or less codifies the procedures employed in the *Service to Crossville Case*, Orders 73-6-45, June 13, 1973 and 74-4-61, April 10, 1974; they are similar to the procedures used on remand in the *Service to Saipan Case*, Orders 75-11-59, November 17, 1975 and 76-6-171, May 7, 1976, and the *Service to Richmond Case*, Orders 76-

11-131, November 24, 1976, and 77-4-29, April 6, 1977, and now being employed in the *Miami-Los Angeles Competitive Nonstop Case*, 78-1-35, January 11, 1978. We also emphasize that the Board routinely decides important regulatory matters—including those requiring the resolution of disputed facts—without either an oral hearing or an initial or recommended decision. Our entire charter liberalization program, for example, which affects millions of travelers and the fortunes of the entire industry, has been established through the use of the notice and comment procedures of 5 U.S.C. 553. The ability to reach reasonable decisions in those cases gives us confidence that we can do so in an expanding category of cases. Similarly, our success with Subpart M and N procedures, where applications proceed to hearing without substantial Board intervention, gives us confidence that we can reduce the delay now associated with the pre-hearing period.

We do not suggest that the scoping phase can be eradicated with respect to all applications or that expedited procedures are suitable to all licensing or rates matters. In particular, we cannot minimize the contribution of an experienced administrative law judge to the distillation of the evidence, the development of the record, and the evolution of a decision. Judges will continue to play an important role in complicated cases. We are also not insensitive to the value of the discipline exerted on parties by the knowledge that their submissions will be tested by cross-examination by experienced counsel, and appreciate that an oral presentation can be very useful to the decision-making process in some cases. The Board will therefore retain the option of ordering an oral presentation—*i.e.*, a conventional trial-type hearing with cross-examination; oral argument; or an informal conference-type hearing which it has not, by and large, used in the past—where desirable. Frankly, we hope to experiment with different kinds of oral presentations. We likewise retain the option of ordering the preparation of an initial or recommended decision, upon our own initiative or upon the request of a party.

### Conclusion

The regulatory process at the CAB as well as other administrative agencies has come under increasing scrutiny and criticism. Regulatory delay in particular has been the subject of criticism. See, for example, Gellhorn and Robertson, *Summary Judgment in Administrative Adjudication*, 84 Harv. L. Rev. 612 (1971), and items cited in that article. In 1976, the Senate Subcommittee on Administrative Practice and Procedure issued a detailed report on the CAB's procedures and recommended, among other things, substantial procedural reform to speed the decisional process. See U.S. Senate Committee on the Judiciary, Subcommittee on Administrative Practice and Procedure, 94th Cong., 20 Sess. (1976). Quite recently, the Senate Committee on Governmental Affairs, as part of its two year study of the regulatory process, issued a report noting that undue delay is the most frequently cited problem of Federal regulation; the Committee recommended that agencies reduce their emphasis on traditional adjudication procedures by adopting a modified process eliminating the need for formal trials in some cases. See, U.S. Senate Committee on Governmental Affairs, *Study on Federal Regulation*, Volume IV *"Delay in the Regulatory Process"*, 95th Cong. 1st Session (1977). The courts have increasingly recognized that administrative agencies need latitude in determining which procedures are best suited to resolving given issues, see *Mobil Oil Corp.* v. *FPC*, 483 F.2d 1238, 1249 (D.C. Cir. 1973) and *Bell Telephone Co.* v. *FCC*, 503 F.2d 1250 (3d Cir. 1974), *Marine Space Enclosures, Inc.* v. *FMC*, 420 F.2d 577 (D.C. Cir. 1969), and *Air Line Pilots' Ass'n* v. *CAB*, 494 F.2d 118 (D.C. Cir. 1974), and the Interstate Commerce Commission's use of procedures similar to those we are proposing in order to reduce costs and expedite decision-making in proper cases is judicially well established. See *Yellow Forwarding Co.* v. *ICC*, 369 F. Supp. 1040 (D. Kan. 1973).

We believe that the demands now placed on the Board and the needs of the traveling public imperatively and unavoidably require an alternative for the processing of some cases, notably cases involving domestic route applications. We are moving on a number of fronts to improve and update our decisional process. We believe that the basic goal of the administrative process—and the thrust of the Administrative Procedure Act—is to allow conflicting contentions to be presented to an agency for decision in a full and fair manner likely to produce sensible, accurate and informed decisions. Our proposal furthers that basic goal and comports with the legal requirements of the APA and the Federal Aviation Act. We wish interested persons to call to our attention any legal infirmities they see in our approach and we welcome comments on how we can improve our proposal consistently with that basic goal.[2]

[2]To give interested persons more background on the issues presented by our notice of rulemaking, and to sharpen the focus of the comments, we are attaching memoranda prepared by the Office of the General Counsel and the Chief Administrative Law Judge during the course of developing the proposed rules. The Board decided at its own meeting on this item to release the memoranda which would, in any case, form a part of the public reading file and be made freely available to any interested person under our current Freedom of Information policies. Publication is intended to ensure greater convenience and a broader audience.

### O'Melia, Member, Separate Statement

The Board Members have agreed to give notice of a proposed rule, on which interested parties may comment, designed to bring about very substantial changes in the Board's traditional and established method of processing route and rate cases. This rulemaking is being undertaken for the declared purpose of avoiding backlogs and regulatory delay, of reducing the expense and time consumed by conventional procedures, and of enabling the Board, presumably without an extraordinary increase in agency costs, to cope with the Board's ever-mounting workload. To accomplish this, the proposed rule would, basically, dispense with an oral hearing and an initial or recommended decision by an administrative law judge, and would replace them with "documentary hearings" and with agency decisions at Board level. Under the new rules, to be entitled Subpart Q, the Board would have almost unlimited discretion with respect to the extent to which the expedited procedures would be used. We are advised by the proponents of the rule that the draft procedures comport with the legal requirements of the Administrative Procedure Act, and that with these changes processing time would be substantially reduced—for example, it has been suggested that many domestic route proceedings which now take an average of 1 to 2 years might be cut down to 180 days.

I could not endorse more fully the objectives of reducing delay, costs, and administrative burdens. If it were determined, after further due study and consideration, that these or suitably modified rules would indeed result in time and cost savings without infringing the rights of the parties, offending our legal institutions, or debasing the quality of our regulatory oversight, I would, of course, give any such changes my full support. It is laudable that our procedures are being reviewed, and I do not object to the issuance of the proposed innovations for public comment. However, my acquiescence in giving public notice of the contemplated procedures is not to be construed as definitive nor tentative support of any particular set of rules. I am not confident that the draft rules set before the Board in the last two weeks for its consideration, relying heavily on the suppression of the oral hearing and on the shift of functions from the Administrative Law Judges to the Board Members, would in fact give us a net improvement in regulatory practice without simultaneously spawning a host of other more damaging problems.

My colleagues and I feel that this is a landmark opportunity for the Board to seek the widest possible comments on the objectives and the workings of this new Subpart Q. It should invite the attention of other government agencies and legal scholars, welcome the expressions of the practitioners in the aviation bar, and pay heed to the concerns that may be articulated by both the regulated entities and the consuming public. For this purpose, it is important to place before the public explanatory materials

that will profile as clearly as possible the legal and practical dangers that may result from these changes, so that the comments received can be properly focused on the real issues of the proceeding. The statement of *Supplementary Information* prefacing the proposed rules, as is perhaps normally done, tends to set forth in an optimistic view the potential benefits and predictions of success for the new rules, and does not, in my opinion, dwell sufficiently on the risks that they entail. However, the Board agreed in principle to make available to the public the underlying staff memoranda on these proposed rules, which were thought to be of particular importance in making known the possible pitfalls.

As has been made evident to the public through the Board's open discussion in a "sunshine" meeting, the Board's staff has not ignored in its study and research the problems that such changes might create. The Office of the General Counsel in developing this bold proposal concludes that, although there are legal risks associated with it, the proposal is legally sound. The Bureau of Administrative Law Judges, on the other hand, drawing upon its long experience and intimate knowledge of oral hearing procedures, has sought with considerable effort to sound warnings against novel and untried procedures that, in its view, do not conform to recognized proper due process standards in American administrative law.

With the concurrence of my colleagues on the Board, I am attaching to this Separate Statement a Memorandum of April 5, 1978, to the Board in which Chief Administrative Law Judge Nahum Litt outlines the three principal problems foreseen by his Bureau should the Board finally adopt the draft rules presented to it by the General Counsel's Office. I am also attaching a copy of a Memorandum of April 3, 1978, from the Office of the General Counsel which addresses these issues. The purpose of circulating these memoranda is to enable interested parties more readily to understand the issues raised by this project, and, I hope, to sharpen the focus and relevance of their comments. Let me say that I am not by this act disclosing confidential materials. The Board decided at its "sunshine" meeting to release the memoranda, which would, in any case, form a part of the Board's public reading file, and would be made freely available to any interested party upon request under our Freedom of Information Act policies. Their publication here is offered only to ensure greater convenience and a broader audience.[3]

Judge Litt's Memorandum attaches several appendices that should be particularly useful to individuals concerned with this rulemaking. I want to draw special attention to the Legal Memorandum set forth as Appendix C, and to Appendix B, an alternative draft for the new Subpart Q advanced by Judge Litt. The latter document will enable those commenting to contrast its provisions with the OGC draft tentatively adopted by the other Members of the Board. I want to point out that Judge Litt is not opposing the adoption of rules meant to expedite and alleviate the Board's caseload, but rather takes the position that such procedures could be useful in only a limited number of cases—specifically, where there are no substantial issues of material facts in dispute. The rules set forth in the NPRM, in contrast, would authorize the Board, in its discretion, to apply the expedited procedures where justified by "staffing and workload" considerations. In addition to excluding rate cases, because of their great complexity, from the purview of the proposed rules, Judge Litt would have the rules prescribe that cases where there are material facts at issue "shall" be set for hearing under the ordinary provisions of Subparts A or E albeit possibly under expedited procedures. These, I think, are the principal differences between the two draft rules.

I will not presume to add to the legal analyses made by either the General Counsel's Office nor the Bureau of Administrative Law Judges in the various memoranda addressing the proposed Subpart Q.[4] Rather, I trust that this appeal will, by evoking public comment of a critical and incisive nature, make the issues of whether documentary hearing will suffice, whether staff separation of functions remains essential in today's environment, and whether initial or tentative decisions as provided for under current rules continue to serve a purpose, the subject of the liveliest and most substantial dialogue possible. However, in closing, I would raise two issues of a practical, nonlegal nature, the first dealing with the prospect of time and cost savings, and the second questioning the seeming trend toward expedience in agency actions.

With respect to the first, are we really going to save any time and expense, for us and for the regulated, by adopting these homogenized rules? To answer this pragmatic question, we must first examine the risks. Does the Board's option of calling for an "oral presentation" in any given case successfully preclude charges of lack of due process? Does the praise-worthy objective of coping more expeditiously with a heavy administrative workload justify dealing with adjudicatory cases where material facts are at issue without an oral, adversarial hearing with the right of confrontation?[5] Will the proposition that route cases may be "initial licensing" matters, insulate the Board from attacks that in the new rules the separation of functions principles of the Administrative Procedure Act have been breached? Would a prolonged court battle over the basic constitutionality of the proposed rules delay or impede the Board's processes? The obvious difficulty in answering these and similar perplexities compells me to ask if the Board's present workload really demands the adoption of rules that cause us to ask ourselves these questions?

The second issue is more personal, and is, in part, aroused by the proposition in the new rules, tentatively adopted by the majority, that henceforth evidence will be submitted "directly to the Board", thus eliminating the allegedly time-wasteful elements of oral hearing, confrontation of evidence, administrative law judge decisions, etc. Does the Board, in its hunger and eagerness to get the job done, really want to be the initial recipient and reviewer of evidence in all route and rate cases? I realize that I will not be standing at the counter to stamp in exhibits, but how far can you carry a fiction? Will the routine procedures tentatively adopted in this NPRM meet the APA's requirement that the Board, a Board Member, or an administrative law judge will "preside at the taking of evidence"? Will the Board Members be required to certify that they have personally reviewed the evidence? Or, do these rules mean, that the Board's established procedures, including the rather human experience of fighting before an administrative law judge in an oral hearing on the tenth floor of Universal North, will be replaced with what I can only visualize as a shiny, new sausage machine?

My apprehension is caused by the overwhelming emphasis being given to expedited procedures. I am concerned that under an expedited, homogenized, automated, computerized system, involving a vastly—or even markedly—increase in the flow of cases, the real decisions would be made by nameless, faceless, non-accountable cogs in the machine, and that the Board Members would become no more than the final counter-rotating gears at the end of the machine through which the sausage links would be ground out. I am not suggesting that my fellow Members and I would not perform their duties conscientiously and with a dedicated effort. The real anxiety is that institutional pressures and priorities would insidiously limit the personal and intellectual immersion of the Members in the cases they must decide. I would, accordingly, urge my colleagues and the interested public to guard against the danger that under the aegis of regulatory reform, we might convert our regulatory agency into a slap-dash, corner-cutting, rubber-stamping production line.

I hope that the comments we receive will relieve the fears that I have revealed in raising these two issues.

RICHARD J. O'MELIA.

[3] After the preparation and circulation of this *Separate Statement*, it was decided by the Board that the Memoranda of OGC and BALJ should be physically attached to the NPRM, rather than to this Separate Statement.

[4] I do, however, invite comment on whether the proposed rule, which invests the Board with a broad discretion to dispense with oral hearings, is sufficiently precise.

[5] The Board is shortly going to have to confront the issue of the right of parties to a hearing in United Air Lines Application for Cleveland-San Diego Nonstop Authority Pursuant to Subpart N, Docket 30236. American Airlines in a document filed on April 17, 1978, has objected to the Board's decision in Order 78-3-77 to grant United's request by show cause procedures, arguing that their opposition entitles them to a hearing as a matter of right. Also at stake is the propriety of using show cause procedures where material facts are in issue. I mention this to underscore the fact that any expedited non-hearing procedures that may be eventually enacted will have to be reconciled with existing regulations dealing with expedition and hearings.

## PROPOSED RULE

It is proposed to adopt a new Subpart Q of Part 302 as follows:

1. Amend the table of contents of Part 302 by adding a new Subpart Q, the title of which reads:

**Subpart Q—Expedited Procedures for Processing Licensing and Rates Cases**

2. Amend Part 302 by adding a new Subpart Q which reads:

Sec.
302.1701 Applicability.
302.1702 Subparts A and E govern.
302.1703 Filing of applications.
302.1704 Contents of applications.
302.1705 Service of application and answer.
302.1706 Preliminary procedures for dismissal or stay.

Sec.
302.1707 Answers to applications.
302.1708 Investigations with respect to rates, fares, and charges.
302.1709 Intervention.
302.1710 Motions to consolidate.
302.1711 Reply to answers.
302.1712 Verification.
302.1713 Joint pleadings.
302.1714 Oral presentation or initial or recommended decision.
302.1715 Disposition of the application or investigation.
302.1716 Criteria for use of expedited procedures.
302.1717 Decision by the Board.

**Subpart Q—Expedited Procedures for Processing Licensing and Rates Cases**

**§ 302.1701 Applicability.**

This subpart sets forth the special rules applicable to expedited procedures for processing (a) applications for certificates of public convenience and necessity and renewals or amendments of certificates, (b) applications for foreign air carrier permits and renewals or amendments of permits, and (c) investigations of the lawfulness of rates, fares, charges and related tariff rules.

**§ 302.1702 Subparts A and E govern.**

Except as otherwise provided below, the provisions of Subparts A and E are applicable.

**§ 302.1703 Filing of applications.**

Any person may file an application for the issuance of an initial certificate or foreign air carrier permit, or a renewal or amendment of its certificate or permit, as described in § 302.1701. If the applicant desires the Board to process the application by the expedited procedure described in this subpart, the application should clearly indicate that desire on its face. The Board shall promptly publish notice of the application in the FEDERAL REGISTER.

**§ 302.1704 Contents of applications.**

An application under §§ 302.1701 and 302.1703 shall include a statement of economic data or other matters which the movant desires the Board to notice officially, and affidavits establishing such facts as it wants the Board to rely upon, including the facts upon which the applicant relies to show that the public convenience and necessity or public interest require the relief sought. Applications shall contain the economic and operating data required by § 302.18. For information as to other information that may be included in applications, reference should be made to Subpart A of this Part, to the Federal Aviation Act, to the substantive rules (see Parts 201 and 211 of the Economic Regulations) and policy statements Part 399.60 of the Policy Statements), and orders of the Board. The applicant shall furnish sufficient detail in the form of footnotes or otherwise so that, without further clarification, final results may be obtained from the basic data. Sources, bases and methodology used in constructing exhibits, including any estimates or judgment employed, shall be provided.

**§ 302.1705 Service of application and answer.**

(a) *Persons to be served.* A notice of the filing of the application shall be served on:

(1) Any certificated air carrier which is authorized to engage in the type of air transportation (i.e., scheduled or supplemental) at one or both of the points with respect to which the applicant seeks nonstop authority;

(2) The chief executive of any State of the United States in which any point which is involved in the application is located: *Provided, however,* That if there be a State commission or agency having jurisdiction over transportation by air, the application shall be served on such commission or agency rather than on the chief executive of the State;

(3) The chief executive of the city, town, or other unit of local government at each of the points located in the United States, between which the applicant seeks authority, as well as each certificated point intermediate thereto; and

(4) The Board, commission, manager, or other body or individual having direct supervision over and responsibility for the management of the airport located in the United States and which is being used to serve such point at the time the application is filed.

(b) *Additional service of notice.* The Board may, in its discretion, order additional service on such person or persons as the facts of the situation warrant. Applicants are encouraged to serve copies of their actual application where feasible.

**§ 302.1706 Preliminary procedures for dismissal or stay.**

(a) On or before the 10th day following publication of notice of the application in the FEDERAL REGISTER, any person may file a motion to dismiss the application.

(b) On or before the 30th day following publication of the notice of the application in the FEDERAL REGISTER the Board may, in its discretion (1) dismiss an application without prejudice to the refiling under the normal procedures if it finds that the application is not in compliance with, or is unsuitable for processing under, the provisions of this subpart, or (2) stay further procedural steps with respect to such application until a further order of the Board.

**§ 302.1707 Answers to application.**

Any interested person may file with the Docket Section, and serve upon the applicant an answer in opposition to, or in support of, an application. Answers shall set forth the economic data and other facts upon which the party relies to support its position. Answers shall be filed no later than 60 days after the date of publication of the notice of the application in the FEDERAL REGISTER. Answers shall include sufficient detail in the form of footnotes or otherwise so that, without further clarification, final results may be obtained from the basic data. Sources, bases and methodology used in constructing exhibits, including any estimates or judgment employed, shall be provided.

**§ 302.1708 Investigations with respect to rates, fares, and charges.**

(a) This paragraph sets forth the special rules applicable to expedited investigations with respect to rates, fares, and charges. Except as otherwise provided by the Board, the provisions of this Subpart are applicable.

(b) The Board, on its own initiative or if it is of the opinion that the facts stated in a petition or complaint warrant, may issue a notice indicating that it intends to process the investigation by the expedited procedure described in this Subpart. That notice shall be published in the FEDERAL REGISTER and shall (1) specify the issues to which the investigation will be limited, (2) indicate the evidence which must be submitted by interested persons to assure a fair examination of the issues, and (3) fix any necessary procedural steps.

**§ 302.1709 Intervention.**

(a) Any interested person shall file with the Docket Section and serve upon the applicant, a petition for intervention, including the economic data and other facts upon which the person relies to support its position concerning the merits of the application. Petitions for intervention shall be filed within the time limits specified by § 302.1707 for the filing of answers.

(b) Answers to petitions to intervene shall be filed with the Docket Section, and served on the petitioner, within 15 days after the due date for the filing of petitions to intervene. Such answers shall set forth the basis of the support of or opposition to the petition to intervene, and, with respect to the merits of, or opposition to, any application or change in a rate, fare or charge, set forth the type of data required by § 1704, § 1707, or § 1708. No replies to the answers are permitted.

(c) Petitions for intervention and answers to petitions shall include sufficient detail in the form of footnotes or otherwise so that, without further clarification, final results may be obtained from the basic data. Sources, bases and methodology used in con-

structing exhibits, including any estimates or judgment employed, shall be provided.

§ 302.1710 Motions to consolidate.

(a) Motions to consolidate an application with an application filed under § 302.1703, or modify the issues to be decided, may be filed within the time limits specified by § 302.1707 for the filing of answers. Motions shall include economic data and other facts in support of both the motion and any application sought to be consolidated. Data in support of any application sought to be consolidated shall conform, to the extent possible, to the provisions of § 302.1704 with respect to original applications. Subsequently filed competing applications and rebuttal evidence shall conform to the base year and forecast year used by the applicant under § 302.1704.

(b) Answers to motions to consolidate or modify the issues shall be filed with the Docket Section, and served on the movant, within 30 days after the due date for the filing of motions. Such answers shall (1) set forth the basis of the support of or opposition to the motion, and (2) with respect to the merits of the application for new authority, set forth the type of data required by § 302.1707 for answers to an original application.

§ 302.1711 Reply to answers.

Replies to answers may be filed with the Docket Section, and served upon any person filing the answer to which the reply is responsive, 15 days after the due date for the filing of the answer. Replies shall include sufficient detail in the form of footnotes or otherwise so that, without further clarification, final results may be obtained from the basic data. Sources, bases and methodology used in constructing exhibits, including any estimates or judgment employed, shall be provided. No further pleading may be made by any person except by permission of the Board.

§ 302.1712 Verification.

The facts asserted in any pleading filed under the expedited procedures established by this Subpart must be sworn to by persons having knowledge thereof, and this fact must affirmatively appear in an affidavit in support of the pleading. Such persons should be those who would appear as witnesses to orally substantiate the facts asserted should oral hearing become necessary. The original of any pleading filed under the expedited procedures must show the signature and capacity of the person administering the oath and the date administered.

§ 302.1713 Joint pleadings.

Parties having common interests, to the extent practicable, shall arrange for the joint preparation of pleadings.

§ 302.1714 Oral presentation or initial or recommended decision.

(a) Applications or investigations assigned to procedures under this Subpart will be decided on the basis of the written submissions unless the Board has granted a petition for oral presentation or a petition for an initial or recommended decision, or otherwise determines that an oral presentation or an initial or recommended decision is required by the public interest.

(b) Any petition under § 302.1714(a) shall be supported by a detailed explanation as to (1) why the evidence or argument to be presented cannot be submitted in the form of affidavits or briefs and shall set forth an estimate of the time required for such presentation, and the number of witnesses which would be presented by the petitioner, or (2) which issues should be examined by an administrative law judge and why such issues should not be presented directly to the Board for decision.

(c) If cross-examination of any witness is desired the name of the witness, the subject matter of the desired cross-examination, and an estimate of the time needed for the cross-examination shall be submitted to the Board.

(d) Petitions for oral presentation or an initial or recommended decision made under subsection (c) and (d) may be filed at the same time as any answer, reply, motion, or petition.

(e) Where stipulation of disputed facts would eliminate the need for an oral presentation, parties may include in their petition an offer to withdraw the request should the stipulation be made.

§ 302.1715 Disposition of the application or investigation.

As promptly as feasible after the filing of all pleadings, the Board shall (a) assign the application or investigation for consideration under the expedited procedures of this Subpart, (b) set the matter for hearing under the ordinary provisions of Subparts A or E, (c) dismiss an application without prejudice to refiling, or (d) take other necessary action. The Board shall also dispose of any pending motions or requests.

§ 302.1716 Criteria for use of expedited procedures.

The Board may, in its discretion, assign an application made under § 302.1703, or sought to be consolidated under § 302.1710, or an investigation under § 302.1708, for consideration under the expedited procedures of this Subpart and order the record presented directly to the Board for decision where it appears that:

(a) All issues of material fact may be resolved by means of written materials and the efficient disposition of the proceeding can be made without oral presentation and without an initial or recommended decision; or

(b) Significant public benefit will result from use of expedited procedures, as where staffing and workload considerations would result in unreasonable delay before consideration of the application or investigation, or dismissal of the application if expedited procedures are not used.

§ 302.1717 Decision by the Board.

The Board will dispose of the issues presented by entering an order which will include a statement of the reasons for its findings and conclusions. Such orders will be deemed "final orders" for purposes of filing Petitions for Reconsideration.

(Secs. 204, 1001, Federal Aviation Act of 1958, as amended. 72 Stat. 743, 788; 49 U.S.C. 1324, 1481, Administrative Procedure Act, 5 U.S.C. 551 et seq.)

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
*Secretary.*

ATTACHMENT I

CIVIL AERONAUTICS BOARD,
*April 3, 1978.*

MEMORANDUM

To: The Board.
From: Deputy General Counsel.
Subject: Procedures for Processing Certain Licensing and Rate Cases.

There is attached for adoption by the Board a notice of rulemaking proposing to establish expedited, non-oral hearing procedures to be used to process certain licensing and ratemaking cases. It should be mentioned that the rule is principally tailored to domestic licensing cases, which represent the area of the Board's work most in need of relief. We nonetheless decided to draft the rule to cover foreign carrier cases and ratemaking cases as well on the theory that these cases could be lawfully included, that the availability of a formal procedural mechanism for expedited processing would be useful, and that the agency may benefit from receiving public comment on these categories of cases.

The procedures were developed over the past few months after consultation between this Office and other components of the staff. This memorandum discusses two principal points—first, how the rule works, and, second, the legal and policy considerations which lead to the drafting of the rule presented by this memorandum.

1. HOW THE RULE WORKS

Adoption of these procedures should offer the Board a degree of procedural flexibility not now available. Under conventional procedures, most matters presented to the Board for evidentiary disposition must follow a single track through BPDA, the Bureau of Administrative Law Judges, and the Office of the General Counsel irrespective of size or complexity of a case, or the issues presented. As long as the resources of these components remain finite, the number of matters which can be processed can merely be increased at a modest rate dependent upon improvements in productivity

or staff increases. The new procedures contemplate two tracks—one for conventional hearing cases, the other for the new non-oral, or documentary, hearing cases—with the documentary hearing cases processed largely by lawyers and analysts currently participating as parties in conventional hearing cases. We foresee a cooperative effort among bureaus to assure that cases are assigned to one track or the other in a fashion that will, on the one hand, carefully tailor the procedures to the issues to be decided and, on the other, maximize the number of total cases that can be decided by the Board.[1]

The draft rule contemplates that applications found generally suitable for processing under expedited procedures would be processed more or less immediately; BPDA analytical time currently devoted to "queuing" such applications would be devoted to an analysis of the merits of the application itself (the rule provides for a threshold analysis of an application by the staff and the Board to insure that cases clearly ill-suited for expedited process would be weeded out promptly; such a procedure is now used in Subpart M cases). The rule also eliminates the preparation of an initial or recommended decision by one of the Board's administrative law judges and the filing of petitions for review and answers. Finally, at the Board decisional level, we contemplate that lawyers from OGC, BPDA, BIA and, perhaps, other bureaus can be assigned to process cases to the Board and prepare Board opinions under the new procedures; in essence, we can double or perhaps treble the Board's opinion-writing staff.

The proposed rules generally provide for the submission of all evidence and argument, including requests to expand a case from the scope established by the initiating application, within an expedited (90 day) period. As noted above, the rules pretty much dispense with the "queuing" phase entirely, shorten the scoping phase, eliminate the oral hearing and the initial or recommended decision by the judge, and allow the matter to be submitted directly to the Board for decision by an expanded group of review attorneys.

The rules require the Board to act at three critical stages. First, opponents of an application have a threshold opportunity as described above to persuade the Board that an application is simply ill-suited to expedited documentary processing. The rules contemplate that the Board will make this threshold decision within 30 days of the FEDERAL REGISTER publication of an application. We propose as an internal matter that recommendations to dismiss or process at this stage be made by the principal action bureau (BPDA or BIA), with coordination by OGC.

Second, the Board would make its principal decision on whether or not to utilize expedited procedures after applications, answers, requests for consolidation or intervention, and any replies have been filed. Under the time table established in the rule, this screening can begin about 90 days after the filing of the original application. A decision as to whether (i) to proceed by expedited procedures, (ii) to dismiss the application entirely, or (iii) to assign the matter for oral hearing before an administrative law judge, would be made by the Board on a joint recommendation by the action bureau, the Office of the General Counsel, and the Chief Administrative Law Judge. The key questions for the Board to decide at this stage are whether non-trial procedures would be lawful under the circumstances of a particular case and whether or not it would be desirable to eliminate various procedures, including an initial or recommended decision by the judge. Nothing would prevent the Board, however, from simply dispensing with a trial but nonetheless having a judge prepare an initial or recommended decision; similarly, the Board could order key issues set for trial but nonetheless decide the case itself.

Third, the Board, of course, would decide the case on the merits based upon a joint recommendation from the action bureau, OGC and OEA (if the application were set for oral hearing or a judge's decision at phase 2, the Board would dispose of the case following an initial or recommended decision under more or less current procedures).

Domestic route applications now take anywhere from 1 to 2 years on average to be processed. Under the proposed expedited procedures simple contested cases (e.g. Subpart M cases) could be processed in as little as about 120 days.[2] Many cases could be disposed of, we believe, in approximately 180 days. We must emphasize two related factors in this connection. First, the Board is necessarily giving up both the participation of its bureau on the record and the expertise of an administrative law judge in those cases processed under documentary procedures in the interest of expedition and the need to process an increasing volume of applications. Second, any anticipation of improved processing of cases requires a commitment of BPDA/BIA lawyers and analysts to the evaluation of applications on the merits and the preparation of recommendations to, and draft decisions for, the Board. The simple promulgation of new procedures will not, standing alone, bring about any improvement in the handling of the Board's caseload. We nonetheless believe that establishment of two decisional tracks, coupled with the improvements in the processing of cases now going on in both BALJ and OGC, can lead to a major increase in the number of cases handled by the Board.

### 2. LEGAL AND POLICY CONSIDERATIONS

Apart from the need for greater expedition in administrative decision-making, we believe the Board should explore whether conventional trial-type procedures are best suited to the examination of some issues, notwithstanding the Board's historic reliance on such procedures and the ability of the traditional hearing process to resolve such issues. Trial-type hearings are useful—and, indeed, necessary—where there are disputed issues of material fact which (1) must be resolved to permit a decision, and which (2) can only be resolved through cross-examination. Cross-examination, however, is not required and may not be desirable simply to explore peripheral matters not material to the decision, *Citizens for Allegan County* v. *FPC*, 414 F. 2d 1125 (D.C. Cir. 1969), to resolve issues of law, policy, or discretion, *Storer Broadcasting* v. *United States*, 351 U.S. 192 (1956), to resolve so-called "legislative" fact issues, *American Airlines* v. *CAB*, 359 F. 2d 264 (D.C. Cir.), cert. denied, 385 U.S. 843 (1966), or to draw inferences from established facts, *B'nai B'rith* v. *FCC*, 403 F. 2d 169 (D.C. Cir. 1968), cert denied, 394 U.S. 930 (1969). By the same token, we believe that the collection and examination of data through a trial may be less efficient in certain circumstances than other methods which could be used. Many of the factual determinations made in evidentiary cases could be developed either through the Board's internal data-gathering systems—which have improved markedly in recent years—or through specific requests made to carriers or other parties involved in matters before the Board. It seems clear to us that as the Board re-defines the substantive ground rules for decision, the type of procedures chosen must be carefully related to the kinds of issues to be examined; the potential for obstruction and delay by parties seeking to frustrate change must also be minimized.

We have examined the court cases, relevant statutes, and articles by respected legal authorities in determining the legality of the proposed procedures. As a threshold matter this Office believes that the rulemaking itself is not likely to be successfully challenged since it does little more than announce a Board methodology for processing some cases. It is far more likely, in our judgment, that a disappointed party will challenge the rule in the context of a specific case where documentary procedures were employed; we must carefully examine which cases should or should not be processed by the new procedures.

The rule—insofar as it provides for the use of expedited procedures where there are no material facts at issue—tracks procedures at other agencies which have been approved by the courts in a long line of cases. Aside from some questions raised by the Bureau of Administrative Law Judges as to how the decisional process will work within the agency, as discussed below, the staff agrees that the rules are acceptable and legally sufficient to determine cases where no material facts are in issue.

The Bureau of Administrative Law Judges believes that the rule should be confined to cases traditionally approved by the courts, i.e., where no material issues of fact are presented. This Office recommends that the Board go beyond the traditional approach and utilize expedited documentary procedures even where material facts may be in issue. The draft rule reflects our recommendation. While our proposal goes beyond any existing agency practice, we believe that such new direction is warranted and will be supported by the courts. The issues raised

[1] We expect, for example, that some cases will simply be ill-suited, because of size or complexity, to the use of documentary procedures; we likewise believe that the Board will in some cases want the input of its bureaus on the record and the expert analysis of issues by an administrative law judge. By and large, however, we expect that additional cases could be assigned to expedited procedures where the judges' docket was full but that the judges would process additional cases where those cases could be accommodated without disrupting the processing of their existing caseload or unduly burdening OGC.

[2] Application is filed on day 1. Board declines to stay the procedures, no competing applications are received, and an answer comes in from the incumbent on day 60. Applicant waives a right of reply and the procedural issue is ready for decision. Staff recommends expedited processing and sends recommendation to the Board in 14 days. Board issues order calling for any further evidence in 7 days and briefs 10 days later. After briefs are filed, staff makes recommendation within 21 days and Board acts a week later.

by the Bureau of Administrative Law Judges are now discussed.

(a) *Use of Documentary Procedures to Decide Factual Issues.* BALJ is concerned that no court has expressly and unambiguously approved a denial of an oral hearing in an adjudication where material facts were in issue.[3] Our view is that there has been substantial judicial and academic encouragement for a new approach, however, and our recommended procedures are well within the bounds of the emerging legal doctrine. In *Shell Oil Co.* v. *FPC*, 520 F. 2d 1061, 1974 (5th Cir. 1975), a ratemaking case, the court concluded that procedures which excluded an adversarial trial and oral cross-examination satisfied the adjudicatory standards of sections 556 and 557 of the APA, even though the FPC was required to "resolve many disputed issues of 'pure fact', assign values to rate components based on a combination of fact and policy considerations, and make policy decisions regarding which components to include, where to include them, and how they should be included * * *." Id at 1067. Judge Henry Friendly, a Federal circuit court judge, in a leading article entitled Some Kind of Hearing, 123 U. of Pa. L. Rev. 1267, 1268 (1975), argues that "* * * [C]ommon sense dictates that we must do with less than full trial-type hearings even on what are clearly adjudicative issues." Professor Ernest Gellhorn similarly argues that:

"[A]gencies can limit the hearing to written presentations where credibility is not in issue. Shortened trial procedures limiting oral testimony are used most successfully in rate or price control proceedings, where economic and expert analysis rather than sensorily perceived phenomena provide the bulk of the evidence. It is also becoming clear that agencies can experiment with other approaches such as legislative type hearings (i.e., the information being supplied by oral and written argument), a conference approach (i.e., discussion by the parties with sworn testimony where needed) and other devices shortening the hearing and dispensing with some of the attributes of a judicial trial * * *." Gellhorn, Administrative Law and Process in a Nutshell, 158 (1972).

And courts have often suggested that procedures may be lawfully tailored to the exigencies of a particluar situation. See, e.g., *Air Line Pilots Ass'n.* v. *CAB*, 494 F. 2d 118 (D.C. Cir. 1974), and *Marine Space Enclosures, Inc.* v. *FMC*, 420 F. 2d 577 (D.C. Cir. 1969).

When the Administrative Procedure Act was enacted, one of the principal evils which was addressed was the combination of functions in the same person of investigator or prosecutor on the one hand, and trier of fact or decision-maker on the other. One of the reforms which the Congress believed would eliminate the process by which agencies denied a fair hearing was to require that rulemaking proceedings be undertaken only after notice and opportunity to comment and that adjudication be held by independent personnel or the agency itself. A "hearing" was generally thought of as an administrative analogue to the judicial trial. The main idea of the traditional approach was for each agency to determine whether or not a matter was "rulemaking" or "adjudication;" if it were the latter, a hearing had to be held. If a hearing was required, a full trial—including cross-examination and decision by the presiding officer—was contemplated.

But the distinctions of three decades ago are being modified by the Federal Courts. The Supreme Court in a recent decision—*United States* v. *Florida East Coast Railroad*, 410 U.S. 224 (1973)—has expounded on the theory that an opportunity to submit written material is sufficient to satisfy statutory hearing requirements, at least in a rulemaking case required to be decided on a record. See also *Shell Oil Co.* v. *FPC, supra.* Several other recent cases have held that cross-examination is not required by due process in all circumstances.

The Board should be aware that a contrary trend has emerged in recent court cases. In certain circumstances, where relevant facts are at issue, some courts have required an oral hearing even where statutes provide that matters can be handled by rulemaking or do not expressly provide for a hearing on the record. See, *United States* v. *CAB*, 411 F. 2d 1315 (D.C. Cir. 1975), setting aside the Board's approval of capacity limitation agreements. See also *Natural Resources Defense Council* v. *NRC*, 547 F. 2d 633 (D.C. Cir. 1976), (pending on appeal; now believed moot due to compliance by NRC with lower court remand), and *U.S. Steel Corp.* v. *Train*, 556 F. 2d 822 (7th Cir. 1977). These cases represent an expanded judicial appreciation that where facts are genuinely at issue the trier of fact must have a basis for his decision on a record which has afforded the parties an adequate opportunity to test the validity of the controverted facts. Utilization of innovative procedures which the courts may accept, therefore, must be tempered with the understanding of the reluctance of the courts to adopt procedures which are not likely to allow a proper resolution of the issues. While this office has a reasonable degree of confidence in the ability to sustain new procedures in the right cases—i.e., where the Board's result is reasonable and the procedures, although novel, fair to all concerned—the Board must be aware that court review is likely.

Professor Kenneth Davis has summed up the trend in the law as follows:

"The main idea of the new law, represented by Eldridge and Goss,* is that each agency for each function must work out procedures that will be both efficient and fair—procedures that may include some of the elements of a trial and not others * * *. On these new foundations, studies are now needed throughout the government to determine for each class of cases what elements of a trial that are now provided can be dispensed with, and what elements of a trial not now provided should be added * * *" Davis, *Administrative Law of the Seventies*, Cumulative Supplement issued July 1977, pp. 88-90.

A judicial reflection of this trend is set forth in Judge Wilkey's excellent analysis in the *Mobile Oil* case of the need for flexibility in fitting administrative procedures to particular functions. Because he says it better than we can, his descussion is set out in full as Appendix A to this memorandum.

We are convinced that establishment of the proposed documentary hearing procedures will require at least three prerequisites. First, the Board must establish as persuasively as possible that continuation of current procedures is not adequate for current regulatory purposes. We attempt to do this in the policy statement accompanying the rule. We believe it is particularly important in this connection to demonstrate that the maintenance of the status quo means that some meritorious applications may not be heard at all—in short, due process for applicants requires at least some process.[4] Second, we must be careful that the employment of the new procedures is likely to lead to reasonable and accurate results and we touch on this matter as well in the notice of rulemaking.[5] Third, and perhaps most important, we must insure that the new procedures are as fair to applicants and opponents as current procedures. Courts may impose additional procedures, even where not expressly required by statute, where they believe an agency's decision is clearly wrong or the processes have been unfair. On the other hand, they will sanction less conventional procedures where an agency's result is reasonable and its methods demonstrably fair.

(b) *Separation of functions.* BALJ is concerned that the proposed documentary procedures violate the spirit—and perhaps the letter—of the separation of functions concept since the Board's "action" bureau will have a major role in making recommendations to the Board in individual cases. Both the language of the APA and the comments in the Attorney General's Manual on the Administrative Procedure Act (1947) support the proposition that CAB route cases are exempt as initial licensing from the separation of functions requirement. This key area governing our cases, however, has never been subject to court interpretation. (Rate cases are clearly exempt, and the courts have so held.) The applicability of the APA's "initial licensing" exemption to the Board's typical route proceeding, therefore, is not crystal clear, although the Attorney General's Manual reasoned that the exemption would apply to the Board's route cases. Moreover, the bureau will not participate as a party of record and an advisor in

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[3] We put aside, for the moment, both the issue of what constitutes a "material issue of fact" and the possibility that the Congress will change the Federal Aviation Act or the Administrative Procedure Act to provide an express statutory authorization for the use of non-oral hearing procedures. As to the first point, certain issues historically resolved by the Board through oral adjudicatory hearings—e.g., policy issues—may not in any event require "evidentiary" exploration. Further, the "materiality" of certain admittedly factual matters may be eroded by a change in the Board's substantive policies.

*Mathews v. *Eldridge*, 424 U.S. 319 (1976) and *Goss* v. *Lopez*, 419 U.S. 565 (1975).

[4] In the *Eldridge* case, which involved termination of disability benefits without a prior hearing, but with the right to a subsequent hearing, the Court observed that the fiscal and administrative burden which would be presented by reliance on conventional procedures was a valid consideration in determining to use abbreviated procedures. As we understand the matter, the ICC has also been successful in persuading the courts to approve its use of "Modified Procedures" by explaining that there is no administrative alternative to handling the 8,000-10,000 applications which the Commission receives annually.

[5] The *Eldridge* court concluded that one factor to be evaluated in employing less traditional hearing procedures was the risk of an erroneous result via the procedures employed and the probable value of additional or substitute procedures.

the same proceeding. The concern, therefore, is that there are fairness problems when an action bureau which is an active litigant in some cases is also a key staff advisor in other cases. Despite the express terms of the APA that there is no separation of functions problem, if a court considers our procedures unfair, BALJ is concerned that it might read into the procedures a requirement for a separation of functions.[6]

Sensitive to this concern, our proposal provides that all determinations will be made by the Board—i.e., a bureau is not the decisionmaker. Also, all key recommendations will be made by three bureaus jointly. At the critical stage when the Board decides whether or not to employ expedited documentary procedures, it will receive a joint recommendation from the principal line bureau (BPDA or BIA), its Chief Administrative Law Judge, and the General Counsel; alternate recommendations will, of course, be available. A recommendation later made on the merits of a case will be made jointly by the principal line bureau, OGC, and the Office of Economic Analysis. We believe that such a procedure will be fair both in actuality and in appearance.

(c) *Presiding and receiving evidence.* Section 556(b) of the APA requires that "There shall preside at the taking of evidence: (1) The agency; (2) one or more members of the body which comprises the agency; or (3) one or more hearing examiners appointed under section 3105 of this title." We believe that the Board would be presiding at the reception of evidence despite its lack of physical presence when the evidence comes in since the Board will exercise all the powers of the presiding officer. See generally *Quon Quon Poy* v. *Johnson*, 273 U.S. 352 (1927) and *Sisto* v. *CAB*, 179 F. 2d 47 (D.C. Cir. 1949). We realize, however, that a question could be raised as to who receives evidence in a documentary hearing case and whether the party who does "receive" evidence is in fact deciding the case. A court might find that the concept of "presiding" entails more than what we contemplate under the rules—i.e., that each Board member must go through all the evidence and not reply on staff analyses, even where those analyses point the Board to the raw record. While the Attorney General's Munual specifically refers to the agency's power to use reports prepared by a staff of specialists as a subsitute for a judge's decision, and to use the services of agency employees as assistants for analysis and drafting, no court, to our knowledge, has directly addressed the issue, and our sister transportation agency—the ICC—uses an elaborate system of employee boards who "preside" as delegate of the Commission at the reception of evidence, with review to the Commission.

(d) *Public hearing.* A "hearing" is required by sections 401(g), 402(f), and 1002(d) of the act, but sections 401(c) and 402(d) call for a "public hearing." We have been unable to find any legislative history of these latter words in the Act but note that Professor Davis contrasts a "public" or open hearing with a private or closed hearing. See Davis, Administrative Law Text, section 8.07 (1972). Clearly a documentary hearing would be "public" in this context. On the other hand, one court has suggested that a "public hearing" evinces a Congressional intent to have an oral presentation, at least in the special factual context presented to the court. See *International Harvester Co.* v. *Ruckelshaus*, 478, F. 2d 615 (D.C. Cir. 1973). In making its recommendation on administrative reform, the Senate Governmental Affairs Committee report recommended that a legislative-type oral hearing be conducted in all cases where some form of documentary procedure is employed. We raise this matter to alert the Board to a possible problem with our proposed rule and to suggest that oral presentations of some kind be considered in some cases processed under the rules.

*Conclusion.* In sum, we believe that the demands now placed on the Board and the needs of the traveling public require an alternative for the processing of some cases, notably cases involving domestic route applications. The Board is moving on a number of fronts to improve and modernize its decisional process. We believe that the basic goal of the administrative process—and the thrust of the Administrative Procedure Act—is to allow conflicting contentions to be presented to an agency for decision in a full and fair manner likely to produce sensible, accurate and informed decisions. Our proposal furthers that basic goal and comports with the legal requirements of the APA and the Federal Aviation Act.

Regardless of whether the Board is inclined at this point to accept our proposal that the rules be expanded to include the broader run of cases, we believe that a proposed rule should nonetheless be published, giving all persons an opportunity to respond to these proposals. We see nothing lost by publishing rules and permitting a response; much could be gained if the responses indicate that there will be general acceptance of the expanded rules which will permit the Board to better handle its docket.

GARY J. EDLES.

APPENDIX A

Appendix A is not reprinted since it is widely available. *Mobil Oil Corp.* v. *FPC*, 483 F. 2d 1238 (D.C. Cir. 1973). Before Leventhal and Wilkey, Circuit Judges, and Jameson, Senior District Judge for the District of Montana, opinion by Judge Wilkey, pp. 1249-1254.

ATTACHMENT II.—CIVIL AERONAUTICS BOARD

MEMORANDUM

APRIL 5, 1978.

To: The Board.
From: Judge Litt.
Subject: BALJ's memorandum regarding Office of General Counsel's memorandum on procedures for processing certain licensing and rate cases (reference CM 7884).

BALJ's principal difficulty with the General Counsel's memorandum is our different appraisal of the legal and practical problems that are likely to confront the Board if the proposed procedures are extended much beyond the limited class of cases where no material facts are in issue. These are our major problem areas:

1. *Application of the procedures to route cases (adjudications) where there are material and important issues of fact in issue.* CAB route cases are adjudications (not rulemaking) under the APA, and under the FAA and the APA are to be decided on the basis of a hearing. We know of no holding by any court that the rights arising under a required adjudicatory hearing may be dispensed with where there are substantial issues of fact in dispute. All the cases cited in the General Counsel's memorandum authorizing limited hearing procedures involve rulemaking.[1]

We see nothing in the law that permits dispensing with the right to a proper hearing in an adjuciation because of the staff's workload. And even where courts have permitted abbreviated procedures in rulemaking requirements, the factual basis—thousands of cases or the legal deadline of effective rates—can hardly be claimed for CAB's route cases.[2]

2. *Separation of functions.* The APA provides that in adjudicatory cases staff members who perform investigative[3] functions in a proceeding shall not participate in or advise the Board in its decision on that case (except as witness or counsel in a public proceeding). Under the proposed procedures, and realistically, a staff member of BPDA will analyze the merits of the filings of the parties to a proceeding and prepare a draft decision, which will be reviewed by BPDA, OGC, and OEA, who will jointly recommend a decision to the Board.[4] Thus there will be no separation of functions between the staff who process, analyze, investigate, and advise by recommending a decision to the Board.[5] And with whom will the Board consult if it has questions about the staff opinion that has been submitted to it?

The APA provides an exception to the requirement that in adjudications the same staff members shall not process and advise the Board: initial licensing; and the Attorney Generals Manual in 1947 argued that the exemption applied to all route cases. However, since the APA the Board has by practice and rule separated the staff that processes route proceedings from the staff that participates in advising it and recommending decisions to it.[6] We know of no

[6]In other areas of procedure, the courts have liberally construed the APA so as to insure adequate procedural fairness even in areas where the APA does not call for specific procedures, as the District of Columbia Circuit Court of Appeals has recognized. *Action for Children's Television* v. *FCC*, 564 F. 2d 458, 470 n. 19 (1977). For example, Board decisions based on an analysis on which the parties had no chance to comment—even an on-the-record analysis—are generally vulnerable to judicial challenges. See, e.g., *Delta Air Lines* v. *CAB*, 561 F. 2d 293, 312 (D.C. Cir. 1977); *Delta Air Lines* v. *CAB*, 442 F. 2d 730 (D.C. Cir. 1970).

[1]At least one is an interim decision with a right to complete hearing at a later stage, *Matthews* v. *Eldridge*, 424 U.S. 319 (1976). *Mobil Oil Corp.* v. *F.P.C.*, 483 F. 2d 1238 (D.C. Cir. 1973) was a rulemaking case, in fact informal rulemaking, and its statements referring to adjudications are dicta, not decisions. Moreover, *Mobil* found that confrontations are required even under rulemaking.

[2]A factual analysis of the Board's docket will not support claims of huge backlog.

[3]"Investigative" is not confined to prosecutorial functions. See Legislative History of Public Law 404, Chapter 324, 79th Congress (Administrative Procedure Act) (G.P.O., 1946) at 262-63.

[4]The recommendation to the Board whether to use the proposed procedures will have been previously made jointly by BPDA, OGC, and the Chief ALJ.

[5]We wonder about the efficiency of a procedure that will involve the collaboration of the Bureaus, if they give serious attention to these cases.

[6]The Board has followed the same practice in rate proceedings (rulemaking).

other major regulatory agency that takes a different position. We suggest that the reason there are no court interpretations relevant to the initial licensing exception is that the Board and other agencies have avoided the challenge by prohibiting the commingling of functions.

3. *Is the Board presiding at the hearing?* Under the APA (section 556) and the FAA[7] either the Board, a member, or an administrative law judge must preside at the hearing where the evidence in the proceeding is taken. Where the Board presides it may make a final decision directly. But where the Board does not preside at the taking of the evidence, either a tentative, a recommended or an initial decision[8] must first be issued to which the parties may except, and the Board must rule on these exceptions in its final decision.

These procedures were adopted to insure that the Board's decisions were made by a Board cognizant of what it was doing; the abuses of the decisional process by decisions made by staffs and rubber stamped by commissions were a major reason for adopting the APA. We wonder whether and to what extent under the proposed procedures the fiction can be maintained that the Board itself is presiding at a hearing and deciding on the basis of what it learned from the evidence it took while presiding.[9]

SUMMARY

The BALJ believes that the proposed procedures can be useful in a limited class of cases where there are no important issues and material facts in dispute. We question whether it can successfully be used as a panacea to dispose of large numbers of seriously controverted cases. BALJ is confident it can—with the cooperative participation of the other Bureaus—handle the present and reasonable foreeable case load the Board wishes to set for hearing. As to rate cases, the rule proposed by the General Counsel is unrealistic and unsupportable from a point of timing. There is no reason to include rates in this rule at this time. (See Appendix C.)

The blurring of functions, in the aggregate, is an attack on the entire fabric of what up to now has encompassed a fair hearing. There is a point where one may be tempted to pull out all the stops for some great perceived public benefit, but that point is not reached with a minimal case load which appears to be quite manageable and where acceptable non-oral hearing procedures are more than adequate for the foreseeable future. It is just not helpful to have the Board tell the world that there is merit in the idea of making the administrative system work by proposing procedures that do not show a sufficient sensitivity to the Board's quasi-judicial function.

Attached as Appendix B is an appropriate prefatory statement and proposed rule circulated by me in early March. The Board must still address the problem of who presides and the issuance of a decision, although as should be noted, the last paragraph of the prefatory statement to the proposed rule resolves these issues. The rule also deletes any reference to rates at this time. Some elaboration and details of the legal issues are discussed in more legal terminology in the attached Appendix C.

APPENDIX A

Note on *Mobil* Case and Reprint of *Mobil* Case

This appendix is the full text of the *Mobil* case cited by General Counsel's office of the new directions being taken in administrative law, a portion of which is attached to the General Counsel memorandum. While I do not believe that it is usually helpful to forward parts of involved legal decisions to a Board, even where a Board may be comprised solely of lawyers, since the General Counsel attached a portion, I am attaching the whole case. Significantly, I believe the case stands for the opposite conclusions which the General Counsel draws and shows that even in rulemaking cases the courts have maintained high standards of procedural due process, have expended great effort in discussing the detailed provisions of the APA, and have refused to limit the requirement for a full and complete hearing, including the right of confrontation, even where the statute does not so require.

Judge Wilkey, as the Board may see from the excerpt below, dispenses with the distinction between "formal" and "informal" rulemaking and focuses instead on the need to create a sufficient basis for judicial review. He concluded for the court that "the 'substantial evidence' requirement[1] necessitates some sort of adversary, adjudicative-type procedures,"[2] stating:

Informal comments simply cannot create a record that satisfies the substantial evidence test. Even if controverting information is submitted in the form of comments by adverse parties, the procedure employed cannot be relied upon as adequate. A "whole record" * * * does not consist merely of the raw data introduced by the parties. It includes the process of testing and illumination ordinarily associated with adversary, adjudicative procedures. Without this critical element, informal comments, even by adverse parties, are two halves that do not make a whole. Thus, it is adversary procedural devices which permit testing and elucidation that raise information from the level of mere inconsistent data to evidence "substantial" enough to support rates.[3]

Thus, this case is a good example of how the courts, even in rulemaking cases, will adhere to and require a high degree of procedural due process.

Decision omitted from appendix.

APPENDIX B

The attached explanatory statement and rule tracks procedures at other agencies and reflects a rule which has been approved by the courts in a long line of cases (cf. *National Trailer Convoy, Inc.* v. *U.S. and I.C.C.*, 227 F. Supp. 730 (1964), appeal after remand, 293 F. Supp. 630 (N.D. Okla. 1968), aff'd 394 U.S. 849 (1969)). All Bureaus basically agree that the attached rules are acceptable and legally sufficient, although BPDA and OGC wish to expand the rule.

CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

PART 302—EXPEDITED PROCEDURES FOR LICENSING AND RATES CASES

*Notice of Proposed Rulemaking*

AGENCY: Civil Aeronautics Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice, undertaken on the Board's own initiative, invites comments from the public on proposed rules to establish expedited hearing procedures for processing applications for new or modified route authority by United States and foreign carriers. Basically, the new procedures would require the submission of all evidence in written form and would dispense with an oral hearing and an initial or recommended decision by an administrative law judge. The Board would, instead, receive and review the evidence itself and issue an agency decision. Whether, and to what extent, the Board would proceed under these expedited procedures in any particular case will be within the Board's discretion.

DATES: Comments by: Reply comments by:

ADDRESSES: Comments should be sent to Docket , Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428. Comments may be examined in Room 711, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C., as soon as they are received.

FOR FURTHER INFORMATION CONTACT:

Gary J. Edles, Deputy General Counsel, Civil Aeronautics Board, 1825 Connecticut Avenue NW., Washington, D.C. 20428, 202-673-5234.

EXPLANATORY STATEMENT

We propose to amend part 302 of the Board's procedural regulations to provide for a non-oral hearing procedure to be used in some licensing cases. Current Board procedures and practice by and large contemplate, first, that the board institute most investigations under the power conferred by sections 204 and 1002 of the Act after examining applications filed by interested carriers under section 401. Departures from this approach include subpart M and N cases and the consideration of applications by foreign air carriers where the Board simply adjudicates applications presented to it by interested parties. Second, hearings have traditionally meant the full panoply of trial procedures, including two rounds of decisions, one by a presiding judge and another by the board itself. Orders to show cause, where the Board tentatively indicates the scope of relief it will grant and does away with all procedural steps short of final decision, have been employed in noncontroversial cases, where there is no objection, or where the interest at stake is small—but we have been reluctant to expand its use. See *Application of Western Air Lines*, Order 77-11-74, November 17, 1977, pp. 6-9 and concurring statement of Chairman Kahn.

This Agency has a responsibility to the public, the industry it regulates, and the Congress to take responsible steps to reduce regulatory delay. To this end, we recognize

[7] The FAA read literally limits presiding to a member or a judge, though, by implication, the Board itself could undoubtedly preside.

[8] Except in an emergency situation so found on the record.

[9] The ICC procedures are based on employee Board authorized by statute from whose decisions exceptions may be taken to the Commission.

[1] Section 1006(e) of the Federal Aviation Act includes a similar type of requirement.

[2] *Mobil Oil Corp.* v. *Federal Power Commission*, 483 F. 2d 1238, 1259 (D.C. Cir. 1973).

[3] *Mobil Oil Corp.*, id., at 1260.

the need to improve our procedures while at the same time providing the parties to our proceedings with the procedural due process rights guaranteed to them by the Constitution, the Administrative Procedure Act and the Federal Aviation Act.

The proposed amendments will permit the board to eliminate an oral hearing and the initial or recommended decision of the Administrative Law Judge in certain instances where there are no substantial issues of material fact. Basically, the new procedures would require the submission of all evidence directly to the board in written form. The Board would then review the evidence itself and issue an Agency decision. Whether the Board will proceed under these expedited procedures in any particular case will be within the Board's discretion. Cases with fewer parties and cases which involve simply an application of established policies to a new set of circumstances are the types of cases which we have in mind for the use of our proposed new procedures.

We cannot minimize the contribution of an experienced administrative law judge to the distillation of the evidence, the development of the record, and the evolution of a meaningful decision in the proper case.

We are also not insensitive to the discipline which occurs when parties know that their submissions will be tested by cross-examination by experienced counsel, and appreciate that an oral presentation can be very useful to the decisionmaking process in some cases. The Board, therefore, will retain its option of ordering a conventional trial-type of hearing with cross-examination. We contemplate that in most instances the more highly complex and controversial cases will continue to be processed via the oral hearing process. Applications involving a single market, and cases with fewer parties, would seem to lend themselves more readily to the use of our proposed documentary procedures. Cases which involve simply an application of established policies to a new set of circumstances would likewise seem candidates for expedited processing.

Our procedures contemplate that in licensing cases applicants will take the initiative in seeking expedited processing. Once an application is received, we will give notice of that application in the FEDERAL REGISTER; interested persons will have 10 days to advise the Board, in general terms, why a particular application should not move forward expeditiously. We will dispose of these preliminary objections within 10 days. As in cases processed under subparts M and N of the Board's procedural regulations, this threshold procedure is designed to avoid substantial work by interested persons by allowing the Board to summarily dismiss or stay proceedings where the application appears on its face to be ill-suited to expedited procedures. Once an application passes this threshold step, interested persons will have approximately 1 month more—or a total of 50 days from the FEDERAL REGISTER publication date—to prepare their substantive answers in support of, or in opposition to, the application. Requests to consolidate competing applications will also be received during this period. Applicants will have 15 days to reply to answers to their applications but interested persons will have 30 days to file answers where new applications have been offered for consolidation. Once all materials are received, the Board will decide whether or not to employ its non-oral procedures to decide the case on the merits.

The Board intends to have an initial, recommended, or tentative decision issued in any non-oral hearing proceeding where the Board has not presided at the taking of evidence.

PROPOSED RULE

It is proposed to adopt a new subpart Q of part 302 as follows:

1. Amend the table of contents of part 302 by adding a new paragraph Q, the title of which reads:

SUBPART Q: EXPEDITED PROCEDURES FOR PROCESSING LICENSING AND RATES CASES

Sec.
302.1701 Applicability.
302.1702 Subparts A and E govern.
302.1703 Filing of applications.
302.1704 Contents of applications.
302.1705 Service of application and answer.
302.1706 Preliminary procedures for dismissal or stay.
302.1707 Answer to application.
302.1708 Intervention.
302.1709 Motions to consolidate.
302.1710 Reply to answers.
302.1711 Verification.
302.1712 Joint pleadings.
302.1713 Oral presentation or initial or recommended decision.
302.1714 Disposition of the application or investigation.

302.1701 *Applicability.*

This subpart sets forth the special rules applicable to expedited procedures for processing (a) applications for certificates of public convenience and necessity and renewals or amendments of certificates, and 9b) applications for foreign air carrier permits and renewals or amendments of permits.

302.1702 *Subparts A and E govern.*

Except as otherwise provided below, the provisions of subparts A and E are applicable.

302.1703 *Filing of applications.*

Any person may file an application for the issuance of an initial certificate or foreign air carrier permit, or a renewal or amendment of its certificate or permit, as described in § 302.1701. If the applicant desires the Board to process the application by the expedited procedure described in this subpart, the application should clearly indicate that desire on its face. The Board shall promptly publish notice of the application in the FEDERAL REGISTER.

302.1704 *Contents of applications.*

An application under §§ 302.1701 and 302.1703 shall include a statement of economic data or other matters which the movant desires the Board to notice officially, and affidavits establishing such facts as it wants the Board to rely upon, including the facts upon which the applicant relies to show that the public convenience and necessity or public interest require the relief sought. Applications shall contain the economic and operating data required by § 302.18. For information as to other information that may be included in applications, reference should be made to subpart A of this part, to the Federal Aviation Act, to the substantive rules (see parts 201 and 211 of the Economic Regulations) and policy statements (see part 399.60 of the policy statements), and orders of the Board. The applicant shall furnish sufficient detail in the form of footnotes or otherwise so that, without further clarification, final results may be obtained from the basic data. Sources, bases and methodology used in constructing exhibits, including any estimates or judgment employed, shall be provided.

302.1705 *Service of application and answer.*

(a) *Persons to be served.* A notice of the filing of the application shall be served on:

(1) Any certificated air carrier which is authorized to engage in the type of air transportation (i.e., scheduled or supplemental) at one or both of the points with respect to which the applicant seeks nonstop authority;

(2) The chief executive of any State of the United States in which any point which is involved in the application is located: *Provided, however,* That if there be a State commission or agency having jurisdiction over transportation by air, the application shall be served on such commission or agency rather than on the chief executive of the State;

(3) The chief executive of the city, town, or other unit of local government at each of the points located in the United States, between which the applicant seeks authority, as well as each certificated point intermediate thereto; and

(4) The Board, commission, manager, or other body or individual having direct supervision over and responsibility for the management of the airport located in the United States and which is being used to serve such point at the time the application is filed.

(b) *Additional service of notice.* The Board may, in its discretion, order additional service on such person or persons as the facts of the situation warrant. Applicants are encouraged to serve copies of their actual application where feasible.

302.1706 *Preliminary procedures for dismissal or stay.*

(a) On or before the 10th day following publication of notice of the application in the FEDERAL REGISTER, any person may file a motion to dismiss the application.

(b) On or before the 30th day following publication of the notice of the application in the FEDERAL REGISTER, the Board may, in its discretion (1) dismiss an application without prejudice to the refiling under the normal procedures if it finds that the application is not in compliance with, or is unsuitable for processing under, the provisions of this subpart, or (2) stay further procedural steps with respect to such application until a further order of the Board.

302.1707 *Answers to application.*

Any interested person may file with the Docket Section, and serve upon the applicant an answer in opposition to, or in support of, an application. Answers shall set forth the economic data and other facts upon which the party relies to support its position. Answers shall be filed no later than 60 days after the date of publication of the notice of the application in the FEDERAL REGISTER.

302.1708 *Intervention.*

(a) Any interested person shall file with the Docket Section and serve upon the applicant, a petition for intervention, including the economic data and other facts upon which the person relies to support its position concerning the merits of the application. Petitions for intervention shall be filed within the time limits specified by § 302.1707 for the filing of answers.

(b) Answers to petitions to intervene shall be filed with the Docket Section, and served

on the petitioner, within 15 days after the due date for the filing of petitions to intervene. Such answers shall set forth the basis of the support of or opposition to the petition to intervene. No replies to the answers are permitted.

302.1709 *Motions to consolidate.*

(a) Motions to consolidate an application with an application filed under § 302.1703, or modify the issues to be decided, may be filed within the time limits specified by § 302.1707 for the filing of answers. Motions shall include economic data and other facts in support of both the motion and any application sought to be consolidated. Data in support of any application sought to be consolidated shall conform, to the extent possible, to the provisions of § 302.1704 with respect to original applications. Subsequently filed competing applications and rebuttal evidence shall conform to the base year and forecast year used by the applicant under § 302.1704.

(b) Answers to motions to consolidate or modify the issues shall be filed with the Docket Section, and served on the movant, within 30 days after the due date for the filing of motions. Such answers shall (1) set forth the basis of the support of or opposition to the motion, and (2) with respect to the merits of the application for new authority, set forth the type of data required by § 302.1707 for answers to an original application.

302.1710 *Reply to answers.*

Replies to answers may be filed with the Docket Section, and served upon any person filing the answer to which the reply is responsive, 15 days after the due date for the filing of the answer. No further pleading may be made by any person except by permission of the Board.

302.1711 *Verification.*

The facts asserted in any pleading filed under the expedited procedures established by this subpart must be sworn to by persons having knowledge thereof, and this fact must affirmatively appear in an affidavit in support of the pleading. Such persons should be those who would appear as witnesses to orally substantiate the facts asserted should hearing become necessary. The original of any pleading filed under the expedited procedures must show the signature and capacity of the person administering the oath and the date thereof.

302.1712 *Joint pleadings.*

Parties having common interests, to the extent practicable, shall arrange for the joint preparation of pleadings.

302.1713 *Oral presentation or initial or recommended decision.*

Application assigned to procedures under this subpart will be decided on the basis of the written submissions unless the Board has granted a petition for oral presentation or a petition for an initial or recommended decision, or otherwise determines that an oral presentation or an initial or recommended decision is required by the public interest.

302.1714 *Disposition of the application or investigation.*

As promptly as feasible after the filing of all pleadings, the Board shall (1) assign the application for consideration under the expedited procedures of this subpart, (2) set the matter for hearing under the ordinary provisions of subparts A or E where material facts are at issue, (3) dismiss an application without prejudice to refiling, or (4) take other necessary action. The Board shall also dispose of any pending motions or requests.

APPENDIX C—LEGAL MEMORANDUM ON NON-ORAL HEARING PROCEDURE

This memorandum is addressed to three different aspects of the General Counsel's memorandum:[1]

1. The proposal to expand the non-oral hearing procedure to embrace adjudicatory cases where there are material facts at issue;

2. The determination that it is legal and fair to have an operating bureau participate in cases required to be heard under the Federal Aviation Act, as investigator, preparer of the instituting order, the movant, trier of fact, and decision writer;

3. The issues of (a) who will preside at the taking of evidence, and (b) the clear need under the APA for an initial decision, recommendation to the Board, or tentative decision of a Board member.

1. *Expanding the non-oral hearing procedure to embrace proceedings where there are material facts at issue.*

a. *Preliminary thoughts.* As a preliminary thought on this issue, there is no reason for the Civil Aeronautics Board to embark on what in all likelihood will be a major legal entanglement of its new rules. Bluntly, the basic concept of due process as well as the APA has accepted as a given the proposition that all parties to an adjudicatory proceeding are entitled to an adequate opportunity to test at an oral hearing the validity of controverted facts. As the General Counsel's memorandum recognizes, these rights would be denied in some cases under its proposed procedures on the basis that the Board's workload and staff resources should allow less.[2] No court has supported this proposition in any adjudication case, and recent court cases indicate that once any oral or non-oral hearing is held, a dilution of the rights of the parties is not acceptable. Cf. *U.S. Steel Corp.* v. *Train*, 556 F. 2d 882 (7th Cir. 1977). Every case cited by the General Counsel is a rulemaking case and despite continued and strong efforts to have reliance on these cases deleted from his prefatory statement, no change has occurred.[3]

My own evaluation is that court review of the expanded procedures is certain, a view which I believe is shared by the General Counsel, and that there is the strong likelihood of an adverse decision, a view which he may not share. Of course, no one can predict with certainty how any court—particularly the Supreme Court—would finally decide the matter. Suffice it to say that, in my opinion, novel procedures seeking to overturn a couple of hundred years of Anglo-American jurisprudence of what a fair hearing is as well as 30 years of codification of this understanding under the APA, are prime candidates for reversal.[4]

b. *Legal considerations.* The provisions of section 556 and 557 of the APA which govern separation of functions and the writing of decisions apply only to proceedings governed by section 554, and the provisions of section 554 apply to every case of adjudication required by statute to be determined after opportunity for an agency hearing. The determination of applications for airline route awards, i.e., licensing, is "adjudication" as defined under sections 551(6) and 551(7) of the APA. See also *Riss and Co.* v. *United States*, 95 F. Supp. 452 (W.D. Mo. 1951), reversed in 341 U.S. 907. The General Counsel's memorandum properly sets out the difficulties with relying on the initial licensing exception to the separation of functions prohibition in section 554(d) of the APA.[5] My own evaluation is that even in the right case the courts may find problems with having the senior staff participate in both the trial and decisions of a route case before the Board. But the Board's "right" case is unlikely to be the case which goes to court.

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[1] The memorandum circulated to BALJ was in the name of the Deputy General Counsel. I refer to it as the General Counsel's memorandum because I assume that the Deputy General Counsel speaks for the General Counsel.

Each of these issues could be, and probably should be, treated in separate legal memoranda if for no other reason than to give the Board members time to reflect on what may amount to amendments to the APA.

[2] It is assumed that any non-oral hearing order would specify which of the bases it proceeded upon. Otherwise, every case would have to be treated by the courts as having material facts at issue. This should be clarified by the General Counsel.

[3] The General Counsel cites rulemaking cases. *In the United States* v. *Florida East Coast Railroad*, 410 US 224 (1973), the issue was whether the proceeding was properly classified under the rulemaking clause of the APA (553) so as to avoid the requirements of section 556 and 557 applicable to adjudications. That case stands for the proposition that certain written submissions were permissible because it was rulemaking. See also *Permian Basin Rate Cases*, 390 US 747 (1968); *Shell Oil Co.* v. *F.P.C.* 520 F. 2d 1061 (5th Cir. 1975) (*Nationwide Rate Case*), both rulemaking proceedings. The latter in fact is particularly inappropriate despite the court's dicta on section 556 and 557. There, the spectre of upward of 10,000 underlying producer rate cases was before the court, and the court, mindful of 20 years worth of prior litigation on the subject, was writing its final chapter on a dialogue that extended for a lifetime. See also *Mobil*, Appendix A to the principal memorandum.

[4] The fact of the matter is that other sister agencies are affirming the right to oral hearings. See Docket RP 72-6, *El Paso Natural Gas, Ignition Fuel and Flame Stabilization*, issued March 9, 1978) where on page 2 of the slip decision, the Federal Energy Regulatory Commission states:

"* * * The right to full cross examination and administrative adjudicatory hearing is a constitutional right which is surely recognized in section 7(c) of the APA."

*"A party is entitled to present a defense by oral or documentary evidence, to submit rebuttal evidence, and to conduct such examination as may be required for full and true disclosure of the facts."* (Emphasis added.)

[5] While the 1947 Attorney General Manual suggests that the initial licensing exemption applies to all route cases, it should be noted that at least one portion of the legislative history of the APA suggests a contrary position, i.e., that original licenses are to be "contradistinguished from renewals or amendments of existing licenses". Legislative History of Public Law 404, Chapter 324, 79th Congress (Administrative Procedure Act) 226 (Government Printing Office 1946).

Further, where a consolidation of competing applications might occur or where there is a denial of an application, it would be very difficult to maintain that the proceeding had neither become complex nor adversarial so as to fall within the exception to the exception contemplated in the *Legislative History of the APA*.[6] A growing body of cases clearly has emerged, involving various licensed trades and occupations, which develops that a denial cannot be made without according full separation of functions even in initial licensing. Thus, even if considered initial licenses, it is doubtful that route applications at the CAB could be denied without affording the applicant an opportunity for cross examination in an adjudicatory hearing. These matters are not addressed by the General Counsel's memorandum and time has not permitted me to address these issues more fully.

2. *Lack of fairness of the internal procedures.* In addition to the legal infirmities, both BPDA and OGC propose a method by which the key power to decide cases within the Board will be shifted in substance from the Board members and their principal legal counsel (OGC) to BPDA with OGC being BPDA's "legal advisor". The alleged justification for the proposal is twofold: (1) the prior method of handling cases has been cumbersome and too time-consuming, and (2) the Board's workload and backlog, which, parenthetically, does not appear really to exist, is very large and expanding rapidly. As a corrolary is a presumption that any bifurcation of responsibility for decision making is not efficient. The facts, at least as of now, do not show that any of the identified problems of delay or backlog require anything more than putting in place better tools to handle some cases. The General Counsel addresses these issues and resolves that since the Board will pass upon the actions recommended by its staff, there will be Board control of these cases.

a. *Non-oral hearings are hearings.* First, there is a blurring of differences between the function of hearing cases and the function of deciding cases. The procedures for non-oral hearing cases, as far as the hearing is concerned, are simple and do not require a great deal of analysis. What they entail is a determination that there are no material facts at issue, or that even if some small contested issues exist, they are not so significant that a court will reverse the findings on the basis of manifest unfairness. Other than that finding and a curtailment of the oral hearing process (the cross-examination of witnesses to determine the truth and validity of contested testimony and exhibits so as to permit rational findings of fact), it is a hearing in every sense of the word and is entitled to the respect and every protection afforded by due process, the statutes, and regulations governing hearings. The term "non-oral hearings" is not a buzz word for the avoidance or dispensation of the hearing protection.

No case has been cited, nor can one be cited to this Board, where any court has sustained an agency action in an adjudicatory proceeding on the basis that a non-oral hearing procedure permits any less a degree of due process than required by the underlying statute. Moreover, in many cases the courts are moving to greater reliance on oral hearings.[7] See *Mobil* (App. A) and *U.S. Steel Corp.* v. *Train, supra.* In the latter, even though the magic words "on the record" did not appear in the enabling statute, a hearing was required nonetheless. The point clearly to be drawn from these cases is that an attempt to ignore the hearing process in the cases where material facts are in issue will not warm the reviewing court's heart and can result in a remand.

BPDA and the OGC have proposed that "all administrative line responsibilities" remain in BPDA. What this means is that in a proceeding in which it is preliminarily decided that there are no material facts at issue, the entire matter will be handled by BPDA from the time the case is filed until a completed decision is laid before the Board to be adopted. Thus, BPDA, which is a forcing or action body and potential litigant, will participate in a determination of whether there are facts at issue, what facts are at issue, and whether a hearing is required. If it should determine that a hearing is required, it would participate at the hearing and then write the Board's decision. BPDA is not now, of course, an opinion writing body in either oral or non-oral hearing cases. Admittedly there are areas where it writes the Board's decision, such as exemptions and realignments, but that is a far cry from changing its curent role from a technical and developmental body with an advocate's role in heard cases to advocate, judge and first line opinion writer in other heard cases.[8] Since BPDA controls its own workload already by picking cases to institute, "queue", or ignore, the additional internal authority will make a most complete bureaucratic institution.

Any belief that a non-oral hearing can be handled with "all administrative line responsibility" in BPDA and still provide a hearing in the manner envisioned by the statute or the APA (or is being provided today by the CAB) would be uninformed. What will have occurred is that BPDA will determine in the first and last instance which cases come to the Board and will style the case in a manner best designed to avoid Board interference. The OGC first objected to this procedure, since I assume it too recognized that the only meaningful role on a de facto basis would be that played by BPDA. After considerable discussion however, the OGC and BPDA worked out a compromise which principally will have the BPDA and OGC cooperate and coordinate these cases—a euphemism for having any policy decision embrace the views of both BPDA and OGC before being forwarded to the Board for approval. The result of this "cooperation" is that there may be no hearing as contemplated by the APA.

b. *Opinion writing.* The loss to the Board of its ability to control the decisional process and the loss of its General Counsel's office as an independent advisor to the Board also causes me great concern. A proceeding coming to the Board from its staff represents, under the best circumstances, BPDA in an advocate role, a judge rendering an initial decision on a mixed basis of fact and law, and the Office of General Counsel as the chief advisor to the Board. This is somewhat inefficient because the give and take of analyzing different ideas, as well as the necessary independent review and analysis preparatory to writing an opinion, takes time. But, what is gained in such a formulation is (1) a built-in institutional check and balance as the case is developed which will apprise the Board and the public more fully of the Board's options (e.g., on procedure cases such as *Colonial* and *TXI Baltimore-Houston*), and (2) an independent review by the Board's Office of General Counsel which has not taken positions earlier in the decisional process.

The only effective method to protect the Board members, given the Board's present setup, is to have the opinion writing continue to be performed in the General Counsel's office so that a detailed analysis of a proceeding leads to an informed judgment. If the General Counsel has collaborated with BPDA throughout the process and his review is on an opinion written in collaboration with BPDA, it will be difficult for him to render an independent and objective final opinion.

c. *No need for expanded procedures due to existing or unexpected workload.* Nor do I believe that the procedures suggested will expedite many cases. First, I have not yet been able to determine which route cases in the past year BPDA believes would have lent itself to its new decisionmaking role. My own analysis is that few of the present breed of cases could be so handled legitimately, although if the Board goes to small point-to-point cases the number would surely increase. Obviously, if the Congress or the courts should countenance a significant modification in entry criteria, that number could be stimulated further. But, absent some significant change in existing law, as well as a great upswell of carrier interest in expanding service which has yet to become evident, there does not appear to be any great number of cases which will lend themselves to that procedure. The fact is that the Board only handles 200 cases a year and no one has yet made any inventory showing that any large number of these cases lend themselves to the procedures.

And another fact is that there is no evidence that use of non-oral hearing procedures in most cases where there is adversarial action will result in reduced cost of entry or substantial savings in time. I have addressed a number of these issues in memoranda of February 14 and March 6, and will not repeat them here. At the ICC, non-orally heard cases were given expeditious treatment but, until very recently when 40 positions were filled temporarily to clean up the backlog, these "expedited" cases took longer to handle than orally heard ones. A cost of entry study at the ICC seeking to show cost savings was abandoned, I am told, when the analysis showed the hypothesis was questionable.

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[6] The report of the Senate Judiciary Committee is quite clear in stating that the initial licensing exemption was not meant to be utilized where there are material issues of fact in dispute. In the committee's language,

> There are, however, some instances of either kind of case [initial licensing or rulemaking] which tend to be accusatory in form and involved sharply controverted factual issues. Agencies should not apply the exception to such cases, because they are not to be interpreted as precluding fair procedure where it is required. Legislative History, supra, at 204.

[7] This follows the APA requirement, as set forth in the legislative history and the Attorney General's Manual, that cases which are complex or are adversarial should be orally heard.

[8] It is a total red herring to suppose that, because BPDA would not be challenged in non-controversial cases if it acted in this role, that it is therefore proper to have BPDA play this role in cases where there is controversy.

As far as delay is concerned at the Board, this was addressed by the BALJ in the recent memorandum asking that 12 cases which were wending their way through BPDA simply be set for hearing. The fact is that some Subpart A or M cases can be disposed of in 4 or 5 months after an answer is filed to a motion to expedite.[9] Moreover, a judge at a prehearing conference can structure a case in a way not possible through the non-oral hearing procedures. Secondly, the judge's initial decision is usually of great value, often can be adopted if the Board's policy has been followed or it likes a new policy uncovered, and most importantly, is possibly the only fair shake in the system a party often believes he receives.

In sum, permitting a bureau to have the role of investigator, action office, trier of fact, and decision maker, even if not proscribed by the APA (which I believe is not the case), would be unfair. And having one's General Counsel, who is the Board's lawyer, collaborating in the process destroys the internal review which has heretofore been considered necessary by the institutional body to protect itself.

3. *"Presiding" and issuance of initial or tentative decisions.*

Who will preside at these cases is not an easy determination and does not speak to whether an initial or tentative decision must be issued. Under the APA, the Board, a member of the Board, or an administrative law judge must preside over the reception of evidence. An analysis of how to resolve who presides at the Board therefore must begin with a determination as to both practical and legal issues. Assuming that there is no desire by either BPDA or the General Counsel to have a judge preside over non-oral hearing procedures,[10] the Board or a member must preside.[11] This cannot be delegated. Legally there is no question that the case could be individually docketed to a Board member and that member could then issue a recommended decision. If a Board member presides he would be required literally to review the evidence and be prepared to state that he had done so. It is possible that others working under his directions could review the evidence for him but, he would still have to have available the record, the materials relied upon and their recommendations. There is no question that under the APA that he still must prepare a decision, to which exceptions will lie, before the Board can decide the matter.

The General Counsel in his memorandum seeks to avoid the writing of either an initial decision, a recommendation to the Board, or a tentative decision by creating a fiction that the Board "presides." This would aviod the requirement that the parties be able to file exceptions to the matter which comes to the Board for decision. The legal basis for the General Counsel's position is two-fold: (1) that the ICC Review Boards in fact are performing this function under delegation today and therefore the Civil Aeronautics Board may also use this procedure; and (2) there are a number of cases which support permitting the board to "preside" in this manner. As to the first, the ICC Boards preside on the basis of specific statutory delegation under the Interstate Commerce Act (49 U.S.C. 17). They sift evidence and the decision they issue is appealable by law to the agency before any administrative finality attaches. Whether this procedure of the Review board presiding is legal, moreover, has never been litigated and I am informed by personnel at the ICC that hopefully, from this point of view, it will not be. Nonetheless, to suggest that a statutorily approved procedure whereby those receiving the evidence and acting as the agency, review the evidence, bears no relationship to what is being suggested is appropriate at the CAB.

The General Counsel, at page 10 of his memorandum, cites three cases to support the proposition that the Board would preside over the reception of evidence "despite its lack of physical presence." All are inapposite and one is actually irrelevant to the issue. The first case, *Quon Quon Poy* v. *Johnson*, 273 U.S. 352 (1927), involved the introduction of the substantial equivalent of depositions without objection and with waiver of cross-examination by the adversely affected party—two decades prior to passage of the APA. The second case, *United States* v. *Dawson*, 3P&F 43d.21-1 (U.S. Dept. Int. 1944), also preceding the APA, was an *ex parte* agency proceeding conducted by a regional law officer after the Commissioner absented himself when the defendant refused to appear in compliance with regulation.[12] Finally, the case involving the Board, *Sisto* v. *C.A.B.*, 179 F.2d 47 (D.C. Cir. 1949), stands for the principle that the Board may choose to hear argument on exceptions to an examiner's initial decision either orally or by written materials and is not compelled to use a particular method under the organic statute. As it turns out, there are very few cases and very little law as to how the term "preside" should be interpreted under either the organic statutes of administratice agencies or the APA. The reason for this, of course, is that to my knowledge no one has suggested systematic methods for avoiding the clear requirements of the APA which, simply stated, is that he who presides should decide and that the parties should have an opportunity to address the decision maker and to appeal his ruling. In *Smith* v. *People*, 47 N.Y. 330, 334, a definition is given that: "When a judge 'holds' court he directs, controls, and governs it as the chief officer and this is the extent of the meaning of the word 'preside' * * *." See also *Koval* v. *Industrial Comm'n*, 532 P.2d 549, 551 (Arizona 1975), which held that "presiding" in a 1973 statute referred to the hearing officer who physically presided over the hearing, not to the "chief" hearing officer.

I think one must be cognizant that the courts are unlikely to accept both (1) a dicision maker not physically taking the evidence, and (2) his issuing a decision, having not taken the evidence, which is not appealable by the filing of exceptions by any aggrieved party to the entire body charged with making the decision. This leads me to conclude that it is unlikely that the Board would be sustained in a procedure whereby its staff handled all the matters and the Board issued a final decision.

The solution to these problems appear unacceptable to BPDA and the OGC because they lead to the writing of interim decisions which are appealable. Unquestionably this will require some additional time—probably three weeks for exceptions to be filed and another week or two for the Board to subsequently decide the matter. Again, time has not permitted a full analysis of this issue, but it should be resolved before proposed rules ignoring these requirements of the APA and creating a thin and inconvincing fiction, as suggested by BPDA and OGC, are issued. The attached Appendix B resolves this matter for the present by providing for intermediate decisions.

4. *Additional matters.*

a. *Rates.* One other matter requires comment. The rule proposed by the General Counsel also seems to be particularly ill-advised for *individual* rate cases since they almost invariably involve factual issues.[13] Those factual issues ordinarily can be resolved faster by an oral hearing, with little or no time being saved under the proposed procedures in the disposition of the overall cases. Moreover, the applicability of the proposed rule to rates seem to be more "window dressing" than reality. From a practical standpoint, instituting orders are normally entered in these cases to preserve the Board's jurisdiction to act and are done so because the Board's staff has not had a adequate opportunity either to resolve its position or prepare what will be its rebuttal case. The carriers, having had months to think about the filing and having presumably prepared their basic case before coming to the Board, are unlikely to comment that additional time will be necessary. It is the staff which will be injured.

The mechanics of the handling of the individual rate cases at the Board at this time also requires some comment. Instituting orders are issued frequently where there is no desire by the staff for quick resolution. The practice now is that, at the staff's request, the office of BALJ does not set rate cases for hearing—sometimes many months have elapsed while settlement negotiations are under way—until the Board's rate bureau is able to mount a full scale rate case in opposition to rate increases. Unless BPDA chooses to ignore this rule for the most part, the rule will increase its workload. Further, under the proposed procedures adopted in a case, the BPDA could be in a position where it was unable to do more than take pot-shots at those few items its quick analysis could uncover and, at best, prepare alternatives for a few cost areas. This piecemeal approach to ratemaking would not be consistent with reaching careful decisions for lawfulness of proposed rates. At this juncture, it appears that the new rule, as applicable to rate cases, would be no more than a hollow shell since no one has identified those cases which would benefit, and, therefore, this category of proceedings should not be placed under that rule. I think, moreover, that there is almost no rationale given which explores these matters and my own conclusion, so far, is that there is no reason to include rate cases until some showing can be made that it will benefit the Board rather than those seeking rate increases.

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[9] If a case is not to be heard because it does not fit the Board's calendar, the Board should say so immediately and not have it either clog the system or be used to affect workload statistics.

[10] This is often done at the ICC.

[11] Section 1004 of the Federal Aviation Act appears more restrictive and limits "presiding" to a member of the agency or a judge. It also uses "hold" and not preside.

[12] This case appeared in the "final" memorandum sent to this office for comment, but apparently was deleted in the notation copy sent to the Board.

[13] Individual rulemaking is more of an adjudicatory process and therefore has different standards than general rulemaking. This aspect of ratemaking has not been discussed in any of the memoranda.

b. *Presentation of evidence.* Much of the language used throughout the various discussions in the OGC memorandum has centered on the term "documentary evidence." This is highly unfortunate since under the APA, section 556, that term has an extremely limited meaning. As stated in the Attorney General's Manual (p. 77):

> . . . As here used "documentary evidence" does not mean affidavits and written evidence of any kind. Such a construction would flood agency proceedings with hearsay evidence. In the last sentence of the subsection, there appears the phrase "evidence in written form," thus indicating that the Congress distinguished between "written evidence" and "documentary evidence." See also section 203(c) of the Emergency Price Control Act. Again, the subsection expressly states the right to adequate cross-examination. Against this background, it is clear that the "right to present his case or defense by oral or documentary evidence" does not extend to presenting evidence in affidavit or other written form so as to deprive the agency or opposing parties of opportunity for cross-examination, nor so as to force them to assume that expense of calling the affiants for cross-examination. See *Powhatan Mining Co.* v. *Ickes*, 118 F. 2d 105, 109 (C.C.A. 6, 1941).

Great care clearly must be used in the terminology so as to avoid confusing the written evidence of parties, which are entitled to cross examination, with the use of "documentay evidence" as a word of art under the Administrative Procedure Act.

c. *Responsible employees.* While the issuance of recommendations to the Board by "responsible employees" is no longer central to the proposed rules as suggested in the General Counsel's memorandum, some consideration must be given as to who would be the responsible officer in the event that the agency chooses to issue a tentative decision or a recommendation. An earlier proposal by the General Counsel, now apparently abandoned, was to employ the phrase "due and timely execution of its functions imperatively and unavoidably (so) requires" to allow the omission of any intermediate decision. (See, e.g., General Counsel memorandum of March 20.)[14] While this has not been developed at length in this memorandum, several of the suggestions previously made, if they should re-emerge, would require a detailed analysis of this aspect of decision making.

Many of the problems here would not require fine-tuned resolution if the matters to be resolved by the agency were limited to those types of non-oral hearings used by other agencies and already approved by the courts. There would be little controversy and therefore little risk of court review. It is principally the determination to create what amounts to an amendment to the APA which requires seminal thinking in order to overcome previously poorly worked out arrangements. As the risk goes up of significant court review, the need also goes up to make sure that the procedures are precise and lawful. The procedures set forth in Appendix B to the present memorandum avoid these problems. They should be adopted because they are consistent with (1) existing law and other agency practice; and (2) are more than adequate to handle the existing or anticipated caseload.

[14] If consideration is given in the future of going to a procedure where responsible employees make recommendations to the Board, it should be kept in mind that the APA would not permit junior and inexperience staff members to perform this function.

[FR Doc. 78-12359 Filed 5-4-78; 8:45 am]

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[4810-22]

## DEPARTMENT OF THE TREASURY

### Customs Service

[19 CFR Part 4]

### VESSELS IN FOREIGN AND DOMESTIC TRADES

### Extension of Time for Comments Concerning Proposed Amendments Relating to Foreign Repairs to, and Equipment Purchased for, American Vessels

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of extension of time for comments.

SUMMARY: This notice extends the period of time permitted for the submission of comments in response to the recent proposal by the Customs Service to modify its substantive and procedural requirements relating to entries for foreign repairs and equipment purchases by American vessels. This extension will permit the preparation and submission of more detailed comments by interested members of the public.

DATES: Comments must be received on or before June 2, 1978.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Jerry C. Laderberg, Carriers Rulings Branch, Carriers, Drawback and Bonds Division, U.S. Customs Service, Washington, D.C. 20229, 202-566-5706.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On April 4, 1978, the Customs Service published in the FEDERAL REGISTER (43 FR 14060) notice of proposed amendments to §§ 4.7(d)(1) and 4.14 of the Customs Regulations (19 CFR 4.7(d)(1) and 4.14) to modify its substantive and procedural requirements relating to entries for foreign repairs and equipment purchases by American vessels. The proposed amendments would establish procedures for handling each aspect of a vessel repair entry and are intended to reduce the amount of time needed to process the entry.

COMMENTS

Comments concerning the proposed amendments were to have been received on or before May 4, 1978. A request on behalf of a number of American-flag vessel operators has been received to extend the period of time for the submission of comments. Therefore, Customs is extending the period of time to comment to June 2, 1978.

LEONARD LEHMAN,
*Assistant Commissioner, Regulations and Rulings.*

[FR Doc. 78-12431 Filed 5-4-78; 8:45 am]

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[4110-03]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

[21 CFR Part 50]

[Docket No. 78N-0049]

### PROTECTION OF HUMAN SUBJECTS

### Proposed Establishment of Regulations

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing a regulation to provide protection for prisoners involved in those research activities which fall within the jurisdiction of FDA. This proposal is issued in compliance with the directive of the Secretary of the Department of Health, Education, and Welfare (DHEW), is in line with the regulations proposed by DHEW, and implements the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research on research involving prisoners. This proposal is intended to assure adequate protection of the rights and safety of prisoners who are subjects in clinical investigations subject to requirements for prior submission to FDA, or conducted in support of applications for permission to conduct further research or to market regulated products.

DATES: Written comments by July 5, 1978. The proposed effective date of the final rule is 12 months after the date of its publication in the FEDERAL REGISTER.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Roger W. Barnes, Office of Medical Affairs (HFM-1), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fish-

ers Lane, Rockville, Md. 20857, 301-443-1177.

SUPPLEMENTARY INFORMATION: In the FEDERAL REGISTER of January 5, 1978 (43 FR 1050), DHEW proposed regulations governing research conducted or supported by DHEW which involves prisoners. The proposed DHEW regulations implement the recommendations of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research on research involving prisoners and provide additional protection for prisoners involved in such research activities. As noted in the proposal:

> The proposed regulations set forth below cover only research conducted or supported by DHEW. They do not cover the non-DHEW supported research which is submitted to the Food and Drug Administration to satisfy its regulatory requirements. The Secretary's rulemaking authority with respect to FDA activities has been delegated to the Commissioner of FDA. The Secretary has directed the Commissioner to issue, as soon as possible, regulations that apply the standards set out in these regulations to research that the FDA accepts to satisfy its regulatory requirements. (43 FR 1051)

In order to comply with the Secretary's directive, and in order to set forth a uniform Departmental policy regarding research involving prisoners, the Commissioner of Food and Drugs is proposing regulations which will apply the principles set forth in the proposed DHEW regulations to all prisoner research that is subject to FDA jurisdiction. The Commissioner adopts the findings of both the Commission and the Secretary regarding the inherently coercive nature of the prison environment and the need for special protections for prisoners involved as subjects in clinical research. The Commissioner also believes that, wherever possible, FDA's regulations should be compatible with, if not identical to, those of the Department. A multiplicity of dissimilar and inconsistent Federal requirements is burdensome to institutions, Institutional Review Boards (IRB's), and the process of clinical investigation. The proposed Part 50, "Protection of Human Subjects," will contain regulations which apply to all clinical investigations which are subject to requirements for prior submission under section 505(i), 507(d), or 520(g) (21 U.S.C. 355(i), 357(d), or 360j(g) of the Federal Food, Drug, and Cosmetic Act, or which support or are intended to support an application for a research or marketing permit for a product regulated by the agency. While only Subparts A and C of Part 50 are being proposed at this time, the Commissioner intends, in the near future, to revise and update existing agency regulations to incorporate appropriate Departmental standards and other relevant materials on informed consent. Regulations regarding informed consent will be proposed as Subpart B of Part 50. This proposal is part of a major effort of FDA to improve its regulations on clinical investigations. Applying the principles set forth in this proposal to research that is subject to FDA jurisdiction will result in nonacceptance of research not conducted in conformity with this proposal.

### CLINICAL INVESTIGATIONS INVOLVING PRISONERS

The proposed regulation conforms to the requirements proposed by the Department insofar as they involve biomedical research and extends those requirements to research submitted to the agency to satisfy its regulatory requirements. The Commissioner has considered the report of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research (published in the FEDERAL REGISTER of January 14, 1977 (42 FR 3076), as well as the comments set forth in the preamble to the January 5, 1978 DHEW proposal, and incorporates those documents as part of the discussion presented here. The Commissioner emphasizes that proposed Subpart C prohibits the use of prisoners as subjects in research subject to FDA jurisdiction if the research is not intended to improve the health of the individual prisoners. This means that no prisoner may serve as a placebo control

### DEFINITIONS

Proposed § 50.3 defines a number of terms used in proposed Part 50. Many of the proposed definitions pertain to terms that can be variably or imprecisely interpreted by persons affected by the proposed regulation. These definitions are to provide a common basis of understanding for the agency, the regulated industry, and the general public regarding the terms used in Part 50. In proposed § 50.3(a), the term "act" is limited to the Federal Food, Drug, and Cosmetic Act, as amended. This is consistent with definitions appearing elsewhere in the agency's regulations. Other statutes, when used, will be mentioned by name, e.g., the Public Health Service Act.

The decision to make this proposal agency-wide in scope required a term that would include all the various requirements for submission of scientific data and information to the agency under its regulatory jurisdiction, even though in certain cases no permission is technically required from FDA for the conduct of a proposed activity with a particular product, i.e., carrying out research or continuing marketing of a product. The term chosen, "application for research or marketing permit," is intended solely as a shorthand way of referring to at least 21 separate categories of data and information that are now, or in the near future will become, subject to requirements for submission to the agency; the term is defined in proposed § 50.3(b).

Other proposed definitions include terms to describe the persons who initiate and carry out clinical investigations: "sponsor," "investigator," and "sponsor-investigator." The term "sponsor" is currently defined in §§ 310.3(j) and 510.3(k) (21 CFR 310.3(j) and 510.3(k), but the Commissioner believes this definition is unsatisfactory because it fails to distinguish the other commonly used term "investigator," which is not defined. Although these terms are widely understood, their precise meanings are difficult to express. The key distinctions seem to lie in who initiates the project (the sponsor) and who actually conducts the study (the investigator). These distinctions have been incorporated in the definitions proposed in § 50.3 (d) and (f), together with a further distinction: investigators must be individuals, while sponsors can be individuals, corporations, institutions, or other legal entities. (The term "person" is defined in paragraph (e) to include an individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational unit thereof, and any other legal entity.) The Commissioner believes that these distinctions will clarify the participants' respective roles and duties.

Many studies (approximately 45 percent of the investigational new drug applications in the Bureau of Drugs, for example) are initiated and actually conducted by the same individual; this investigator may carry out the study alone or with other investigators responsible to the initiator. The Commissioner considers it important to identify the hybrid role of the "sponsor-investigator" and, where appropriate, to allow special provisions for that role. Thus, this term is defined in proposed § 50.3(g); unlike the term "sponsor," the "sponsor-investigator" is limited to individuals.

Proposed § 50.3(h) defines "subject" as a human who is or becomes a participant in a clinical investigation, either as the recipient of the test article or as a control. The term may also, where appropriate, include either a person in normal health or a patient to whom the test article might offer a therapeutic benefit or provide diagnostic information.

The terms "institution" and "institutional review board" are defined in proposed § 50.3(i) and (j), respectively. Although since 1971 FDA has had a requirement that clinical drug investigations involving institutionalized subjects be reviewed and monitored by an institutional review committee or

board, no guidelines defining the outer limits of these concepts have been issued. The Commissioner proposes that the definition of "institution" include any corporation, scientific or academic establishment, or government agency that engages in the conduct of research on human subjects or in the delivery of medical services to individuals: a hospital, a university that performs research with students, a retirement home that primarily provides housing and personal care to the elderly but also cares for health needs of residents, a manufacturer that uses its employees as subjects in the course of product development, or a prison. Although this proposal deals only with prisoners, Part 50, when completed, will deal with the broader subject of protection of all subjects of biomedical research subject to FDA jurisdiction.

The term "institutional review board" is defined in this proposal to mean any board, committee, or other formally organized group created to review research involving human subjects, approve the initiation of such research, monitor its conduct, and when necessary, suspend or terminate the research. The Commissioner notes that the use of the word "board" reflects terminology of the National Research Act of 1975 (Pub. L. 93-348), DHEW regulations (45 CFR Part 46), and discussions of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research. However, the Commissioner also recognizes that existing FDA regulations, e.g., 21 CFR 312.1, use the term "committee" as does section 520(g) of the act. The Commissioner believes there is no practical difference between the two words and has elected to follow Departmental terminology.

An "institutionalized subject," as defined in proposed § 50.3(k), includes two categories: First, any individual who is voluntarily confined on the premises of, and in the care of, an institution for more than 1 day; outpatients are excluded from the definition in keeping with existing FDA policy. Second, any individual involuntarily confined for any period of time in an institution such as a penal facility or a hospital by civil commitment.

"Prisoner," as defined in proposed § 50.3(l), follows the definition proposed by DHEW and means any individual involuntarily confined or detained in a penal institution. In scope, the term encompasses individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing. To some extent, the terms "institutionalized subject" and "prisoner" overlap. The term "prisoner," however, does not include either those persons voluntarily confined or those persons subject to a civil commitment procedure which is not an alternative to criminal prosecution; the term "prisoner" will be used throughout Subpart C.

The Commissioner is proposing that the final rule take effect 12 months after its date of publication in the FEDERAL REGISTER. Ongoing clinical investigations involving prisoners as subjects shall be completed by the effective date, discontinued, or brought into conformity with the requirements of the regulation. In those cases in which all phases of a clinical investigation except statistical evaluations are completed by the effective date, statistical evaluations completed after the effective date will be accepted.

### LEGAL AUTHORITY

The results of literally hundreds of clinical investigations are submitted to FDA each year by persons seeking regulatory action by the agency. To obtain a marketing license, clinical research data are offered to support the safety and effectiveness or functionality of a product, e.g., a food or color additive, a drug or biologic for human use, or a medical device for human use. Even where a license is not required or already has been issued, such data may be relied upon to demonstrate the bioavailability of a marketed drug, the general recognition of safety of a product, or the absence of any need for premarket approval or a product standard for a device. In evaluating the enormous volume of clinical investigations filed with FDA, many types of scientific and regulatory review must be devoted to these studies apart from determining their ethical and scientific acceptability and their basic validity, e.g., to interpret the results and to evaluate the status of the affected products in light of the results. Given the limited resources within the agency, the Commissioner believes that FDA must have standards to screen out those clinical investigations that are likely to be unacceptable and thus should not be authorized by FDA or warrant little further evaluation in support of a product application. The promulgation of this regulation provides one process for making this judgment. Moreover, the regulation reflects principles recognized by the scientific community as essential to sound research involving human subjects. Thus, this regulation will assist FDA in identifying those investigations that cannot be permitted to be carried out or considered in support of an application for a research or marketing permit.

Under section 701(a) of the act (21 U.S.C. 371(a)), the Commissioner is empowered to promulgate regulations for the efficient enforcement of the act. Previously, the Commissioner has issued regulations (21 CFR 314.111(a)(5)) for determining whether a clinical investigation of a drug intended for human use, among other things, was scientifically reliable and valid, in the words of the act: "adequate and well-controlled," to support approval of a new drug. These regulations were issued under sections 505 and 701(a) of the act and have been upheld by the Supreme Court (see *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Upjohn Co.* v. *Finch*, 422 F.2d 944 (6th Cir. 1970) and *Pharmaceutical Manufacturers Association* v. *Richardson*, 318 F. Supp. 301 (D. Del. 1970)).

Furthermore, sections 505(i), 507(d), and 520(g) of the act, regarding clinical investigations that require prior FDA authorization, direct the Commissioner to promulgate regulations to protect the public health in the course of those investigations. The proposed regulation is intended to fulfill these mandates.

The Commissioner concludes that legal authority to promulgate this regulation exists under sections 505(i), 507(d), 520(g), and 701(a) of the act, as essential to protection of the public health and safety and to enforcement of the agency's responsibilities under sections 406, 409, 502, 503, 505, 506, 507, 510, 513, 514, 515, 516, 518, 519, 520, 601, 706, and 801 of the act, as well as the responsibilities of FDA under sections 351 and 354 to 360F of the Public Health Service Act.

The Commissioner will promulgate conforming amendments in other FDA regulations if appropriate to execute the policy set forth in this regulation.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 406, 409, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 601, 701(a), 706, and 801, 52 Stat. 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-560, 562-574 (21 U.S.C. 346, 348, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 361, 371(a), 376, and 381)) and the Public Health Service Act (secs. 215, 351, 354-360F, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 262, 263b-263n)) and under authority

delegated to him (21 CFR 5.1), the Commissioner proposes that Chapter I of Title 21 of the Code of Federal Regulations be amended by adding new Part 50 to read as follows:

## PART 50—PROTECTION OF HUMAN SUBJECTS

### Subpart A—General Provisions

Sec.
50.1 Scope.
50.3 Definitions.

### Subpart B—[Reserved]

### Subpart C—Protections Pertaining to Clinical Investigations Involving Prisoners as Subjects

50.40 Applicability.
50.42 Purpose.
50.44 Permitted clinical investigations involving prisoners.
50.46 Composition of institutional review boards where prisoners are involved.
50.48 Additional duties of the institutional review boards where prisoners are involved.

AUTHORITY: Secs. 406, 409, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 601, 701(a), 706, and 801, Pub. L. 717, 52 Stat. 1049-1054 as amended, 1055, 1058 as amended, 55 Stat. 851 as amended, 59 Stat. 463 as amended, 72 Stat. 1785-1788 as amended, 74 Stat. 399-407 as amended, 76 Stat. 794-795 as amended, 90 Stat. 540-560, 562-574 (21 U.S.C. 346, 348, 352, 353, 355, 356, 357, 360, 360c-360f, 360h-360j, 361, 371(a), 376, and 381); secs. 215, 351, 354-360F, Pub. L. 410, 58 Stat. 690, 702 as amended, 82 Stat. 1173-1186 as amended (42 U.S.C. 216, 262, 263b-263n).

### Subpart A—General Provisions

#### § 50.1 Scope.

This part applies to all clinical investigations regulated by the Food and Drug Administration under sections 505(i), 507(d), and 520(g) of the act, as well as clinical investigations that support applications for research or marketing permits for products regulated by the Food and Drug Administration, including food and color additives, cosmetics, drugs for human use, medical devices for human use, biological products for human use, and electronic products. Additional specific obligations and commitments of, and standards of conduct for, persons who sponsor and/or monitor clinical investigations involving particular test articles may also be found in other parts (e.g., Parts 312 and 812) of this chapter. Compliance with these parts is intended to protect the rights and safety of subjects involved in investigations filed with the FDA pursuant to sections 406, 409, 502, 503, 505, 506, 507, 510, 513-516, 518-520, 601, 706, and 801 of the act and sections 351 and 354-360F of the Public Health Service Act.

#### § 50.3 Definitions.

As used in this part:

(a) "Act" means the Federal Food, Drug, and Cosmetic Act, as amended (secs. 201-902, 52 Stat. 1040 et seq., as amended (21 U.S.C. 321-392)).

(b) "Application for research or marketing permit" includes:

(1) A color additive petition, described in Part 71 of this chapter.

(2) A food additive petition, described in Part 171 of this chapter.

(3) Data and information regarding a substance submitted as part of the procedures for establishing that a substance is generally recognized as safe for use that results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food, described in §§ 170.30 and 570.30 of this chapter.

(4) Data and information regarding a food additive submitted as part of the procedures regarding food additives permitted to be used on an interim basis pending addtional study, described in § 180.1 of this chapter.

(5) Data and information regarding a substance submitted as part of the procedures for establishing a tolerance for unavoidable contaminants in food and food-packaging materials, described in section 406 of the act.

(6) A "Notice of Claimed Investigational Exemption for a New Drug," described in Part 312 of this chapter.

(7) A new drug application, described in Part 314 of this chapter.

(8) Data and information regarding the bioavailability or bioequivalence of drugs for human use submitted as part of the procedures for issuing, amending, or repealing a bioequivalence requirement, described in Part 320 of this chapter.

(9) Data and information regarding an over-the-counter drug for human use submitted as part of the procedures for classifying such drugs as generally recognized as safe and effective and not misbranded, described in Part 330 of this chapter,

(10) Data and information regarding a prescription drug for human use submitted as part of the procedures for classifying such drugs as generally recognized as safe and effective and not misbranded, to be described in this chapter.

(11) Data and information regarding an antibiotic drug submitted as Part of the procedures for issuing, amending, or repealing regulations for such drugs, described in Part 430 of this chapter.

(12) An application for a biological product license, described in Part 601 of this chapter.

(13) Data and information regarding a biological product submitted as part of the procedures for determining that licensed biological products are safe and effective and not misbranded, described in Part 601 of this chapter.

(14) An "Application for an Investigational Device Exemption," described in Part 812 of this chapter.

(15) Data and information regarding a medical device for human use submitted as part of the procedures for classifying such devices, described in section 513 of the act.

(16) Data and information regarding a medical device for human use submitted as part of the procedures for establishing, amending, or repealing a standard for such devices, described in section 514 of the act.

(17) An application for premarket approval of a medical device for human use, described in section 515 of the act.

(18) A product development protocol for a medical device for human use, described in section 515 of the act.

(19) Data and information regarding an electronic product submitted as part of the procedures for establishing, amending, or repealing a standard for such products, described in section 358 of the Public Health Service Act.

(20) Data and information regarding an electronic product submitted as part of the procedures for obtaining a variance from any electronic product performance standard, as described in § 1010.4 of this chapter.

(21) Data and information regarding an electronic product submitted as part of the procedures for granting, amending, or extending an exemption from a radiation safety performance standard, as described in § 1010.5 of this chapter.

(22) Data and information regarding an electronic product submitted as part of the procedures for obtaining an exemption from notification of a radiation safety defect or failure of compliance with a radiation safety performance standard, described in Subpart D of Part 1003 of this chapter.

(c) "Clinical investigation" means any experiment involving a test article, which experiment is either subject to requirements for prior submission to the Food and Drug Adminsitration under section 505(i), 507(d), or 520(g) of the act, or which experiment is not subject to requirements for prior submission to the Food and Drug Administration under these sections of the act, but the results of which are intended to be later submitted to, or held for inspection by, the Food and Drug Administration as part of an application for a research or marketing permit. The term does not include experiments that are subject to the provisions of Part 58 of this chapter, which governs nonclinical laboratory studies.

(d) "Investigator" means an individual who actually conducts a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject.

(e) "Person" includes an individual, partnership, corporation, association, scientific or academic establishment, government agency or organizational

unit thereof, and any other legal entity.

(f) "Sponsor" means a person who initiates a clinical investigation, but who does not actually conduct the investigation, i.e., the test article is administered or dispensed to, or used involving, a subject under the immediate direction of another individual. A person other than an individual (e.g., corporation or agency) that uses one or more of its own employees to conduct a clinical investigation it has initiated is considered to be a sponsor (not a sponsor-investigator), and the employees are considered to be investigators.

(g) "Sponsor-investigator" means an individual who both initiates and actually conducts, alone or with others, a clinical investigation, i.e., under whose immediate direction the test article is administered or dispensed to, or used involving, a subject. The term does not include any person other than an individual, e.g., corporation or agency.

(h) "Subject" means a human who is or becomes a participant in a clinical investigation, either as a recipient of the test article or as a control. A subject may be either a person in normal health or a patient to whom the test article might offer a therapeutic benefit or provide diagnostic information.

(i) "Institution" means a person, other than an individual, who engages in research on human subjects or in the delivery of medical services to individuals, as a primary activity or as an adjunct to providing residential or custodial care to humans. The term includes, for example, a hospital, retirement home, prison, academic establishment, and pharmaceutical or device manufacturer. "Facility" as used in section 520(g) of the act is deemed to be synonymous with the term "institution" for purposes of this part.

(j) "Institutional review board" means any board, committee, or other group formally designated by an institution for the purposes of reviewing clinical investigations or other types of biomedical research involving humans as subjects, approving the initiation of such investigations or research, overseeing the conduct of such investigations or research, and/or terminating or suspending such investigations or research when necessary for the protection of the subjects. The term has the same meaning as the phrase "institutional review committee" as used in section 520(g) of the act.

(k) "Institutionalized subject" means:

(1) A subject who is voluntarily confined for a period of more than 24 continuous hours on the premises of, and in the care of, an institution (e.g., a hospital in-patient or a retirement home resident), whether or not that institution is a sponsor of the clinical investigation; and

(2) A subject who is involuntarily confined for any period of time in a penal institution (e.g., jail, workhouse, house of detention, or prison), or another institution (e.g., a hospital) by virtue of a sentence under a criminal or civil statute, or awaiting arraignment, commitment, trial, or sentencing under such a statute, or by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal facility.

(l) "Prisoner" means any individual involuntarily confined or detained in a penal institution. The term is intended to encompass individuals sentenced to such an institution under a criminal or civil statute, individuals detained in other facilities by virtue of statutes or commitment procedures which provide alternatives to criminal prosecution or incarceration in a penal institution, and individuals detained pending arraignment, trial, or sentencing.

(m) "Test article" means any drug (including a biological product for human use), medical device for human use, human food additive, color additive, cosmetic, electronic product, or any other article subject to regulation under the act or under sections 351 and 354-360F of the Public Health Service Act.

### Subpart B—[Reserved]

### Subpart C—Protections Pertaining to Clinical Investigations Involving Prisoners as Subjects

#### § 50.40 Applicability.

(a) The regulations in this subpart are applicable to all clinical investigations involving prisoners as subjects, subject to requirements for prior submission to the Food and Drug Administration under section 505(i), 507(d), or 520(g) of the act, or conducted in support of an application for a research or marketing permit for a product regulated by the agency.

(b) Nothing in this subpart shall be construed as indicating that compliance with the procedures set forth herein will authorize research involving prisoners as subjects, to the extent such research is limited or barred by applicable State or local law.

#### § 50.42 Purpose.

Inasmuch as prisoners may be under constraints because of their incarceration which could affect their ability to make a truly voluntary and uncoerced decision whether or not to participate as subjects in research, it is the purpose of this subpart to provide additional safeguards for the protection of prisoners involved in activities to which this subpart is applicable.

#### § 50.44 Permitted clinical investigations involving prisoners.

(a) Clinical investigations conducted by the Food and Drug Administration, subject to requirements for prior submission to the Food and Drug Administration under section 505(i), 507(d), or 520(g) of the act, or conducted in support of an application for a research or marketing permit for a product regulated by the FDA may involve prisoners as subjects only if:

(1) The institution responsible for the conduct of the clinical investigation has certified to the Commissioner that the Institutional Review Board has approved the clinical investigation under § 50.48 of this subpart; and

(2) In the judgment of the Commissioner, the proposed clinical investigation involves solely research on practices both innovative and accepted, which is intended to improve, or which has a reasonable probability of improving, the health and well-being of the subjects.

(b) Except as provided in paragraph (a) of this section, clinical investigations conducted by or subject to requirements for prior submission to the agency or conducted in support of a research or marketing permit for a product regulated by the agency shall not involve prisoners as subjects.

#### § 50.46 Composition of institutional review boards where prisoners are involved.

In addition to satisfying any other requirements governing Institutional Review Boards set forth in this chapter, an Institutional Review Board, carrying out responsibilities under this part with respect to research covered by this subpart, shall also meet the following specific requirements:

(a) A majority of the Board (exclusive of prisoner members) shall have no association with the prison(s) involved, apart from their membership on the Board.

(b) At least one member of the Board shall be a prisoner, or a prisoner advocate with appropriate background and experience to serve in that capacity, except that where a particular research project is reviewed by more than one Board only one Board need satisfy this requirement.

#### § 50.48 Additional duties of the institutional review boards where prisoners are involved.

(a) In addition to all other responsibilities prescribed for Institutional Review Boards under this chapter, the Board shall review clinical investigations covered by this subpart and approve such clinical investigations only if it finds that:

(1) Any possible advantages accruing to the prisoner through his or her participation in the clinical investigation, when compared to the general living conditions, medical care, quality of food, amenities, and opportunity for earnings in the prison, are not of such a magnitude that his or her ability to

weigh the risks of the clinical investigation against the value of such advantages in the limited choice environment of the prison is impaired;

(2) The risks involved in the clinical investigation are commensurate with risks that would be accepted by nonprisoner volunteers;

(3) Procedures for the selection of subjects within the prison are fair to all prisoners and immune from arbitrary intervention by prison authorities or prisoners;

(4) The information is presented in language which is appropriate for the subject population;

(5) Adequate assurance exists that parole boards will not take into account a prisoner's participation in the clinical investigation in making decisions regarding parole, and each prisoner is clearly informed in advance that participation in the clinical investigation will have no effect on his or her parole; and

(6) Where the Board finds there may be need for followup examination or care of participants after the end of their participation, adquate provision has been made for such examination or care, taking into account the varying lengths of individual prisoners' sentences, and for informing participants of this fact.

(b) The Board shall carry out such other duties as may be assigned by the Commissioner.

(c) The institution shall certify to the Commissioner, in such form and manner as the Commissioner may require, that the duties of the Board under this section have been fulfilled.

Interested persons may, on or before July 5, 1978 submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107. A copy of the economic impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Dated: April 22, 1978.

DONALD KENNEDY,
*Commissioner of Food and Drugs.*

[FR Doc. 78-11994 Filed 5-4-78; 8:45 am]

[4110-03]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Food and Drug Administration

[21 CFR Part 184]

[Docket No. 78N-0106]

### PROPYL GALLATE

### Proposed Modification of GRAS Usage as a Direct Human Food Ingredient

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This is a proposal to modify the conditions of use for propyl gallate as a generally recognized as safe (GRAS) direct human food ingredient. The safety of propyl gallate was evaluated during the comprehensive safety review being conducted by the agency, and the ingredient was affirmed as GRAS. But the adopted conditions of use conflict with good manufacturing practice. This proposal would modify the regulation for the use of propyl gallate to include current good manufacturing provisions for its GRAS use in food.

DATE: Comments by July 5, 1978.

ADDRESS: Written comments (preferably four copies) to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

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

SUPPLEMENTARY INFORMATION: A comprehensive study of human food ingredients classified as generally recognized as safe (GRAS) or subject to a prior sanction is being conducted by FDA. Pursuant to this review, the Commissioner of Food and Drug issued a proposed regulation in the FEDERAL REGISTER of September 23, 1974 (39 FR 34199) for the use of propyl gallate as an antioxidant in food. This proposal summarized the available information regarding the identity, manufacture, and safety of this food ingredient. It was proposed that propyl gallate be affirmed as GRAS as a direct human food ingredient for use as an antioxidant, under conditions of good manufacturing practice. Good manufacturing practice was defined as a maximum level of 0.015 percent in food. No comments were received on this proposal, and in the FEDERAL REGISTER of December 7, 1976 (41 FR 53613) it was adopted without change.

A manufacturer of propyl gallate recently requested clarification of the labeling requirements for this ingredient because of the changes in its permitted levels and conditions of use resulting from the GRAS affirmation regulation published on December 7, 1976. Before this regulation, the GRAS use of propyl gallate was restricted to a level where the total content of antioxidants did not exceed 0.02 percent of the fat or oil content of food (including essential (volatile) oil content of the food). The present GRAS regulation limits the use of propyl gallate to 0.015 percent of the food irrespective of the fat or oil content of the food or the content of other antioxidants. The December 7, 1976 regulation could be interpreted as authorizing increased levels of use of propyl gallate in food, and this would appear to conflict with good manufacturing practice (21 CFR 184.1(b)(1).

But the current regulation was not intended to alter the levels of use of propyl gallate in food. This condition developed because of two errors. The first error was the failure to include the restrictions that base the level of addition of the ingredient on the fat or oil content of the food and on the presence of other antioxidants. The second error resulted from adoption of the maximum weighted mean use level of 0.015 percent, rather than the maximum use level of 0.02 percent as reported in the National Academy of Sciences/National Research Council's survey of food manufacturers. Affirming the former level as GRAS is unfair to those manufacturers that are using the ingredient at the maximum level reported in the survey. Both of these errors were in the proposed regulation for propyl gallate published on September 23, 1974, and, through an oversight, were not corrected in the final regulation, which was published on December 7, 1976. The Commissioner therefore concludes that it is in the public interest to amend the existing regulation and restore the previous good manufacturing practice use of propyl gallate. He is therefore proposing that propyl gallate be affirmed as GRAS as an antioxidant at a maximum use level of 0.02 percent of the fat or oil content of the food. This maximum use level, consisting of propyl gallate alone or in combination with other antioxidants, shall represent the total content of antioxidant in food.

The proposed action does not affect the present uses of propyl gallate for pet food or animal feed.

The Commissioner has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact state-

ment is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food, and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 701(a), 52 Stat. 1055, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348, 371(a))), and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Part 184 be amended in § 184.1660 by revising paragraph (d), to read as follows:

§ 184.1660 Propyl gallate.

* * * * *

(d) The ingredient is used in food, in accordance with § 184.1(b)(1), at levels not to exceed good manufacturing practice. Good manufacturing practice results in a maximum level, as served, of 0.02 percent calculated on the fat or oil content, including the essential (volatile) oil content, of the food. The maximum use level, consisting of propyl gallate alone or in combination with other antioxidants, shall represent the total content of antioxidant in food.

* * * * *

Interested persons may, on or before July 5, 1978, submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

NOTE.—The Food and Drug Administration has determined that this proposal will not have a major economic impact as defined by Executive Order 11821 (amended by Executive Order 11949) and OMB Circular A-107.

Dated: April 28, 1978.

WILLIAM F. RANDOLPH,
*Acting Associate Commissioner for Compliance.*

[FR Doc. 78-12269 Filed 5-4-78; 8:45 am]

[4110-03]

[21 CFR Part 740]

[Docket No. 77P-0353]

## COAL TAR HAIR DYES CONTAINING 4-METHOXY-*M*-PHENYLENEDIAMINE (2,4-DIAMINOANISOLE) OR 4-METHOXY-*M*-PHENYLENEDIAMINE SULFATE (2,4-DIAMINOANISOLE SULFATE)

### Proposed Warning Statement; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Extension of comment period for proposed rule.

SUMMARY: This document extends to May 22, 1978 the comment period on the proposal to require a warning statement and warning posters on coal tar hair dyes containing 4-methoxy-*m*-phenylenediamine (also known as 2,4-diaminoanisole) or 4-methoxy-*m*-phenylenediamine sulfate (also known as 2,4-diaminoanisole sulfate). This action is taken because of a request for extension of time. The proposed warning will inform consumers about the risk of cancer that may result from using hair dyes containing these ingredients.

DATES: Comments by May 22, 1978.

ADDRESS: Written comments to the Hearing Clerk (HFC-20), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

John A. Wenninger, Bureau of Foods (HFF-441), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C Street SW., Washington, D.C. 20204, 202-245-1061.

SUPPLEMENTARY INFORMATION: in the FEDERAL REGISTER of January 6, 1978 (43 FR 1101), the Commissioner of Food and Drugs issued a proposal to require warning labels on coal tar hair dyes containing 4-methoxy-*m*-phenylenediamine sulfate (also known as 2,4-diaminoanisole sulfate) to warn consumers about the risk of cancer that may result from using hair dyes containing these ingredients. The proposal would also require that posters be displayed in beauty salons alerting patrons to ask to read the label on the hair dye preparation to be used on their hair. Interested persons were requested to submit their comments on the proposal on or before March 7, 1978. The comment period was extended to close of business, May 8, 1978 in a notice published in the FEDERAL REGISTER of March 10, 1978 (43 FR 9830).

The Commissioner has received a request for further extension of time for comment aby the Cosmetic, Toiletry and Fragrance Association (CTFA). The CTFA request seeks an extension of time to comment on the proposal in light of material, including material on risk assessments, placed on file with the Hearing Clerk as memoranda during the comment period. The request asserts that additional time is needed, because of scheduling problems, to evaluate the filed material and submit comments.

The Commissioner is granting the extension.

Interested persons may, on or before May 22, 1978 submit to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Dated: May 1, 1978.

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

[FR Doc. 78-12253 Filed 5-2-78; 9:55 am]

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[1505-01]

[21 CFR Part 1040]

[Docket No. 76N-0383]

## MERCURY VAPOR LAMPS

### Proposed Performance Standard

*Correction*

In FR Doc. 78-10792 appearing at page 16997 in the issue for Friday, April 21, 1978, on page 17002, in the middle column, in the fourth paragraph, in the second line, the comments closing date now listed as "May 22, 1978", should be corrected to read "June 20, 1978."

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[1410-01]

## COPYRIGHT ROYALTY TRIBUNAL

[37 CFR Part 302]

## FILING OF CLAIMS TO CABLE FEES

### Proposed Rulemaking with Respect to Filing of Claims to Cable Royalty Fees

AGENCY: Copyright Royalty Tribunal.

ACTION: Proposed rule.

SUMMARY: Consideration is being given to the following proposed rule,

which would prescribe requirements whereby persons claiming to be entitled to compulsory license copyright fees for secondary transmissions by cable systems shall file claims with the Copyright Royalty Tribunal. The proposed rule would prescribe the content and time of filing of such claims.

DATE: Comments must be received on or before May 22, 1978.

ADDRESSES: Comments shall be addressed to the Chairman, Copyright Royalty Tribunal, 1111 20th Street NW., Washington, D.C. 20036. Ten copies of all written comments shall be submitted.

FOR FURTHER INFORMATION CONTACT:

Thomas C. Brennan, Chairman, Copyright Royalty Tribunal, 202-653-5175.

SUPPLEMENTARY INFORMATION: The Copyright Royalty Tribunal in an Advance Notice of Proposed Rulemaking, published at 43 FR 6263, invited comments concerning the filing of claims to royalty fees for secondary transmissions by cable systems pursuant to 17 U.S.C. 111(d)(5)(A). The comments and reply comments filed with the Copyright Royalty Tribunal reflect a difference of opinion among representatives of copyright owners who are likely to be major claimants as to whether the copyright statute requires filings in July, 1978, for claims to royalty fees for secondary transmissions during the period January 1 through June 30, 1978. Certain comments filed maintain that the copyright statute requires filings every July, including July of 1978. Other comments suggest that the Copyright Royalty Tribunal has discretion to forego a requirement that claims be filed in July of 1978, in view of the regulations adopted by the Copyright Office concerning the filing with the Office of statements of account by cable operators.

The proposed rule requires all copyright owners who wish to share in the distribution of royalty fees for secondary transmissions by cable systems during the first six months of 1978 to file claims with the Copyright Royalty Tribunal during the month of July, 1978. A failure to file a claim during the month of July would bar a copyright owner from sharing in the distribution of royalty fees for uses during the first six months of 1978. The proposed rule requires only a minimal filing of a claim in July of 1978, with a requirement that the filing be supplemented in July, 1979, after copyright owners have had an opportunity to examine the statements of account filed by cable operators in the Copyright Office. Adoption of the proposed rule would thus preclude any distribution of royalty fees by the Copyright Royalty Tribunal prior to August, 1979.

The Advance Notice of Proposed Rulemaking stated that the "CRT wishes to receive comments concerning the types of information that should be required of copyright claimants." The comments filed indicate that copyright owner claimants will be unable to determine the types of information that would be appropriate to a claim, at least until the claimants have had an opportunity to examine the initial statements of account filed by cable operators. The Copyright Royalty Tribunal consequently does not propose at this time to adopt regulations on this subject, but later this year will invite comments on what information should be required in the 1979 filings. It is likely that subsequent to the first cable royalty distribution proceeding, the Copyright Royalty Tribunal will wish to consider more detailed regulations concerning information to be required of claimants.

The Copyright Royalty Tribunal, in an advisory letter of January 31, 1978, stated that participation in the royalty distribution proceedings does not require copyright owners to preserve and submit simultaneous fixations of live transmissions. The Motion Picture Association of America, Inc. (MPAA) urges the Copyright Royalty Tribunal to "reconsider" the advisory letter and to "invite comments in the matter in any further notice the CRT may issue in this proceeding." The MPAA is concerned that the letter may be relied on to support a claim that a fixation of a live television broadcast is not necessary as a condition for filing a royalty claim, or that a fixation, once made, may be erased or destroyed prior to filing the claim without detriment to the copyright owner.

17 U.S.C. 102 requires that a work must be fixed in a tangible medium of expression as a condition of copyright protection. This requirement is statutory in nature and precludes the Copyright Royalty Tribunal from adopting any regulations waiving the requirement of fixation. Consequently, the copyright Royalty Tribunal was not requested to address that issue in its advisory letter.

No comments or reply comments filed with the Copyright Royalty Tribunal suggest that the views expressed in the advisory letter are an incorrect interpretation of the copyright statute. Certain comments or reply comments suggest the desirability of the Copyright Royalty Tribunal considering the subject of what proof may be required to establish that fixation of a particular program did occur. For the same considerations that resulted in the advisory letter, the Copyright Royalty Tribunal believes that it may be desirable for the Tribunal to determine at the earliest feasible date the nature of the proof of fixation that may be required during a royalty distribution proceeding. Therefore, the Copyright Royalty Tribunal invites interested parties to submit comments not later than June 15 as to what proof of fixation, other than the actual video tape or film, should be required in a royalty distribution proceeding. Comments should consider such form of proof as affidavits from authorized personnel, and the technical feasibility of preserving an indentifiable frame or frames from each program.

Such proposed rule reads as follows:

## PART 302—FILING OF CLAIMS TO CABLE ROYALTY FEES

Sec.

302.1 General.
302.2 Filing of claims to cable royalty fees for secondary transmissions during the period January 1 through June 30, 1978.
302.3 Content of claims.
302.4 Forms.
302.5 Supplemental filing.
302.6 Filing of claims to cable royalty fees for secondary transmissions during the period July 1 through December 31, 1978.
302.7 Filing of claims to cable royalty fees for secondary transmissions during calendar year 1979 and subsequent calendar years.
302.8 Compliance with statutory dates.

AUTHORITY: 17 U.S.C. 111(d)(5)(A).

### § 302.1 General.

This regulation prescribes procedures pursuant to 17 U.S.C. 111(d)(5)(A), whereby persons claiming to be entitled to compulsory license fees for secondary transmissions by cable systems shall file claims with the Copyright Royalty Tribunal (CRT).

### § 302.2 Filing of claims to cable royalty fees for secondary transmissions during the period January 1 through June 30, 1978.

Every person claiming to be entitled to complulsory license fees for secondary transmissions by cable systems during the period January 1 through June 30, 1978, shall file in the office of the Copyright Royalty Tribunal a claim to such fees during the calendar month of July, 1978. No royalty fees shall be distributed to copyright owners for secondary transmissions during the period January 1 through June 30, 1978, unless such owner has filed a claim to such fees during the calendar month of July, 1978. For purposes of this clause claimants may file claims jointly or as a single claim.

### § 302.3 Content of claims.

The claims filed pursuant to § 302.2 shall include the following information:

(a) The full legal name of the person or entity claiming compulsory license fees.

(b) The full address, including a specific number and street name or rural route, of the place of business of the person or entity,

(c) A general statement of the nature of the copyrighted works, whose secondary transmission provides the basis of the claim,

**§ 302.4 Forms.**

The Copyright Royalty Tribunal does not provide printed forms for the filing of claims.

**§ 302.5 Supplemental filing.**

During the month of July 1979 those persons who filed claims pursuant to § 302.2 for secondary transmissions during the period January 1 through June 30, 1978, shall make a supplemental filing, which shall include such information as the Copyright Royalty Tribunal may require.

**§ 302.6 Filing of claims to cable royalty fees for secondary transmissions during the period July 1 through December 31, 1978.**

During the month of July 1979, every person claiming to be entitled to compulsory license fees for secondary transmissions during the period July 1 through December 31, 1978, shall file in the offices of the Copyright Royalty Tribunal a claim to such fees. No royalty fees shall be distributed to copyright owners for secondary transmissions during the period July 1 through December 31, 1978, unless such owner has filed a claim to such fees during the calendar month of July 1979. For purposes of this clause claimants may file claims jointly or as a single claim. Such filing shall include such information as the Copyright Royalty Tribunal may require.

**§ 302.7 Filing of claims to cable royalty fees for secondary transmissions during calendar year 1979 and subsequent calendar years.**

During the month of July 1980, and in July of each succeeding year, every person claiming to be entitled to compulsory license fees for secondary transmissions during the preceeding calendar year shall file a claim to such fees in the office of the Copyright Royalty Tribunal. No royalty fees shall be distributed to copyright owners for secondary transmissions during the specified period unless such owner has filed a claim to such fees during the following calendar month of July. For purposes of this clause claimants may file claims jointly or as a single claim. Such filing shall include such information as the Copyright Royalty Tribunal may require.

**§ 302.8 Compliance with statutory dates.**

For purposes of 17 U.S.C. (d)(5)(A), claims required to be filed with the Copyright Royalty Tribunal during the month of July shall be considered as timely filed if (a) they are addressed to the Copyright Royalty Tribunal, 1111 20th Street NW., Washington, D.C. 20036, and deposited with the U.S. Postal Service with sufficient postage as first class mail prior to the expiration of the statutory period, and (b) they are accompanied by a certificate stating the date of deposit. The persons signing the certificate should have reasonable basis to expect that the correspondence would be mailed on or before the date indicated.

Dated: May 2, 1978.

THOMAS C. BRENNAN,
*Chairman,*
*Copyright Royalty Tribunal.*

[FR Doc. 78-12353 Filed 5-4-78; 8:45 am]

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[6560-01]

## ENVIRONMENTAL PROTECTION AGENCY

**[40 CFR Part 52]**

**[FRL 891-4]**

**APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

**North Carolina: Proposed Plan Revisions**

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: It is proposed to revise the North Carolina implementation plan by adding limits for emissions of sulfur dioxide ($SO_2$) and sulfuric acid ($H_2SO_4$) mist from the roasting of spodumene ore (a lithium-bearing mineral), and by changing the procedures used by fuel-burning sources to demonstrate, through fuel analysis, their compliance with the sulfur dioxide control standards of the plan.

DATE: To be considered, written comments must be received on or before June 5, 1978.

ADDRESSES: Comments should be sent to Walter Bishop of the Agency's Region IV Air Programs Branch (see Atlanta address below). Copies of the materials submitted by the State of North Carolina may be examined during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308.

Public Information Reference Unit, Library Systems Branch, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460.

Air Quality Section, Environmental Management Division, North Carolina Department of Natural Resources and Community Development, 512 North Salisbury Street, (P.O. Box 27687), Raleigh, N.C. 27611.

FOR FURTHER INFORMATION CONTACT:

Walter Bishop, Air Programs Branch, EPA Region IV, 345 Courtland Street NE., Atlanta, Ga. 30308, 404-881-3286 (FTS: 257-3286).

SUPPLEMENTARY INFORMATION: On February 9, 1978, the North Carolina Environmental Management Commission, following notice and public hearing in conformity with 40 CFR 51.4, adopted changes in the State's air pollution control regulations. These changes were submitted to EPA's Region IV office as proposed implementation plan revisions on February 14, 1978. The purpose of this notice is to describe these changes and to ask for public comment on them.

Two facilities in the State now process the lithium-bearing ore known as spodumene: Lithium Corporation of American in Bessemer City, and Foote Minerals in Shelby. On the basis of data supplied by these two sources, the North Carolina air quality agency performed diffusion modeling to estimate the ambient impact of their $SO_2$ and sulfuric acid mist emissions. The results were used to set the following emission limits for spodumene ore roasting: 9.7 pounds of $SO_2$ and 1.0 pound of $H_2SO_4$ mist per ton of ore roasted. These limits are contained in a new regulation, 15NCAC 2D .0527. Compliance with them is to be determined through the use of Method 8 of Appendix A to 40 CFR Part 60 (regulation .0501(d)(4)). The State agency's modeling results indicate that implementation of the new emission limits will not jeopardize the continued maintenance of the three national ambient air quality standards for $SO_2$, which are currently being met throughout the State.

Under regulation, .0501(d)(3), fuel-burning sources in North Carolina may demonstrate compliance with $SO_2$ emission control standards either by stack sampling or by fuel analysis. The present revision changes the requirements for the latter alternative. The following test methods of the American Society for Testing and Materials (ASTM) are to be used: (A) for coal—D 2234 for sampling, D 2013 for preparation, D 2015 for gross calorific value, D 3173 for moisture content, and D 3177 for sulfur content (the old regulation called for the use of methods D 2234 and D 3177 only); (B) for oil—D 270 for sampling, D 240 for heat of combustion, and D 129 for sulfur content (the old regulation called for the use of methods D 270 and D 129 only). Sulfur content and heating value of fuels shall be reported on a dry basis.

The public is invited to participate in the present rulemaking by submitting written comments on the proposed revisions in the North Carolina plan. After considering relevant comments received together with other information available to him the Administrator will act on the proposed changes.

(Section 110 of the Clean Air Act (42 U.S.C. 7410).)

Dated: April 27, 1978.

JOHN C. WHITE,
*Regional Administrator.*

[FR Doc. 78-12248 Filed 5-4-78; 8:45 am]

# notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

[6320-01]

## CIVIL AERONAUTICS BOARD

[Docket 32484; Order 78-4-126]

### INVESTIGATION OF THE LOCAL SERVICE CLASS SUBSIDY RATE; CLASS RATE IX

**Order Instituting Investigation and Requiring Information; Correction**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 19th day of April, 1978.

The information instructions attached to the order first published at 43 FR 18229 in the issue of April 28, 1978, were based on proposed costing procedures in notice of proposed rulemaking, PDR 46. PDR-46 was adopted as a final interim rule by PR-172 but with modifications. The instructions in Attachment A should be changed to reflect the adoption of PR-172. The attached tables II, II-A, II-B, II-C, II-D, and IV, Page 1 of 6, supersede the corresponding tables in Appendix A of the order.[1]

Also, the second paragraph in the first column on page 18230 should read as follows:

We also propose the adoption of an improved costing methodology based on Subpart K amendments adopted by PR-172. We feel the use of the Subpart K revisions will produce a beneficial refinement in the costing techniques used to compute subsidy rates, especially in the areas of passenger service expense and expenses related to ground property and equipment.[2] An explanation of the proposed changes can be found in Attachment A.

Dated: April 26, 1978.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
*Secretary.*

[FR Doc. 78-12356 Filed 5-4-78; 8:45 am]

[1]Tables filed as part of the original document.

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[6320-01]

[Docket 32220; Order 78-5-2]

### TACA INTERNATIONAL AIRLINES, S.A.

**Statement of Tentative Findings and Conclusions and Order To Show Cause**

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 2d day of May, 1978.

TACA International Airlines, S.A. (TACA) is the holder of a foreign air carrier permit[1] authorizing: (a) Foreign air transportation of persons, property, and mail (i) between the terminal point San Salvador, El Salvador; the intermediate points Guatemala City, Guatemala, San Pedro Sula, Honduras, Belize City, British Honduras (Belize), and Merida, Mexico;[2] and the terminal point New Orleans, La.; and (ii) between the terminal point San Salvador, El Salvador; the intermediate points San Pedro Sula, Honduras, and Belize City, British Honduras (Belize); and the terminal point Miami, Fla.;[3] and (b) the performance of charter trips in foreign air transportation pursuant to Part 212 of the Board's Economic Regulations.

By application filed on March 9, 1978,[4] TACA filed for renewal of its existing foreign air carrier permit.[5] Subsequently, TACA filed a petition requesting that its application be handled by show-cause procedures.

In granting TACA two routes to the United States, the Board found that the carrier met the operational and financial fitness standards of the Act,[6] and that its services were in the public interest. It currently serves the San Salvador-Miami and San Salvador-New Orleans markets each with daily round-trip combination services utilizing BAC-111 equipment. An opportunity for reciprocity exists for U.S. air carriers seeking to perform similar operations to El Salvador.

Finally, we are unable to conclude that TACA is substantially owned and effectively controlled by the citizens of El Salvador. The applicatin does show, however, that 30 percent of the stock continues to be held by an El Salvador corporation which is in turn exclusively owned by a Salvadorian family and that no other person owns as much as five percent of the stock.[7] Thus, it appears that control does lie in Salvadorian citizens. Since the only question appears to be technical ownership, rather than control, and the majority ownership by non-Salvadorian nationals does not appear to raise any problems, we find that it is in the public interest to waive our traditional national ownership and control policy.

In view of the foregoing and all the facts of record, the Board tentatively finds:

1. That it is in the public interest to renew the foreign air carrier permit of TACA International Airlines, S.A. authorizing the carrier, for a period of five years: (a) to engage in foreign air transportation of persons, property, and mail (i) between the terminal point San Salvador, El Salvador; the intermediate points Guatemala City, Guatemala, San Pedro Sula, Honduras, Belize City, British Honduras (Belize), and Merida, Mexico; and the terminal point New Orleans, La.; and (ii) between the terminal point San Salvador, El Salvador; the intermediate points San Pedro Sula, Honduras, and Belize City, British Honduras (Belize); and the terminal point Miami, Fla.; and (b) to engage in charter trips in foreign air transportation pursuant to Part 212 of the Board's Economic Regulations;

2. That the authority to serve Merida shall expire whenever a United States carrier inaugurates scheduled service between New Orleans and Merida. Service to Merida under the temporary authority granted here shall *not* be considered to be activity

[1]Order 77-10-39. approved October 11, 1977.

[2]TACA's permit states that the authority to serve Merida, Mexico as an intermediate point is a temporary authorization, which expires "whenever a United States carrier inaugurates scheduled service between New Orleans and Merida." (Order 77-10-39)

[3]TACA's permit is subject to the condition that the carrier serve the terminal points Miami and New Orleans only on flights that serve San Salvador.

[4]A copy of the application has been transmitted to the President of the United States in accordance with the requirements of section 801 of the Act.

[5]TACA requests that its foreign air carrier permit be renewed for an indefinite period. Previously, TACA's permit has been renewed for five-year periods (47 C.A.B. 742 and Order 73-5-142). There is no bilateral air transport agreement between the United States and El Salvador. Accordingly, we will renew TACA's current permit for a period of five years, rather than for an indefinite period.

[6]In the most recent order amending TACA's foreign air carier permit (Order 77-10-39), the Board found that the carrier met the fitness standards of the Act, and that TACA's services would be in the public interest. The present application continues to support these findings.

[7]The applicant indicates by amended exhibits filed April 4, 1978, that only the following persons held more than one percent of the carrier's voting stock: Cede & Co.; Merrill Lynch, Pierce, Fenner & Smith, Inc.; Pershing & Co., Inc.; Tad & Co.; Underwood Neuhaus & Co., Inc.; Watkins & Co., Inc.; William B. Daly; Albert B. Fay; Harry B. Leslie; and Robert K. Moses, Jr.

of a continuing nature as that term is used in section 558(c) of the Administrative Procedure Act, and will not be automatically extended by the timely filing of a renewal application;

3. That TACA is fit, willing, and able properly to perform the above-described foreign air transportation, and to conform to the provisions of the Act and the rules, regulations, and requirements of the Board;

4. That the public interest requires that the exercise of the privileges granted to TACA International Airlines, S.A. shall be subject to the terms, conditions, and limitations contained in the specimen form of foreign air carrier permit attached to this order, and to such other reasonable terms, conditions, and limitations required by the public interest as may from time to time be prescribed by the Board;

5. That an oral hearing is not required in the public interest;

6. That except to the extent granted, the application of TACA International Airlines, S.A. in Docket 32220 should be denied; and

7. That the renewal of TACA International Airlines, S.A.'s foreign air carrier permit is not a "major federal action significantly affecting the quality of the human environment" within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969,[8] and will not constitute a "major regulatory action" under the Energy Policy and Conservation Act of 1975 (EPACA), as defined in subsection 313.4(a)(1) of the Board's regulations.[9]

*It is therefore ordered*, That:

1. All interested persons are directed to show cause why the Board should not make final its tentative findings and conclusions, and should not, subject to the approval of the President, renew the foreign air carrier permit issued to TACA International Airlines, S.A. by Order 77-10-39 for a period of five years in the form of the attached specimen permit;

2. Any interested persons having objections to the issuance of an order making final the Board's tentative findings and conclusions and issuing the renewed permit shall, within 14 days after the service of this order, file with the Board and serve on the persons named in paragraph 5 a statement of objections specifying the part or parts of the tentative findings or conclusions objected to, together with a summary of testimony, statistical data, and such evidence expected to be relied upon in support of the statement of objections. If an oral hearing is requested, the objector should state in detail why such hearing is considered necessary and what relevant and material facts he would expect to establish through such hearing which cannot be established in written pleadings;

3. If timely and properly supported objections are filed, further consideration will be accorded the matters and issues raised by the objections before further action is taken by the Board: *Provided*, That the Board may proceed to enter an order in accordance with its tentative findings and conclusions set forth in the order if it determines that there are no factual issues presented that warrant the holding of an oral hearing.[10]

4. In the event no objections are filed, all further procedural steps will be deemed to have been waived and the Secretary shall enter an order which, subject to the approval of the President, (1) shall make final the Board's tentative findings and conclusions set forth in this order, and (2) shall issue a renewed foreign air carrier permit to the applicant in the specimen form attached; and

5. This order shall be served upon TACA International Airlines, Pan American World Airways, Inc., the Ambassador of El Salvador in Washington, D.C., and the United States Departments of State and Transportation.

This order shall be published in the FEDERAL REGISTER and transmitted to the President.

By the Civil Aeronautics Board.

PHYLLIS T. KAYLOR,
*Secretary.*

(Specimen Permit)

UNITED STATES OF AMERICA, CIVIL AERONAUTICS BOARD, WASHINGTON, D.C.

PERMIT TO FOREIGN AIR CARRIER (AS AMENDED)

TACA International Airlines, S.A. is authorized, subject to the provisions set forth, the provisions of the Federal Aviation Act of 1958, and the orders, rules, and regulations issued under the Act, to engage in foreign air transportation of persons, property, and mail as follows:

1. Between the terminal point San Salvador, El Salvador; the intermediate points Guatemala City, Guatemala, San Pedro Sula, Honduras, Belize City, British Honduras (Belize), and Merida, Mexico, and the terminal point New Orleans, La.; and

2. Between the terminal point San Salvador, El Salvador; the intermediate points San Pedro Sula, Honduras, and Belize City, British Honduras (Belize); and the terminal point Miami, Fla.

The holder shall be authorized to engage in charter trips in foreign air transportation, subject to the terms, conditions, and limitations prescribed by Part 212 of the Board's Economic Regulations.

This permit shall be subject to the condition that the holder shall serve the terminal points Miami, Fla., and New Orleans, La., only on flights that serve San Salvador, El Salvador.

The holder shall conform to the airworthiness and airman competency requirements prescribed by the Government of El Salvador for Salvadorian international air service.

This permit shall be subject to all applicable provisions of any treaty, convention, or agreement affecting international air transportation now in effect, or that may become effective during the period this permit remains in effect, to which the United States and El Salvador shall be parties.

This permit shall be subject to the condition that in the event any practice develops which the Board regards as inimical to sound economic conditions the holder and the Board will consult and use their best efforts to agree on modifications satisfactory to both.

By accepting this permit the holder waives any right it may possess to assert any defense of sovereign immunity from suit in any action or proceeding instituted against the holder in any court or other tribunal in the United States (or its territories or possessions) based upon any claim arising out of operations under this permit.

The holder shall keep on deposit with the Board a signed counterpart of CAB Agreement 18900, an agreement relating to liability limitations of the Warsaw Convention and the Hague Protocol approved by Board Order E-23680, May 13, 1966, and a signed counterpart of any amendment or amendments to such agreement which may be approved by the Board and to which the holder becomes a party.

The holder (1) shall not provide foreign air transportation under this permit unless there is in effect third-party liability insurance in the amount of $1,000,000 or more to meet potential liability claims which may arise in connection with its operations under this permit, and unless there is on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts of liability limits of the third-party liability insurance provided, and (2) shall not provide foreign air transportation of persons unless there is in effect liability insurance sufficient to cover the obligations assumed in CAB Agreement 18900, and unless there in on file with the Docket Section of the Board a statement showing the name and address of the insurance carrier and the amounts and liability limits of the passenger liability insurance provided. Upon request the Board may authorize the holder to supply the name and address of an insurance syndicate in Lieu of the names and addresses of the member insurers.

The initial tariff filed by the holder shall not set forth rates, fares, and charges lower than those that may be in effect for any U.S. air carrier in the same foreign air transportation. However, this limitation shall not apply to a tariff filed after the initial tariff regardless of whether this subsequent tariff is effective before or after the introduction of the authorized service.

The exercise of the privileges granted here shall be subject to such other reasonable terms, conditions, and limitations required by the public interest as may from time-to-time be prescribed by the Board.

[8] Our tentative finding is based upon the fact that the applicant is seeking only renewal of existing authority. Section 312.9 of the Board's regulations does not require that an environmental evaluation be made in such cases.

[9] Since no new services are to be performed, there will be no material increase in the utilization of fuel.

[10] Since provision is made for the filing of objections to this order, petitions for reconsideration will not be entertained.

This permit shall be effective on ———, and shall terminate five years thereafter, except that it shall be subject to termination at any time if the authority to conduct flight operations to and from El Salvador granted by the Government of El Salvador to any air carrier designated by the United States is canceled or restricted: *Provided, however,* That if in the period during which this permit shall be effective the operation of the foreign air transportation here authorized becomes the subject of any treaty, convention, or agreement to which the United States and El Salvador are or shall become parties, then this permit is continued in effect during the period provided in such treaty, convention, or agreement: *Provided further,* That, with respect to Merida, Mexico, the authority granted here shall expire whenever a United States carrier inaugurates scheduled service between New Orleans and Merida.[1]

The Civil Aeronautics Board, through its Secretary, has executed this permit and affixed its seal on ———.

———,
*Secretary.*

Issuance of this permit to the holder approved by the President of the United States on ——— in Order ——.

[FR Doc. 78-12357 Filed 5-4-78; 8:45 am]

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[3510-25]

## DEPARTMENT OF COMMERCE

### Industry and Trade Administration

### PRESBYTERIAN HOSPITAL, ET AL

### Applications 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 25, 1978.

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 6886C of the Department of Commerce Building, 14th and Constitution Avenue NW., Washington, D.C. 20230.

[1]The amendment authorizing service to Merida is a temporary authorization and does not refer to an activity of a continuing nature within the meaning of section 558(c) of the Administrative Procedure Act, 5 U.S.C. 558(c).

Docket No. 78-00072. Applicant: Presbyterian Hospital (Col. Pres. Medical Center), 622 West 168th Street, New York, N.Y. 10032. Article: ANOPS 101 Histogram Computer. Manufacturer: (Unitronex) Politechnika Warszawska, Poland. Intended use of article: The article is intended to be used for the study of computerization of the motor unit potential, particularly from patients with muscular dystrophy or carriers of patients with this order. This is an essential form of investigation and in many instances can only be accomplished by computerization of the muscle motor unit potentials so recorded with this article. Application received by Commissioner of Customs: April 14, 1978.

Docket No. 78-00099. Applicant: Case Western Reserve University, Department of Macromolecular Science, University Circle, Cleveland, Ohio 44106. Article: Chart Recorder, Model TE 200/2 and Accessories. Manufacturer: Tekman Electronics Ltd., United Kingdom. Intended use of article: The article is intended to be used to record volume changes against time during studies of the static and dynamic P-V relationships and creep measurements at constant pressures and comparison of changes in internal and external volume for several pressures. Application received by Commissioner of Customs: April 14, 1978.

Docket No. 78-00114. Applicant: Texas A. & I. University, Station 1, Box 104, Kingsville, Tex. 78363. Article: TE 16 Test Bed (used) and accessories. Manufacturer: Experimental Engineering Equipment Ltd., Canada. Intended use of article: The article is intended to be used in the course Mechanical Engineering Laboratory (ME341) study of measuring techniques and performance characteristics of mechanical engineering equipment including fluid devices, power systems and heat transfer equipment. Application received by Commissioner of Customs: April 14, 1978.

Docket No. 78-00151. Applicant: Old Dominion University, Department of Biological Sciences, Room 120, Hampton Boulevard, Norfolk, Va. 23508. Article: LKB 8800A Ultrotome III Ultramicrotome and Accessories. Manufacturer: LKB Produkter AB, Sweden. Intended use of article: The article is intended to be used to section plant, insect and animal specimens which have been embedded in hard epoxy and water emissible resins. Investigations will be conducted in order to understand basic ultra-structural phenomena associated with these tissues. In certain pathologic studies (human sperm and duck plague virus) attempts will be made to correlate changes with clinical treatment. The article will also be used for educational purposes in the courses: "Methods in Electron Microscopy" and "Advanced Methods in Electron Microscopy" which will involve a study of general principles on techniques and the use of the electron microscope to study the fine structure of cells, virus and the employment of cytochemical staining to localize various enzymes and minerals. Application received by Commissioner of Customs: April 14, 1978.

Docket No. 78-00152. Applicant: Washington State University, Division of Purchasing, Pullman, Wash. 99164. Article: Waferizer Cutterhead for a Hombak Type ZOA 18 Drum Type Wood Flaker and Accessories. Manufacturer: Hombak GmbH, West Germany. Intended use of article: The article is intended to be used for evaluating the potential of converting sawmill waste, plywood waste, and forest slash into wafers for further manufacture into building products. Variables to be researched are: species, moisture content, wafer size and geometry, and type and quality of residue. Application received by Commissioner of Customs: April 14, 1978.

Docket No. 78-00166. Applicant: University of Rochester, 250 East River Road, Rochester, N.Y. 14623. Article: Three (3) Ultrafast Streak Cameras and Accessories. Manufacturer: Hadland Photonics Ltd., United Kingdom. Intended use of article: The article is intended to be used in the study of the feasibility of heating targets with a pulsed high power laser to produce thermonuclear reactions. The article converts the laser photons to electrons and then sweeps the accelerated electrons across a phosphor, transforming temporal to spatial variations. Application received by Commissioner of Customs: April 14, 1978.

Docket No. 78-00186. Applicant: Cornell University, Department of Biochemistry, Wing Hall, Ithaca, N.Y. 14853. Article: Xenon Arc Lamp System and Accessories. Manufacturer: Photochemical Research Association Inc., Canada. Intended use of article: The article is intended to be used for the investigation of binding of ligand (e.g., Oxygen [$O_2$], carbon monoxide [CO] or nitric oxide [NO]) to hemoglobin as well as protein conformational changes of hemoglobin. All the experiments will involve flash photolysis in which a laser pulse is used to remove ligand from hemoglobin. These investigations are directed toward obtaining a clearer understanding of cooperative effects observed in the binding of ligand by hemoglobin. Application received by Commissioner of Customs: April 14, 1978.

Docket No. 78-00188. Applicant: The Regents of the University of California, Department of Pathology, School of Medicine, University of California, SF, San Francisco, Calif. 94143. Article: Electron Microscope, Model JEM 100CX and accessories. Manufacturer: JEOL Ltd., Japan. Intended use of ar-

ticle: The article is intended to be used both as a means for analysis of naturally occurring disease and as a supplemental aid to the study of model disease systems. Specimens obtained from surgical pathology and from the autopsy will be prepared by standard means, sectioned and stained for routine transmission microscopy. Specifically, detailed analysis of soft tissue tumors, the ultrastructural features of meningiomata, and the distortions produced by liver disease will be followed. The studies will be conducted in an attempt to define the structural and functional correlations that are associated with degenerative and proliferative diseases both in animal models and in humans. The article will also be used for training graduate students in electron microscopy techniques. Application received by Commissioner of Customs: April 11, 1978.

Docket No. 78-00206. Applicant: National Eye Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014. Article: Electron Microscope, Model EM 400 HMG with Water Chiller and Accessories. Manufacturer: Philips Electronics Instruments NVD, the Netherlands. Intended use of article: The article is intended to be used to examine plastic sections of human ocular tissues, animal tissues and tissue culture preparations in investigations related to corneal diseases, glaucoma, cataracts, retinal diseases, ocular cancer and ocular viruses. Application received by Commissioner of Customs: April 13, 1978.

Docket No. 78-00207. Applicant: University of Oklahoma, 1000 Asp Avenue, Room 314, Norman, Okla. 73019. Article: Nuclear Magnetic Resonance Pulse Spectrometer, Model CPS-2 and Accessories. Manufacturer: Spin-Lock Ltd., Canada. Intended use of article: The article is intended to be used for the study of the motional behavior of water and sodium ions in muscle, collagen and other body tissues in laboratory animals in the aging process. The two techniques which will be used in this project are the study of spin-spin relaxation time in the rotating framework ($T_1$ ) and self-diffusion coefficient by applying pulse magnetic field gradient. Continued studies of the effect of cross-linking of collagen on interaction between ATP and collagen molecules, will also be conducted. Application received by Commissioner of Customs: April 13, 1978.

(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. 78-12251 Filed 5-4-78; 8:45 am]

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[3510-03]

**Maritime Administration**

[Docket No. S-605]

**ATLAS MARINE CO.**

**Multiple Applications**

In the matter of Atlas Marine Co., Aeron Marine Shipping Co., Aquarius Marine Co., Worth Oil Transport Co., American Shipping, Inc., Pacific Shipping, Inc.

Notice is hereby given that the foregoing companies, holders of long-term operating-differential subsidy (ODS) contracts in the worldwide bulk trades, have filed separate applications dated April 18, 1978 to amend their respective contracts so as to include the transportation of dry bulk cargo under the cargo preference laws of the United States, including but not limited to 10 U.S.C. 2631, 46 U.S.C. 1241, and 15 U.S.C. 616 (a), provided, however, that no subsidy will be paid for voyages during which the applicants carry less than 55,000 long tons of dry bulk cargo on the loaded leg, and provided further, that no subsidy shall be paid for any voyage during which the applicants carry dry bulk cargo which has been bagged.

The applicants' current ODS contracts specify that the subsidized vessels shall carry exclusively commercial liquid and dry bulk cargoes not subject to the cargo preference statutes of the United States unless such cargoes are those that, except for the participation of the subsidized operator, would be carried by foreign flag vessels. In this event, such cargoes shall be carried at rates comparable to those offered by foreign flag vessels. Subsidized vessels may also engage in the carriage of liquid bulk cargoes specifically to meet the requirements of the Strategic Petroleum Reserve (SPR) Program of the United States with the understanding that no ODS shall be paid while the vessel is engaged in the carriage of that portion of SPR cargoes reserved for U.S. flag ships.

Interested parties may inspect the applications in the Office of the Secretary, Maritime Subsidy Board, Room 3099-B, Department of Commerce Building, 14th and E Streets NW., Washington, D.C. 20230.

Any person, firm, or corporation having an interest in such applications who desires to offer views and comments thereon for consideration by the Maritime Subsidy Board should submit them in writing, in triplicate, to the Secretary, Maritime Subsidy Board, Washington, D.C. 20230, by the close of business on May 15, 1978.

The Maritime Subsidy Board will consider these views and comments and take such action with respect thereto as may be deemed appropriate.

(Catalog of Federal Domestic Assistance Program No. 11.504 Operating-Differential Subsidies (ODS).)

By order of the Maritime Subsidy Board.

Dated: May 1, 1978.

JAMES S. DAWSON, Jr.,
*Secretary.*

[FR Doc. 78-12261 Filed 5-4-78; 8:45 am]

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[3510-22]

**National Oceanic and Atmospheric Administration**

**ATLANTIC GROUNDFISH**

**New Landing Restrictions**

Section 651.7(e) of the fishing regulations regarding cod, haddock, and yellowtail flounder (43 FR 14969) provides that the Assistant Administrator for Fisheries may adjust the landing restrictions for cod, haddock and yellowtail flounder after 40 percent of the quarterly quota of cod, haddock, or yellowtail flounder has been taken. The Assistant Administrator has determined that more than 40 percent of cod, haddock and yellowtail flounder west of 69° W. longitude has been taken, and that it is necessary to impose additional restrictions on the landings of those species. The New England Fishery Management Council recommended that additional restrictions be imposed and its suggestions were carefully considered and adopted in part.

The Assistant Administrator also announces that further restrictions may soon be imposed to ensure that the quarterly quota is not taken before the end of the quarter.

The new restrictions per vessel are as follows:

(1) Cod:

| *Vessel size* | *Pounds per week* |
|---|---|
| 0 to 60 gross registered tons | 4,900 |
| 61 to 125 gross registered tons | 9,800 |
| 126 plus gross registered tons | 14,000 |
| Fixed-gear vessels | [1]8,000 |
| Do | [2]13,000 |

[1]Gulf of Maine.
[2]Georges Bank and southern New England.

(2) Haddock:

| *Vessel size* | *Pounds per week* |
|---|---|
| 0 to 60 gross registered tons | 3,500 |
| 61 to 125 gross registered tons | 7,000 |
| 126 plus gross registered tons | 10,000 |
| Fixed-gear vessels | 8,000 |

(3) Yellowtail flounder west of 69° W. longitude: 2,250 pounds per trip. The alternative limit based on a percentage of the weight of all fish on board no longer applies.

The weekly over-run of 5,000 pounds permitted by § 651.7(c), as amended, in the FEDERAL REGISTER on April 24, 1978 (43 FR 17362), is reduced by the same proportions of 30 percent for cod

and 50 percent for haddock. Thus the permitted "over-run" for cod is 3,500 pounds per week.

Fishermen may continue to land 5,510 pounds of yellowtail flounder per trip caught east of 69° W. longitude. However, the alternative limit based on a percentage of the weight of all fish on board no longer applies.

These new landing restrictions will become effective at 0001 hours eastern daylight time, May 7, 1978..

Signed at Washington, D.C., this 28th day of April 1978.

WINFRED H. MEIBOHM,
*Associate Director, National Marine Fisheries Service.*

[FR Doc. 78-12280 Filed 5-4-78; 8:45 am]

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[3510-12]

## WEATHER MODIFICATION ADVISORY BOARD

### Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given of the twelfth meeting of the Weather Modification Advisory Board.

The Weather Modification Advisory Board will meet from 4 to 6 p.m. on May 30; from 9 a.m. to 6 p.m. on May 31-June 2, and from 9 a.m. to 1 p.m. on June 3, 1978, in the Conference Room of the Aspen Meadows, Aspen, Colo.

The Board was established in January 1977 (42 FR 4512, January 25, 1977), to advise the Secretary of Commerce on matters of a national policy, a national research and development program, and other aspects of weather modification as outlined in the National Weather Modification Policy Act of 1976 (Pub. L. 94-490), enacted on October 13, 1976. The Board consists of 17 members, with a balanced representation selected from scientific, academic, commercial, consumer, legal, and environmental groups who are appointed by the Secretary of Commerce.

The purpose of this meeting is to review and approve the draft sections that have been prepared for use in the Board's Final Report. The sections deal with weather modification science, operations, future research programs and budgets, statistical evaluations, Federal organization for weather modification, environmental assessment, economics, societal aspects, legal and regulatory matters, and international factors.

The agenda for the meeting is:

TUESDAY, MAY 30, 1978—CONFERENCE ROOM, ASPEN MEADOWS

4 to 6 p.m.—Reading period to study and review the draft statements to be considered for inclusion in the final report of the Board.

WEDNESDAY, MAY 31-FRIDAY, JUNE 2, 1978

9 a.m. to 6 p.m.—Discussion and approval of individual sections of the Final Report.
12 noon to 1 p.m. (each day)—Recess for lunch.

SATURDAY, JUNE 3, 1978

9 a.m. to 1 p.m.—Continuation of review and approval process.
1:00 p.m.—Adjournment.

The meeting will be open to the public and a period will be set aside at the discretion of the Chairman for oral comments or questions by the public which do not exceed 10 minutes each. More extensive questions or comments should be submitted in writing before May 26. Other public statements regarding Board affairs may be submitted at any time before the meeting. Seating will be available for the public on a first-come, first-served basis in the Conference Room of the Aspen Meadows.

Copies of the minutes will be available on request 30 days after the meeting.

Inquiries may be addressed to Dr. Ronald L. Lavoie, Director, Science and Academic Affairs Office, National Oceanic and Atmospheric Administration, Rockville, Md. 20852, phone 301-443-8721.

Dated: May 2, 1978.

R. L. CARNAHAN,
*Deputy Assistant Administrator for Administration.*

[FR Doc. 78-12408 Filed 5-4-78; 8:45 am]

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[6820-33]

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### PROCUREMENT LIST 1978

### Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received a proposal to add to Procurement List 1978 commodities to be produced by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 7, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1978, November 14, 1977 (42 FR 59015):

NO NSN

Wheel Chock, Wood;
Standard 2 x 4 x 8";
Standard 6 x 8 x 18";
Standard 6 x 8 x 76";
U-Shaped 8 x 12"; and
U-Shaped 10 x 20".

The above for all requirements for facilities located west of the Mississippi river and any requirements for facilities located east of the Mississippi river which are not furnished by the Federal Prison Industries.

C. W. FLETCHER,
*Executive Director.*

[FR Doc. 78-12288 Filed 5-4-78; 8:45 am]

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[6820-33]

## PROCUREMENT LIST 1978

### Additions

AGENCY: Committee for Purchase from the Blind and Other Serverly Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1978 commodities to be produced by and services to be provided by workshops for the blind or other severly handicapped.

EFFECTIVE DATE: May 5, 1978.

ADDRESS: Committee for Purchase from the Blind and Other Severly Handicapped, 2009 14th Street North, Suite 610, Arlington, Va. 22201.

FOR FURTHER INFORMATION CONTACT:

C. W. Fletcher, 703-557-1145.

SUPPLEMENTARY INFORMATION: On March 3, 1978, December 23, 1977, and March 10, 1978, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (43 FR 8829, 42 FR 64399, and 43 FR 9842) of proposed additions to Procurement List 1978, November 14, 1977 (42 FR 59015).

After consideration of the relevant matter presented the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48(c), 85 Stat. 77.

Accordingly, the following commodities and services are hereby added to Procurement List 1978:

CLASS 8430

Footwear Cover, Radioactive, Contaminants (IB), 8430-00-890-2079.

SIC 7349

Janitorial Service (SH), Federal Building, Post Office and Courthouse, Leavenworth, Kans.

Janitorial Services (SH), Department of Transportation, Federal Aviation Administration, Tracon Facility, Steward Avenue, Westbury, Long Island, N.Y.

C. W. FLETCHER,
*Executive Director.*

[FR Doc 78-12289 Filed 5-4-78; 8:45 a.m.]

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[6355-01]

## CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 78-2]

### G. L. ELECTRIC FLASHEAT CO. AND GERVIS J. GALLOWAY

#### Hearing

In the matter of G. L. Electric Flasheat Co., a corporation and Gervis J. Galloway, individually and as an officer thereof, section 15, Consumer Product Safety Act enforcement proceeding.

Served: May 2, 1978.

On March 24, 1978, the Commission authorized the issuance of a complaint charging Respondents G. L. Electric Flasheat Co., and its president, Gervis J. Galloway, with having manufactured, sold and distributed three models of portable immersion electric water heaters known as the "Flasheat," the "AC and DC" and the "Fast Heat," which were so designed as to present the potential for a substantial shock hazard to persons entering water which is being heated by the said devices and contacting a ground. The complaint alleges that the potential shock hazard is a product defect within the meaning of section 15(a)2 of the Consumer Product Safety Act (15 U.S.C. 2064(a)(2)) which may create a substantial risk of injury to the public and thereby constitute a substantial product hazard. Relief is requested in the form of an order requiring Respondents to cease manufacturing, selling, distributing and importing the said water heaters, to give adequate notice to the public of the substantial product hazard presented and to elect within ten (10) days to repair, replace, or refund the purchase price of the heaters less a reasonable allowance for use.

On April 25, 1978, Counsel for Respondents filed an Answer denying knowledge or information sufficient to form a belief as to the truth of the principal allegations of the Complaint.

Issue having been joined, a public hearing thereon will be held commencing at 10 a.m. (EDST), Tuesday, May 23, 1978, in room 1194 of the McNamara Federal Building, 477 Michigan Avenue, Detroit, Mich. 48226.

Dated: May 2, 1978.

PAUL N. PFEIFFER,
*Administrative Law Judge.*

[FR Doc. 78-12268 Filed 5-4-78; 8:45 am]

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[6360-01]

## DELAWARE RIVER BASIN COMMISSION

### WETLANDS PROTECTION POLICY

#### Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on proposed wetlands protection policies. The hearing will be held on May 24, 1978, at 2:30 p.m. in the Commission's office building at 25 State Police Drive, West Trenton, N.J. Persons wishing to testify are requested to register with the Secretary no later than 24 hours prior to the hearing. Written comments may be submitted in place of oral testimony.

If adopted, the proposed policy would become a part of the Commission's Comprehensive Plan. It supports preservation and protection of both fresh water and tidal wetlands areas by State and Federal agencies, and provides for Commission participation in review of proposed projects affecting wetlands under specified circumstances. The policy includes general standards defining conditions that could adversely affect wetlands, and a procedure for protecting the public interest where encroachments could impair environmental values.

Text of the proposed policy, and of two conforming amendments to the Commission's rules of practice and procedure, is available from the Commission upon request.

W. BRINTON WHITALL,
*Secretary.*

APRIL 28, 1978.

[FR Doc. 78-12252 Filed 5-4-78; 8:45 am]

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[3128-01]

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[10 CFR Part 211]

### THUNDERBIRD RESOURCES, INC.

#### Application for the Use of Multiple Allocation Fractions

AGENCY: Department of Energy, Economic Regulatory Administration.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) is considering an application from Thunderbird Resources, Inc. for use of multiple allocation fractions for motor gasoline pursuant to the provisions of 10 CFR 211.10(b). Notice is hereby given that ERA is providing an opportunity for interested parties to comment concerning the appropriateness of granting the relief requested in this application in whole or in part.

DATE: Comments must be submitted by May 24, 1978.

ADDRESS: Comments should be addresed to: Charles R. McCrea, Economic Regulatory Administration, Office of Product Allocation, Room 6222, 2000 M Street NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Charles R. McCrea or R. T. Gehring, Economic Regulatory Administration, Office of Product Allocation, Room 6222, 2000 M Street NW., Washington, D.C. 20461, 202-254-8583.

Ben McRae, Office of General Counsel, room 5146-b, 12th and Pennsylvania Avenue NW., Washington, D.C. 20461, 202-566-9565.

SUPPLEMENTARY INFORMATION: On August 30, 1977, the Federal Energy Administration (FEA) received an application from Thunderbird Resources, Inc. (T-Bird) for use of multiple allocation fractions (MAF) for motor gasoline pursuant to the provisions of 10 CFR 211.10(b). T-Bird indicated the existence of three marketing subsystems for its motor gasoline—namely, (1) "Big West-Western" (including portions of Washington, Idaho, and Oregon); (2) "Westco" (including portions of central and western Montana); and (3) "Westland" (including portions of North Dakota and eastern Montana). On the basis of the geographic locations of the three marketing subsystems and the alleged absence of practical methods to transfer motor gasoline among the marketing subsystems, T-Bird has requested permission to use a separate allocation fraction for each subsystem.

The functions of the FEA were assumed by the DOE pursuant to the Department of Energy Organization Act (Pub. L. 95-91, "DOE Act") and Executive Order 12009 (42 FR 46267, September 15, 1977). By Delegation Order 0204-4 the Secretary of Energy delegated to the Administrator of the ERA the responsibility for administering the Mandatory Petroleum Allocation Regulations. Under Section 705 of the DOE Act, pending proceedings are continued without being affected. Accordingly, ERA has continued consideration of the application by T-Bird.

10 CFR 211.10(b) states in pertinent part as follows:

* * * Suppliers with two or more distribution subsystems or regions independent of one another may apply to the [ERA] National Office, in accordance with Subpart G of Part 205 of this chapter, for permission to use multiple allocation fractions whenever use of a single allocation fraction would be impracticable or inconsistent with the objectives of the program.

ERA generally requires suppliers of an allocated product to maintain a single allocation fraction. This policy is designed to ensure, to the maximum practical extent, the equitable distribution of all allocated products throughout the domestic market. This policy of maintaining a single allocation fraction will, however, be waived when it is impractical or unduly burdensome to maintain a single allocation fraction in any particular situation and permission to use multiple allocation fractions would not frustrate the objectives of the program. The practicability of utilizing one or a combination of several normal business practices common to the industry in order to accomplish the necessary transfer or redistribution of product within a single allocation fraction is central to the ERA's determination to grant or deny a request for the use of multiple allocation fractions. If the transfer of product between and among the proposed subsystems is not impracticable, the purposes of having a single uniform allocation fraction would ordinarily override the mere convenience of having separate allocation fractions. Specifically, T-Bird must demonstrate that equalization of product disribution between subsystems so as to meet the requirements of a single allocation fraction by direct transport, exchange, borrow/payback, or other product arrangements are so impractical a method of allocation as to constitute a significant burden on T-Bird's operations. Accordingly, ERA is analyzing this request with respect to (1) the interdependence of systems served including any overlapping or marketing regions and any geographical features which would have a bearing on and/or inhibit the maintenance of a single allocation fraction in T-Bird's various marketing subsystems; and (2) the practices of T-Bird and its affiliated companies with respect to supply, marketing, distribution, management, and the maintenance of allocation fractions within their corporate structure.

To assist ERA in determining the appropriateness of T-Bird's request, interested parties are invited to submit views and comments concerning this matter to Charles R. McCrea, Department of Energy, Economic Regulatory Administration, Office of Product Allocation, Room 6222, 2000 M Street NW., Washington, D.C. 20461. All submissions should be made in five copies and should be received no later than 4:30 p.m., May 24, 1978. Comments should be identified on the outside envelope and on the document with the designation, "T-Bird Application for MAF."

Any information or data furnished that you consider confidential must be so identified and submitted in writing, in one copy only. ERA reserves the right to determine the confidential status of the information or data and to treat such information according to that determination.

A copy of the application submitted by T-Bird in this matter, with proprietary information deleted, is available for public inspection in the DOE Freedom of Information Office, Room 2107, 12th and Pennsylvania Avenue NW., Washington, D.C., between the hours of 8 a.m. and 4:30 p.m., Monday through Friday.

Issued in Washington, D.C., May 2, 1978.

BARTON R. HOUSE,
*Assistant Administrator for Fuels Regulation, Economic Regulatory Administration.*

[FR Doc. 78-12319 Filed 5-4-78; 8:45 am]

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[6740-02]

## Federal Energy Regulatory Commission

## BOSTON EDISON CO.

[Docket Nos. E-8855; ER76-90; ER76-854; ER77-84]

### Order Accepting Settlement Agreement

APRIL 28, 1978.

On October 1, 1977, pursuant to the provisions of the Department of Energy Organization Act (DOE Act), Pub. L. 95-91, 91 Stat. 565 (August 4, 1977) and Executive Order No. 12009, 42 FR 46267 (September 15, 1977), the Federal Power Commission ceased to exist and its functions and regulatory responsibilities were transferred to the Secretary of Energy and the Federal Energy Regulatory Commission (FERC) which, as an independent commission within the Department of Energy, was activated on October 1, 1977.[1]

The "savings provisions" of section 705(b) of the DOE Act provide that proceedings pending before the FPC on the date the DOE Act takes effect shall not be affected and that orders shall be issued in such proceedings as if the DOE Act had not been enacted. All such proceedings shall be continued and further actions shall be taken by the appropriate component of DOE now responsible for the function under the DOE Act and regulations promulgated thereunder. The functions which are the subject of this proceeding were specifically transferred to the FERC by section 402(a)(1) or 402(a)(2) of the DOE Act.

The joint regulation adopted on October 1, 1977, by the Secretary and the FERC entitled "Transfer of Proceedings to the Secretary of Energy and the FERC," 10 CFR —, provided that this proceeding would be continued before the FERC. The FERC takes action in this proceeding in accordance with the above mentioned authorities.

Presently before the Commission is the joint motion of Boston Edison Co. (Edison) and the Reading Municipal Light Board (Reading) for acceptance of their mutually agreed upon settlement agreement. As will be detailed in the body of this order, we accept the proffered settlement agreement.

#### BACKGROUND

On January 16, 1978, Edison and Reading filed with the Commission the aforementioned joint motion and the settlement agreement itself. These documents were publicly noticed on February 28, 1978. Comments on the settlement were received on March 21, 1978, from Staff and Edison's full requirements wholesale customers, the Towns of Concord, Norwood, and Wellesley, Mass. (The Towns). Staff fully supports the settlement, while the Towns have certain reservations. On April 12, 1978, Edison responded to the Towns' comments.

On April 11, 1978, Reading filed a request for Commission acceptance of the settlement by April 30, 1978. In support thereof, Reading asserts that the settlement includes certain new power supply arrangements between itself and Edison from which the monetary benefits to be gleaned would decline if not implemented by that date.

#### SETTLEMENT

This settlement agreement would resolve all disputes between Edision and Reading in three pending proceedings: (1) full requirements wholesale rate increase in Docket No. E-8855 (Rate S-3); (2) full requirements wholesale rate increase in Docket No. ER76-90 (Rate S-4); and (3) consolidated proceedings concerning a partial requirements Contract Demand rate in Docket No. ER76-854 and non-firm transmission rate in Docket No. ER77-84. The settlement constitutes a "package" arrangement by which Edison and Reading will graduate to a totally new power supply relationship. The settlement contains several features of present interest:

The S-3 and S-4 rate levels are to be reduced by $448,897 and $363,522, respectively, for the locked-in periods those rates were applicable to Reading.

The Contract Demand rate level will be reduced by $409,200 for the period

[1] The "Commission" when used in the context of an action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

November 1, 1976 through October 31, 1977. Proportionate Contract Demand refunds will be made for the period beginning Novemberr 1, 1977.

The notice provision in the Contract Demand rate schedule has been changed so that Reading may, upon giving a minimum notice of twenty-four months, (i) increase or decrease up to 10 percent of the amount of Contract Demand service the customer had previously committed to take from Edison for a power year and (ii) increase or decrease in any amount the previously specified non-firm transmission service for a power year. The provision does not apply to any power year preceding that beginning November 1, 1981.

Edison will reduce by up to 50 percent the charges otherwise collectable for non-firm transmission service in circumstances where the transmission facilities of one or more other utilities are used to bring power to a customer's system and the other utilities offer a similar reduction.

The parties have resolved their differences with respect to the notice requirements for terminating all requirements service by agreeing to a combination of firm power and unit sale purchases extending through the Fall of 1982 by Reading from Edison. Those purchases will make unit power available to Reading and increase utilization of Edison generating facilities thus conferring financial benefits on both Reading and Edison.

Edison will consult with Reading concerning future rate increases in an effort to reach agreements with respect to such increases prior to their filing.

All disputes, claims and litigation between the parties as to matters covered by the Settlement Agreement are resolved. Excluded from the Settlement Agreement are disputes concerning the S-2 rate which was recently the subject of Commission Opinion No. 809-A [2] and which was effective in 1973 and 1974, the deferred fuel amortization charge which Edison has included in its rates since the end of February 1976 and which will terminate within a few weeks (Docket No. ER76-445), and the proper interest rate on amounts owed in Docket No. ER77-558. The parties agree that a Commission decision in Docket No. ER76-445 will govern as to the deferred fuel amortization charge proposed in that docket and carried over in certain succeeding dockets.

In the joint motion it is asserted that Edison is offering this settlement to the Towns as it applies to Rates S-3 and S-4 and that, while the Towns do not take Contract Demand or non-firm transmission service from Edison, such service as revised by the settlement will be available to them.

[2] *Boston Edison Co.*, Opinion No. 809-A, Docket Nos. E-7738 and E-7784, issued December 9, 1977.

### Comments

As noted above, Staff after careful review supports the settlement. It finds that, while the settlement rate level for rate 3 is excessive under its cost of service analysis, it is deficient for both Rate 4 and the Contract Demand rates and that, when considered as a package, the settlement rate levels are not excessive. Staff stresses the need to consider the settlement as a negotiated whole: It is "a negotiated settlement in which losses by the customers under a past rate are compensated by benefits under ongoing and future rates."

The Towns state that they will not oppose the settlement, so long as (1) it does not settle their claims in these proceedings and (2) Edison makes interim refunds to them pending resolution of the S-3 and S-4 cases on the merits, these refunds to be based upon the settlement rate level as modified by previously approved rate design.[3] Absent this interim refund condition, the Towns argue that they would be discriminated against in favor of reading. In addition the Towns complain that the settlement violates due process and Commission regulations for they were not invited to the negotiations between Edison and Reading and as a result cannot ascertain the true basis for the settlement. The Towns proceed to reiterate their position on several rate issues in these dockets which they contend are not resolved by the settlement,[4] as a result of which they cannot accept the settlement as presently structured.

In its response, Edison first notes that it offered this settlement to the Towns, which declined to accept. Moreover, Edison asserts that the Towns were notified of an invited to the settlement negotiations. Edison adds that the settlement was not intended to pressure the Towns and that it expressly leaves unaffected the ongoing litigation in these several dockets. Finally, Edison opposes the Towns' proposed interim refund condition as improperly giving the Towns the advantages of the settlement without the requisite compromise of relinquishing claims to further litigation of these dockets.

### Discussion

We find that the settlement agreement between Edison and Reading, when regarded in its totality, is neither unduly preferential nor unduly advantageous, and it establishes a just and reasonable rate level. Under the instant circumstances of one wholesale customer, Reading, moving from full requirements to partial requirements to unit contract status, the overall revenue level of all the rates involved is clearly not excessive. Accordingly the settlement should be accepted.

The only real point of contention concerns the impact of this settlement upon Edison's other wholesale customers, the Towns. While this settlement has been offered to, but apparently rejected by, the Towns, it will have no controlling effect over our subsequent decisions on the merits in these several proceedings as such decisions would relate to the Towns. Our acceptance of this settlement is in no way a prejudgment of the Town's numerous positions held in these dockets.

While the Towns are dissatisfied with the settlement, even though offered to them, we do not find persuasive their proposed condition that pending decisions on the merits in these dockets they receive interim refunds. Apart from this proposed condition requiring a "prescription of rates" for which we have no authority,[5] there is no compelling justification for it. It is not necessarily unduly discriminatory for one customer to settle rate increase proceedings at a level unacceptable to other customers who in turn have rested their case upon a Commission decision on the merits. If they succeed on the merits, they will receive refunds accordingly on the basis of the just and reasonable rates found applicable to them. It is their decision in the first instance whether to accept this settlement. Having decided to await a Commission decision on the merits, they have no basis for insisting without having offered a *quid pro quo* for the privilege, nonetheless, that they should be entitled to the settlement refunds.

A fortiori, they are not entitled to interim settlement refunds as dramatically increased by an adjustment reflecting their view of the Rate S-3 and S-4 cases on the merits.

The Commission further finds: The settlement agreement filed on January 16, 1978, between Edison and Reading in Docket Nos. E-8855, ER76-90, ER76-854 and ER77-84 is just and reasonable and should be approved.

The Commission orders: (A) The settlement agreement summarized herein and filed on January 16, 1978, is hereby approved. Such approval is,

[3] Specifically, the Towns would have the settlement rate level adjusted by using Kw billing instead of the Kva billing included in the settlement. This would increase their refunds for Rate S-3 by some $300,000 per Town over their respective refunds under the settlement.

[4] These issues include price squeeze, 14 Kv surcharge, fuel clause, Kva versus Kv billing.

[5] Before we could prescribe rates for the Towns pursuant to section 206 of the Federal Power Act, we must find them to be just and reasonable and the existing rates unjust and unreasonable. This we are not prepared to do on the present record.

however, without prejudice to any subsequent Commission decision on the merits in these proceedings as related to the Towns.

(B) Within 45 days of this order Edison shall refund to Reading all rates collected in excess of the rates which would have been collected under the terms of the settlement agreement, together with interest at the rate of 9 percent per annum on all excess amounts collected in Docket Nos. E-8855, ER76-90, ER76-854 and ER77-84.

(C) Within 15 days after completion of the refunds set out in paragraph (B), Edison shall file with this Commission and all interested state commissions a full report detailing the refund procedure and accounting for all refunds made under the settlement agreement.

By the Commission.

LOIS D. CASHELL,
*Acting Secretary.*

[FR Doc. 78-12320 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. ER78-311]

## CENTRAL HUDSON GAS & ELECTRIC CORP.

### Filing

MAY 1, 1978.

In the matter of Central Hudson Gas & Electric Corp.; Consolidated Edison Co. of New York, Inc.; Long Island Lighting Co.; New York State Electric & Gas Corp.; Niagara Mohawk Power Corp.; Orange and Rockland Utilities, Inc.; Rochester Gas & Electric Corp.; Power Authority of the State of New York.

Take notice that on April 14, 1978, the New York Power Pool (NYPP) filed on behalf of the above listed companies a revised Schedule C-2 to the New York Power Pool Agreement. NYPP states that this schedule will replace an existing schedule effective as of April 4, 1977, pursuant to Order of the Commission in Docket No. ER77-511. NYPP further states that the filing proposes that the revised schedule become effective June 1, 1978.

NYPP indicates that the schedule for changes in charges associated with economy energy transactions and paid into the transmission compensation account. NYPP further indicates that changes in the arrangement for sharing the proceeds of the transmission compensation account are also proposed.

Any person desiring to be heard or to make any protest with reference to the application should on or before May 19, 1978, file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10). All such protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons wishing to participate as a party in any hearing therein must file petitions 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*

[FR Doc. 78-12321 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. ES78-32]

## CLIFFS ELECTRIC SERVICE CO.

### Application

MAY 1, 1978.

Take notice that on April 14, 1978, Cliffs Electric Service Co. ("Service Company"), a wholly owned subsidiary of The Cleveland-Cliffs Iron Co. filed an application seeking an order pursuant to section 204(a) of the Federal Power Act authorizing Service Company to guarantee the securities of another person or, in the alternative, an order determining that Service Company is not assuming any obligation as guarantor in respect of any security of any other person within the meaning of section 204(a) of the Federal Power Act.

Pursuant to the order issued by this Commission in Docket No. ES76-24, Service Company has acquired sufficient additional share of Common Stock of Upper Peninsula Generating Co. ("Generating Company") to enable Generating Company to finance the construction of the Seventh and Eighth units at its Presque Isle station. Service Company is entitled to all of the capacity and energy to be produced by those units. Pursuant to the First 1978 Supplement to 1974 Power Contract, Service Company has agreed to pay to Generating Company all of its costs associated with those units including amounts equal to any payment of principal and interest required to be paid by Generating Company on the bonds it has issued in connection with those units.

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. 20425, in accordance with the Commission's rule of practice and procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before May 12, 1978. Protests will be considered by the Commission in determining the appropiate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-12322 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. RP78-52]

## CONSOLIDATED GAS SUPPLY CORP.

**Order Conditionally Accepting for Filing and Suspending Proposed Rate Increase, Waiving Notice Requirements, Initiating Hearing, Establishing Procedures, Requiring Additional Data and the Submission of a Revised Tariff Sheet, and Granting Interventions**

APRIL 28, 1978.

On March 31, 1978, Consolidated Gas Supply Corp. (Consolidated) tendered for filing a proposed tariff sheet[1] reflecting an annual increase in jurisdictional rates of $61,598,529. Consolidated stated that the filing seeks to recover the costs of purchasing regasified LNG from its affiliate, Consolidated System LNG Co., commencing April 30, 1978, and other changes in costs relating to gas purchases. This abbreviated filing was tendered pursuant to section 154.63(b)(3) of the Commission's Regulations and thus was supported only by Statements L.[2]

Consolidated requested an effective date of April 30, 1978, and waiver of section 154.66 of the Regulations to permit this filing to be tendered on the last day of the five month period of suspension of the proposed rate increase filed by Consolidated in Docket No. RP77-140.

By letter dated April 12, 1978, the Secretary of the Commission advised Consolidated that this filing was deficient and that no filing date would be assigned until a proper filing in compliance with Part 154 of the Commission's Regulations was received. Specifically, Consolidated was advised that the provision for abbreviated fil-

[1] First Revised Sheet No. 16 and Alternate First Revised Sheet No. 16 to Third Revised Volume No. 1 of Consolidated's FERC Gas Tariff.

[2] Section 154.63(b)(3) of the Commission's Regulations, 18 CFR Part 154, provides for the submission of an abbreviated filing, supported by Statements L, M, and N, in lieu of Statements A through M, to recover increases in purchased gas costs, if a major rate increase has been filed within the past twelve months, and if there has been no material change in the pipeline's facilities, sales volumes and cost of service.

ings in section 154.63(b)(3) of the Regulations permits adjustments only to purchased gas costs and that its deficient filing reflected adjustments to other costs of service items.

On April 18, 1978, Consolidated tendered a revised tariff sheet[3] and revised Statements N, S, and R. Consolidated stated that the proposed sales rates, as revised, will generate increased annual revenues of $83.7 million over the rates proposed to be effective on April 1, 1978 in Docket No. RP77-140, but will be approximately $2 million below the sales rates originally filed in Docket No. RP77-140.[4] Consolidated also requested that the Commission take expedited action and grant necessary waiver of the regulations to permit these revised rates to become effective on April 30, 1978, subject to refund. Notice of the filing was issued on April 20, 1978, providing for protests or petitions to intervene to be filed on or before May 2, 1978. Timely petitions to intervene were filed by the parties listed in the Appendix to this order. Also, a notice of intervention was filed by the Pennsylvania Public Utility Commission. All of the petitioners have demonstrated an interest in this proceeding which warrants their participation. The petitions to intervene shall therefore be granted.

Consolidated's revised tariff sheet, tendered in this docket on April 18, 1978, will be accepted for filing on that date. Waiver of the thirty day notice requirement in section 4(d) of the Natural Gas Act and sections 154.22 and 154.51 of the Commission's Regulations will be granted to permit a proposed effective date of April 29, 1978. The proposed rates will be suspended and permitted to become effective, subject to refund, on September 29, 1978, or such earlier date, on or after April 30, 1978, when LNG deliveries to Consolidated commence. This filing will be accepted subject to compliance with the conditions outlined below. A hearing on the lawfulness of the propsed rates will be initiated.

The revised filing reflects the cost, sales, and rate base data included in Consolidated's original filing in Docket No. RP77-140, the elimination of the costs of facilities that were not in service by April 1, 1978, and the inclusion of LNG purchase costs. The proposed rates are based on a twelve month test period ending June 30, 1977, as adjusted for known and measurable changes through March 31, 1978, and for the commencement of LNG deliveries. Based on a review of Consolidated's filing, the Commission finds that the proposed increased rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or otherwise unlawful. Because this filing, as properly revised, reflects increases attributable only to the purchase of regasified LNG, the Commission finds that it is reasonable and appropriate to permit the rates to become effective, subject to refund and certain conditions, when LNG deliveries to Consolidated commence. Because of the apparent uncertainty over the expected date of initial deliveries, the exact suspension period cannot be fixed now. It shall be not less than one day, or until April 30, 1978, and not more than five months, or until September 29, 1978.

The Commission also finds that several conditions must be attached to the acceptance of this filing. First, if LNG deliveries have not commenced on a regularly scheduled basis before the end of the maximum five month suspension period, Consolidated, shall file, on or before September 29, 1978, revised tariff sheets reflecting the elimination of all costs associated with the purchase of regasified LNG. Second, to provide sufficient information for a full and adequate evaluation of the present proposed rates, within thirty days after the commencement of LNG deliveries, Consolidated shall file complete data in the form required by section 154.63 of the Regulations on the cost and revenues estimated for the first twelve months of operations from the date that LNG deliveries commence. By attaching this condition we are not suggesting that Consolidated shall be permitted to claim or recover any additional cost increases without the submission of a full and proper rate increase filing. This information is necessary because of the significant, unprecedented impact of initial LNG deliveries on Consolidated's operations and costs. Third, Consolidated shall advise the Commission, jurisdictional customers, affected State Regulatory Commissions, and other interested parties of the actual date of initial deliveries of regasified LNG to Consolidated, within three days after deliveries begin.

The Commission finds: It is necessary and proper in the public interest and in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates proposed by Consolidated, that the same be accepted for filing as of April 18, 1978, that the thirty day notice requirement be waived to permit a proposed effective date of April 29, 1978, and that the proposed rates be suspended as hereafter ordered, subject to compliance with the conditions hereafter ordered.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, 9, and 15 thereof, and the Commissions rules and regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Consolidated.

(B) Pending hearing and decision, Consolidated's proposed rate increase, Substitute Alternate First Revised Tariff Sheet No. 16 to Third Revised Volume No. 1 of its FERC Gas Tariff, is accepted for filing as of April 18, 1978, and waiver of the thirty day notice requirement is granted to permit a proposed effective date of April 29, 1978. The proposed rate increase shall be suspended and then permitted to become effective, subject to refund, on September 29, 1978, or on such earlier date, on or after April 30, 1978, when the delivery of regasified LNG to Consolidated commences, upon motion filed by Consolidated in accordance with the provisions of the Natural Gas Act.

(C) Acceptance of this filing is subject to these conditions:

(1) If LNG deliveries to Consolidated do not commence on a regularly scheduled basis on or before September 29, 1978, then Consolidated shall file, on or before September 29, 1978, revised tariff sheets reflecting the elimination of all costs associated with the receipt of regasified LNG;

(2) Within thirty days after the commencement of LNG deliveries, Consolidated shall file full cost and revenue data, in the form required by section 154.63 of the regulations, providing estimated cost and revenue data for the first twelve months of operations after LNG deliveries commence;

(3) Within three days of commencement of LNG deliveries, Consolidated shall advise the Commission, jurisdictional customers, affected State Regulatory Commissions, and other interested parties of the actual date of commencement of LNG deliveries.

(D) The Commission Staff shall prepare and serve top sheets on all parties within ninety days after receipt of the additional cost and revenue data to be filed by Consolidated pursuant to ordering paragraph (C) above.

(E) A Presiding Administrative Law Judge, to be designated by the Chief

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[3]Substitute Alternate First Revised Tariff Sheet No. 16 to Third Revised Volume No. 1 of Consolidated's FERC Gas Tariff.

[4]Consolidated's original filing in Docket No. RP77-140 included costs associated with the receipt of regasified LNG. By order issued October 31, 1977, the proposed rates were accepted for filing and suspended until April 1, 1978, upon condition that Consolidated file revised tariff sheets reflecting elimination of facilities not in service by April 1, 1978 and LNG costs if deliveries did not begin by April 1, 1978. This condition was reaffirmed in an order denying rehearing issued on February 1, 1978 and an order rejecting a compliance filing issued March 31, 1978. Pursuant to that condition Consolidated filed revised tariff sheets on April 4, 1978 and further revised tariff sheets on April 18, 1978. These revised sheets reflect a substantial reduction in the rate increase proposed to be effective on April 1, 1978, in Docket No. RP77-140.

Administrative Law Judge for that purpose (18 CFR 3.5(d)), shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets by the staff, in a hearing or conference room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule upon all motions (except motions to consolidate, sever, or dismiss), as provided for in the rules of practice and procedure.

(F) The petitioners listed in the Appendix to this order shall be permitted to intervene in this proceeding subject to the rules and regulations of the Commission: *Provided, however,* That the participation of such intervenors shall be limited to matters affecting asserted rights and interests as specifically set forth in their petitions to intervene: and, *Provided, further,* That the admission of said intervenors shall not be construed as recognition by the Commission that they might be aggrieved because of any order of the Commission entered in this proceeding.

(G) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission. Commissioner Hall voted present.

LOIS D. CASHELL,
*Acting Secretary.*

APPENDIX

Bay State Gas Co.
The Berkshire Gas Co.
Boston Gas Co.
Cape Cod Gas Co.
Commonwealth Gas Co.
The Connecticut Gas Co.
Connecticut Natural Gas Corp.
Fall River Gas Co.
Fitchburg Gas & Electric Light Co.
The Hartford Electric Light Co.
Havenhill Gas Co.
Manchester Gas Co.
Town of Middleborough, Municipal Gas and Electric Department
New Jersey Natural Gas Co.
City of Norwich, Department of Public Utilities
Orange and Rockland Utilities, Inc.
The Providence Gas Co.
The Southern Connecticut Gas Co.
Valley Gas Co.
Transcontinental Gas Pipe Line Corp.

[FR Doc. 78-12323 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. ES78-33]

## EL PASO ELECTRIC CO.

### Application

MAY 1, 1978.

Take notice that on April 20, 1978, El Paso Electric Co. (Applicant), filed an application with the Federal Energy Regulatory Commission seeking authority pursuant to Section 204 of the Federal Power Act to issue unsecured promissory notes not to exceed $130,000,000 face value at any one time outstanding.

The Applicant is incorporated under the laws of the State of Texas with its principal business office at El Paso, Tex., and is engaged in the electric utility business in the States of Texas and New Mexico in an area in the Rio Grande Valley extending approximately 110 miles northwesterly from El Paso to the Cabello Dam in New Mexico, and 120 miles southeasterly from El Paso to Van Horn, Tex., with a population of approximately 480,000 of whom 385,000 reside in metropolitan El Paso.

According to Applicant, the notes, including bank notes and commercial paper, are to have maturities not exceeding twelve months from the dates of issuance, with final maturity dates not later than December 31, 1980.The Applicant indicates that the interest rate on the Notes to be issued to commercial banks are not for resale to the public will be at the prime rate in effect from time to time, plus, in some instances, provision for compensating balances of 20 percent. The interest rate for Commercial Paper will be the prevailing rate in effect at the time of its issuance for paper of comparative quality and term.

Applicant states that the proceeds from the sale of the Notes will be used (i) to provide interim financing for Applicant's construction program contemplated and now in progress, (ii) to provide temporary financing of current transactions, to maintain cash working funds at normal levels, to carry accounts receivable, to provide for periodic large cash needs, such as tax payments, to supply temporary funds for unexpected cash requirements, and (iii) to provide for other types of current operational business requirements. Applicant's construction program for the years 1978 through 1981 has an estimated cost of $412,272,310.

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 12, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-12324 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. ER78-282]

## FLORIDA POWER & LIGHT CO.

### Order Accepting Rate Schedule for Filing, Waiving Regulations and Consolidating Proceedings

APRIL 28, 1978.

On March 29, 1978, Florida Power & Light Co. (FP&L) filed with the Commission an unexecuted Service Agreement and Exhibit A to its FERC Electric Tariff for service to the Fort Pierce Utilities Authority (Fort Pierce). FP&L proposes to make available to Fort Pierce 33 MW of firm power, and the energy associated therewith, under its Rate Schedule PR, for the period March 27, 1978 through May 31, 1978. Since FP&L states that it commenced service to Fort Pierce on March 27, 1978, in accordance with its request, the company requests that the Commission waive the notice requirements of Section 35.3 of its Regulations in order to permit the rate schedule to become effective as of that date.

FP&L states that Fort Pierce is a fully self-sufficient utility which presently purchases power from it under Service Schedules A (Emergency Interchange Service), B (Scheduled Interchange Service), and C (Economy Energy Interchange Service), to an interchange contract dated May 1, 1974. Because Fort Pierce has sufficient generating capacity to supply its own bulk power requirements, FP&L maintains that it cannot estimate the amount of power and energy Fort Pierce will actually take under Rate Schedule PR. Consequently, the company states that it cannot estimate the revenues it will receive under the rate schedule.

On October 14, 1977, in Docket No. ER78-19, FP&L submitted for filing rate schedules which seek to limit the availablity of total (Rate Schedule SR-2) and partial requirements service (Rate Schedule PR). Proposed Rate Schedule PR would only be available to those electric systems for partial power requirements if the systems have insufficient generating capacity and/or firm power purchases to meet their own loads. By order issued December 30, 1977, in Docket No. ER78-19, et al., the Commission suspended the availability clauses in SR-2 and PR for five months, until June 1, 1978.

FP&L asserts that in order to prevent the technical noncompliance with the tariff presently in effect from be-

coming an issue in Docket Nos. ER78-19, et al., it has made the service requested available to Fort Pierce until the proposed change in the availability clause of Rate Schedule PR becomes effective.

On April 17, 1978, Fort Pierce filed a Protest and Request For Relief. Fort Pierce argues that FP&L's submittal in this docket represents an attempt to eliminate the basis for effective enforcement of its wholesale service obligations and an absolute refusal to deal in basic power supply services. It maintains that the May 31, 1978 termination date is a violation of the present and proposed availability clauses of FP&L's tariff, which provides that service cannot be terminated other than by two years' written notice, and specifying that there should be an initial five year term. It states that it accepted FP&L's contract after striking the June 1, 1978 termination language and notified the company of its refusal to accept the termination date before service commenced. Fort Pierce states that FP&L began to render service anyway. Fort Pierce reasons that in providing service under the tariff FP&L has acquiesced to its rejection of the proposed limitation of service to June 1, 1978.

Fort Pierce then posits that FP&L's actions are unlawful on the following grounds:

1. FP&L's refusals to deal with Fort Pierce are unduly discriminatory, since it is willing to sell to existing new retail customers;

2. FP&L acts to impose blatant tie-in sales by refusing to provide wholesale service to Fort Pierce to allow it to distribute power;

3. FP&L's refusals to deal with Fort Pierce constitute an extreme form of price squeeze;

4. The service terms are unjust and unreasonable insofar as they constitute an attempt by FP&L to preserve its nuclear and base load monopoly; and

5. By seeking approval of its proposed contract, FP&L proposes an unlawful and unjustified abandonment of the service it has just instituted.

Fort Pierce requests:

(1) That it be granted intervention;

(2) That the Commission find that FP&L's refusals to sell wholesale power to it is contrary to FP&L's filed tariff and the Federal Power Act; and

(3) That the Commission accept FP&L's proposed filing in this docket, but order the proposed termination of service be ineffective.

The Commission shall accept FP&L's March 29, 1978 submittal for filing. FP&L shall be directed to file cost support pursuant to Section 35.13 of the Commission's Regulations for its service to Fort Pierce. Such support was not included in FP&L's filing in Docket No. ER78-19 nor in the instant docket. Since service commenced on March 27, 1978, the Commission finds good cause to waive the notice requirements of Section 35.3 of its Regulations.

The Commission finds good cause to consolidate the instant docket with Docket Nos. ER78-19, et al which concerns the reasonableness of FP&L's Rate Schedules SR-2 and PR. Because of the substantial nature of Fort Pierce's interests in this proceeding, the Commission will allow it to intervene herein.

The availability provision of Rate Schedule PR, which provides that service is only available to those systems having insufficient generating capacity to meet their own needs, was suspended for five months, until June 1, 1978, by Commission order issued December 30, 1977 in Docket Nos. ER78-19, et al. The Commission also ordered an expedited investigation to determine the lawfulness of FP&L's proposed service limitations. All other provisions of FP&L's tariff became effective on March 1, 1978, after a two month suspension.

FP&L initiated service on March 27, 1978, when the availability provision was not in effect.

By letter dated March 24, 1978, FP&L offered to commence service at any time after 6 p.m., Friday, March 24, 1978. Exhibit A of the Service Agreement transmitted to Fort Pierce provides in relevant part:

Notwithstanding any other term of the Service Agreement dated ——— to the contrary, service at this Point of Delivery will terminate on June 1, 1978 unless otherwise ordered by the Federal Energy Regulatory Commission.

On March 27, 1978, by telegram, Fort Pierce notified FP&L that it accepted its offer to sell partial requirements service. It further indicated that it did not assent to the above-quoted paragraph. Fort Pierce additionally wrote a letter dated March 27, 1978, explaining why it did not agree to the June 1, 1978 termination date. By letter dated March 29, 1978, Fort Pierce transmitted an executed Service Agreement to FP&L with the June 1, 1978 termination language crossed out. FP&L commenced service notwithstanding Fort Pierce's rejection of the termination provision.

On the basis of the foregoing discussion, it is clear that Fort Pierce disavows the notion that it acquiesced in the June 1, 1978 termination provision. However, Fort Pierce is presently receiving partial requirements service from FP&L.

It should be noted that before FP&L can terminate service to Fort Pierce, it must file pursuant to Section 35.15 of the Commission's Regulations, a notice of termination. Such notice should be filed at least 30 but not more than 90 days before the proposed termination is to take effect. Before service can be terminated, the proposed termination must be shown to be consistent with the public interest. *Pennsylvania Water & Power Co. v. Federal Power Commission*, 343 U.S. 414 (1952). Unless and until authority to terminate is granted under this procedure, FP&L is ordered to continue rendering service to Fort Pierce under the service agreement declared effective by this order notwithstanding any restrictive eligibility clause as would otherwise determine Fort Pierce ineligible to receive service under its tariff. Any provision of the service agreement which by its own terms would effect a termination of service to Fort Pierce is hereby found and declared to be inconsistent with the public interest.

The Commission further finds: (1) Good cause exists to waive the cost support requirements of Section 35.13 for the purpose of accepting FP&L's submittal for filing.

(2) Good cause exists to accept FP&L's submittal for filing as herein conditioned.

(3) Good cause exists to waive the notice requirements of Section 35.3 of the Commission's Regulations and allow FP&L's filing to be effective as of March 27, 1978.

(4) Good cause exists to consolidate the instant docket with Docket Nos. ER78-19, et al.

(5) Participation by Fort Pierce in this proceeding may be in the public interest.

The Commission further orders: (A) The Commission shall waive Section 35.13 of its Regulations for the purpose of accepting FP&L's submittal for filing. However, FP&L is hereby directed to file cost support pursuant to Section 35.13 of the Commission's Regulations for service to Fort Pierce within 20 days of the issuance of this order.

(B) FP&L's submittal in this docket is hereby accepted for filing as of March 27, 1978, subject to refund.

(C) FP&L shall continue to provide partial requirements service to Fort Pierce pursuant to the service agreement filed herein until otherwise ordered by the Commission.

(D) The Commission hereby waives Section 35.3 of its Regulations to allow an effective date of March 27, 1978, for FP&L's filing.

(E) Revenues collected by FP&L from Fort Pierce under Rate Schedule PR shall be subject to refund in Docket No. ER78-19.

(F) Docket No. ER78-282 is hereby consolidated with Docket Nos. ER78-19, et al.

(G) Fort Pierce is hereby permitted to intervene in this proceeding subject to the Rules and Regulations of the Commission: *Provided, however,* that

participation of Fort Pierce shall be limited to the matters specficially set forth in its petition to intervene; and *Provided, further,* that the admission of Fort Pierce shall not be construed as recognition by the Commission that it might be aggrieved by any order issued in this proceeding.

(H) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
*Acting Secretary.*

[FR Doc. 78-12325 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. ES78-30]

**IOWA SOUTHERN UTILITIES CO.**

**Application**

MAY 1, 1978.

Take notice that on April 5, 1978, Iowa Southern Utilities Co. (Applicant) filed an application for an order pursuant to section 204 of the Federal Power Act requesting an amendment to its authority to issue common stock of the company pursuant to an Employees' Stock Ownership Plan (ESOP Plan) within the meaning of section 301 of the Tax Reduction Act of 1975 for as long as the ESOP Plan so qualifies.

Applicant is incorporated under the laws of the State of Delaware with its principal business office at Centerville, Iowa, and is engaged in the electric utility business in 24 counties in Iowa.

The Common Stock will be issued to a trust for the benefit of the company's employees qualifying for the plan.

The proceeds from the issuance of the common stock will be used to reduce the amount of income tax payable for the appropriate year to the extent of 1 percent of investment tax credit and up to one-half of an additional 1 percent investment tax credit to the extent matched by payments from participants of the Plan, and subsequent years, by the company.

Any person desiring to be heard or to make any protest with reference to the application should on or before May 12, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions or protests in accordance with the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). The application is on file with the Commission.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-12326 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. ER78-326]

**KANSAS GAS AND ELECTRIC CO.**

**Filing**

MAY 1, 1978.

Take notice that Kansas Gas and Electric Co. (KG&E), on April 21, 1978, tendered for filing an initial Agreement for Wholesale Electric Service with the city of Oxford, Kans. KG&E states that initial service is to commence on June 27, 1978.

KG&E further states that copies of the Agreement have been served upon the city of Oxford, Kans.

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 sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 9, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this application are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-12327 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket Nos. RP78-10 and RP72-32 (PGA77-2a)]

**KANSAS-NEBRASKA NATURAL GAS CO. INC.**

**Further Extension of Time**

APRIL 28, 1978

On April 19, 1978, Staff Counsel filed a motion to further extend the time for service of top sheets in the above referenced proceeding, pursuant to the Commission's Order issued November 25, 1977. An extension of time was previously granted by notice issued March 21, 1978.

Upon consideration, notice is herby given that an extension of time is granted to and including June 1, 1978, within which Staff Counsel shall serve top sheets on all parties. Pursuant to Ordering Paragraph (I) of the November 25, 1977 Order, the Presiding Administrative Law Judge shall convene a settlement conference within 10 days after the service of top sheets and will establish all further procedural dates.

LOIS D. CASHELL,
*Acting Secretary.*

[FR Doc. 78-12328 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. RP73-14; (PGA78-2) (DCA78-1)]

**MICHIGAN WISCONSIN PIPE LINE CO.**

**Order Accepting for Filing and Suspending Proposed Rate Increase, Granting Interventions, Initiating Hearing and Establishing Procedures**

APRIL 28, 1978.

On March 15, 1978, Michigan Wisconsin Pipe Line Co. (Mich-Wisc) filed a revised tariff sheet[1] containing PGA and DCA rate adjustments to be effective May 1, 1978, to reflect (1) a commodity increase of 8.25 cents per Mcf in the Purchase Gas Adjustment to reflect principally the combined effect of (a) the replacement of old sources of gas supply with higher priced new gas, (b) contractual increases and escalations due to producer increases under Opinion Nos. 699, 749, and 770, (c) an increase in the cost of Oklahoma gas production due to the Oklahoma Conservation tax of 7 cents per Mcf which became effective on January 1, 1978, and (d) a rate reduction by Midwestern Gas Transmission Co. due to variations in the Canadian exchange rate; (2) a commodity increase of 4.81 cents per Mcf in the surcharge level to 12.09 cents which will recover a reduced level of deferred costs from those recovered through the November 1, 1977 surcharge but over a lesser volume, and; (3) a commodity reduction of 0.86 cents per Mcf in the Demand Charge adjustment to 1.27 cents for the period May through October 1978.

Mich-Wisc concurrently filed an alternate tariff sheet[2] which excludes 0.02 cents from the surcharge adjustment representing the cost of emergency purchases above rates prescribed by Opinion No. 770-A. Mich-Wisc requests that this alternative tariff sheet be made effective for one day, May 1, 1978, in the event that the Commission suspends for one day its filing due to the inclusion of emergency purchases above the rates prescribed by Opinion No. 770-A.

The emergency purchases made by Mich-Wisc at issue herein are as follows:

(a) Purchase of 4,576 Mcf for $10,296 from Helmerich and Payne pursuant to a contract dated March 17, 1977.

(b) Purchase of 15,214 Mcf for $34,231 from Donald C. Slawson pursuant to a contract dated February 24, 1977.

(c) Purchase of 53,416 Mcf for $120,186 from Kennedy and Mitchell,

[1] Nineteenth Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1.

[2] Alternate Nineteenth Revised Sheet No. 27F to FPC Gas Tariff, Second Revised Volume No. 1.

Inc., pursuant to a contract dated September 29, 1977.

The volumes purchased under contracts (a) and (b) are a continuation of purchases included in Mich-Wisc's September 15, 1977, PGA filing which became effective November 1, 1977. The Commission approved that PGA filing by letter order dated November 18, 1977, in Docket Nos. RP73-14 and RP76-50 (PGA No. 77-3 and DCA No. 77-1). Accordingly, no further investigation of these emergency purchases is necessary. As to the remaining contract (c) which has not been the subject of previous Mich-Wisc PGA filings, we believe that Mich-Wisc should be allowed to include in its purchased gas costs the rate for such purchase which a reasonably prudent pipeline would pay for gas under the same or similar circumstances. Accordingly, we shall institute hearing procedures for the purpose of resolving this issue. The amounts shall also be collected subject to refund pending the outcome of the hearing.

Our review of the costs included in the filing, other than the costs associated with the Kennedy and Mitchell purchases indicates that they are just and reasonable or otherwise appropriate under the Natural Gas Act and should be approved. Accordingly, we shall reject the alternate tariff sheet filed by Mich-Wisc and proposed to be effective for one day, May 1, 1978, but permit Mich-Wisc to file a revised tariff sheet to become effective May 1, 1978, without refund obligation, which excludes those costs attributable to the Kennedy and Mitchell emergency purchases which are in excess of Opinion 770-A rate levels.

Public notice of the filing was issued on March 20, 1978 with protests or petitions for intervention due on or before April 7, 1978. Petitions to intervene was filed by the Wisconsin Gas Co. and the Wisconsin Natural Gas Co. The city of Albany, Mo., filed a protest requesting the Commission to review the rate increase closely and to disapprove any amounts not shown to be necessary.

The Commission finds: (1) Mich-Wisc's proposed increase should be accepted for filing and suspended for one day to become effective May 2, 1978, subject to refund.

(2) Mich-Wisc's alternative tariff sheet should be rejected.

(3) Mich-Wisc should be permitted to file a revised tariff sheet to be effective May 1, 1977, which excludes those costs attributable to the Kennedy and Mitchell emergency purchases which are in excess of Opinion 770-A rate levels.

(4) A hearing should be held to determine the prudency of the Kennedy and Mitchell emergency purchase.

The Commission orders: (A) Mich-Wisc's proposed tariff sheet, referenced herein, is accepted for filing and suspended for one day until May 2, 1978, at which time such sheet shall be permitted to become effective, subject to refund.

(B) Mich-Wisc may file, within 15 days of the issuance of this order, a revised tariff sheet effective May 1, 1978, without refund obligation reflecting the elimination of those costs attributable to the Kennedy and Mitchell emergency purchases which are in excess of Opinion 770-A rate levels.

(C) Pursuant to the authority of the Natural Gas Act, particularly, sections 4, 5, 7, 14, 15, and 16, and the Commission's Rules and Regulations, a hearing shall be held in this proceeding to determine the issue of the prudency of Kennedy and Mitchell emergency purchase.

(D) The Commission Staff shall prepare and serve top sheets on all parties on or before August 1, 1978.

(E) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge pursuant to 18 CFR 3.5(d), shall convene a prehearing conference in this proceeding within 10 days after the service of top sheets by the Staff, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, for the purposes of establishing procedures for the investigation and hearing to be held pursuant to this order. The Presiding Judge shall be authorized to modify all procedural dates and to establish further procedures as may in his judgment be required for purposes of the investigation and hearing pursuant to this order. The presiding Judge shall also be authorized to rule upon all motions except motions to consolidate, sever, or dismiss, as provided for in the Rules of Practice and Procedure.

(F) The above-noted petitioners to intervene are permitted to intervene in this proceeding subject to the Commission's Rules and Regulations; *Provided, however,* That the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene; and *Provided, further,* That the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

(G) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
*Acting Secretary.*

[FR Doc. 78-12329 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. ER77-348]

## MISSOURI UTILITIES CO.

### Proposed Settlement Agreement

MAY 1, 1978.

Take notice that on March 27, 1978, Missouri Utilities Company (MUCO) tendered for filing a proposed settlement agreement in the above cited docket. On March 31, 1978, Presiding Administrative Law Judge Stephen L. Grossman certified the settlement to the Commission.

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 15, 1978. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-12330 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. RP78-50]

## NORTHWEST PIPELINE CORP.

### Order Accepting for Filing and Suspending Proposed Rate Increase Subject to Conditions, Initiating Hearing and Granting Interventions

APRIL 23, 1978.

On March 31, 1978, Northwest Pipeline Corp. (Northwest) filed in Docket No. RP78-50 revised tariff sheets[1] which would increase jurisdictional revenues by $32,621,067 annually based on costs and sales volumes for the twelve months ended December 31, 1977, as adjusted. Northwest requests that the proposed rate increase become effective on May 1, 1978. For the reasons stated below, the Commission shall accept the revised tariff sheets for filing, suspend them for five months and set the matter for hearing.

Public notice of Northwest's filing was issued on April 11, 1978, providing for the filing of protests or petitions to intervene on or before April 28, 1978. Timely petitions to intervene were filed by the Public Service Co. of Colorado, Western Slope Gas Co., Chey-

[1] Twentieth Revised Sheet No. 10 to Original Vol. No. 1 and First Revised Sheet Nos. 195, 241, 283, 309 and 365 to Original Vol. No. 2.

enne Light, Fuel and Power Co., Colorado Interstate Gas Co. and Pacific Gas Transmission Co. The Commission finds that all listed petitioners have demonstrated an interest in this proceeding which warrants their participation. The petitions to intervene shall therefore be granted.

Northwest states that its proposed increase in rates is required because of the increased costs associated with the expansion of the Clay Basin Storage Project, increased costs of gas supply projects, increased operation and maintenance expenses and taxes and decreased sales volumes. Northwest also claims an overall rate of return of 11.39 percent which is designed to yield a 16.50 percent return on equity capital.

Based on a review of Northwest's filing the Commission finds that the proposed rate increase has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or otherwise unlawful. Accordingly, the Commission shall accept Northwest's revised tariff sheets for filing, suspend their use for five months to become effective October 1, 1978, subject to refund, and shall set the matter for hearing, as hereinafter conditioned.

Northwest's supporting cost of service includes the costs of the Clay Basin Storage Project, a project which has received Commission certificate authorization but which has not yet been placed in service. Northwest asks for waiver of section 154.63(e)(2)(ii) of the Commission's Regulations to permit inclusion of these costs in rates even if the facilities are not placed in service before October 1, 1978. Northwest also reflects in its rates costs related to the proposed expansion of the Jackson Prairie Storage Field and asks for waiver of section 154.63(e)(2)(ii) to permit these costs to be recovered in rates despite the fact that certificate authorization has not yet been applied for. Northwest has also reflected in rates the costs of certain other facilities which have not yet received certificate authorization but which are expected to be certificated and in service prior to October 1, 1978. The Commission shall grant waiver of section 154.63(e)(2)(ii) in that it shall accept for filing Northwest's revised tariff sheets which include the costs of noncertificated facilities. Northwest's request for waiver of section 154.63(e)(2)(ii) to permit recovery of the costs of facilities not certificated and placed in service on or before September 30, 1978, shall be denied, however, and Northwest shall be required to file, prior to October 1, 1978, revised tariff sheets to reflect elimination of all costs from its cost of service related to facilities not placed in service by October 1, 1978.

The proposed rates are designed to recover increases in royalty costs and related production taxes which may become payable by Northwest under procedures recently promulgated by the United States Geological Survey (USGS). Northwest explains that the USGS published a notice on May 4, 1977 (42 FR 22610) which establishes new rules for calculating royalty payments due under Federal and Indian lease agreements. Northwest claims that the new rules, which became effective on June 1, 1977, require that where a gas sales contract is not the product of arm's length bargaining (e.g., pipeline production) the royalties payable on that production shall be computed using a base figure equal to the higher of (a) the price received by the lessee or operator under the sales contract or (b) the highest applicable ceiling rate established by the FERC for the same vintage gas. Northwest maintains that the USGS may interpret the "highest applicable ceiling rate" to mean rates for renegotiated contracts set forth in 699-H and 770-A and not the flowing gas rate promulgated in Opinion No. 749 which has been the basis for Northwest's landowner royalty payments since June 1, 1977. Should Federal and Indian royalty costs be increased, Northwest states that it would be compelled to increase royalty payments to private as well as public lessors. Northwest requests waiver of section 154.63(e)(2)(i) of the Regulations to permit recovery, subject to refund, of increased royalty and related production tax expenses pending resolution of the royalty issue with USGS. The Commission shall not grant waiver of its regulations as requested. Based on information provided to the Commission by Northwest, the projected increases in royalty costs and production taxes may never be realized and, at the present time, constitute a speculative liability which is not "known and measurable" as required by the Commission's regulations. Under these circumstances, we shall allow Northwest to reflect in its proposed rates only that level of royalty and production tax expenses which are actually being incurred on September 30, 1978.

Finally, Northwest filed in this docket First Revised Sheet No. 365 which sets forth increased rates for Rate Schedule X-41. We note that Northwest's Rate Schedule X-41 and Original Sheet No. 365 is being considered in Northwest's pending certificate proceeding in Docket No. CP77-447. Section 154.22 of the Commission's Regulations provides that a natural gas company must obtain a certificate of public convenience and necessity pursuant to section 7(c) of the Natural Gas Act before any new rate schedule or contracts for the performance of any new service may be filed. We shall waive the provisions of this Regulation in order to accept for filing the increased rates for Rate Schedule X-41, subject to the condition that Northwest shall file revised tariff sheets reflecting the elimination of Rate Schedule X-41 if a certificate for this service has not been issued by October 1, 1978.

The Commission finds: It is necessary and proper in carrying out the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the rates proposed by Northwest and that the proposed increased rates be accepted for filing and suspended as ordered below.

The Commission orders: (A) Pursuant to the authority of the Natural Gas Act, particularly sections 4, 5, 8, and 15, and the Commission's regulations, a public hearing shall be held concerning the lawfulness of the increased rates proposed by Northwest.

(B) Pending hearing and decision, and subject to the conditions of this order, Northwest's proposed rate increase is accepted for filing and suspended for 5 months, until October 1, 1978, when it shall be permitted to become effective, subject to refund, upon motion filed by Northwest in accordance with the provisions of the Natural Gas Act.

(C) On or before October 1, 1978, Northwest shall file substitute tariff sheets and supporting cost and revenue data in accordance with the Commission's rules and regulations, to reflect the elimination of all costs associated with facilities not placed in service by October 1, 1978.

(D) Waiver of Section 154.63(e)(2)(ii) of the Regulations is granted subject to the condition set forth in Paragraph (C) above.

(E) The tariff sheets accepted by this order shall be revised to reflect elimination of all projected increases in royalty expenses and production taxes which do not become effective by October 1, 1978.

(F) Waiver of Section 154.22 of the Regulations is granted subject to the condition that Northwest shall file revised tariff sheets reflecting the elimination of Rate Schedule X-41 if a certificate for this service has not been issued by October 1, 1978.

(G) The petitioners to intervene listed in the body of this order shall be permitted to intervene in this proceeding subject to the Commission's rules and regulations;

*Provided, however,* that the participation of the intervenors shall be limited to matters affecting asserted rights and interests specifically set forth in the petitions to intervene; and *Provided, further,* that the admission of such intervenors shall not be construed as recognition that they might be aggrieved by any order entered in this proceeding.

(H) The Commission Staff shall prepare and serve top sheets on all parties on or before August 18, 1978.

(I) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge for that purpose (18 CFR 3.5(d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of top sheets in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever, consolidate or dismiss) as provided for in the rules of practice and procedure.

(J) The Secretary shall cause prompt publication of this order in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
*Acting Secretary.*

[FR Doc. 78-12331 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. ER78-228]

**PUBLIC SERVICE COMPANY OF INDIANA, INC.**

**Order Accepting for Filing and Suspending Proposed Rates and Services for Interchange Service Providing for Hearing and Establishing Procedures**

APRIL 28, 1978.

On February 24, 1978, Public Service Company of Indiana, Inc. (PSI) tendered for filing an Interconnection Agreement (the Agreement) between PSI and the city of Crawfordsville, Ind. (City). The proposed Agreement cancels and replaces the Interconnection Agreement dated March 6, 1968, which has been designated as Rate Schedule FERC No. 21. Notice of the filing was issued on March 2, 1978, with protests or petitions to intervene due on or before March 24, 1978. No protests or petitions have been filed.

The proposed Agreement consists of general terms and conditions of Service Schedules A through E, providing respectively for the exchange of Firm Power, Emergency Service Maintenance Power, Interchange Power and Interim Power. As pertinent Service Schedule A, section 2, specifies a charge for firm power of $5.34 per kW-month of firm billing demand plus 6.59 mills per kWh subject to a fuel clause adjustment[1]. This schedule requires the City to take firm power and firm energy at a rate of delivery not less than the "Firm Reservation" Currently specified at 35 percent of the City's Maximum System Kilowatt Demand during the immediately preceding 12 months[2]. Service Schedule B, Section 3 provides that emergency energy shall be compensated by the return of equivalent energy, or at the supplier's discretion, by payments equal to 110 percent of the supplier's "out-of-pocket", incremental, cost. The Agreement also states that the fuel cost component of the supplier's out-of-pocket costs may include the replacement costs of fuel purchased for, or supplied from, the supplier's storage inventories.

A preliminary review indicates that the proposed rates discussed above have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory, preferential, or otherwise unlawful. PSI requests that the proposed rates go into effect on May 1, 1978. Considering the above, the Commission will accept the submittal for filing and suspend the rates for one day from the effective date after which the rates will go into effect subject to refund.

It is in the public interest to hold a prehearing conference among representatives of the PSI, the City, and the Commission Staff to provide and exchange additional facts and to work toward resolution of the issues raised by this filing.

The Commission finds: (1) Good cause exists to accept for filing the proposed rates and services and to suspend the use thereof for one day from May 1, 1978, when they shall become effective subject to refund.

(2) It is necessary and proper in the public interest and to aid in the enforcement of the Federal Power Act that the Commission enter upon a hearing concerning the lawfulness of PSI's proposed rates and services.

(3) Good cause exists to hold a prehearing conference among representatives of PSI, the City, and Commission Staff to discuss issues regarding this filing.

The Commission orders: (A) PSI's proposed rates and services are hereby accepted for filing and suspended for one day from May 1, 1978, when they may become effective subject to refund.

(B) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge for that purpose (see Delegation of Authority, 18 CFR section 35.5(d)), shall convene prehearing conference in this proceeding on June 20, 1978, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426. The Law Judge is authorized to establish all procedural dates and to rule upon all motions (except petitions to intervene, motions to consolidate and sever, and motions to dismiss), as provided for in the Commission's Rules of Practice and Procedure.

(C) Pursuant to the authority of the Federal Power Act, particularly sections 205 and 206 thereof, and the Commission's Rules and Regulations, a public hearing shall be held concerning the justness and reasonableness of the rates and charges included in the subject filing of PSI.

(D) The Secretary shall cause prompt publication of this order to be made in the FEDERAL REGISTER.

By the Commission.

LOIS D. CASHELL,
*Acting Secretary.*

[FR Doc. 78-12332 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. CP78-286]

**TRANSPORT, INC.**

**Application**

APRIL 27, 1978.

Take notice that on April 14, 1978, Transport, Inc. (Applicant), 109 North Broad Street, Lancaster, Ohio 43130, filed in Docket No. CP78-286 an application pursuant to Section 7(c) of the Natural Gas Act and Section 157.7(b) of the Regulations thereunder (18 CFR 157.7(b)) for a certificate of public convenience and necessity authorizing the construction, during the twelve-month period May 1, 1978 through April 30, 1979, and operation of facilities to enable Applicant to take into its certificated main pipeline system natural gas which would be purchased from producers or other similar sellers thereof, all as more fully set forth in the application on file with the Commission open to public inspection.

The stated purpose of this budget-type application is to augment Applicant's ability to act with reasonable dispatch in connecting to its pipeline system supplies of natural gas which may become available from various producing areas generally coextensive with its pipeline system or the systems of other pipeline companies which may be authorized to transport gas for the account of or exchange gas with Applicant.

Applicant states that the total estimated cost of the proposed facilities is $800,000, which cost would be financed with internally-generated funds or short-term financing. Applicant states that it is aware that the total estimated cost of the proposed facilities exceeds 2 percent of plant account. However, Applicant states that it is engaged in essentially a gathering operation and needs to be able to attach reserves without extensive delays.

[1] These rates are the same as those at issue in Docket Nos. ER76-149 and E-9537 as applicable to PSI's agreements with certain municipal customers.

[2] PSI's agreements with its other municipal customers involved in dockets cited above specifies a Firm Reservation of 10 percent, as did the prior agreement with Crawfordsville.

Consequently, Applicant requests that the Commission waive the maximum dollar limitation imposed by section 2.58(a) of its General Policy and Interpretations and section 157.7(b)(1) of its Regulations with regard to this application.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 17, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-12333 Filed 5-4-78; 8:45 am]

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[6740-02]

[Docket No. CP78-294]

**UNITED GAS PIPE LINE CO.**

**Pipeline Application**

APRIL 27, 1978.

Take notice that on April 7, 1978, United Gas Pipe Line Co. (United), P.O. Box 1478, Houston, Tex. 77001, filed an application in Docket No. CP78-294, pursuant to section 7(c) of the Natural Gas Act, as amended, requesting authorization to transport gas for Arkansas Louisiana Gas Co. (Arkla), all as more fully set forth in the application which is on file with the Federal Energy Regulatory Commission (Commission).

United states that pursuant to a transportation agreement dated April 4, 1978, between United and Arkla, Arkla will deliver or cause to be delivered to United for transportation up to 27,000 Mcf per day at a point of receipt on United's offshore pipeline system in Eugene Island Area, Block 32, offshore Louisiana. United will redeliver equivalent volumes, less fuel and company-used gas, to Arkla at various existing and proposed points of interconnection between United and Arkla.

Any person desiring to be heard or to make any protest with reference to said application, on or before May 17, 1978, should file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 1.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding, or to participate as a party in any hearing therein, must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing wil be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-12334 Filed 5-4-78; 8:45 am]

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[6740-02]

**Federal Energy Regulatory Commission**

[Docket Nos. G-5236, et al.]

**CABOT CORP., ET AL.**

**Applications for Certificates, Abandonment of Service and Petitions to Amend Certificates [1]**

APRIL 26, 1978.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before May 23, 1978, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 1.8 or 110). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission on all applications in which no petition to intervene is filed within the time required herein if the Commission on its own review of the matter believes that a grant of the certificates or the authorization for the proposed abandonment is required by the public convenience and necessity. Where a petition for leave to intervene is timely filed, or where the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

KENNETH F. PLUMB,
*Secretary.*

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

| Docket No. and date filed | Applicant | Purchaser and location | Price Per 1,000 ft³ | Pressure base |
|---|---|---|---|---|
| G-5236, C, Apr. 12, 1978 | Cabot Corp. (successor to Godfrey L. Cabot, Inc.), P.O. Box 1473, Charleston, W. Va. 25325. | Consolidated Gas Supply Corp., certain acreage in Wood County, W. VA. | (1) | 14.65 |
| G-7241, C, Apr. 12, 1978 | Southland Royalty Co. (successor in interest to Aztec Oil & Gas Co.), 1000 Fort Worth Club Tower, Fort Worth, Tex. 76102. | Northern Natural Gas Co., Queen Sand underlying acreage located in the S/2 S/2 of sec. 35, T20S, R37E, and the E/2 SE/4 of sec. 28 and the W/2 SW/4 of sec. 27, T19S, R37E, all in Lea County, N. Mex. | (2) | 14.73 |
| G-18697, D, Apr. 13, 1978 | Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001. | United Gas Pipeline Co., Gibson Field, Terrebonne Parish, La. | Shell drilled two dry holes on this acreage and was unable to establish production. | |
| CI75-39, A, Apr. 17, 1978 | Finadel, Inc. (successor in interest to American Petrofina Exploration Co.), P.O. Box 2159, Dallas, Tex. 75221. | Transcontinental Gas Pipe Line Corp., ship shoal area (south addition), block 246 field, offshore Louisiana. | (3) | 15.025 |
| CI76-53, C, Apr. 17, 1978 | Mobil Oil Corp., 3 Greenway Plaza East, Suite 800, Houston, Tex. 77046. | Natural Gas Pipeline Co. of America, South one-half of block 532 and the north one-half of block 533, West Cameron area, south addition, offshore Louisiana. | (3 4) | 14.73 |
| CI76-733, C, Apr. 10, 1978 | Finadel Inc. (successor in interest to American Petrofina Exploration Co.). | Transcontinental Gas Pipe Line Corp., Galveston area block 255 field, Gulf of Mexico. | (3) | 15.025 |
| CI76-737, C, Apr. 13, 1978 | ....do | Transco Gas Supply Co., West Cameron block 480 field, offshore Louisiana. | (3) | 15.025 |
| CI77-34, C, Apr. 11, 1978 | Dover Exploration Co., Box 615, Dover, Del. 19901. | Eastern Shore Natural Gas Co., Meyersville Field, Victoria County, Tex., north east Traywick field, Nacogdoches County, Tex., and South Edna field, Jackson County, Tex. | (3) | 14.73 |
| CI77-350, C, Apr. 11, 1978 | Ashland Exploration, Inc., P.O. Box 1503, Houston, Tex. 77001. | United Gas Pipeline Co., J. Paulin Duhe No. 2-A well, located in sec. 41-T12S-R8E, Iberia Parish, La. | (3) | 15.025 |
| CI77-410, C, Apr. 4, 1978 | Anadarko Production Co., P.O. Box 1330, Houston, Tex. 77001. | Panhandle Eastern Pipe Line Co., Christenson "B" No. 1 well, W/2 NE/4, sec. 14, T45N, R76W, Campbell County, Wyo. | (3) | 15.025 |
| CI77-694, C, Apr. 17, 1978 | Chevron U.S.A. Inc., P.O. Box 599, Denver, Colo. 80201. | Mississippi River Transmission Corp., E. T. Davis No. 1 well, Mills Ranch (Hunton) field, Wheeler County, Tex. | (3) | 14.65 |
| CI78-508, C, Apr. 7, 1978 | Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221. | Michigan Wisconsin Pipe Line Co., Robertson No. 1-A well, all of sec. 28-T26N-R26W, Harper County, Okla. | (3) | 14.65 |
| CI78-612, A, Apr. 3, 1978 | Sohio Natural Resources Co., 50 Penn Place, Suite 1100, Oklahoma City, Okla. 73118. | El Paso Natural Gas Co., Drinkard formation, Walden well No. 4 located in sec. 15, T22S, R37E, Lea County, N. Mex. | (6) | 14.65 |
| CI78-613, A, Apr. 3, 1978 | Hondo Oil & Gas Co., P.O. Box 2819, Dallas, Tex. 75221. | El Paso Natural Gas Co., certain acreage in the Millman area, Eddy County, N. Mex. | (3) | 14.65 |
| CI78-614, A, Apr. 5, 1978 | Ashland Exploration, Inc., P.O. Box 1503, Houston, Tex. 77001. | Panhandle Eastern Pipeline Co., Keffer No. 2-5 well located in sec. 5, T24N, R13W, Woods County, Okla. | (3) | 14.65 |
| CI78-615, A, Apr. 5, 1978 | Cities Service Co., P.O. Box 300, Tulsa, Okla. 74102. | Northern Natural Gas Co., Stonebraker "A" No. 91, sec. 6-2N-13ECM, Texas County, Okla., limited to production from the Council Grove formation. | (3) | 14.65 |
| CI78-616, A, Apr. 6, 1978 | Hondo Oil & Gas Co | El Paso Natural Gas Co., certain acreage in the Millman area, Eddy County, N. Mex. | (3) | 14.65 |
| CI78-617, A, Apr. 6, 1978 | Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221. | .....do | (3) | 14.65 |
| CI78-618 (G-19010), B, Apr. 6, 1978. | Austral Oil Co., Inc., 2700 Exxon Bldg., Houston, Tex. 77002. | Transcontinental Gas Pipe Line Corp., blocks 172 and 184, Dome field, Eugene Island, offshore Louisiana. | Depleted, leases released, plugged, and abandoned. | |

| Docket No. and date filed | Applicant | Purchaser and location | Price Per 1,000 ft³ | Pressure base |
|---|---|---|---|---|
| CI78-619, A, Apr. 7, 1978..... | Phillips Petroleum Co., 5 C4 Phillips Bldg., Bartlesville, Okla. 74004. | Mountain Fuel Supply Co., Bruff A No. 1 well located in sec. 18-18N-112W, Uinta County, Wyo. | (3) | 14.73 |
| CI78-620, A, Apr. 8, 1978..... | Appalachian Exploration & Development, Inc., P.O. Box 628, Charleston, W. Va. 25322. | Cabot Corp., Pocahontas C-5, C-6, C-7, and C-10 wells situated in McDowell County, W. Va. | (3) | 14.65 |
| CI78-622 (G-4801), B, Apr. 10, 1978. | Exxon Corp., P.O. Box 2180, Houston, Tex. 77001. | Lone Star Gas Co., Dillard Plant, Carter County, Okla. | Depleted, contract cancelled and no deliveries made to Lone Star for over four (4) years. | |
| CI78-623, B, Apr. 10, 1978..... | An-Son Corp., 810 Saratoga Bldg., New Orleans, La. 70112. | Northern Natural Gas Co., South Parnell, Basal Morrow; Ochiltree County, Tex. | Uneconomical. | |
| CI78-624 (CI62-463), B, Apr. 10, 1978. | Tenneco Oil Co. (successor to Tenneco Corp.), P.O. Box 2511, Houston, Tex. 77001. | El Paso Natural Gas Co., West Kutz Dakota field, San Juan County, N. Mex. | (7) | ..... |
| CI78-636, A, Apr. 14, 1978..... | Atlantic Richfield Co., P.O. Box 2819, Dallas, Tex. 75221. | El Paso Natural Gas Co., certain acreage in the block A-34 (Yates) field, Andrews County, Tex. | (3) | 14.65 |
| CI78-637, A, Apr. 14, 1978..... | Marathon Oil Co., 539 South Main St., Findlay, Ohio 45840. | El Paso Natural Gas Co., Jicarilla area (Chacra formation), Rio Arriba County, N. Mex. | (3) | 14.73 |
| CI78-638 (CI75-449), B, Apr. 10, 1978. | Gulf Oil Corp., P.O. Box 2100, Houston, Tex. 77001. | El Paso Natural Gas Co., A-B-M field, Upton County, Tex. | Plugged and abandoned, contract dated Dec. 2, 1974, expires by its own terms on Apr. 1, 1978. | |
| CI78-639, B, Apr. 17, 1978..... | Americo Petroleum, Inc., 200 East Third, Hutchinson, Kans. | Arkansas Louisiana Gas Co., north half (N/2) of sec. 19, T25S, R4W, Reno County, Kans., Harry Valdois No. 1 well. | Production has declined below economic limit. | |
| CI78-640, A, Apr. 13, 1978..... | Mesa Petroleum Co., P.O. Box 2009, Amarillo, Tex. 79189. | Tennessee Gas Pipeline Co., a division of Tenneco, Inc., West Delta, blocks 61 and 62, offshore Louisiana. | (3) | 14.73 |
| CI78-642, A, Apr. 17, 1978..... | Felmont Oil Corp., P.O. Box 2266, Midland, Tex. 79701. | Northern Natural Gas Co., from a portion of high island, area block A-532, south addition, offshore Texas. | (3) | 14.65 |
| CI78-643, A, Apr. 7, 1978..... | Arkla Exploration Co., P.O. Box 21734, Shreveport, La. 71151. | Arkansas Louisiana Gas Co., Clay field, Jackson and Lincoln Parishes, La. | (8) | 15.025 |
| CI78-644, A, Apr. 7, 1978..... | Arkla Exploration Co..... | Arkansas Louisiana Gas Co., southwest Mayfield field, Beckham County, Okla. | (9) | 14.65 |
| CI78-645, B, Apr. 17, 1978..... | Yucca Petroleum Co., P.O. Box 2585, Amarillo, Tex. 79105. | Northern Natural Gas Co., north Hansford field (Tonkawa zone) Hansford County, Tex. | (10) | ..... |
| CI78-646 (CI71-519), B, Apr. 2, 1978. | Kerr-McGee Corp., P.O. 25861, Oklahoma City, Okla. 73125. | Natural Gas Pipeline Co. of America, Mermentau River field, Acadia Parish, La. | Producers interest of certain properties has been relinquished. | |
| CI78-647 (CI60-84), B, Apr. 13, 1978. | Sun Oil Co., P.O. Box 20, Dallas, Tex. 75221. | Phillips Petroleum Co., Azalea field, Midland County, Tex. | (11) | ..... |
| CI78-648 (CI76-628), B, Apr. 17, 1978. | Shell Oil Co., 2 Shell Plaza, P.O. Box 2099, Houston, Tex. 77001. | Michigan Wisconsin Pipe Line Co., Eugene Island block 192, offshore Louisiana. | (12) | ..... |

| Docket No. and date filed | Applicant | Purchaser and location | Price Per 1,000 ft³ | Pressure base |
|---|---|---|---|---|
| CI78-649 (CI61-399), B, Apr. 12, 1978. | Caroline Hunt Schoellkopf, 2500 1st National Bank Bldg., Dallas, Tex. 75202. | Michigan Wisconsin Pipe Line Co., Laverne field, Beaver County, Okla. | Depleted, leases released from contract. | |
| CI78-650, A, Apr. 18, 1978..... | The Superior Oil Co., P.O. Box 1521, Houston, Tex. 77001. | Columbia Gas Transmission Corp. blocks A-337, A-342, and A-343, High Island area, offshore Texas. | (2) | 15.025 |
| CI78-651, B, Apr. 13, 1978..... | Gas Futures, Ltd., 2200 South Post Oak Rd., Houston, Tex. 77027. | Michigan Wisconsin Pipe Line Co., Laverne field, Harper County, Okla. | Well was shut in after cessation of production and unsuccessful workover program during February 1976. | |
| CI78-652, A, Apr. 17, 1978..... | Texas Gas Exploration Corp., P.O. Box 52310, Houston, Tex. 77052. | Consolidated Gas Supply Corp., "A" platform, block 313, Vermilion area, offshore Louisiana. | (3) | 14.73 |
| CI78-653, A, Apr. 17, 1978..... | Elf Aquitaine, Inc., 950 Threadneedle, Suite 200, Houston, Tex. 77079. | Tennessee Gas Pipeline Co., Maple Branch field, Monroe and Lowndes Counties, Miss. | (4) | 15.025 |
| CI78-654, A, Apr. 17, 1978..... | Shell Oil Co | Transcontinental Gas Pipe Line Corp., East Cameron blocks 56 and 57 field, offshore Louisiana. | (5) | 15.025 |
| CI78-655, A, Apr. 13, 1978..... | Sun Oil Co | Northwest Pipeline Corp., Blanco field, Rio Arriba County, N. Mex. | (13) | 14.65 |

[1] Applicant requests its certificate of public convenience and necessity be amended to add 138 additional oil and gas leasehold acres.

[2] Applicant is willing to accept an initial rate pursuant to opinion No. 699-H and is filing under gas purchase contract dated Mar. 29, 1978. Prior gas purchase contract dated Nov. 1, 1966 terminated by its own terms on Nov. 30, 1973.

[3] Applicant is willing to accept the applicable national rate pursuant to opinion No. 770, as amended.

[4] Applicant requests its certificate of public convenience and necessity be further amended to add an additional delivery point from platform "B" in tract I pursuant to the unit plans, West Cameron 533 field, 3,200 ft Sand Unit No. 14-08-0001-16152 and 3,500 ft Sand Unit No. 14-08-0001-16153.

[5] Applicant is filing under gas purchase contract dated Nov. 16, 1977.

[6] Applicant is filing under gas purchase contract dated Mar. 6, 1978.

[7] Tenneco's interest in the W/2 of sec. 21, T29N, R13W, San Juan County, N. Mex. was assigned to Aztec Oil & Gas Co. by assignment dated June 30, 1969, effective Aug. 1, 1969. Tenneco's leases in sec. 17, T29N, R13W, San Juan County, N. Mex. expired by own terms due to nonproduction. No wells were drilled on this acreage.

[8] Applicant is filing under gas sales contract dated Jan. 3, 1978.

[9] Applicant is filing under gas sales contract dated Dec. 30, 1977.

[10] The available supply of natural gas underlying the H. T. Cline unit is depleted. The owner of oil rights has recompleted the well as an oil well.

[11] The basic contract expired on Jan. 1, 1978, and has been replaced by a percentage of proceeds type contract dated Jan. 1, 1978, with Phillips Petroleum Co. Phillips Petroleum Co. will gather and process the gas and resell the residue gas, under its FERC GRS No. 533, to Northern Natural Gas Co.

[12] Cessation of production occurred during October 1977. Attempts to recomplete well were unsuccessful. Shell offered assignment to Amoco. Amoco refused. There are no remaining reserves for well No. 1, OCS-0431. All new drilling attempts were completed as dry holes, both by Shell and Amoco. Amoco filed a release on Dec. 30, 1977 with lessor.

[13] Applicant is filing under gas purchase contract dated Mar. 3, 1978.

Filing code: A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Amendment to delete acreage. E—Succession. F—Partial succession.

[FR Doc. 78-12137 Filed 5-4-78; 8:45 am]

[6740-02]

[Docket Nos. RP75-35 and RP75-36]

**TENNESSEE GAS PIPELINE CO., A DIVISION OF TENNECO INC.**

**Compliance Filing**

MAY 3, 1978.

Take notice that on April 26, 1978, Tennessee Gas Pipeline Co., a division of Tenneco Inc. (Tennessee), tendered for filing proposed tariff sheets to its FERC Gas Tariff, Ninth revised Volume No. 1, to be effective May 27, 1978. The proposed tariff sheets consist of the following:

Original Sheet Nos. 213K1, 213K2, 213K3, and 213K4
First Revised Sheet Nos. 213E, 213F, and 213I
Second Revised Sheet Nos. 213D, 213G, 213H, and 213J
Third Revised sheet No. 213K

Tennessee states that the proposed tariff sheets are filed to comply with the Commission's January 26, 1978, order in this proceeding. According to Tennessee, the tariff sheets expand the language of the curtailment plan in article XXIV of the general terms and conditions of its tariff to explain more specifically its curtailment implementation procedures.

It appears reasonable and consistent with the public interest in this proceeding to prescribe a period shorter than 15 days for the filing of protests and petitions to intervene. Therefore, 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 sections 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 1.8 or 1.10) on or before May 10, 1978. All 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 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. Persons that have previously filed a notice or petition for intervention in this proceeding need not file additional notices or petitions to become parties with respect to the instant filing. This filing which was made with the Commission is available for public inspection.

KENNETH F. PLUMB,
*Secretary.*

[FR Doc. 78-12438 Filed 5-4-78; 8:45 am]

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[3128-01]

**Office of Hearings and Appeals**

**FEDERAL ENERGY GUIDELINES PAR. 80,026**

**Supplement to Exceptions and Appeals Guidelines**

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Supplement to Exceptions and Appeals Guidelines.

FOR FURTHER INFORMATION CONTACT:

Thomas L. Wieker, Deputy Director, Office of Hearings and Appeals, 2000 M Street NW., Room 8014, Washington, D.C. 20461, 202-254-9681.

SUPPLEMENTARY INFORMATION: on November 18, 1976, the Federal Energy Administration published Guidelines which summarized the criteria used in granting exception relief pursuant to the applicable statutes and regulations. (41 FR 50856 (November 18, 1976)). A portion of those Guidelines relates to Price Exceptions for Crude Oil Producers—Part 212, Subpart D. Federal Energy Guidelines Par. 80,026.

Several inquiries have been received as to the meaning of the crude oil portion of the Guidelines. Those Guidelines are accordingly being supplemented at this time to make it clear that the Department of Energy will consider exception applictions when a producer is not able to recover its current operating expenses. The supplement to the Guidelines also makes it clear that a crude oil producer need not wait until it completes a fiscal quarter in which it incurs a loss before filing an exception application. If the firm is able to project on the basis of reliable and substantial data that

either its current operations or its operations during its next fiscal quarter will result in a negative cash flow it may file an application which will be considered on its merits by the DOE Office of Hearings and Appeals.

The first paragraph of Paragraph 80,026 of the Federal Energy Guidelines is therefore amended by the insertion of the material which appears below following the last sentence of that paragraph:

If the record establishes that a firm cannot continue a crude oil extraction effort on a profitable basis because its operating costs exceed the revenues which it may receive under the DOE regulatory program then an exception will generally be approved. *Monsanto Co.*, 6 FEA Par. 83,060 (August 26, 1977); *Gulf Oil Corp.*, 6 FEA Par. 83,028 (July 8, 1977). The analysis used in arriving at this determination is generally based on the firm's projections of the costs which it will reasonably incur during the six month period that includes its present fiscal quarter. *Barber Oil Exploration, Inc.*, 1 DOE Par. 81,008 (November 2, 1977). The DOE will also grant exception relief on the basis of reliable and substantial data which indicates that the operating expenses of the firm for the property involved during the next fiscal quarter will result in a negative cash flow. *W. N. McMurry*, 6 FEA Par. 83,014 (June 17, 1977); *City of Long Beach, California*, 4 FEA Par. 83,040 (August 10, 1976). In addition, exception relief has been granted when a firm does not project a negative cash flow but is able to demonstrate that unless an exception is granted from the ceiling price regulations it has an economic incentive to abandon production and salvage its equipment. *Reading & Bates Oil and Gas Co.*, 1DOE Par. 81,048 (January 6, 1978).

Issued in Washington, D.C., May 1, 1978

MELVIN GOLDSTEIN,
*Director, Office of Hearings and Appeals.*

[FR Doc. 78-12287 filed 5-4-78; 8:45 am]

[3128-01]

**Office of the Secretary**

**PROPOSED SUBSEQUENT ARRANGEMENT**

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the United States and the International Atomic Energy Agency for Cooperation in the Peaceful Application of Atomic Energy, and the Agreement for Cooperation Between the United States and Argentina Concerning Civil uses of Atomic Energy.

The subsequent arrangement, to be carried out under the above-mentioned agreements, involves a supply agreement negotiated by the Governments of the United States, Argentina, and Peru and the International Atomic Energy Agency (IAEA) whereby the United States agrees to approve the transfer of fuel elements containing 14,785.9 grams of U.S.-origin uranium enriched to approximately 20.09 percent from Argentina to Peru for use in an IAEA project consisting of a zero power research reactor supplied to Peru by Argentina. In accordance with section 131 of the Atomic Energy Act of 1954, as amended, the Secretary has determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect May 22, 1978.

For the Department of Energy.

Dated: May 3, 1978.

WALTER J. MCDONALD,
*Acting Assistant Secretary, International Affairs.*

[FR Doc. 78-12535 Filed 5-4-78; 12:07 pm]

[6560-01]

## ENVIRONMENTAL PROTECTION AGENCY

[FRL 891-3]

**CALIFORNIA STATE MOTOR VEHICLE POLLUTION CONTROL STANDARDS**

**Amended Notice of Public Hearing**

On April 21, 1978, a notice of public hearing regarding three actions taken by the California Air Resources Board was published on pages 17044-17045 of volume 43 of the FEDERAL REGISTER. I hereby give notice of the following changes to the dates of this hearing and the corresponding revision of the agenda:

(1) The public hearing will be held on May 18-19, 1978;

(2) On Thursday, May 18, 1978, we will consider the highway cycle $NO_x$ emission standard for 1980 and subsequent model year passenger cars and 1981 and subsequent model year light duty trucks and medium duty vehicles;

(3) On Friday, May 19, 1977, we will consider assembly-line test procedures for 1979 model year passenger cars, light duty trucks and medium duty vehicles, and tune-up label specifications for 1979 and subsequent model year passenger cars, light duty trucks, medium duty vehicles, heavy duty gasoline-fueled engines and heavy duty diesel fueled engines, and 1982 and subsequent model year motorcycles.

The location will be, as before, the Environmental Protection Agency Regional Office (Region IX) Conference room A-B, Sixth Floor, 215 Fremont Street, San Francisco, Calif. For all other particulars regarding said hearing, refer to 43 FR 17044 (April 21, 1978).

Dated: May 1, 1978.

BENJAMIN R. JACKSON,
*Presiding Officer Director, Mobile Source Enforcement Division.*

[FR Doc. 78-12245 Filed 5-4-78; 8:45 am]

[6560-01]

[FRL 891-8; OPP—33000/540]

**RECEIPT OF APPLICATION FOR PESTICIDE REGISTRATION**

**Data To Be Considered in Support of Applications**

On November 19, 1973, the Environmental Protection Agency (EPA) published in the FEDERAL REGISTER (39 FR 31862) its interim policy with respect to the administration of Section 3(c)(1)(D) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended ["Interim Policy Statement"]. On January 22, 1976, EPA published in the FEDERAL REGISTER a document entitled "Registration of a Pesticide Product—Consideration of Data by the Administrator in Support of an Application" [41 FR 3339]. This document described the changes in the Agency's procedures for implementing Section 3(c)(1)(D) of FIFRA, as set out in the Interim Policy Statement which were effected by the enactment of the amendments to FIFRA on November 28, 1975 [Pub. L. 94-140], and the regulations governing the registration and reregistration of pesticides which became effective on August 4, 1975 [40 CFR Part 162].

Pursuant to the procedures set forth in these FEDERAL REGISTER documents, EPA hereby gives notice of the applications for pesticide registration listed below. In some cases these applications have recently been received; in other cases, applications have been amended by the submission of additional supporting data, the election of a new method of support, or the submission of new "offer to pay" statements.

In the case of all applications, the labeling furnished by the applicant for the product will be available for inspection at the Environmental Protection Agency, Room 209, East Tower, 401 M Street SW., Washington, D.C. 20460. In the case of applications subject to the Section 3 regulations which utilize either the 2(a) or 2(b) method of support specified in the Interim Policy Statement, all data citations submitted or referenced by the applicant in support of the application will be made available for inspection at the above address. This information (proposed labeling and, where applicable, data citations) will also be supplied by mail, upon request. However, such a request should be made only when circumstances make it inconvenient for

the inspection to be made at the Agency offices.

Any person who (a) is or has been an applicant, (b) believes that data he developed and submitted to EPA on or after January 1, 1970, are being used to support an application described in this notice, (c) desires to assert a claim under Section 3(c)(1)(D) for such use of his data and wishes to preserve his right to have the Administrator determine the amount of reasonable compensation to which he is entitled for such use of the data, or (d) wishes to assert confidential status under Section 10 for his data, must notify the Administrator and the applicant named in the notice in the FEDERAL REGISTER of his claim by certified mail. Notification to the Administrator should be addressed to the Product Control Branch, Registration Division (WH-567), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. Every such claimant must include, at a minimum, the information listed in the Interim Policy Statement of November 19, 1973.

Specific questions concerning applications made to the Agency should be addressed to the designated Product Manager (PM), Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telephone as follows:

PM 11, 12, and 13—202-755-9315
PM 21 and 22—202-426-2454
PM 24—202-755-2196
PM 31—202-426-2635
PM 33—202-755-9041
PM 15, 16, and 17—202-426-9425
PM 23—202-755-1397
PM 25—202-426-2632
PM 32—202-426-9486
PM 34—202-426-9490

The Interim Policy Statement requires that claims for compensation be filed on or before July 5, 1978. EPA will not delay any registration pending the assertion of claims for compensation or the determination of reasonable compensation. Inquiries and assertions that data relied upon are subject to protection under Section 10 of FIFRA, as amended, should be made on or before June 5, 1978. Registration will be delayed pending resolution of Section 10 claims.

Dated May 1, 1978.

DOUGLAS D. CAMPT,
*Acting Director,*
*Registration Division.*

APPLICATIONS RECEIVED (OPP-33000/540)

EPA File Symbol 11329-RE. Aladdin Chemical Corp., Box 244, Rogers, Minn. 55374. Algaecide NF. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride], 40.0 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 11497-RT. Enviro Chem Corp., P.O. Box 29213, Dallas, Tex. 75229. Enviro 27-20. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride], 5 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 11558-O. Celanese Chemical Co., 1211 Avenue of the Americas, New York, N.Y. 10030. Formaldehyde Solution. Active Ingredients: 45 percent Formaldehyde. Method of Support: Application proceeds under 2(a) of interim policy. PM33.

EPA File Symbol 13442-O. Environment Engineering, Inc., 1310 Headquarters Drive, Greensboro, N.C. 27405. M-23. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 15 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 18146-RN. Excel Chemical Co., Inc., 107 Watts Street, Jacksonville, Fla. 32204. CT-600. Active Ingredients: Dioctyl dimethyl ammonium chloride 50 percent; Ethyl alcohol 10 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM31.

EPA File Symbol 19605-T. Gulf Chemicals Co., 6840 Piccadilly, Houston, Tex. 77061. Something Else, Disinfectant Cleaner. Active Ingredients: Octyl Decyl Dimethyl Ammonium Chloride 4.50 percent; Dioctyl Dimethyl Ammonium chloride 2.25 percent; Didecyl Dimethyl Ammonium chloride 2.25 percent: Tetrasodium Ethylenediamine Tetraacetate 2.40 percent: Isopropyl Alcohol 3.60 percent. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Offer to pay statement submitted. PM31.

EPA Reg. No. 11598-20. Connecticut Aerosols, Inc., 85 Furniture Row, Milford, Conn. 06460. Flea and Tick Spray for Dogs and Cats. Active Ingredients: Pyrethrins .056 percent; Pine Oil .900 percent; Petroleum distillate .406 percent. Method of Support: Application proceeds under 2(b) of interim policy. Amendment. PM17.

EPA File Symbol 27036-R. Colt Chemical Mfg. Co., Inc., 2212 Hawkins Street, Charlotte, N.C. 28203. Polycide 12. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 12 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 33448-E. Maram Corp., P.O. Box 543, Northbrook, Ill. 60062. MB-150. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 15 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 33448-G. Maram Corp., P.O. Box 543, Northbrook, Ill. 60062. MB-100. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 10 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 33448-U. Maram Corp., P.O. Box 543, Northbrook, Ill. 60062. MB-1100. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 20 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 34751-U. Encee Chemical Sales., Inc., P.O. Box 39, New Bern, N.C. 28560. Sodium Hypochlorite "Bleach." Active Ingredient: Sodium Hypochlorite 12 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM33.

EPA File Symbol 35900-T. Ionics, Inc., P.O. Box 99, Bridgeville, Pa. 15017. Hygene Mark III Bacteriostatic Water Filter Media. Active Ingredients: Metallic Silver 0.2 percent. Method of Support: Application proceeds under 2(a) of interim policy. PM33.

EPA File Symbol 36739-E. Sinton Supply Co., Inc., 204 East Sample Street, South Bend, Ind. 46623. Sinco Pool-Ade Puclor. Active Ingredients: Sodium Hypochlorite 12.5 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 37267-R. Deo-Chem Inc., 1032 West Robinson Street, Orlando, Fla. 32805. Deo Biocide. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene-(dimethyliminio) ethylene dichloride] 7.5 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 37267-E. Deo-Chem Inc., 1032 West Robinson Street, Orlando, Fla. 32805. Deo Formula 1350 Algaecide-Slimicide. Active Ingredients: Poly [oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 7.5 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 39239-R. All-Cide Inc., 1333 South Claudina Street, Anaheim, Calif. 92805. All-Cide Concentrated Sterilant. Active Ingredients: 20 percent Glutaraldehyde. Method of Support: Application proceeds under 2(b) of interim policy. PM33.

EPA File Symbol 39769-R. Loomis Chemical Co., P.O. Box 17342, 2011 North Columbia Boulevard, Portland, Oreg. 97217. Loomis Brand Sodium Hypochlorite. Active Ingredients: Sodium Hypochlorite 12.5 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA Reg. No. 39926-1. Caribe Biochemicals, Inc. c/o K. G. Giquere, Vice President, Brandywine Building, B-13219, Wilmington, Del. 19898. DuPont Lexone 4L. Active Ingredients: 4-Amino-6-(1,1-dimethylethyl)-3-(methylthio)-1,2,4-triazin-5(4H)-one, 42.8 percent. Method of Support: Application proceeds under 2(b) of interim policy. Republished: Added uses. PM25.

EPA File Symbol 40195-R. Revenge Insect Repellent Corp., Box 1425, Savannah, Ga. 31402. Revenge. Active Ingredients: Isopropyl Palmitate 16 percent; Isopropyl Myristate 16 percent; Isopropyl Stearate 16 percent. Method of Support: Application proceeds under 2(a) of interim policy. PM17.

EPA File Symbol 40702-R. Chemical Methods Associates, 7125 Fenwick Lane, Suite H. Westminster, Calif. 92638. SANTI 3000. Active Ingredients: Sodium Hypochlorite 5.25 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 40809-R. All American Pool Stores, 11106 Southwest 184th Street, Miami, Fla. 33157. Pro Chem. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41039-R. American Foundation for Pure Water, Inc., 367 Ravensbrook Road, Zephyrhills, Fla. 33599. Final Filter Water Treatment Unit. Active Ingredients: Metallic Silver 1.05 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM33.

EPA File Symbol 41227-R. Mitchell Gunite Co., 1217 Lorento Street, Jacksonville, Fla. 32211. M & N Chemicals. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41228-R. Southwest Pool Services, Inc., 3419 Westview Drive, Naples, Fla. 33940. Southwest Solution. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41229-R. Hallmark Pools, Inc. 3605 S. Tamiami Trail, Ft. Myers, Fla. 33902. Hallmark Pool Sanitizer. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41230-R. Horizon Pool Service, 4701 SW. 45th Street, Fort Lauderdale, Fla. 33314. Liquid Sunshine. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41231-R. Jonah Pools, P.O. Box 1838, Pompano Beach, Fla. 33060. Sodium Hypochlorite. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41232-R. Sunset Pools, P.O. Box 186, Perrine, Fla. 33157. Sun Pool. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41233-R. D & C Pool Maintenance Inc., 8348 Griffin Road, Davie, Fla. 33328. Pool Guard. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41234-R. Plymouth Pools, Inc., P.O. Box 1438, Delray Beach, Fla. 33444. Sodium Hypochlorite. Active Ingredients: Sodium Hypochlorite 9.2 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

EPA File Symbol 41574-R. Utility Chemical, Inc., P.O. Box 349, Cambridge, Minn. 55008. SP-10. Active Ingredients: Poly[oxyethylene (dimethyliminio) ethylene (dimethyliminio) ethylene dichloride] 10.0 percent. Method of Support: Application proceeds under 2(b) of interim policy. PM34.

[FR Doc. 78-12246 Filed 5-4-78; 8:45 am]

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[6560-01]

[FRL891-6; PFT-26]

## FOOD ADDITIVE PETITION

### Filing

Monsanto Agricultural Products Co., 800 North Linbergh Boulevard, St. Louis, Mo. 63166, has submitted a petition (FAP 8H5179) to the Environmental Protection Agency (EPA) which proposes to amend 21 CFR 193.235 by establishing a regulation permitting the use of the herbicide glyphosate [N-(phosphonomethyl)glycine] and its metalbolite aminomethlyphosphonic acid in a proposed experimental program involving application of the herbicide to growing sugarcane with a tolerance limitation of 0.15 part per million (ppm) in molasses. Notice of this submission is given pursuant to the provisions of Section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street, SW., Washington, D.C. 20460.

Inquiries concerning this petition may be directed to Special Registration Branch, Registration Division (WH-567), Office of Pesticide Programs, EPA, at the above address, or by telephone at 202-755-4851. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m. Monday through Friday.

Dated: May 1, 1978.

DOUGLAS D. CAMPT,
*Acting Director,*
*Registration Division.*

[FR Doc. 78-12243 Filed 5-4-78; 8:45 am]

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[6560-01]

[FRL 891-5; PFT-23B]

## FOOD ADDITIVE PETITION AMENDMENT

### Filing

On July 7, 1977, the Environmental Protection Agency (EPA) announced (42 FR 31181) that Elanco Products Co., a division of Eli Lilly & Co., P.O. Box 1750, Indianapolis, Ind. 46206, had submitted a petition (FAP 7H5165) which proposed to amend 21 CFR 561 by establishing a food additive regulation permitting the use of the fungicide tricyclazole [5-methyl-1,2,4-triazolo (3,4-*b*)-benzothiazole and its metabolite 1,2,4-triazolo (3,4-*b*)-benzothioazole-5-methanol in connection with a proposed experimental program involving application of said fungicide and its metabolite to growing rice with a tolerance limitation of 7 parts per million (ppm) in rice hulls, bran, polishings and straw. The applicant has submitted an amendment to this petition increasing the proposed tolerance of 7 ppm to 15 ppm and deleting the raw agricultual commodity rice straw. Notice of this submission is given pursuant to Section 409(b)(5) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on this petition to the Federal Register Section, Technical Services Division (WH-569), Office of Pesticide Programs, EPA, Room 401, East Tower, 401 M Street SW., Washington, D.C. 20460. Inquiries concerning this petition may be directed to Special Registration Branch, Registration Division (WH-567), Office of Pesticide Programs, at the above address, or by telepone at 202-755-4851. Written comments should bear a notation indicating the petition number. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the office of the Federal Register Section from 8:30 a.m. to 4 p.m., Monday through Friday.

Dated: May 1, 1978.

DOUGLAS D. CAMPT,
*Acting Director,*
*Registration Division.*

[FR Doc. 78-12244 Filed 5-4-78; 8:45 am]

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[6560-01]

[FRL 892-2; OPP-00072]

## PESTICIDE PROGRAMS; FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT SCIENTIFIC ADVISORY PANEL

### Open Meeting

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

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel from 9:30 a.m. to 4:30 p.m. daily on Thursday and Friday, May 25 and 26, 1978. The meeting will be held in the third floor Auditorium, Room 3129, University of Miami School of Medicine, 1600 Northwest 10th Avenue, Miami, Fla., and will be open to the public.

FOR FURTHER INFORMATION CONTACT:

Dr. H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel, Office of Pesticide Programs (WH-566), Room 803, Crystal Mall, Building 2, 1921 Jefferson Davis Highway, Arlington, Va., telephone 703-557-7560.

SUPPLEMENTARY INFORMATION: In accordance with section 25(d) of the amended FIFRA, the Scientific Advisory Panel will comment on the impact on health and the environment of regulatory actions under sections 6(b) and 25(a) prior to implementation. The purpose of this meeting is to discuss the following topics:

1. Briefing on criteria for classification of pesticides under section 3 of FIFRA;

2. Review a recommendation to cancel registrations of chlorobenzilate products under section 6(b) of FIFRA;

3. Continue discussions relative to epidemiological data requirements for

assessment of hazards to farmworkers from pesticides; and

4. In addition, the Agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above. Interested persons are permitted to file written statements before or after the meeting, and may upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. Written or oral statements will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit copies of summary no later than May 19, 1978.

Individuals who wish to file written statements are advised to submit copies of statements to the Executive Secretary in a timely manner to ensure appropriate consideration by the Panel.

Dated: May 1, 1978.

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

[FR Doc. 78-12350 Filed 5-4-78; 8:45 am]

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[6560-01]

[FRL 892-1]

## RECEIPT OF ENVIRONMENTAL IMPACT STATEMENTS

Pursuant to the President's Reorganization Plan No. 1, the Environmental Protection Agency is the official recipient for environmental impact statements (EIS's) and is required to publish the availability of each EIS received weekly. The following is a list of environmental impact statements received by the Environmental Protection Agency from April 24, 1978 through April 28, 1978. The date of receipt for each statement is noted in the statement summary. Under the Guidelines of the Council on Environmental Quality the minimum period for public review and comment on draft environmental impact statements is forty-five (45) days; the date of submission of comments is June 19, 1978. The thirty (30) day period for each final statement begins the day the statement is made available to the Environmental Protection Agency and to commenting parties.

Copies of individual statements are available for review from the originating agency. Back copies are also available at 10 cents per page from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

Dated: May 2, 1978.

JOSEPH M. MCCABE,
*Acting Director, Office of Federal Activities.*

### DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, U.S. Department of Agriculture, Room 359A, Washington, D.C. 20250, 202-447-3965.

#### FOREST SERVICE

*Draft*

Leesburg Planning Unit, Salmon National Forest, Lemhi County, Idaho, Apr. 25: The proposal consists of the division of the Leesburg planning unit, located in Salmon National Forests, Lemhi County, Idaho. The unit is to first be divided into two major management areas with similar land types, terrain, major drainage and management qualities. These areas will then be further divided into smaller units for management requirements, protection needs, and use and development of various resources within the unit. The entire Leesburg unit is comprised of 86,390 acres, 2,009 of which are privately owned and another 1,584 acres of which are surface rights claims (USDA-FS-DES(ADM)R4-78-5). (ELR Order No. 80410.)

*Final*

Cooperative Gypsy Moth Suppression Program, 1978, Apr. 26: This EIS presents the selection criteria for regulatory programs and discusses each viable alternative which may be considered for State-Federal cooperative projects in suppressing gypsy moth infestations in the northeastern United States. The draft EIS was utilized as the decisionmaking instrument for selecting the most viable alternative(s) for gypsy moth suppression. This statement also discusses the regulatory programs of the Animal and Plant Inspection Service. Comments made by: DOT, EPA, DOC, and State agencies. (ELR Order No. 80416.)

Southern California National Forests, Timber Plan. Several Counties, California, Apr. 25: Proposed is the implementation of a timber plan for the Angeles, Cleveland, Los Padres, and San Bernardino National Forests. The plan is designed to protect or enhance recreational, watershed, wildlife, and other amenity values; silvicultural treatments included in the proposed plan will develop stand conditions which maintain an attractive, healthy forest. Though commodity production is not a major goal of this plan, wood products made available as a result of stand treatment will be utilized for firewood, posts, or sawlogs, as appropriate (USDA-FS-R5-FES(ADM)-77-08). Comments made by: USDA, AHP, DOI, EPA, State and local agencies, and organizations and individuals. (ELR Order No. 80411.)

Magpie-Confederate Planning Unit, Helena National Forest, Broadwater, Lewis, and Clark Counties, Mont., Apr. 25: Proposed is the implementation of a multiple use plan for the Magpie-Confederate planning unit, Helena National Forest. The unit encompasses 83,773 acres of national forest in the big belt mountains of Montana, the goal of the proposed plan is economic stability of the surrounding community with proper use of resources. The planning unit will continue to produce a constant flow of goods and services. Other areas will be managed to protect their unroaded nature and provide: watershed, scenic value, habitat for wildlife and to benefit man (USDA-FS-RI(12)FES-ADM-76-19). Comments made by: DOI, AHP, USDA, HUD, EPA, HEW, DOT, FPC, State and local agencies, organizations, industry, and individuals. (ELR Order No. 80408.)

Bear Planning Unit—Land Management Plan. Skamania County, Wash., April 24: The proposed action is the implementation of a comprehensive management plan for the 27,490-acre bear planning unit in Gifford Pinchot National Forest. The preferred alternative provides for almost every resource use except wilderness and domestic range. The Wind River experimental forest will be continued and 4,190 acres within the Columbia River Gorge would be recommended for classification as a special interest area. Timber management areas total 13,380 acres. These would be managed for a variety of uses including developed and dispersed recreation, timber havest, watershed and wildlife (USDA-FS-R6-FES (ADM) 77-1). Comments made by: FPC, USDA, DOT, DOC, AHP, COE, EPA, DOI, and State and local agencies. (ELR Order No. 80409.)

*Draft supplement*

King Planning Unit, Klamath National Forest (S-1). Siskiyou County, Calif., Apr. 26: This document supplements a final EIS filed in April 1977, concerning the management of the King Planning Unit, Klamath National Forest, Siskuyou County, Calif. The proposal consists of dividing the area into seven units of similar social, physical, and biological implications, to provide separate and coordinated management direction. The area includes approximately 49,000 acres in the Marble Mountain Wilderness, Johnson Wilderness Study Area, Titus Roadless Area, and the Ten Bear Roadless Area. (USDA-FS-R5-FES(ADM)76-03(s)). (ELR Order No. 80420.)

#### RURAL ELECTRIFICATION ADMINISTRATION

*Final*

Wyodak to Antelope, 230 KV Transmission Line. Campbell and Converse Counties, Wyo., April 28: Proposed is a loan from the Rural Electrification Administration to the Tri County Electric Association, Inc. (TCEA): TCEA proposes to construct and operate approximately 62 miles of 230 KV transmission line from the Wyodak Substation, adjacent to the coal-fired powerplant, to Antelope, located on the Campbell-Converse County Line, where it will tie in with a proposed 230 KV transmission line to be constructed by Pacific Power and Light. Related facilities include construction of a 230 KV bay at Wyodak substation and a new substation near Rend Junction (USDA-REA-EIS(ADM)-76-9-F). Comments made by: DOI, USDA, DOT, COE, EPA, and State and local agencies. (ELR Order No. 80428.)

### DEPARTMENT OF COMMERCE

Contact: Dr. Sidney R. Galler, Assistant Secretary for Environmental Affairs, Environmental Affairs, Depatment of Commerce, Washington, D.C. 20230, 202-377-4335.

#### NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION

*Draft*

Project Stormfury, Atlantic Weather Modification, April 27: This project is a scientific experiment designed to explore the structure and dynamics of western Atlantic tropical cyclones and the potential of modi-

fication. The experimentation is to test the hypothesis that the maximum winds of hurricanes can be reduced by at least 10 to 15 percent by seeding the proper clouds with freezing nuclei (silver iodide). Each experiment will consist of 17 flights over a 60 hour period, with approximately 875 pounds of silver iodide being dispensed in four separate flights over an 8-10 hour period. The operational area is primarily located east of the Bahamas, north of Puerto Rico and south of Bermuda. (ELR Order No. 80426.)

New Jersey Coastal Management Program, New Jersey, April 27: The action proposed is the approval by Department of Commerce of the State of New Jersey's coastal zone management program, bay and ocean shore segment. The funding will be used for various actions which include improvement or development of: (1) mapping programs, (2) preparation of a coastal handbook, (3) educational and information programs, (4) energy facility siting criteria and policies, (5) beach and waterfront area access, and (6) coastal management enforcement and monitoring programs. (ELR Order No. 80425.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Dr. C. Grant Ash, Office of Environmental Policy Department, Attention: 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.

*Draft*

Mayo Electric Generating Plant, Person County, N.C., April 26: The proposed action is the application by Carolina Power & Light Co. for a permit to discharge fill materials into waters of the United States in connection with the proposed 1,440 megawatt Mayo electric generating plant, located in Person County, N.C. The actions include: (1) construction of a main reservoir dam and ash pond dam covering approximately 2,960 acres, (2) discharge of ash into waters behind the ash pond dam, and (3) relocation of a road. (Wilmington Distict.) (ELR Order No. 80419.)

*Draft Supplement*

Kings Island Turning Basin, Enlargement, Chatham County, Ga., April 26: This statement supplements a final EIS filed in June 1976, to consider alternate sites for the expansion of Kings Island turning basin located in the Savannah Harbor, Chatham County, Ga. The studies presented in the report are limited to reaffirming or modifying the authorized improvement of enlarging the basin. There are four alternate sites being considered. (Savannah District.) (ELR Order No. 80415.)

Missouri River, Review Report, South Dakota, North Dakota, Nebraska, and Montana, April 26: This statement supplements a draft EIS filed in February 1977, for proposed actions on the Misso uri River in the States of South Dakota, North Dakota, Nebraska, and Montana. This supplement is the review report submitted by the Board of Engineers for Rivers and Harbors. The actions of the proposed project are: (1) bank protection at selected locations; (2) additions to the hydro-electric power plants and construction of a pumped-storage plant; (3) development of the Missouri River as a recreational river under the provisions of the Wild and Scenic Rivers Act; and (4) construction and operation of on-Site northern pike fish rearing ponds.

DEPARTMENT OF DEFENSE

ARMY

Contact: George A. Cunney, Jr., Acting Chief, Environmental Office, Office of the Assistant Chief of Engineers, Department of the Army, Room 1E676, Pentagon, Washington, D.C. 20310, 202-694-4269.

*Draft*

Fort Ord Mission Change, California, April 28: This action involves the conversion of the Fort Ord Mission from a training center to a permanent station for the 7th Infantry Division and the transfer of the command of the installation from the Headquarters, U.S. Army Training Center and Fort Ord to Headquarters, 7th Infantry Division and Fort Ord. Under the old mission, the greater portion of the training dealt with the individual soldier. The new mission will deal primarily with unit type training since elements of the division must train together to function effectively. Fort Ord is located on the coast of California approximately 118 miles South of San Francisco. (ELR Order No. 80429.)

ENVIRONMENTAL PROTECTION AGENCY

Contact: EPA Library (MD-35), Environmental Protection agency, Research Triangle Park, N.C. 27711, 919-541-5277.

*Final*

Standards for Lime Manufacturing Plants, April 24: Proposed is the implementation of standards of performance for new and modified rotary lime kilns and hydrators at lime manufacturing plants. The proposed standards limit emissions to 0.15 kilogram of particulate matter per megagram of limestone feed and 10 percent opacity. Beneficial impacts are anticipated. (EPA-450/2-77-007B.) Comments made by: EPA, DOI, HEW, ERDA, DOC, State and local agencies, organizations and individuals. (ELR Order No. 80431.)

Contact: Clinton Spotts, Environmental Protection Agency, Region VI, First International Building, 1201 Elm Street, Dallas, Tex. 75270, 214-767-2716.

*Draft*

San Antonio Wastewater Treatment System, Bexar County, Tex., April 25: The proposed action is the granting of funds to the City of San Antonio, Bexar County, Tex. for improvement of wastewater treatment facilities in order to meet the requirements of the Federal Water Pollution Control Act amendments of 1972. The proposal consists of five major actions: (1) abandonment of the Billing Road plant, (2) improvement of the Leon Creek and Salado Creek plants, (3) construction of a new plant, (4) emplacement of sewage transfer lines, and (4) expansion of sewage collector and interceptor system, (ELR Order No. 80407.)

EXTENSION OF REVIEW PERIOD

The Environmental Protection Agency has officially extended the review period for the Draft EIS entitled Criteria for Classification of Solid Waste Disposal Facilities (ELR Order No. 80345) to June 12, 1978. EPA will conduct a public hearing on the EIS in Cincinnati, Ohio at the USEPA Environmental Research Center Auditorium, 26 West St. Clair, on June 5, 1978 from 1 to 5:30 p.m. and 7 to 10:30 p.m. Registration will be from 12:30 to 1 p.m. and 6:30 to 7 p.m.

FEDERAL ENERGY RESEARCH COMMISSION

Contact: Dr. Jack M. Heinemann, Advisor on Environmental Quality, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, 202-275-6569.

*Draft*

Western LNG Project, Construction and Operation, Alaska, April 24: The proposed action involves an application filed for a certificate of public convenience and necessity authorizing the construction and operation of facilities to collect and liquefy natural gas: The transportation of liquefied natural gas (LNG) in interstate commerce, and the sale of natural gas to Pacific Gas Co. & Electric Co. (PG AND E) and to Southern California Gas Co. (SOCAL). Natural gas would be purchased from gas fields in the Cook Inlet region of Alaska and transported through a proposed 6 to 24-inch diameter 104.5 mile pipeline network to a proposed LNG plant in the Nikiski Industrial Co. 9 miles north of Kenai, Alaska. (FERC/EIS-0002.) (ELR Order No. 80405.)

DEPARTMENT OF HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Department of Housing and Urban Development, 451 7th Street SW., Washington, D.C. 20410, 202-755-6308.

SECTION 104(H)

The following are community development block grant statements prepared and circulated directly by applicants pursuant to section 104(H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the appropriate local executive. Copies are not available from HUD.

*Draft*

Pedestrian walkway, upper Darby Township, Delaware County, Pa., April 25: The proposed action is the application for community development block grant funds from HUD. The proposal is the construction of an enclosed pedestrian walkway over West Chester Pike at the intersection with 69th Street to physically separate pedestrian movement between the 69th Street transit terminal and the 69th business area in the Upper Darby Township, Delaware County, Pa. This action is a multiyear project and is scheduled to be started in August 1978 and completed within 10 months. (ELR Order No. 80432.)

Disposition of Amos block, Syracuse, Onondaga County, N.Y., April 27: The proposed action is the application by the city of Syracuse, N.Y., for community development block grant funds from HUD. This proposal entails the demolition of the Amos block, encompassing the structures at 208-220 West Water Street, located in the city of Syracuse, Onondaga County, N.Y. This action is being considered in conjunction with the approved Clinton Square urban renewal project which outlines two possible objectives for the demolition area: (1) Additional right-of-way, and (2) landscaped entrance to Clinton Square and central Syracuse. (ELR Order No. 80423.)

Eastern North Philadelphia plan, Philadelphia County, Pa., April 27: The proposed action is the application by the city of Philadelphia for community development block grant funds from HUD. This proposal has identified the eastern north portion of the city of Philadelphia, Pa., for various

concentrated, long-term action. These activities include: (1) Housing rehabilitation, (2) loans and grants, (3) site improvements, (4) public services and facilities, and (5) economic development. (ELR Order No. 80427.)

DEPARTMENT OF INTERIOR

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256, Interior Building, Department of the Interior, Washington, D.C. 20240, 202-343-3891.

BUREAU OF LAND MANAGEMENT

*Draft*

Upper Gila-San Simon livestock grazing, Arizona-New Mexico, April 24: This statement proposes to implement a livestock grazing management program based on multiple-use concepts. The grazing area is located in the States of Arizona and New Mexico and includes a total land area of 2,346,062 acres, which includes public, Federal, State, and private lands. The grazing area will total 193 units and be used for livestock grazing with incorporation of various resource uses and minimal conflict. (DES-78-13.) (ELR Order No. 80406.)

NATIONAL PARK SERVICE

*Final*

Tuskegee Institute management plan, Macon County, Ala., April 26: Proposed is the implementation of a general management plan for Tuskegee Institute national historic site in Tuskegee, Ala. The plan proposes to preserve and interpret this educational resource; protection and preservation of 22 Buildings (21 on the historic Tuskegee Campus and 1 adjacent to the campus) are involved. A proposal to acquire certain historic properties is also included. No adverse effects are anticipated. (FES-78-6.) Comments made by: AHP, USDA, HEW, HUD, DOI, DOT, EPA, COE, State and local agencies. (ELR Order No. 80413.)

Proposed wilderness, Everglades National Park, Dade and Monroe Counties, Fla., April 26: The statement refers to the proposed legislative designation of 1,296,500 acres (92.7 percent of the park's land and water area), of the Everglades National Park as wilderness. The proposal would result in the preservation of natural ecosystems, including the habitats for several rare and endangered species. Management, research, and development options will be restricted by the action. (FES-78-7.) Comments made by: AHP, COE, DOI, DOT, CGD, EPA, FPC, State and local agencies. (ELR Order No. 80412.)

NUCLEAR REGULATORY COMMISSION

Contact: Mr. Sheldon Meyers, Director, Division of Fuel Cycle and Material Safety, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Mail 396-SS, 301-427-4152.

*Draft*

Irigaray solution mining project, Johnson County, Wyo., April 27: This action concerns an application for a source material license by the Wyoming Mineral Corp. to conduct production-scale solution mining of uranium at the Irigaray site, Johnson County, Wyo., within the Powder River basin. The project will affect approximately 1,000 acres of land at the site. The actions consist of leaching uranium from subsurface ore-bearing sandstone by adding chemical reagents to existing ground water to reverse the natural uranium precipitation process. (NUREG-0399.) (ELR Order No. 80424.)

DEPARTMENT OF TRANSPORTATION

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street SW., Washington, D.C. 20590, 202-426-4357.

FEDERAL HIGHWAY ADMINISTRATION

*Final*

Albany to I-75 (South of Cordele) connector, Dougherty, Worth, and Crisp Counties, Ga., April 26: This proposed action involves the construction of a four-lane facility connecting Albany to I-75 south of Cordele. The proposed project is located in Dougherty, Worth, and Crisp Counties, Ga. The majority of the project is free access with the addition of two lanes to the existing SR 257. Only that portion on new location between U.S. 41 and I-75 (1.5 miles) south of Cordele is limited access. The project is approximately 37 miles in length, of which 6 miles (from SR 257 east to I-75) is on new location, the four-lane facility will provide a direct connector between Albany, Oakfield, Warwick, and Cordele as well as provide much improved traffic service. Comments made by: USDA, COE, HEW, FPC, DOI, EPA, State and local agencies, groups and individuals. (ELR Order No. 80417.)

Appalachian Highway in north Georgia, several counties in Georgia, April 26: Georgia project APD-056-1(31) Forsyth, Cherokee, Pickens, Gilmer, Fannin, and Union Counties is proposed to be the extension, on either new location or in common with certain existing highways of SR 400 from SR 306 in Forsyth County approximately 90 miles generally in a northerly direction into Union County and ending at a point approximately 2 miles north of the north city limits of Blairsville on U.S. 76. The route will consist of four lanes, two in each direction on about 300 feet of right-of-way with free access. (FHWA-GA-EIS-77-04-F.) Comments made by: TVA, USDA, HEW, CDE, DOT, HUD, EPA, State and local agencies, groups and individuals. (ELR Order No. 80418.)

Redwood Road, UT-68, Salt Lake County, Utah, April 26: The proposed project is the reconstruction of Redwood Road. State Route 68, located in Salt Lake County, Utah, actually two projects are covered in this EIS. The first begins at 6500 South Street on Redwood Road and extends northward for approximately 4.5 miles, ending at 3500 South Street. The other project, beginning at Redwood Road and North Temple Streets runs north for about 1.3 miles to 1000 North Street. The design concept is to widen the road to two lanes in each direction with parking, curb, and gutters and a painted median, (FHWA-UT-EIS-73-01-F.) Comments made by: EPA, DOT, USDA, DOI, State and local agencies. (ELR Order No. 80414.)

Knowlton Bridge and approaches (S.T.H. 34), Marathon County, Wis., April 26: Proposed is the construction of a new bridge over Lake Dubay and the updating of the approaches to that bridge to current standards. This bridge carries State Trunk Highway 34 and is called the Knowlton Bridge. The project begins just north of the community of Dancy in south-central Marathon County and proceeds north across Lake Dubay, ending at a recently constructed portion of Highway 34 north of Knowlton. The project is one segment of a minor arterial proposed in the 1990 State highway plan. (FHWA-WISC-EIS-76-02-F.) Comments made by: DOI, DOT, USDA, CGD, EPA, State agencies. (ELR Order No. 80421.)

*Final Supplement*

31 East 63rd Street line, Manhattan and Queens, N.Y., April 28: This statement supplements an EIS filed with CEQ in April 1973 and contains proposals by the New York City Transit Authority to amend the project. The proposed amendments are: (1) Extension of the project 780 feet and the addition of a passenger station at Northern Boulevard; (2) addition of an emergency ventilation facility in Manhattan on East 63rd Street between York and FDR Drive; and (3) construction of two condenser water lines in the emergency ventilation facility and the proposed station at 63rd Street-Lexington Avenue. Comments made by: EPA, HEW, DOI, State and local agencies groups, individuals, and businesses. (ELR Order No. 80430.)

*Official Correction*

The Environmental Protection Agency published in the FEDERAL REGISTER dated April 14, 1978, receipt of a final EIS entitled "I—565, Madison and Limestone Counties, Ala." (ELR Order No. 80341), prepared by the Federal Highway Administration. The statement summary prepared by EPA did not accurately describe the proposed project. Following is an accurate statement summary.

DEPARTMENT OF TRANPORTATION

FEDERAL HIGHWAY ADMINISTRATION

*Final*

I-565, Madison and Limestone Counties, Ala., March 7: Proposed is Alabama Project No. I-565-5(1) located in Madison and Limestone Counties. The proposed project begins at I-65 at existing Alabama 20 Interchange, or begins at I-65 approximately 1 mile north of its present junction with Alabama 20, with each alternative extending northeasterly to Huntsville. The project length is approximately 21 miles and is a four to six lane, limited access, interstate highway. Approval of the EIS for section 3 of I-565, Jordan Lane to the vicinity of Oakwood Avenue and Andrew Jackson Way, is being withheld pending completion of the review and acceptance of a relocation plan by DOT officials. At such time as the review is completed, an addendum to the EIS will be filed with the EPA indicating the decision for section 3.

[FR Doc. 78-12349 Filed 5-4-78; 8:45 am]

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[6210-01]

## FEDERAL RESERVE SYSTEM

### FIRST CHANDLER CORP.

#### Formation of Bank Holding Company

First Chandler Corp., Chandler, Okla., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become a bank holding company by acquiring 80 percent or more of the voting shares of the First National Bank, Chandler, Okla. The factors that are considered in acting

on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

First Chandler Corp., Chandler, Okla., has also applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to acquire voting shares of two de novo subsidiaries, First Chandler Business Trust and First Chandler Insurance Agency, both of Chandler, Okla. Notice of the application was published on March 2, 1978, in the Lincoln County News, a newspaper circulated in Chandler, Okla.

Applicant states that First Chandler Insurance Agency would engage in the activities of offering credit life insurance and credit accident and health insurance in connection with extensions of credit by the First National Bank, Chandler, Okla. First Chandler Business Trust would own the shares of First Chandler Insurance Agency. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question should be accompanied by a statement summarizing the evidence the person requesting the hearing proposes to submit or to elicit at the hearing and a statement of the reasons why this matter should not be resolved without a hearing.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any views or requests for hearing should by submitted in writing and received by the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than May 22, 1978.

Board of Governors of the Federal Reserve System, April 27, 1978.

GRIFFITH L. GARWOOD,
*Deputy Secretary*
*of the Board.*

[FR Doc. 78-12290 Filed 5-4-78; 8:45 am]

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[6210-01]

## FOREST HILL BANCSHARES, INC.

### Formation of Bank Holding Company

Forest Hill Bancshares, Inc., Fort Worth, Tex., has applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1) to become a bank holding company by acquiring 80 percent or more of the voting shares of Forest Hill State Bank, Fort Worth, Tex. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (42 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Dallas. Any person wishing to comment on the application should submit views in writing to the Reserve Bank, to be received not later than May 30, 1978.

Board of Governors of the Federal Reserve Systemn, May 1, 1978.

GRIFFITH L. GARWOOD,
*Deputy Secretary*
*of the the Board.*

[FR Doc. 78-12291 Filed 5-4-78; 8:45 am]

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[4110-89]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Office of the Secretary

### COMMENTS ON COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

Pursuant to Section 406(g)(2)(B), General Education Provisions Act, notice is hereby given as follows:

The National Center for Education Statistics, the Office for Civil Rights, and the U.S. Office of Education have proposed collections of information and data acquisition activities which will request information from educational agencies or institutions.

The purpose of publishing this notice in the FEDERAL REGISTER is to comply with paragraph (g)(2)(B) of the "Control of Paperwork" amendment which provides that each educational agency or institution subject to a request under the collection of information and data acquisition activity and their representative organizations shall have an opportunity, during a 30-day period before the transmittal of the request to the Director of the Office of Management and Budget, to comment to the Administrator of the National Center for Education Statistics on the collection of information and data acquisition activity.

These data acquisition activities are subject to review by the HEW Education Data Acquisition Coucil and the Office of Management and Budget.

Descriptions of the proposed collections of information and data acquisition activities follow below.

Written comments on the proposed activities are invited. Comments should refer to the specific sponsoring agency and form number and must be received on or before June 5, 1978 and should be addressed to Administrator, National Center for Education Statistics, ATTN: Manager, Information Acquisition, Planning, and Utilization, Room 3001, 400 Maryland Avenue SW., Washington, D.C. 20202.

Further information may be obtained from Elizabeth M. Proctor of the National Center for Education Statistics, 202-245-1022.

MARIE D. ELDRIDGE,
*Administrator, National Center*
*for Education Statistics.*

DATED: May 2, 1978.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISTION ACTIVITY

1. Title of proposed activity.—Higher Education General Information Survey XIII: Inventory of College and University Physical Facilities (as of September 15, 1978).

2. Agency/bureau/office.—National Center for Education Statistics.

3. Agency form number.—NCES 2300-7.

4. Legislative authority for this activity.—"* * * The (National) Center (for Education Statistics) shall—* * * collect, collate, and, from time to time, report full and complete statistics on the condition of education in the United States * * *" (Sec. 501. (a) of Pub. L. 93-380; Sec. 406 (g) of the General Education Provisions Act. 20 USC 1221 e-1).

5. Voluntary/obligatory nature of response.—Voluntary.

6. How information collected will be used.—The data to be acquired will be used for:

*Program management,* estimating the present national level of compliance with Section 504 of the Rehibilitation Act (Pub. L. 93-112 and 93-516), hereinafter referred to as Section 504.

*Evaluation,* (a) Assessing the degree of success of the system of voluntary compliance with Section 504 implemented by the Office for Civil Rights.

(b) Determining the need for modifications in higher education facilities to meet the requirements of Section 504 and of the Occupational Safety and Health Administration (OSHA).

*Research,* (a) Providing basic information as to the present level of accessibility to higher education facilities and programs by mobility impaired persons.

(b) Furnishing reasonably accurate estimates of the degree to which modifications of existing facilities are required in order to comply with Section 504 and OSHA requirements.

(c) Suggesting whether a statistical relationship exists between program accessibility and the level of facilities accessibility among institutions of higher education to determine what modifications the institutions must

make in order to come into compliance and to make cost estimates of these modifications.

(d) Establishing the number of mobility impaired students attending institutions during the 1978 fall term.

*Condition of education,* (a) Providing Congress, federal and state education agencies, and private education associations with basic information as to the present level of accessibility to higher education facilities and programs by mobility impaired persons.

(b) Helping institutions to identify what they need to do to fully comply with Section 504.

(c) Furnishing Congress with a reasonably accurate indication of the need for federal financial assistance to help institutions in their efforts to determine the least expensive means of complying with Section 504 and to make the facilities modifications which are necessary for Section 504 compliance.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: October 31, 1978; and (c) frequency: Biennially.

8. Respondents.—(a) Type: Colleges and universities (including 2-year institutions); (b) Number: 700 (sample); and (c) estimated average man-hour per respondent: 3.0.

9. Information to be collected.—Required of each respondent:

(1) Total number of buildings on campus on September 15, 1978 (by age groups),

(2) Number of buildings on campus which are accessible on September 15, 1978 (by age groups),

(3) Number of buildings on campus which have toilets for the mobility impaired on September 15, 1978 (by age groups),

(4) total amount of assignable floor space on campus on September 15, 1978 (by age groups),

(5) Amount of accessible floor space on campus on September 15, 1978 (by age groups),

(6) Total assignable floor space on campus on September 15, 1978 (by room use categories),

(7) Accessible floor space on September 15, 1978 (by room use categories),

(8) Total number of beds for students in institutionally owned or operated housing on September 15, 1978,

(9) Number of beds designed for mobility impaired students as of September 15, 1978,

(10) Total number of degree programs offered on September 15, 1978,

(11) Number of accessible degree programs offered on September 15, 1978, and

(12) Number of mobility impaired students 1978 fall term.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Fall 1978 Special Purpose Schools Civil Rights Survey.

2. AGENCY/bureau/office.—Department of Health, Education, and Welfare/Office of the Secretary/Office for Civil Rights.

3. Agency form number.—CR 202.

4. Legislative authority for this activity.—This survey is mandated by Order of the United States District Court in *Kenneth Adams, et al, v. Joseph A. Califano, Jr.,* Civil No. 3095-70 (D.D.C. filed December 29, 1977), and Section 42.406 of the Justice Department's Title VI Coordinating Regulations (42 CFR 42).

The following are the relevant legislative authorities:

*Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.).*

* * * Each recipient shall keep records and submit to the responsible Department official or his/her designee timely, complete and accurate compliance reports at such times, and in such form and containing such information, as the responsible Department official or his/her designee may determine to be necessary to enable him to ascertain whether the recipient has complied or is complying with this part * * * (45 CFR 80.6(b))

*Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.).*

The procedural regulations applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated by reference. These procedures may be found at 45 CFR 80.6-80.11 and 45 CFR Part 81. (45 CFR 86.71)

*Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794).*

The procedural provisions applicable to Title VI of the Civil Rights Act of 1964 are adopted and incorporated by reference. These procedures are found at 45 CFR 80.6-80.10 and 45 CFR Part 81.

5. Voluntary/obligatory nature of response.—Obligatory.

6. How information to be collected will be used.—The purpose of the survey is to help determine which special purpose schools for the deaf, blind, and other handicapped students will be reviewed under the principal civil rights jurisdictions of the Department. These are Title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color, or national origin by recipients of Federal financial assistance; Title IX of the Education Amendments of 1972, which prohibits discrimination on the basis of sex in federally assisted education programs; and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination based on handicapping conditions by recipients of Federal financial assistance.

OCR is authorized to monitor recipient institutions and investigate allegations or indications of discrimination prohibited by these statutes.

The primary plan for analysis of compliance with the statutes is dependent on statistics shown in:

(1) The assignment of children to facilities and the range of services offered by these facilities,

(2) The assignment of children to programs within each facility and the characteristics of the population served by the facility.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: Fall 1978; and (c) frequency: Biennally.

8. Respondents.—CR 202.

(a) Type: State operated and State Supported Schools for the Handicapped.

(b) Number: 4,000.

(c) Estimated average person hours per respondent: 4.

9. Information to be collected.—Each selected school will complete the appropriate Individual Facility Report form. The report for the handicapped requires that each facility report by race and sex, general information on the type of handicapped children served, program and service accessibility, residential and educational enrollment and types of alternative placement used. In addition there is a section which requests data on the participation of children in programs offered, including: special education, enrollment of children with limited English speaking ability, the number and design of vocational education, and specialized training programs. There also is a section which requests the number of professional teaching staff members, by race, sex, and presence of handicapping condition.

A public meeting on this survey will be held on May 31, 1978, Room 5051, HEW North Building, 330 Independence Avenue SW., Washington, D.C. 20201.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard application (nonconstruction) for parts B and C of the Indian Education Act.

2. Agency/bureau/office.—Office of Education/Office of Indian Education.

3. Agency form number.—OE form 267.

4. Legislative authority for this activity.—"Section 810(a) The Commissioner shall casrry out a program of making grants for the improvement of educational opportunities for Indian children * * * (f) Applications for a grant under this section shall be submitted * * *." (20 U.S.C. 887(c).)

"Section 314(a) The Commissioner shall carry out a program of making grants * * * for providing adult education for Indians * * * (c) Applications for a grant under this section shall be submitted * * *." (20 U.S.C. 1211a) Pub. L. 92-318.

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information collected will be used.—The information will be used to decide which applicants will receive awards.

7. Data acquistion plan.—(a) Method of collection: Mail; (b) time of collection: Winter; and (c) Frequency: Annually.

8. Respondents.—(a) Type: Indian tribes and organizations, educational agencies; (b) number: 400; and (c) estimated average man-hours per respondent: 15.

9. Information to be collected.—The standard application (nonconstruction) from OMB Circular No. A-102 will be used with modifications required by law and regulations.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISTION ACTIVITY

1. Title of proposed activity.—Standard Application (Construction) for Non-Commercial Educational Broadcasting Facilities.

2. Agency/bureau/office.—Office of Education/Bureau of Elementary and Secondary Education/Office of Libraries and Learning Resources/Educational Broadcasting Facilities Branch.

3. Agency form number.—OE form 323-1.

4. Legislative authority for this activity.—"Section 392(a) For each project for the construction of noncommercial educational television or radio broadcasting facilities there shall be submitted to the Secretary an application for a grant. * * *" (47 U.S.C. 392) Pub. L. 87-447.

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information collected will be used.—The information collected will be used to determine which applicants will receive awards.

7. Data acquistion plan.—(a) Method of collection: Mail; (b) time of collection: Winter; and (c) frequency: Annually.

8. Respondents.—(a) Type: States, nonprofit colleges or universities, nonprofit organizations (with qualification); (b) number: 100; and (c) estimated average man-hours per respondent: 60.

9. Information to be collected.—The standard Federal application (construction) will be used. In order to determine the need for facilities (including equipment) a supplementary questionnaire containing the following information must also be submitted: Federal Communications Commission information, population and school enrollment within service area, eligible apparatus and other eligible costs.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard Application (Nonconstruction) for Foreign Language and Area Studies.

2. Agency/bureau/office.—U.S. Office of Education, Bureau of Higher and Continuing Education, International Education.

3. Agency form number.—OE 324.

4. Legislative authority for this activity.—"Sec. 601(a) The Secretary is authorized to make grants to or contracts with institutions of higher education for the purposes of establishing, equipping, and operating graduate and undergraduate centers and programs for the teaching of any modern foreign language, for instruction in other fields needed to provide a full understanding of the areas, regions, or countries in which such language is commonly used, or for research and training in international studies and the international aspects of professional and other fields of study." (Pub. L. 85-864, as amended; 20 U.S.C. 511.)

"Sec. 602. The Commissioner is authorized, directly or by grant or contract, to make studies and surveys to determine the need for increased or improved instruction in modern foreign languages and other fields needed to provide a full understanding of the areas, regions, or countries in which such languages are commonly used, to conduct research on more effective methods of teaching such languages and in such other fields, and to develop specialized materials for use in such training, or in training teachers of such languages or in such fields." (Pub. L. 86-864, as amended; 20 U.S.C. 512.)

"Sec. 102.(b)(6) * * * the President is further authorized to provide for * * * promoting modern foreign language training and area studies in United States schools, colleges, and universities * * *" (Pub. L. 87-256, as amended; 22 U.S.C. 2451-1458.)

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information collected will be used.—The information will be used to determine which applicants will receive awards.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: Winter; and (c) frequency: Annually.

8. Respondents.—(a) Type: Institutions of Higher Education; (b) number: 800; and (c) estimated average man-hours per respodnent: 12.

9. Information to be collected.—The standard application (nonconstruction) of OMB Circular No. A-102 will be used with minor modification based on the law and the regulations.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard Application (Nonconstruction) for Environmental Education.

2. Agency/bureau/office.—Office of Education, Bureau of Elementary and Secondary Education, Office of Environmental Education.

3. Agency form number.—OE form 326.

4. Legislative authority for this activity.—"Sec. 3(b)(3)(A) Financial Assistance * * * may be made available only upon application to the Commissioner." (20 U.S.C. 1532) (Pub. L. 91-516.)

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information collected will be used.—The information collected will be used to decide which applicants will receive awards.

7. Data acquistion plan.—(a) Method of collection: Mail; (b) time of collection: Winter; and (c) frequency: Annually.

8. Respondents.—(a) Type: Public and private nonprofit agencies, organizations, and institutions; (b) number: 1,000; and (c) estimated average man-hours per respondent: 40.

9. Information to be collected.—The standard application (nonconstruction) from OMB Circular No. A-102 will be used with modifications required by law and regulations.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard Application (Short Form) for Environmental Education.

2. Agency/bureau/office.—Office of Education, Bureau of Elementary and Secondary Education, Office of Environmental Education.

3. Agency form number.—OE form 326-1.

4. Legislative authority for this activity.—"Sec. 3(b)(3)(A) Financial assistance * * * may be made available only upon application to the Commissioner." (20 U.S.C. 1532) (Pub. L. 91-516.)

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information collected will be used.—The information collected will be used to decide which applicants will receive awards.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) number: 500; and (c) estimated average man-hours per respondent: 20.

9. Information to be collected.—The standard application (short form) from OMB Circular No. A-102 will be used with mofifications required by law and regulations.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Financial Status Report and Performance Report—Bureau of Occupational and Adult Education.

2. Agency/bureau/office.—Office of Education, Bureau of Occupational and Adult Education.

3. Agency form number.—OE form 360.

4. Legislative authority for this activity.—"Section 422(a) The Commissioner shall——

3. Collect data and information on applicable programs * * * (Pub. L. 91-230, Title IV; 20 U.S.C. 1231a.)

5. Voluntary/obligatory nature of response.—Required to maintain benefit.

6. How information to be collected will be used.—The financial status report will be used to monitor the status of funds under grants awarded by the Bureau of Occupational and Adult Education. The performance report will be used to monitor activities under the grant.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: for interim reports, 30 days after the end of each six month period of the project; for final reports, 90 days after the completion of the project; and (c) frequency: Semi-annually.

8. Respondents.—

(a) Type: Colleges and universities; (b) number: 145; and (c) estimated average man-hours per respondent: 9.

(a) Type: Local education agencies; (b) number: 180; and (c) estimated average man-hours per respondent: 9.

(a) Type: State education agencies; (b) number: 20; and (c) estimated average man-hours per respondent: 9.

(a) Type: Nonprofit organizations; (b) number: 20; and (c) estimated average man-hours per respondent: 9.

(a) Type: Other (Indian tribes and tribal organizations and State and local governmental organizations); (b) number: 45; and (c) estimated average man-hours per respondent: 9.

9. Information to be collected.—All grantees will use the standard financial status report from OMB Circulars No. A-102 and A-110. Information on the standard form not required by the programs will not be collected. The performance report will be based upon the instructions contained in OMB Circular No. A-102 and will collect information on the accomplishment of activities and objectives contained in the approved grant application. For grants under fellowship programs, grantees will report the amount of excess institutional allowance funds and how these funds have been used to improve their programs, as required by the law.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard Application (Nonconstruction) for Migrant Program, Title I, ESEA.

2. Agency/Bureau/office: Office of Education/Bureau of Elementary and Secondary Education/Compensatory Educational Programs/Division of Education for the Disadvantaged/Migrant Branch.

3. Agency form number.—OE form 362.

4. Legislative authority for this activity.—"Sec. 122. (a)(1) A State educational agency or a combination of such agencies, upon application, shall be entitled to receive a grant for any fiscal year under this section to establish or improve, either directly or through local educational agencies, programs of education for migratory children or migratory agricultural workers or of migratory fishermen. The Commissioner may approve such an application. * * * " (20 U.S.C. 241c-2) Pub. L. 93-380.

5. Voluntary/obligatory nature of response.—Required from State educational agencies to obtain benefit. The State has the option of using the application for local educational agencies.

6. How information collected will be used.—This information will be used to process grant applications.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: Fall; and (c) frequency: Annually.

8. Respondents.—(a) Type: State Educational Agencies; (b) number: 47; and (c) estimated average man-hours per respondent: 20.

(a) Type: Local Educational Agencies; (b) number: 1,200; and (c) estimated average man-hours per respondent: 20.

9. Information to be collected.—All respondents will be required to provide information requested on the standard non-construction application for Federal assistance, including the standard face page, SF-242. The Part IV, Program Narrative, incorporates requests for information based on statutory and regulatory needs.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Education for the Public Service program—application.

2. Agency/Bureau/Office.—Office of Education/Bureau of Higher and Continuing Education.

3. Agency form No.—OE 404.

4. Legislative authority for this activity.—"Sec. 901. (a) * * * (2) to establish, strength, and improve program designed to prepare graduate and professional students for Public Service * * * " (20 U.S.C. 1134a).

"Sec. 902. (a) The Commissioner is authorized to make grants of institutions of higher education * * * an institution of higher education shall submit an application * * *." (20 U.S.C. 1134a).

5. Voluntary/obligatory nature of response.—Required to obtain or maintain benefits.

6. How information will be used.—For award purpose, the information will be used in the evaluation of an institution's graduate programs in education for the public service, for institutional grants, and allocations of fellowships to these institutions.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) Time of collection: January; and (c) Frequency: Annually.

8. Respondents. (a) Type: Colleges and universities; (b) Number: 170; and (c) Estimated average man-hours per respondent: 20.

9. Information to be collected.—The standard Form 424 is used. A proposed budget must be included for each planned activity.

For a fellowship grant, the following figures must be included: the number of new fellowships, and continuing fellowships requested.

A narrative statement is also required, covering:

(a) Nature and objectives of the fellowship program.

(b) Program description.

(c) Need for fellowship support.

(d) Selection of fellows, including procedures for determining financial need.

(e) Qualifications of the faculty.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Domestic Mining and Mineral and Mineral Fuel Conservation Fellowship program—application.

2. Agency/Bureau/Office.—Office of Education/Bureau of Higher and Continuing Education.

3. Agency Form No.—OE 405.

4. Legislative authority for this activity.—"Sec. 961. (b)(1) The Commissioner is authorized to award under the provisions of this part not to exceed five hundred fellowships for the fiscal year ending June 30, 1973, and for each of the succeeding fiscal years ending prior to October 1, 1979." (Pub. L. 92-318, as amended; 20 U.S.C. 1134n).

5. Voluntary/obligatory nature of response.—Required to obtain or maintain benefits.

6. How information collected will be used.—Information collected will be used in the evaluation of an institution's graduate programs in mining and mineral fuel conservation for allo-

cations of fellowships to these institutions.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) Time of collection: Fall; and (c) Frequency: Annually.

8. Respondents. (a) Type: Colleges and universities; (b) Number: 60; and (c) Estimated average man-hours per respondent: 40.

9. Information to be collected.—The information required on Standard Form 424, plus the number of new fellowships, continuing fellowships, and dissertation year fellowships requested. A narrative statement is also required, covering:

(a) Nature and objective of the fellowship program.

(b) Program description.

(c) Need for fellowship.

(d) Selection of fellows, including procedures for determining financial need.

(e) Qualifications of faculty.

Grantees who had an award for fiscal year 1978 need only respond in the narrative in terms of changes.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard application for consumers' education and metric education.

2. Agency/Bureau/Office.—Office of Education, Bureau of Occupational and Adult Education.

3. Agency form No.—OE Form 425.

4. Legislative authority for this activity.—"Section 403(c)(1) Financial assistance under this section (Metric Education) may be made available only upon application to the Commissioner." (Pub. L. 93-380; 20 U.S.C. 1862).

"Section 811(b)(1)(C) Financial assistance under this subsection (Consumers' Education) may be made available only upon application * * *. (Pub. L. 92-318, sec. 505(a); 20 U.S.C. 887d).

5. Voluntary/obligatory nature of response.—Required to obtain benefits.

6. How information collected will be used.—The information collected will be used to decide which applicants will receive awards.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) Time of collection: Fall; and (c) Frequency: Annually.

8. Respondents.—(a) Type: Colleges and universities; (b) Number: 370; and (c) Estimated average man-hours per respondent: 20.

(a) Type: Local educational agencies; (b) Number: 360; and (c) Estimated average man-hours per respondent: 20.

(a) Type: State education agencies; (b) Number: 40; and (c) Estimated average man-hours per respondent: 20.

(a) Type: Nonprofit organizations; (b) Number: 370; and (c) Estimated average man-hours per respondent: 20.

(a) Type: Other public organizations and agencies; (b) Number: 75; and (c) Estimated average man-hours per respondent: 20.

9. Information to be collected.—All applicants will use the standard nonconstruction application from OMB Circular No. A-102. Departmental definitions are provided for the object class categories in the budget. Information not required by the programs on the standard application is deleted.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Application for Federal Assistance: Instruction for Part A, Title IV, Pub. L. 92-318.

2. Agency/Bureau/Office.—U.S. Office of Education, Office of Indian Education.

3. Agency Form No.—OE 444.

4. Legislative authority for this activity.—"Sec. 305.(a) A grant under this title, except as provided in section 303(b), may be made only to a local educational agency, or agencies, and only upon application to the Commissioner at such time or times, in such manner, and containing or accompanied by such information as the Commissioner deems necessary" (20 U.S.C. 241dd; Pub. L. 92-318).

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information to be collected will be used.—Information will be used to determine eligibility and amount of grant award.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) Time of collection: Winter; and (c) Frequency: Annually.

8. Respondents.—(a) Type: Local education agencies; (b) Number: 1,5000; and (c) Estimated average man-hours per respondent: 10.

9. Information to be collected.—All respondents will be required to provide information requested on the standard non-construction application for Federal assistance, including the standard face page, SF-424. Part IV, Progaram Narrative, incorporates requests for information based on statutory or regulatory needs as follows:

(1) Objectives and need for this assistance. Demonstrate the need for assistance in meeting the special educational needs of Indian children and state the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests are required by law and or regulations: a copy of the notice of the Public Hearing, description of the Needs Assessment.

(2) Results or benefits expected.

(3) Approach.

(a) A plan of action pertaining to the scope and detail of how the proposed work will be accomplished for each function or activity, provided in the budget. Describe the selection of the Parent Committee and its involvement in terms of ongoing operation. Describe how the program will obtain and utilize the best available talents and resources including persons from the Indian community.

(b) Provide quantitative monthly or quarterly projections of the accomplishments to be achieved.

(c) Identify the kinds of data to be collected and the criteria to be used to evaluate the results and successes of the project.

(d) List organizations, cooperators, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

(4) Geographical location. Give a precise location of the project or area to be served by the proposed project.

(5) If applicable, provide the following information:

(a) A biographical sketch of the program director which includes; name, address, phone number, background, and other qualifying experience for the project. Also, list the name, training and background for other key personnel.

(b) Discuss accomplishments to date and list in chronological order a schedule of accomplishments, progress or milestones anticipated with the new funding request.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Application for Federal Assistance for Arts Education Projects.

2. Agency/bureau/office.—Office of the Commissioner, Arts and Humanities Staff.

3. Agency form number.—OE 449.

4. Legislative authority for this activity.—"Sec. 409(a) The Commissioner shall, during the period beginning after June 30, 1972 and ending June 30, 1978, through arrangements made with the John F. Kennedy Center for the Performing Arts, carry out a program of grants and contracts to encourage and assist State and local education agencies to establish and conduct programs in which the arts are an integral part of elementary and secondary school programs." (20 U.S.C. 1867) Pub. L. 93-380.

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information to be collected will be used.—Information will be used to determine which applicant will receive award.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time: January; and (c) frequency: Annually.

8. Respondents.—(a) Type: State Education Agencies and Local Education Agencies; (b) number: 250; and (c)

estimated average man-hours per respondent: 15.

9. Information to be collected.—The standard application (non-construction) from OMB No. A-102 will be used with modifications required by law and regulations.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Application for Grants Under Library Training Program.

2. Agency/bureau/office.—U.S. Office of Education, Bureau of Elementary and Secondary Education, Office of Libraries and Learning Resources.

3. Agency form number.—OE-547.

4. Legislative authority for this activity.—"Section 222. (a) The Commissioner is authorized to make grants to institutions of higher education and library organizations or agencies to assist them in training persons in librarianship. Such grants may be used by such institutions, library organizations or agencies (1) to assist in covering the cost of courses of training or study (including short term or regular session institutes) for such persons, (2) for establishing and maintaining fellowships or traineeships with stipends for fellows and others undergoing training and their dependents, not in excess of such maximum amounts as may be prescribed by the Commissioner, and (3) for establishing, developing, or expanding programs or library and information science."

"(b) The Commissioner may make a grant to an institution of higher education and library organizations or agencies only upon application by the institutions and only upon his finding that such program will substantially further the objective of increasing the opportunities throughout the Nation for training in librarianship." (20 U.S.C. 1033) (Pub. L. 89-329, as amended.)

5. Voluntary/obligatory nature of response.—Required to obtain or maintain benefits.

6. How information to be collected will be used.—Information will be used to determine applicant's eligibility and that the proposed training activity meets the objectives of increasing the opportunities throughout the Nation for training in librarianship.

7. Data acquisition plan.—(a) Method of Collection: Mail; (b) time of Collection: Fall; and (c) frequency: Annually.

8. Respondents.—(a) Type: Institutions of higher education and nonprofit organizations; (b) number: 200; and (c) estimated average man-hours per respondent: 40.

9. Information to be collected.—The application consists of the standard face page for Federal applications, SF-424 and the standard Federal application (nonconstruction). Although the standard format is followed, Part IV, the Program Narrative is modified to request the following specific information which is required by law and regulation: (1) objectives of the project and need for the assistance, (2) results or benefits expected, (3) a plan of action as to how the proposed activity will be accomplished, (4) the geographic area to be served by the project and (5) a listing of the key personnel engaged in the project.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Graduate and Professional Study Fellowships and Institutional Grants—Application.

2. Agency/bureau/office.—Office of Education/Bureau of Higher and Continuing Education.

3. Agency form number.—OE 591.

4. Legislative authority for this activity.—For institutional grants: "There are authorized to be appropriated $50,000,000 for each of the fiscal years ending prior to October 1, 1979, for the purpose of this part." (Pub. L. 92-318, as amended by Pub. L. 94-482, 20 U.S.C. 1134)

For fellowships: "During the fiscal year ending June 30, 1973, and each of the succeeding fiscal years ending prior to October 1, 1979, the Commissioner is authorized to award not to exceed seven thousand five hundred fellowships to be used for study in graduate programs at institutions of higher education." (Pub. L. 92-318, as amended by Pub. L. 94-482, 20 U.S.C. 1134e)

5. Volunatry/obligatory nature of response.—Required to obtain or maintain benefits.

6. How information collected will be used.—This information will be used in the evaluation of applications by institutions of higher education for institutional grants and allocations of fellowships.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: Fall; and (c) frequency: Annually.

8. Respondents.—(a) Type: Colleges and Universities; (b) number: 350; and (c) estimated average man-hours per respondent: 40.

9. Information to be collected.—The information required on Standard Form 424, plus the amount of institutional grant requested by category of eligible activities and also the number of fellowships requested. A narrative statement is also required, covering: (a) Nature and objectives of the program, (b) curriculum description, (c) internship description, (d) library, laboratory, and other facilities and description, (e) qualifications of the faculty and staff, and (f) institutional commitment to program.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Teacher Centers Program Financial Status Report and Performance Report.

2. Agency/bureau/office.—U.S. Office of Education, Bureau of Occupational and Adult Education, Division of Educational Systems Development.

3. Agency form number.—OE Form 632.

4. Legislative authority for this activity.—"Section 422(a) The Commissioner shall—(3) collect data and information on applicable programs . . ." (Pub. L. 91-230. Title IV; 20 U.S.C. 1231a).

5. Voluntary/obligatory nature of response.—Required to maintain benefit.

6. How information to be collected will be used.—The information is to be used to: (a) judge the performance of noncompeting continuation projects to aid in and document funding decisions. (b) determine program effects for budget requests and recommended legislation, (c) identify promising practices and processes for further dissemination, especially from one State to another, and (d) monitor changes and accomplishments in projects.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) Time of collection: For final report, 90 days after the completion of the project; for interim reports, 30 days after the end of each six-month reporting period; and (c) Frequency: Semiannual.

8. Respondents.—(a) Type: Local Educational Agency; (b) Number: 54; and (c) estimated average man-hours per respondent: 8.

(a) Type: Colleges and Universities; (b) Number: 6; and (c) Estimated average man-hours per respondent: 8.

9. Information to be collected.—Financial status report will collect only information prescribed by OMB circulars A-102 and A-110. Data items not needed by the program will be deleted. The performance report will collect information on the accomplishment of activities, objectives, and revisions to the approved application, as well as changes in staff and policy board membership. Activities related to the specific purposes of the statute will be treated separately, and the extent of participation in each reported by participant type.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Application for Special Programs for Students from Disadvantaged Backgrounds, Higher Education Act, as amended.

2. Agency/bureau/office.—U.S. Office of Education/Bureau of Higher

and Continuing Education/Division of Student Services and Veterans Programs.

3. Agency form number.—OE Form 1251.

4. Legislative authority for this activity.—"Section 417A. (a) The Commissioner shall, in accordance with the provisions of this subpart, carry out a program designed to identify qualified students from low-income families, to prepare them for a program of postsecondary education, and to provide special services for such students who are pursuing programs of postsecondary education." (20 U.S.C. 1070d)

"Section 417B.(a) The Commissioner is authorized to make grants . . ." (20 U.S.C. 1070d-1) Pub. L. 92-318.

5. Voluntary/obligatory nature of response.—Required to obtain or maintain benefits.

6. How information to be collected will be used.—The form requests programmatic and budgetary information from eligible applicants so that Office of Education program officers and non-Federal reviewers will have adequate, relevant information with which to make funding decisions. The information collected will be used to determine compliance with the published funding criteria.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: Winter-Spring; and (c) frequency: Annually.

8. Respondents.—(a) Type: Institutions of higher education; (b) number: 877; and (c) estimated average man-hours per respondent: 5.

(a) Type: Other (public and private agencies, organizations, and secondary schools); (b) number: 123; and (c) estimated average man-hours per respondent: 5.

9. Information to be collected.—The following is collected from all respondents: Standard Form 424; number of students/clients proposed to be served; narrative—information called for in the program regulations: need for the proposed project, its design, and the resources and organization available and planned to carry out the project; budget summary—Personnel, Travel, Equipment, Room and Board, Stipends, Services, Indirect Costs.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard Application (Short Form) for Comprehensive Planning Grants and State Administration Funds for Administering State Plans under the Higher Education Act, as amended.

2. Agency/bureau/office.—Office of Education, Bureau of Higher and Continuing Education, State Planning Commissions Program.

3. Agency form number.—OE Form 1279.

4. Legislative authority for this activity.—"Section 1202(c)(2)(A). The Commissioner shall pay the State Commission the amount necessary for the proper and efficient administration of the Commission * * * ." (20 U.S.C. 1142a). "Section 1203(a). The Commissioner is authorized to make grants to any State Commission * * * to expand the scope * * * studies and planning * * * ." (20 U.S.C. 1142b) Pub. L. 92-318.

5. Voluntary/obligatory nature of response.—Required to obtain benefits.

6. How information collected will be used.—This information will be used in the processing of applications from both State Postsecondary Education Commissions for comprehensive planning grants under section 1203(a) of the Higher Education Act, and from State Commissions serving as the Higher Education Facilities Commissions for funds to administer the State plans under Titles VI-A and VII-A of the Higher Education Act.

7. Data acquisition plan.—(a) Method of collection: Mail, (b) Time be collection: Winter or spring, and (c) Frequency: Annually.

8. Respondents.—(a) TYPE: State Commissions, (b) Number: 57, and (c) Estimated average man-hours per respondent: 13.

9. Information to be collected.—The standard application (short form) will be used as the face page for both applications as required. Departmental definitions for the object class categories are used. A program narrative statement for comprehensive planning requests the following information: (a) The need for the proposed activities; (b) a description of the proposed activities; (c) the methodology to be used in carrying out the activities; and (d) the anticipated benefits and results of the activities. For State administration, description of any studies or inventories necessary to administer the State plans is requested.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard Application (Non-construction) for Special Community Services and Continuing Education.

2. Agency/bureau/office.—Office of Education/Bureau of Higher and Continuing Education/Division of Training and Facilities.

3. Agency form number.—OE 1280.

4. Legislative authority for this activity.—"Sec. 106.(b)(1) * * *, the Commissioner is authorized to make grants to, you contract with, institutions of higher education (and combinations thereof) * * *."(20 U.S.C. 1005a.)

5. Voluntary/obligatory nature of response.—Required to obtain benefits.

6. How information to be collected will be used.—Information will be used to determined which applicant will receive an award.

7. Data acquistion plan.—(a) Method of collection: Mail, (b) Time: Winter or spring, and (c) Frequency: Annually.

8. Respondents.—(a) Type: Institutions of Higher Education, (b) Number: 200, and (c) Estimated Average man-hours per respondent: 40.

9. Information to be collected.—The standard application from OMB Circular No. A-102 with modifications as required by law and regulations.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Application for College Work-Study Grant for Students of American Samoa or the Trust Territory of the Pacific Islands.

2. Agency/bureau/office.—Office of Education, Bureau of Student Financial Assistance, Division of Program Operations.

3. Agency form number.—OE 1285.

4. Legislative authority for this activity.—"Section 442(f) * * * for each fiscal year the Commissioner shall reserve an amount to provide work-study assistance to students who reside in, but who attend eligible institutions outside of, American Samoa or the Trust Territory of the Pacific Islands. The amount so reserved shall be allotted to eligible institutions * * *." (42 U.S.C. 2752) Pub. L. 92-318.

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information collected will be used.—The information collected will be used to allot funds to institutions to provide work-study assistance to students described in (4) above.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: Winter; and (c) Frequency: Annually.

8. Respondents.—(a) Type. Institutions of Higher Education; (b) Number: 80; and (c) Estimated average man-hours per respondent: 2.

9. Information to be collected.—The standard face page for applications in OMB Circular No. A-110 will be used. Number of students described in (4) above to be employed, the estimated average earnings per student, estimated total earnings, the Federal share and administrative expenses are data items to be collected. Student names and places of residence are also requested in a listing.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Application for State Student Incentive Grant Program.

2. Agency/bureau/office.—Office of Education/Bureau of Student Financial Assistance/State Student Incentive Grant Program.

3. Agency form number.—OE Form 1288.

4. Legislative authority for this activity.—"Section 415C(a). A State which desires to obtain a payment under this subpart for any fiscal year shall submit an application * * *." (20 U.S.C. 1070c-2) Pub. L. 92-318.

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information collected will be used.—By formula, to determine the amount of money a State will receive "to assist them in providing grants to eligible students in attendance at institutions of higher education."

7. Data acquisition plan.—(a) Method of collection: Mail; (b) time of collection: Spring; and (c) frequency: Annually.

8. Respondents.—(a) Type: State agencies; (b) number: 56; and (c) estimated average man-hours per respondent: 8.

9. Information to be collected.—Information to be collected concerns those data necessary to make the formula payment; i.e., the State request for Federal funds for initial and continuation awards, State matching funds available, State maintenance of effort, State criteria for determining financial need of students, numbers of students receiving assistance, and institutional eligibility.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Application for grants Under College Library Resources Program.

2. Agency/bureau/office.—U.S. Office of Education/Bureau of Elementary and Secondary Education/ Office of Libraries and Learning Resources.

3. Agency form number.—OE-3118.

4. Legislative authority for this activity.—"Section 201.(a). The Commissioner shall carry out a program of financial assistance—(1) to assist and encourage institutions of higher education in the acquistion of library resources * * *.

"Section 202 * * * A basic grant under this subsection may be made only if the application therefor is approved by the Commissioner upon his determination that the application (whether by an individual institution or a combination of institutions)—

(1) Provides satisfactory assurance that the applicant will expend during the fiscal year for which the basic grant is sought from funds other than funds received under this part—

(A) For all library purposes (exclusive of construction), an amount not less than the average annual amount it expended for such purposes during the two fiscal years preceding the fiscal year for which assistance is sought under this part, and

(B) For library resources, an amount not less than the average amount it expended for such resources during the two fiscal years preceding the fiscal year for which assistance is sought under this part, except that, if the commissioner determines, in accordance with regulations, that there are special and unusual circumstances which prevent the applicant from making the assurances required by this clause (1), he may waive that requirement for one or both assurances. (20 U.S.C. 1022-28) (Pub. L. 89-329, as amended.)

5. Voluntary/obligatory nature of response.—Required to obtain or maintain benefits.

6. How information to be collected will be used.—Information will be used to determine applicant's eligibility and for assurances that the applicant will expend during the fiscal year for which the grant is sought, an amount equal to the amount of the grant award and will equal or maintain its two year average for expenditures for all library purposes and library resources (maintenance of effort) and to provide a format for request for a waiver from maintenance of effort where the Commissioner may so approve.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) Time of collection: Winter; and (c) Frequency: Annually.

8. Respondents.—(a) Type: Institutions of higher education and public or private non profit library institutions whose primary purpose is to provide library and information services to institutions of higher education. (b) Number: 2,700; and (c) Estimated average man-hours per respondent: 1.

9. Information to be collected.—The application consists of two parts. Part 1 is the standard face page for Federal applications, SF-424. Part II is OE Form 3118 on which the applicant provides a maintenance of effort analysis cited above.

DESCRIPTION OF A PROPOSED COLLECTION OF INFORMATION AND DATA ACQUISITION ACTIVITY

1. Title of proposed activity.—Standard Application (Nonconstruction) for the Gifted and Talented Program.

2. Agency/bureau/office.—Office of Education, Bureau of Education for the Handicapped, Office of Gifted and Talented.

3. Agency form number.—OE Form 9048.

4. Legislative authority for this activity.—"Section 404(c)(2)(A). Any State educational agency or local educational agency desiring to receive a grant under this subsection shall submit an application to the Commissioner * * *." (20 U.S.C. 1863.)

"Section 404(a) The Commissioner is authorized to make grants to institutions of higher education and other appropriate non-profit organization * * *" (20 U.S.C. 1863.)

5. Voluntary/obligatory nature of response.—Required to obtain benefit.

6. How information will be used.—The information will be used to determine which applicants will receive awards.

7. Data acquisition plan.—(a) Method of collection: Mail; (b) Time of collection: Winter; and (c) Frequency: Annually.

8. Respondents.—(a) Type: State Education Agencies, Local Education Agencies, Institutions of Higher Education, and Nonprofit Organization; (b) Number: 500; and (c) Estimated average man-hours per respondent: 40.

9. Information to be collected.—The standard application (nonconstruction) from OMB Circular No. A-102 will be used with modification required by law and regulations. Information not required by the program will be deleted.

[FR Doc. 78-12309 Filed 5-4-78; 8:45 am]

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[4110-03]

## Food and Drug Administration

[FDA-225-78-4002]

## INSPECTION OF DRUG MANUFACTURERS, REPACKAGERS, AND DISTRIBUTORS

### Memorandum of Understanding with the Virginia Board of Pharmacy

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has executed a memorandum of understanding with the Virginia Board of Pharmacy. The purpose of the understanding is to set forth cooperative working arrangements between the two agencies to provide more effective consumer protection through more efficient inspectional coverage of Virginia drug manufacturers, repackagers, and distributors.

DATES: The agreement became effective March 10, 1978.

FOR FURTHER INFORMATION CONTACT:

Gary Dykstra, Compliance Coordination and Policy Staff (HFC-13), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-3470.

SUPPLEMENTARY INFORMATION: Pursuant to the notice published in the FEDERAL REGISTER of October 3, 1974 (39 FR 35697) stating that future memoranda of understanding and agreements between FDA and others would be published in the FEDERAL

REGISTER, the Commissioner of Food and Drugs is issuing the following memorandum of understanding:

MEMORANDUM OF UNDERSTANDING BETWEEN VIRGINIA BOARD OF PHARMACY AND BALTIMORE DISTRICT U.S. FOOD AND DRUG ADMINISTRATION

I. PURPOSE

It is the purpose of this understanding to provide more effective consumer protection through more efficient inspectional coverage of Virginia drug manufacturers, repackagers and distributors. The Virginia Board of Pharmacy and the Food and Drug Administration, Baltimore District will coordinate their programs to maximize effectiveness of their compliance efforts. This understanding will provide a format for formal discussion and planning in the development of a cooperative inspectional program satisfactory to both agencies.

II. WORK-SHARING PROGRAM

A. Goals and Responsibilities: The Virginia Board of Pharmacy and the FDA Baltimore District Investigations Branch will attempt to develop a formal program for sharing the responsibility of the inspection of all Virginia drug, device, and cosmetic establishments of mutual obligation. Close coordination and communication will be developed; there will be joint planning to assure that manpower is more efficiently utilized and regulatory efforts are properly meshed to achieve a high level of industry compliance.

B. Inspectional Obligation: 1. Inspection Inventory: An inventory of firms covered by this understanding, hereafter referred to as the cooperative establishment inventory (CEI), will be developed by both agencies and maintained by FDA's data processing unit (DPU).

2. Registration Information: The Virginia Board of Pharmacy will supply Baltimore District FDA with drug and device registration information. FDA will supply the State with a listing of registered drug firms in Virginia.

3. Joint Inspections: During the term of this understanding, joint inspections will be conducted to give each agency the opportunity to observe its partner's inspectional procedures. The inspections will be planned during the first planning session and discussed during the second and last, as stated in section IV-A.

III. GENERAL PROVISIONS

A. Drug Sampling: 1. Collection: The Virginia Board of Pharmacy will assist the Baltimore District FDA in the collection of drug samples if requested and within the limits of its available manpower.

2. Assay: The Baltimore District drug laboratory will assay drug samples if requested by the Virginia Board of Pharmacy, within the limits of available resources.

B. Recall and Emergency: The agencies will cooperate to the fullest extent possible in handling emergency public health problems of drug and device origin and in checking the effectiveness of drug product recalls.

C. Complaint Investigations: When indicated, each agency will assist its partner to the extent possible in the investigation of complaints.

D. Cross-Commissioning: Consideration will be given by both agencies to the possibility of commissioning each other's inspectors to operate under the authority of State and Federal Acts. The need for such commissioning will be determined during the term of this understanding.

E. Training: Based on the results of the joint inspections, FDA and the State will identify training needs and, if needed, develop several possible training activities designed to meet the needs of implementing this understanding.

F. Personnel Exchange: An exchange of personnel will be accomplished during the term of this understanding to permit closer program coordination, better understanding of mutual responsibilities, and an insight into operational procedures and regulatory philosophies. An FDA official will be assigned for a two-week period to the Board of Pharmacy and a State official will be assigned to the Baltimore District FDA for a two-week period. The details will be conducted under the provisions of the Federal Intergovernmental Personnel Act at Federal expense.

IV. PROGRAM REVIEW

A. Planning Sessions: Three joint planning sessions will be held during the term of this understanding to discuss the cooperative program, establish effective communication, determine regulatory philosophy, and plan future objectives. The first session will be held within 4 months of the signing of this memorandum; the second will be held 4 months thereafter, and the third during the 11th month of this understanding. Each session will be arranged for and moderated by FDA's Region III Assistant Food and Drug Director for Intergovernmental Affairs.

B. Performance Evaluation: During the term of this understanding, a procedure for evaluation of the quality of program performance will be developed. The evaluation procedure will be established during the current term and set into operation during the second year of the program.

V. TERM OF UNDERSTANDING

This understanding will expire on March 31, 1979, unless renewed and signed by both cooperating agencies to continue it in effect for another year.

This understanding in its entirety, or in part, may be revised by mutual consent or terminated upon 30 days' written notice by either agency.

Approved and accepted for the Virginia Board of Pharmacy:

Dated: March 10, 1978.

J. B. CARSON,
*Secretary,*
*Virginia Board of Pharmacy.*

Approved and accepted for the Food and Drug Administration:

Dated: February 16, 1978.

M. L. STRAIT,
*Director, Baltimore District Food and Drug Administration.*

*Effective date.* This memorandum of understanding became effective March 10, 1978.

Dated: April 28, 1978.

WILLIAM F. RANDOLPH,
*Acting Associate Commissioner for Compliance.*

[FR Doc. 78-12257 Filed 5-4-78; 8:45 am]

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[4110-03]

[Docket No. 78D-0099]

## SOURCE PLASMA (HUMAN)

### Availability of Guideline

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This document announces the availability of a revised guideline for red blood cell immunization of Source Plasma (Human) donors. The agency has revised the guideline in response to manufacturers' comments that the guideline as initially issued was difficult to follow.

DATE: Written comments by June 5, 1978.

ADDRESSES: Written comments and requests for copies of the guideline should be forwarded to the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857.

FOR FURTHER INFORMATION CONTACT:

Joe K. Holloway, Bureau of Biologics (HFB-620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, Md. 20014, 301-443-1306.

SUPPLEMENTARY INFORMATION: The Commissioner of Food and Drugs issued a notice published in the FEDERAL REGISTER of May 17, 1977 (42 FR 25381) advising manufacturers of the availability of a guideline for immunizing Source Plasma (Human) donors with Red Blood Cells (Human). He hereby gives notice that the guideline referred to in the May 1977 notice has been revised and updated and is now on display at the office of the Hearing Clerk (HFC-20), Food and Drug Administration, Room 4-65, 5600 Fishers Lane, Rockville, Md. 20857,

The Food and Drug Administration (FDA) committee on red blood cell immunization found, through discussions and correspondence with the blood manufacturing industry, that the Bureau's current guideline, displayed May 1977 at the Hearing Clerk's Office, required revision and updating. Problems with the current guideline are that manufacturers found it difficult to (1) successfully immunize the donors at the recommended dosage and administering intervals, especially for de novo (initial) immunizaiton, and (2) adequately match the donor's blood with the recipient's blood using the recommended criteria. The revised guideline will alleviate these problems.

Interested persons may obtain copies of the guideline by contacting the office of the Hearing Clerk and identifying the guideline with the Hearing Clerk docket number found in brackets in the heading of this document.

Dated: May 1, 1978.

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

[FR Doc. 78-12258 Filed 5-4-78; 8:45 am]

[4110-84]

Health Services Administration

## PROJECT GRANTS FOR HOME HEALTH SERVICES

### Announcement of Availability of Grants

Notice is hereby given that competitive applications are now being accepted from Home Health Services project grants under the authority of Section 602(a) of Pub. L. 94-63 (42 U.S.C. 1395x note). The Secretary will make grants to public and private nonprofit entities to support projects for the development and expansion of home health services.

Regulations applicable to these grants, published in the FEDERAL REGISTER on June 3, 1977 (42 FR 28692), state that the Secretary will give preference to applications for projects that will serve catchment areas in which a high percentage of the population is elderly, medically indigent, or both (42 CFR 51e.107).

On October 14, 1977, a notice was published in the FEDERAL REGISTER (42 FR 55371) announcing the first funding cycle for 1978. That notice established a deadline of January 2, 1978, for the receipt of completed applications and limited consideration of applications to applicants who proposed to serve preference areas.

The purpose of this notice is to announce the second funding cycle for 1978 for which approximately $2,500,000 is available. It is expected that these resources will be sufficient to support the award of some grants to applicants who proposed to serve nonpreference areas.

Information may be obtained from and completed applications returned to the representative of the Home Health Services Grant Program at the appropriate Regional Office (listed below). The representative may be contacted for consultation and technical assistance relative to development of an application.

Completed applications must be received at the Regional Office by June 1, 1978, to be considered for funding.

Dated: April 26, 1978.

JOHN H. KELSO,
*Deputy Administrator, Health Services Administration.*

Ms. Rita Pope, DHEW/PHS/Region I, Division of Health Services Delivery, Primary Health Care, Room 1409, John F. Kennedy Federal Building, Boston, Mass. 02203, 617-223-5845.

Mr. Robert Shaw, DHEW/PHS/Region II, Division of Health Services Delivery, Primary Health Care, 26 Federal Plaza, New York, N.Y. 10007, 212-264-2546.

Mr. Walter Ihle, DHEW/PHS/Region III, Division of Health Services Delivery, Primary Health Care, P.O. Box 13716, Philadelphia, Pa. 19101, 215-596-6675.

Ms. Pat Atkinson, DHEW/PHS/Region IV, Division of Health Services Delivery, Primary Health Care, 101 Marietta Towers, Atlanta, Ga. 30323, 404-221-2032.

Ms. Susan Kamp, DHEW/PHS/Region V, Division of Health Services Delivery, Primary Health Care, 300 South Wacker Drive, Chicago, Ill. 60606, 312-353-1720.

Mrs. Vicki Wright, DHEW/PHS/Region VI, Division of Health Services Delivery, Community Health Development, 1200 Main Tower Building, 17th Floor, Dallas, Tex. 75202, 214-655-3041.

E. June Smith, R.N., DHEW/PHS/Region VII, Division of Health Services Delivery, Family and Child Services, 601 East 12th Street, 5th Floor West, Kansas City, Mo. 64106, 816-374-2403.

Mr. Michael Oliva, DHEW/PHS/Region VIII, Division of Health Services Delivery, Primary Health Care, 11037 Federal Building, 19th and Stout Streets, Denver, Colo. 80094, 303-837-4781.

Ms. D. J. Soviero, DHEW/PHS/Region IX, Division of Health Services Delivery, 50 United Nations Plaza, Room 304, San Francisco, Calif. 94102, 415-556-1371.

Ms. Norma Ewan, DHEW/PHS/Region X, Division of Health Services Delivery, Family and Child Health, 1321 Second Avenue, Mail Stop 506, Seattle, Wash. 98101, 206-442-1020.

[FR Doc. 78-12198 Filed 5-4-78; 8:45 am]

[4110-83]

Health Resources Administration

## SCHOOLS OF PUBLIC HEALTH AND GRADUATE PROGRAMS IN HEALTH ADMINISTRATION

### Application Announcement for Grants for Special Projects

The Bureau of Health Manpower, Health Resources Administration, announces that applications for fiscal year 1978 grants for Special Projects for Schools of Public Health and Graduate Programs in Health Administration are now being accepted under the authority of section 792 of the Health Professions Educational Assistance Act of 1976 (Pub. L. 94-484).

Section 792 authorizes grants to assist accredited schools of public health and other educational entities with accredited graduate programs in health administration, health planning, or health policy analysis and planning to develop new graduate programs or expand existing ones in biostatistics or epidemiology; health administration, health planning or health policy analysis and planning; environmental or occupational health; or dietetics and nutrition.

In the award of grants for projects in the area of health administration, health planning or health policy analysis and planning, funding preference will be given to:

(a) Programs preparing the graduate for employment in a wide variety of settings;

(b) Program expanding content in health planning, policy and regulation, health economics, and quantitative methods or financial management;

(c) Programs providing for field training in (a) and (b) above;

(d) Programs providing short courses for employed health services administrators and planners in special areas involving health policy, planning and regulation, health economics, quantitative methods, and financial management; or

(e) Programs to meet manpower needs in health services administration and planning by providing educational opportunities for students residing in States where there is no accredited program in health services administration and planning or where there is a documented shortage of health administrators and planners.

Requests for application materials and questions regarding grants policy should be directed to:

Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 4-22, 3700 East-West Highway, Hyattsville, Md. 20782, phone 301-436-6564.

To be considered for fiscal year 1978 funding, applications must be received by the Grants Management Officer, Bureau of Health Manpower, Health Resources Administration, at the above address no later than June 1, 1978.

Should additional programmatic information be required, please contact:

Education Development Branch, Division of Associated Health Professions, Bureau of Health Manpower, Health Resources Administration, Center Building, Room 5-27, 3700 East-West Highway, Hyattsville, Md. 20782, phone 301-436-6800 or 436-6805.

Dated: April 24, 1978.

HENRY A. FOLEY,
*Administrator, HRA.*

[FR Doc. 78-12197 Filed 5-4-78; 8:45 am]

[4110-08]

National Institutes of Health

## REPORT ON BIOASSAY OF TRIS (2,3-DIBROMOPROPYL) PHOSPHATE FOR POSSIBLE CARCINOGENICITY

### Availability

Tris (2,3-dibromopropyl) phosphate (CAS 126-72-7) has been tested for cancer-causing activity with rats and mice in the Carcinogenesis Program, Division of Cancer Cause and Prevention, National Cancer Institute. A report is available to the public.

*Summary:* A bioassay of technical-grade tris (2,3-dibromopropyl) phosphate (TBP) for possible carcinogenicity was conducted using Fischer 344 rats and B6C3F1 mice. TBP ws administered in the feed, at either of two concentrations, to groups of 55 male and 55 female rats, and 50 male and 50 female mice. The high and low dietary concentrations of TBP administered

were, respectively, 100 and 50 ppm for the male and female rats, and 1000 and 500 ppm for the male and female mice. After a 103-week dosing period, observation of the rats and mice continued for 1 or 2 additional weeks. For each species, 55 animals of each sex were placed on test as controls. No TBP was added to their diet.

In both species, adequate numbers of animals in all groups survived sufficiently long to be at risk from late-developing tumors.

It is concluded that under the conditions of this study orally administered TBP was carcinogenic to B6C3F1 mice, causing increased incidences of tumors in livers, lungs, and stomachs of female mice and in kidneys, lungs, and stomachs of male mice. TBP also carcinogenic in Fischer 344 rats, causing an increased incidence of kidney tumors in both sexes.

Single copies of the report are available from the Office of Cancer Communications, National Cancer Institute, Building 31, room 10A21, National Institutes of Health, Bethesda, Md. 20014.

(Catalogue of Federal Domestic Assistance Program Number 13.393, Cancer Cause and Prevention Research)

Dated: April 27, 1978.

DONALD S. FREDRICKSON,
*Director,*
*National Institutes of Health.*

[FR Doc. 78-12110 Filed 5-4-78; 8:45 am]

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[4110-08]

## CARCINOGENESIS PROGRAM SCIENTIFIC REVIEW COMMITTEE

### Cancellation of Meeting

Notice is hereby given of the cancellation of the meeting of the Carcinogenesis Program Scientific Review Committee, National Cancer Institute, National Institutes of Health, May 11-12, 1978, which was published in the FEDERAL REGISTER on April 4, 1978 (43 FR 14129). This meeting is cancelled because the deadline for submission of contract proposals has been extended.

Dated: April 26, 1978.

SUZANNE L. FREMEAU,
*Committee Management Officer, NIH.*

[FR Doc. 78-12111 Filed 5-4-78; 8:45 am]

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[4110-08]

## CLINICAL CANCER EDUCATION COMMITTEE

### Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Clinical Cancer Education Committee, National Cancer Institute, Jume 1 and 2, 1978, Building 31C, Conference Room 10, National Institutes of Health. The meeting will be open to the public on June 1, 1978, from 8:30 a.m. to 9:30 a.m. to review administrative details. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5, U.S. code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 1, 1978, from 9:30 a.m. to 5 p.m., and on June 2, 1978, from 8:30 a.m. until adjournment, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal personal information concerning individuals associated with the applications.

Mrs. Marjorie F. Early, Committee Management Officer, National Cancer Institute, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will provide summaries of the meeting and roster of committee members, upon request.

Dr. Margaret H. Edwards, Executive Secretary, National Cancer Institute, Westwood Building, Room 10A18, National Institutes of Health, Bethesda, Md. 20014, 301-496-7761, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.398, National Institutes of Health)

Dated: April 26, 1978.

SUZANNE L. FREMEAU,
*Committee Management Officer,*
*National Institutes of Health.*

[FR Doc. 78-12114 Filed 5-4-78; 8:45 am]

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[4110-08]

## REVIEW OF CONTRACT PROPOSALS AND GRANT APPLICATIONS

### Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of committees advisory to the National Cancer Institute.

These meetings will be open to the public to discuss administrative details or other issues relating to committee business as indicated in the notice. Attendance by the public will be limited to space available.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, United States Code an section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual contract proposals and grant applications, as indicated. These proposals and applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the proposals and applications.

Mrs. Marjorie F. Early, Committee Management Officer, NCI, Building 31, Room 4B43, National Institutes of Health, Bethesda, Md. 20014, 301-496-5708, will furnish summaries of the meetings and rosters of committee members, upon request. Other information pertaining to the meeting can be obtained from the Executive Secretary indicated. Meetings will be held at the National Institutes of Health, 9000 Rockville Pike, Bethesda, Md. 20014, unless otherwise stated.

Name of Committee: Biometry and Epidemiology Contract Review Committee.
Dates: June 1-2, 1978; 7 p.m.
Place: Landow Building, Room A809, 7910 Woodmont Avenue, Bethesda, Md. 20014.
Times: Open: June 1, 7 p.m. to 10:30 p.m.
Closed: June 2, 8:30 a.m. to 5 p.m.
Closure Reason: To review research contract proposals.
Executive Secretary: Mr. Harvey Geller.
Address: Landow Building, Room 5C19, National Institutes of Health.
Phone: 301-496-6014.

(Catalog of Federal Domestic Assistance No. 13.393, National Institutes of Health.)

Name of Committee: Large Bowel and Pancreatic Cancer Review Committee (Large Bowel Subcommittee).
Dates: June 1-2, 1978; 7:30 p.m.
Place: Anderson-Mayfair Hotel, 1600 Holcombe Blvd., Houston, Tex. 77025.
Times: Open: June 1, 7:30 p.m. to 8:30 p.m.
Closed: June 1, 8:30 p.m. to adjournment.
Closed: June 2, 8:30 a.m. to adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. Andrew Chiarodo.
Address: Westwood Building, Room 855, National Institutes of Health.
Phone: 301-496-7194.

(Catalog of Federal Domestic Assistance No. 13.393, 13.394, 13.395; National Institutes of Health.)

Name of Committee: Cancer and Nutrition Scientific Review Committee.
Dates: June 1-2, 1978; 8:30 a.m.
Place: Federal Building, Room 6C01, 7550 Wisconsin Avenue, Bethesda, Md. 20014.
Times: Open: June 1, 8:30 a.m. to 9 a.m. Open: June 2, 8:30 a.m. to 9 a.m.
Closed: June 1, 9: a.m. to adjournment.
Closed: June 2, 9: a.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Gio B. Gori.
Address: Building 31, Room 11A03, National Institutes of Health.
Phone: 301-496-6616.

(Catalog of Federal Domestic Assistance No. 13.393, National Institutes of Health.)

Name of Committee: Bladder and Prostatic Cancer Review Committee (Bladder Subcommittee).
Dates: June 8, 1978; 8:30 a.m.
Place: O'Hare Hilton, Room 4109, O'Hare International Airport, Chicago, Ill.
Times: Open: June 8, 8:30 a.m. to 11:00 a.m. Closed: June 8, 11 a.m. to adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. William E. Stralle.
Address: Westwood Building, Room 853, National Institutes of Health.

Phone: 301-496-7194.

(Catalog of Federal Domestic Assistance No. 13.393, 13.394, 13.395; National Institutes of Health.)

Name of Committee: Cancer Control Grant Review Committee.
Dates: June 12-13, 1978; 8:30 a.m.
Place: Building 31C, Conference Room 8, National Institutes of Health.
Times: Open: June 12, 8:30 a.m. to 9 a.m. Closed: June 12, 9 a.m. to recess. Closed: June 13, 8:30 a.m. to adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. Robert F. Browning.
Address: Blair Building, Room 7A07, National Institutes of Health.
Phone: 301-427-7943.

(Catalog of Federal Domestic Assistance No. 13.399, National Institutes of Health.)

Name of Committee: Cancer Special Program Advisory Committee.
Dates: June 12-13, 1978; 9 a.m.
Place: Building 31A, Conference Room 4, National Institutes of Health.
Times: Open: June 12, 9 a.m. to 10:30 a.m. Closed: June 12, 10:30 a.m. to 5 p.m. Closed: June 13, 8:30 a.m. to adjournment.
Closure Reason: To review research grant applications.
Executive Secretary: Dr. William R. Sanslone.
Address: Westwood Building, Room 805, National Institutes of Health.
Phone: 301-496-7565.

(Catalog of Federal Domestic Assistance No. 13.392, National Institutes of Health.)

Name of Committee: Committee on Cancer Immunotherapy.
Dates: June 12-13, 1978; 1:30 p.m.
Place: Building 10, Room 4B14, National Institutes of Health.
Times: Open: June 12, 1:30 p.m. to 2 p.m. Closed: June 12, 2 p.m. to adjournment. Closed: June 13, 1:30 p.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. George M. Steinberg.
Address: Building 10, Room 4B09, National Institutes of Health.
Phone: 301-496-1791.

(Catalog of Federal Domestic Assistance No. 13.395, National Institutes of Health.)

Name of Committee: Committee on Cancer Immunotherapy.
Dates: June 15, 1978; 1:30 p.m.
Place: Building 10, Room 4B14, National Institutes of Health.
Times: Open: June 15, 1:30 to 2 p.m.
Closed: June 15, 2 p.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. George M. Steinberg.
Address: Building 10, Room 4B09, National Institutes of Health.
Phone: 301-496-1791.

(Catalog of Federal Domestic Assistance No. 13.395, National Institutes of Health.)

Name of Committee: Committee on Cancer Immunobiology.
Dates: June 20, 1978; 2 p.m.
Place: Building 10, Room 4B14, National Institutes of Health.
Times: Open: June 20, 2 p.m. to 2:30 p.m. Closed: June 20, 2:30 p.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Mrs. Judith M. Whalen.
Address: Building 10, Room 4B17, National Institutes of Health.
Phone: 301-496-1791

(Catalog of Federal Domestic Assistance No. 13.396, National Institutes of Health.)

Name of Committee: Committee on Cancer Immunotherapy.
Dates: June 22, 1978; 1:30 p.m.
Place: Building 10, Room 4B14, National Institutes of Health.
Times: Open: June 22, 1:30 p.m. to 2 p.m. Closed: June 22, 2 p.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. George M. Steinberg.
Address: Building 10, Room 4B09, National Institutes of Health.
Phone: 301-496-1791.

(Catalog of Federal Domestic Assistance No. 13.395, National Institutes of Health.)

Name of Committee: Virus Cancer Program Scientific Review Committee.
Dates: June 22-23, 1978; 9 a.m.
Place: Landow Building, Room 9B04, 7910 Woodmont Avenue, Bethesda, Md. 20014.
Times: Open: June 22, 9 a.m. to 9:30 a.m. Closed: June 22, 9:30 a.m. to 5 p.m. Closed: June 23, 9 a.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Maurice L. Guss.
Address: Landow Building, Room 9A10, National Institutes of Health.
Phone: 301-496-4533.

(Catalog of Federal Domestic Assistance No. 13.393, National Institutes of Health.)

Name of Committee: Cancer Control Community Activities Review Committee.
Dates: June 23, 1978; 8:30 a.m.
Place: Blair Building, Room 110, 8300 Colesville Road, Silver Spring, Md. 20910.
Times: Open: June 23, 8:30 a.m. to 9 a.m. Closed: June 23, 9 a.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Robert F. Browning.
Address: Blair Building, Room 7A07, National Institutes of Health.
Phone: 301-427-7943.

(Catalog of Federal Domestic Assistance No. 13.399, National Institutes of Health.)

Name of Committee: Bladder and Prostatic Cancer Review Committee (Prostatic Subcommittee).
Dates: June 23, 1978; 8:30 a.m.
Place: Roswell Park Research Study Center, 666 Elm Street, Buffalo, N.Y.
Times: Open: June 23, 8:30 a.m. to 9 a.m. Closed: June 23, 9 a.m. to adjournment.
Closure Reason: To review research grant applications.
Executive Secretary:
Address: Dr. Andrew Chiarodo, National Institutes of Health.
Phone: 301-496-7194.

(Catalog of Federal Domestic Assistance Nos. 13.393, 13.394, 13.395; National Institutes of Health.)

Name of Committee: Cancer Clinical Investigation Review Committee.
Dates: June 26-27, 1978; 9 a.m.
Place: Building 31C, Conference Room 6, National Institutes of Health.
Times: Open: June 26, 9 a.m. to 12:30 p.m.
Agenda—Open portion: Discussion of review of cooperative group program.
Closed: June 26, 1:30 p.m. to 5 p.m.
Closed: June 27, 8:30 a.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Mr. C. W. White.
Address: Landow Building, Room 8C09, National Institutes of Health.
Phone: 301-497-4471.

(Catalog of Federal Domestic Assistance No. 13.395, National Institutes of Health.)

Name of Committee: Cancer Control Treatment, Rehabilitation and Continuing Care Review Committee.
Dates: June 29, 1978; 8:30 a.m.
Place: Building 31C, Conference Room 10, National Institutes of Health.
Times: Open: June 29, 8:30 a.m. to 3 p.m.
Agenda—Open portion: Contract review in the areas of cancer control treatment, rehabilitation and continuing care.
Closed: June 29, 3 p.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Carlos E. Caban.
Address: Blair Building, Room 7A07, National Institutes of Health.
Phone: 301-427-7945.

(Catalog of Federal Domestic Assistance No. 13.399, National Institutes of Health.)

Name of Committee: Carcinogenesis Program Scientific Review Committee.
Dates: June 29-30, 1978; 8:30 a.m.
Place: Landow Building, Room 8C41, 7910 Woodmont Avenue, Bethesda, Md. 20014.
Times: Open: June 29, 8:30 a.m. to 9 a.m.
Closed: June 29, 9 a.m. to recess.
Closed: June 30, 8:30 a.m. to adjournment.
Closure Reason: To review research contract proposals.
Executive Secretary: Dr. Carl E. Smith.
Address: Landow Building, Room 8C37, National Institutes of Health.
Phone: 301-496-4141.

(Catalog of Federal Domestic Assistance No. 13.393, National Institutes of Health.)

Dated: April 26, 1978.

SUZANNE L. FREMEAU,
*Committee Management Officer, NIH.*

[FR Doc 78-12115 Filed 5-4-78; 8:45 a.m.]

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[4110-08]

## BOARD OF SCIENTIFIC COUNSELORS, NATIONAL EYE INSTITUTE

### Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute, June 8 and 9, 1978, Building 31, Room 6A-35, National Institutes of Health, Bethesda, Md.

This meeting will be open to the public on June 8 from 8:30 a.m. until 2:30 p.m. for general remarks by the Institute Director on matters concerning the intramural programs of the National Eye Institute. Attendance by the public will be limited to space available.

In accordance with provisions set forth in section 552b(c)(6), Title 5,

United States Code and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 8 from 2:30 p.m. until adjournment and the entire day on June 9 for review, discussion, and evaluation of individual projects conducted by the Laboratory of Vision Research, NEI. This evaluation and discussion could reveal personal information concerning individuals associated with the projects. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Mr. Julian Morris, Chief, Office of Program Planning and Scientific Reporting, National Eye Institute, Building 31, Room 6A-25, telephone 301-496-5248, will furnish summaries of the meeting and rosters of committee members.

Substantive program information may also be obtained from Dr. Carl Kupfer, Director, National Eye Institute, Building 31, Room 6A-03, telephone 301-496-2234, National Institutes of Health, Bethesda, Md. 20014.

Dated: April 26, 1978.

SUZANNE L. FREMEAU,
*Committee Management Officer, National Institutes of Health.*

[FR Doc. 78-12116 Filed 5-4-78; 8:45 am]

[4110-08]

## BOARD OF SCIENTIFIC COUNSELORS, NATIONAL INSTITUTE OF ALLERGY AND INFECTIOUS DISEASES

### Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Allergy and Infectious Diseases, June 13, 1978, in Building 31C, conference room 9, on June 14, 1978, in Building 5, room 216, and on June 15, 1978, in Building 31, room 7A24, National Institutes of Health, Bethesda, Md.

This meeting will be open to the public on June 13 from 9 a.m. until recess. During this open session, the permanent staff of the Laboratory of Infectious Diseases and the Laboratory of Biology of Viruses will present and discuss their immediate, past, and present research activities.

In accordance with the provisions set forth in sections 552b(c)(6), Title 5, U.S. Code, and section 10(d) of Pub. L. 92-463, the meeting of the Board will be closed to the public on June 14 from 9 a.m. until recess, and on June 15 from 9 a.m. to adjournment for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, and the competence of individual investigators.

Mr. Robert L. Schreiber, Chief, Office of Research Reporting and Public Response, National Institute of Allergy and Infectious Diseases, Building 31, room 7A32, National Institutes of Health, Bethesda, Md., telephone 301-496-5717, will provide summaries of the meetings and rosters of the Board members.

Dr. Kenneth W. Sell, Executive Secretary, Board of Scientific Counselors, NIAID, NIH, building 5, room 137, telephone 301-496-2144, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13-301, National Institutes of Health.)

Dated: April 26, 1978.

SUZANNE L. FREMEAU,
*Committee Management Officer, NIH.*

[FR Doc. 78-12117 Filed 5-4-78; 8:45 am]

[4110-08]

## PERIODONTAL DISEASES ADVISORY COMMITTEE

### Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Periodontal Diseases Advisory Committee, National Institute of Dental Research, National Institutes of Health, Bethesda, Md. on June 15-16, 1978, in Building 31-A, Conference Room 4.

The entire meeting will be open to the public from 9 a.m. to 5 p.m. on June 15, and from 9 a.m. to adjournment on June 16, to discuss research progress and ongoing plans and programs of the Periodontal Diseases Research Program. Attendance by the public will be limited to space available.

Dr. Paul F. Parakkal, Executive Secretary of the Periodontal Diseases Advisory Committee, National Institute of Dental Research, National Institutes of Health, Westwood Building, Room 519, Bethesda, Md. 20014, phone 301-496-7784, will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance No. 13.302, National Institutes of Health.)

Dated: April 25, 1978.

SUZANNE L. FREMEAU,
*Committee Management Officer, National Institutes of Health.*

[FR Doc. 78-12118 Filed 5-4-78; 8:45 am]

[4110-08]

## DENTAL CARIES PROGRAM ADVISORY COMMITTEE

### Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Dental Caries Program Advisory Committee, National Institute of Dental Research, on June 19-20, 1978, National Institutes of Health, building 31-C, conference room 7, Bethesda, Md.

The entire meeting will be open to the public from 1 p.m. to 5 p.m. on June 19, and from 9 a.m. to adjournment on June 20, to discuss research progress and ongoing plans and programs of the National Caries Program. Attendance by the public will be limited to space available.

Dr. James P. Carlos, Associate Director, National Caries Program, National Institute of Dental Research, National Institutes of Health, Westwood Building, room 528, Bethesda, Md. 20014, phone 301-496-7239, will furnish rosters of committee members, a summary of the meeting, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.840, National Institutes of Health.)

Dated: April 25, 1978.

SUZANNE L. FREMEAU
*Committee Management Officer, National Institutes of Health.*

[FR Doc. 78-12119 filed 5-4-78; 8:45 am]

[4110-08]

## NATIONAL COMMISSION ON DIGESTIVE DISEASES

### Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of three meetings of the National Commission on Digestive Diseases, 9 a.m. to 6 p.m. on the dates and places listed below. The entire three days will be open to the public. Attendance by the public will be limited to space available. No input will be requested from the audience.

On July 1-4, 1978, the Commission will meet at the Cherry Hill Inn, Cherry Hill, N.J., to review the subcommittee reports and to outline the first draft of the Long Range Plan; on July 20-22, in the Coolfont Conference Center, Berkeley Springs, W. Va., for the purpose of reviewing the first draft of the Long Range Plan; and on August 17-19, in the Minary Conference Center, Dartmouth College, Hanover, N.H., for the purpose of reviewing the second draft of the Long Range Plan.

Messrs. James N. Fordham or Irving Shapiro, Office of Scientific and Technical Reports, NIAMDD, National Institutes of Health, Building 31, room 9A04, Bethesda, Md. 20014, telephone 301-496-3583, will provide summaries of the meeting.

(Catalog of Federal Domestic Assistance Program No. 13.484, National Institutes of Health.)

Dated: April 27, 1978.

SUZANNE L. FREMEAU,
*Committee Management Officer, National Institutes of Health.*

[FR Doc. 78-12120 Filed 5-4-78; 8:45 am]

[4110-02]

Office of Education

NATIONAL ADVISORY COUNCIL ON ADULT EDUCATION

Meeting

AGENCY: National Advisory Council on Adult Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Ad Hoc Committee on the 1978 Annual Report of the National Advisory Council on Adult Education. This notice also describes the functions of the Council. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463, Sec. 10(a)(2)).

DATES: May 25, 1978, 11 a.m. to 5 p.m. and May 26, 1978, 9 a.m. to 3 p.m.

ADDRESS: Pennsylvania Building, 425 13th Street NW., Suite 323, Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Dr. Gary A. Eyre, Executive Director, National Advisory Council on Adult Education, 425 13th Street NW., Washington, D.C. 20004, 202-376-8892.

SUPPLEMENTARY INFORMATION: The National Advisory Council on Adult Education is established under Section 311 of the Adult Education Act (80 Stat. 1216.20 U.S.C. 1201). The Council is directed to:

Advise the Commissioner in the preparation of general regulations and with respect to policy matters arising in the administration of this title, including policies and procedures governing the approval of State plans under section 306 and policies to eliminate duplication, and to effectuate the coordination of programs under this title and other programs offering adult education activities and services.

The Council shall review the administration and effectiveness of programs under this title, make recommendations with respect thereto, and make annual reports to the President of its findings and recommendations (including recommendations for changes in this title and other Federal law relating to adult education activities and services). The President shall transmit each such report to the Congress together with his comments and recommendations.

The meeting of the Committee shall be open to the public.

The proposed agenda reflects the various topics to be discussed on the annual report which includes:

The Foreword
Council Activities/Concerns for the Year
Council Meeting
Council Membership
Council Structure/Committees
Committee Projects
Projected Council Activities

Records shall be kept of all Council proceedings, and shall be available for public inspection at the Office of the National Advisory Council on Adult Education, Room 323, Pennsylvania Building, 425 13th Street NW., Washington, D.C. 20004.

Signed at Washington, D.C., on May 1, 1978.

GARY A. EYRE,
*Executive Director, National Advisory Council on Adult Education.*

[FR Doc. 78-12249 Filed 5-4-78; 8:45 am]

[4110-02]

NATIONAL ADVISORY COUNCIL ON THE EDUCATION OF DISADVANTAGED CHILDREN

Amendment

This notice is to amend a portion of the notice of the meeting of the National Advisory Council on the Education of Disadvantaged Children which appeared in the FEDERAL REGISTER on Monday, April 24, 1978. The site visits scheduled for May 12, 1978, in the Washington, D.C., area schools, from 8:30 a.m. to 4:30 p.m, will now be held from 8:30 a.m to 2:30 p.m., followed by informal discussions on urban education to be held at the Presidential Building, Superintendent's Conference Room, 12th floor, 415 12th Street NW., from 2:30 to 4:30 p.m. The scheduled Seminar on Migrant Education has been canceled.

The National Advisory Council on the Education of Disadvantaged Children is established under section 148 of the Elementary and Secondary Act (20 U.S.C. 2411) to advise the President and the Congress on the effectiveness of compensatory education to improve the educational attainment of disadvantaged children.

Signed at Washington, D.C., on May 3, 1978.

ROBERTA LOVENHEIM,
*Executive Director.*

[FR Doc. 78-12418 Filed 5-4-78; 8:45 am]

[4110-12]

Office of the Secretary

PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Meeting

The President's Committee on Mental Retardation was established by Executive Order to provide advice and assistance in the area of mental retardation to the President including evaluation of the adequacy of the national effort to combat mental retardation; coordination of activities of Federal agencies; provision of adequate liaison between foundations and other private organizations; and development of information designed for dissemination to the general public.

The Committee will meet on June 1-3, 1978, 9 a.m. to 5 p.m., at the Chateau Motor Hotel, 201 Lake Street, Shreveport, La. At the meeting, the Committee will discuss full citizenship rights, humane service systems, trends in residential facilities, public awareness, and prevention of mental retardation.

These meetings are open to the public.

Further information on the President's Committee on Mental Retardation may be obtained from Mr. Fred J. Krause, Executive Director, President's Committee on Mental Retardation, Room 2614, ROB No. 3, 7th & D Streets SW., Washington, D.C. 20201, telephone 202-245-7634.

Dated: April 28, 1978.

RED J. DRAUSE,
*Executive Director, President's Committee on Mental Retardation.*

[FR Doc. 78-12306 Filed 5-4-78; 8:45 am]

[4210-01]

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Federal Disaster Assistance Administration

[FDAA-3064-EM; Docket No. NFD-623]

ALABAMA

Emergency Declaration and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of an emergency for the State of Alabama (FDAA-3064-EM), dated April 24, 1978, and related determinations.

DATED: April 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delega-

tion of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on April 24, 1978, the President declared an emergency as follows:

I have determined that the impact of tornadoes on the State of Alabama is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefor declare that such an emergency exists in the State of Alabama.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Thomas P. Credle of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Alabama to have been adversely affected by this declared emergency.

The Counties of:

Monroe and Montgomery.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
*Administrator, Federal Disaster Assistance Administration.*

[FR Doc. 78-12274 Filed 5-4-78; 8:45 am]

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**[4210-01]**

[FDAA-3062-EM; Docket No. NFD-624]

**ARKANSAS**

**Emergency Declaration and Related Determinations**

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of an emergency for the State of Arkansas (FDAA-3062-EM), dated April 22, 1978, and related determinations.

DATED: April 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on April 22, 1978, the President declared an emergency as follows:

I have determined that the impact of tornadoes on the State of Arkansas is of sufficient severity and magnitude to warrant a declaration of an emergency under Public Law 93-288. I therefore declare that such an emergency exists in the State of Arkansas.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Joe D. Winkle of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following area of the State of Arkansas to have been adversely affected by this declared emergency:

The County of:

Lonoke.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
*Administrator, Federal Disaster Assistance Administration.*

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**[4210-01]**

[FDAA-555-DR; Docket No. NFD-625]

**MINNESOTA**

**Major Disaster and Related Determinations**

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Minnesota (FDAA-555-DR), dated April 22, 1978, and related determinations.

DATED: April 22, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on April 22, 1978, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms, ice jams, snowmelt, and flooding beginning about March 13, 1978, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288. I therefore declare that such a major disaster exists in the State of Minnesota.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Robert E. Connor of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of Minnesota to have been adversely affected by this declared major disaster.

The Counties of:

Becker, Clay, Kittson, Marshall, Norman, Pennington, Polk, Red Lake, Traverse, and Wilkin.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
*Federal Disaster Assistance Administration.*

[FR Doc. 78-12276 Filed 5-4-78; 8:45 am]

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**[4210-01]**

[FDAA-3063-EM; Docket No. NFD-622]

**MISSISSIPPI**

**Emergency Declaration and Related Determinations**

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of an emergency for the State of Mississippi (FDAA-3063-EM), dated April 24, 1978, and related determinations.

DATED: April 24, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muchenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and

Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitled "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on April 24, 1978, the President declared an emergency as follows:

I have determined that the impact of tornadoes on the State of Mississippi is of sufficient severity and magnitude to warrant a declaration of an emergency under Pub. L. 93-288. I therefore declare that such an emergency exists in the State of Mississippi.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Thomas P. Credle of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared emergency.

I do hereby determine the following areas of the State of Mississippi to have been adversely affected by this declared emergency:

The counties of: Amite, Bolivar, Claiborne, Copiah, Hinds, Lauderdale, Lawrence, Marion, Pearl River, Perry, Smith, and Washington.

(Catalog of Federal Domestic Assistance No. 14. 701, Disaster Assistance.)

WILLIAM H. WILCOX,
*Administrator, Federal Disaster Assistance Administration.*

[FR Doc. 78-12277 Filed 5-4-78; 8:45 am]

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[4210-01]

[FDAA-552-DR; Docket No. NFD-626]

NEBRASKA

Notice of Major Disaster Declaration

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This Notice amends the Notice of major disaster declaration for the State of Nebraska (FDAA-552-DR), dated March 24, 1978.

DATED: April 25, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: The Notice of major disaster for the State of Nebraska, dated March 24, 1978, and amended on April 5, 1978, and April 12, 1978, is hereby further amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 24, 1978:

The county of Dawson.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
*Administrator, Federal Disaster Assistance Administration.*

[FR Doc. 78-12278 Filed 5-4-78; 8:45 am]

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[4210-01]

[FDAA-554-DR; Docket No. NFD-621]

NORTH DAKOTA

Major Disaster and Related Determinations

AGENCY: Federal Disaster Assistance Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of North Dakota (FDAA-554-DR), dated April 17, 1978, and related determinations.

DATED: April 17, 1978.

FOR FURTHER INFORMATION CONTACT:

Frank J. Muckenhaupt, Chief, Program Support Staff, Federal Disaster Assistance Administration, Department of Housing and Urban Development, Washington, D.C. 20410, 202-634-7825.

NOTICE: Pursuant to the authority vested in the Secretary of Housing and Urban Development by the President under Executive Order 11795 of July 11, 1974, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285; and by virtue of the Act of May 22, 1974, entitles "Disaster Relief Act of 1974" (88 Stat. 143); notice is hereby given that on April 17, 1978, the President declared a major disaster as follows:

I have determined that the damage in certain areas of the State of North Dakota resulting from severe storms, ice jams, snowmelt, and flooding beginning about March 11, 1978, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288. I therefore declare that such a major disaster exists in the State of North Dakota.

Notice is hereby given that pursuant to the authority vested in the Secretary of Housing and Urban Development under Executive Order 11795, and delegated to me by the Secretary under Department of Housing and Urban Development Delegation of Authority, Docket No. D-74-285, I hereby appoint Mr. Donald G. Eddy of the Federal Disaster Assistance Administration to act as the Federal Coordinating Officer for this declared major disaster.

I do hereby determine the following areas of the State of North Dakota to have been adversely affected by this declared major disaster.

The counties of Adams, Billings, Bowman, Burleigh, Cass, Dickey, Dunn, Emmons, Golden Valley, Grand Forks, Grant, Hettinger, La Moure, Logan, McIntosh, Mercer, Morton, Pembina, Richland, Sioux, Slope, Stark, Traill, and Walsh.

(Catalog of Federal Domestic Assistance No. 14.701, Disaster Assistance.)

WILLIAM H. WILCOX,
*Administrator, Federal Disaster Assistance Administration.*

[FR Doc. 78-12279 Filed 5-4-78; 8:45 am]

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[4310-02]

## DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

IRRIGATION OPERATION AND MAINTENANCE CHARGES

Water Charges and Related Information on the Flathead Project, Mont.

This notice of operation and maintenance rates and related information is published under the authority delegated to the Assistant Secretary—Indian Affairs by the Secretary of the Interior in 230 DM 1 and redelegated by the Assistant Secretary—Indian Affairs to the Area Directors in 10 BIAM 3, and by authority delegated to the Project Engineer and to the Superintendent by the Area Director in 10 BIAM 7.0, Sections 2.70-2.75. The authority to issue regulations is vested in the Secretary of the Interior by 5 U.S.C. 301 and Sections 463 and 465 of the Revised Statutes (25 U.S.C. 2 and 9), and also under 25 CFR 191.1(e).

FLATHEAD PROJECT—PAYMENT AND PENALTY

Operation and maintenance charges stipulated in this regulation shall be paid as follows:

(a) For Indian Trust and Non District Land payment shall become due on April 1 of each year, and are payable on or before that date. Charges not paid on or before July 1 following the due date shall have added a penalty of one half of one percent per month or fraction thereof from the due date, April 1, so long as the delinquency continues.

(b) For land embraced in the several Irrigation Districts payment shall be made of one half the amount due on or before February 1 of each year, and one half of the amount due on or before July 1 of each year. Payments

or portions of payments not received when due will have added a penalty of one half of one percent per month or fraction thereof from the due date for as long as the delinquency continues.

INDIAN TRUST AND NON-DISTRICT LANDS

The basic operation and maintenance rate for a pro-rata share of irrigation water supply for the season of 1978 for Indian Trust land and land not included in an Irrigation District shall be as follows:

| | |
|---|---|
| 1. Minimum charge for all tracts | $10.00 |
| 2. Basic rate per acre for lands in the Jocko Division | 6.10 |
| 3. Basic rate per acre for lands in the Mission Valley Division | 6.97 |
| 4. Basic rate per acre for lands in the Camas Division | 6.69 |

LANDS INCLUDED IN THE FLATHEAD IRRIGATION DISTRICT

The charge for operation and maintenance for lands included in the Flathead Irrigation District for the irrigation season of 1979 shall be approximately $598,750 for approximately 88,690 acres of irrigable land included in the Flathead Irrigation District. The minimum charge for any tract will be $10. Payment of said charges will entitle the said lands to a pro-rata share of available water for the season of 1979.

LANDS INCLUDED IN THE MISSION IRRIGATION DISTRICT

The charges for operation and maintenance for lands included in the Mission Irrigation District for the irrigation season of 1979 shall be approximately $113,750 for approximately 16,250 acres of irrigable land included in the Mission Irrigation District. The minimum charge for any tract will be $10. Payment of said charges will entitle the said lands to a pro-rata share of available water for the season of 1979.

LAND INCLUDED IN THE JOCKO VALLEY IRRIGATION DISTRICT

The charge for operation and maintenance for lands included in the Jocko Valley Irrigation District for the irrigation season of 1979 shall be approximately $52,325 for approximately 7,475 acres of irrigable land included in the Jocko Valley Irrigation District. The minimum charge for any tract will be $10. Payment of said charges will entitle the said lands to a pro-rata share of available water for the season of 1979.

Upon publication of these regulations Chapter I, Subchapter T of Title 25, Code of Federal Regulations is amended by deleting §§ 221.15, 221.16, 221.17, 221.18, 221.19, 221.20, 221.21, 221.22, 221.24, 221.25, 221.25a, 221.26, 221.27, 221.27a, 221.28, 221.29, 221.29a.

NOTE.—It is hereby certified that the economic and inflationary impacts of these regulations have been carefully evaluated in accordance with Executive Order 11821.

GEORGE L. MOON,
*Project Engineer.*

[FR Doc 78-12254 Filed 5-4-78; 8:45 am]

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[4310-84]

**Bureau of Land Management**

[Colorado 15142]

**COLORADO**

**Partial Termination of Proposed Withdrawal and Reservation of Lands**

APRIL 27, 1978.

Notice of a Forest Service, U.S. Department of Agriculture application, Colorado 15142, for withdrawal and reservation of lands for public purposes was published as FR Doc. 72-4500, on pages 6122-6123 of the issue of March 24, 1972, and republished pursuant to section 204(h) of the Federal Land Policy and Management Act of 1976 in order to give opportunity to request public hearing. The second notice was published as FR Doc. 77-37175 on pages 65283-65284 of the issue of December 30, 1977. The applicant agency has canceled its application insofar as it affects the following described lands:

NEW MEXICO PRINCIPAL MERIDIAN

RIO GRANDE NATIONAL FOREST

Park Creek Administrative Site

T. 38 N., R. 3 E.,
Sec. 31, W½NE¼.

NEW MEXICO PRINCIPAL MERIDIAN

UNCOMPAHGRE NATIONAL FOREST

Highway 145 Roadside Zone

A strip of land 200 feet wide on each side of the Colorado State Highway 145 centerline through the following described lands;

T. 41 N., R. 9 W.,
Sec. 5, Lot 2, SW¼SW¼NE¼, E½SW¼, W½SE¼;
Sec. 7, E½SE¼
Sec. 8, NE¼NW¼; and
Sec. 18, NE¼, NE¼SW¼, NW¼SE¼.
T. 42 N., R. 9 W.,
Sec. 20, E½SW¼;
Sec. 28, SW¼SW¼;
Sec. 29, W½E½, NE¼NW¼, E½SE¼;
Sec. 32, NE¼NE¼, S½NE¼, E½SW¼, W½SE¼; and
Sec. 33, W½E½NW¼, W½NW¼.
Excluding portions of mineral patents M.S. 1005, 1167A, 7301, 8603A, 12342, 12416, 14048, 15590, and 20027.

The areas described aggregate approximately 330 acres.

Therefore, pursuant to the regulations contained in 43 CFR, Part 2300, such lands will be relieved of the segregative effect of the above-mentioned application 30 days from the date of filing of this notice with the FEDERAL REGISTER.

ALAN D. CAMPBELL,
*Acting Leader, Montrose Team, Branch of Adjudication.*

[FR Doc. 78-12255 Filed 5-4-78; 8:45 am]

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[4310-84]

[W-63233]

**WYOMING**

**Application**

APRIL 26, 1978.

Notice is hereby given that pursuant to Sec. 28 of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 185), the Colorado Interstate Gas Co. of Colorado Springs, Colo., filed an application for a right-of-way to construct a 4½-inch O.D. pipeline for the purpose of transporting natural gas across the following described public lands:

SIXTH PRINCIPAL MERIDIAN, WYOMING

T. 18 N., R. 93 W.,
Sec. 20, W½SW¼.
T. 18 N., R. 94 W.,
Sec. 10, SW¼NE¼, NW¼NW¼, S½NW¼, N½SE¼ and SE¼SE¼;
Sec. 14, NE¼ and NE¼NW¼;
Sec. 24, NE¼NE¼.

The proposed pipeline will transport natural gas from the Federal No. 20-18-93 well located in the SW¼ of Section 20, T. 18 N., R. 93 W., Carbon County to a point of connection with Colorado Interstate Gas Company's existing pipeline located in the NW¼ of Section 10, T. 18 N., R. 94 W., Sweetwater County, Wyoming.

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 do so promptly. Persons submitting comments should include their name and address and send them to the District Manager, Bureau of Land Management, 1300 Third Street, P.O. Box 670, Rawlins, Wyo. 82301.

HAROLD G. STINCHCOMB,
*Chief, Branch of Lands and Minerals Operations.*

[FR Doc. 78-12256 Filed 5-4-78; 8:45 am]

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[7020-02]

## INTERNATIONAL TRADE COMMISSION

[AA1921-180]

**WELDED STAINLESS STEEL PIPE AND TUBING FROM JAPAN**

**Notice of Investigation and Hearing**

Having received advice from the Department of the Treasury on April 20,

1978, that welded stainless-steel pipe and tubing from Japan, with the exception of that merchandise produced by Toa Seiki Co., Ltd., and Yamato Industries Co., Ltd., are being, or likely to be, sold at less than fair value the United States International Trade Commission on May 1, 1978, instituted investigation No. AA1921-180 under section 201(a) of the Antidumping Act, 1921, as amended (19 U.S.C. 160(a)), 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.

A public hearing in connection with the investigation will be held in the Commission's hearing room, United States International Trade Commission, 701 E Street NW., Washington, D.C. 20436, beginning at 9:30 a.m., e.d.t., on June 8, 1978. All persons shall have the right to appear by counsel or in person, to present evidence and be heard. Requests to appear at the public hearing, or to intervene under the provisions of section 201(d) of the Antidumping Act, 1921, shall be filed with the Secretary of the Commission at his office in Washington, D.C., not later than noon, Friday, June 2, 1978.

There will be a prehearing conference in connection with this investigation which will be held in Washington, D.C. at 9:30 a.m., e.d.t., on Friday, June 2, 1978, in room 117, U.S. International Trade Commission Building, 701 E Street NW.

Issued: May 2, 1978.

By order of the Commission.

KENNETH R. MASON,
*Secretary.*

[FR Doc. 78-12351 Filed 5-4-78; 8:45 am]

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[4410-01]

## DEPARTMENT OF JUSTICE

### Attorney General

### CERTIFICATION OF THE ATTORNEY GENERAL

In accordance with section 6 of the Voting Rights Act of 1965, as amended, 42 U.S.C. 1973d (Supp. V) (Pub. L. 94-73). I hereby certify that in my judgment the appointment of examiners is necessary to enforce the guarantees of the Fourteenth and Fifteenth Amendments to the Constitution of the United States in Reeves County, Tex. This county is included within the scope of the determination of the Attorney General and the Director of the Census made on September 18, 1975, under section 4(b) of the Voting Rights Act of 1965 and published in the FEDERAL REGISTER on September 23, 1975 (40 FR 43746).

GRIFFIN B. BELL,
*Attorney General of the United States.*

MAY 2, 1978.

[FR Doc. 78-12413 Filed 5-4-78; 8:45 am]

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[4410-05]

### Bureau of Prisons

### NATIONAL INSTITUTE OF CORRECTIONS ADVISORY BOARD

### Meeting

Notice is hereby given that the National Institute of Corrections Advisory Board in accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 70) will meet on Sunday, June 4, 1978, starting at 3 p.m. and on Monday, June 5, 1978, starting at 8 a.m., at the Broker Inn, 555 30th Street, Boulder, Colo.

At this meeting (one of the regularly scheduled triannual meetings of the Advisory Board), the Board will receive its subcommittees' reports and recommendations as to future thrusts of the Institute and Program planning for fiscal year 1979.

LARRY SOLOMON,
*Social Science Research Analyst, National Institute of Corrections.*

[FR Doc. 78-12305 Filed 5-4-78; 8:45 am]

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[4410-01]

### Drug Enforcement Administration

### MANUFACTURE OF CONTROLLED SUBSTANCES

### Application

Pursuant to 21 U.S.C. 823(a)(1), and § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 30, 1978, Regis Chemical Co., 8210 North Austin Avenue, Morton Grove, Ill. 60053, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the schedule I controlled substance mescaline.

Any other such applicant, and any person who is presently registered with DEA to manufacture such substances, may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, D.C. 20537, Attention: DEA Federal Register Representative, Room 1203, and must be filed not later than June 5, 1978.

PETER B. BENSINGER,
*Administrator, Drug Enforcement Administration.*

Dated: May 1, 1978.

[FR Doc. 78-12307 Filed 5-4-78; 8:45 am]

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[4410-01]

[Docket No. 77-22]

### ROBERT C. BERWICK, M.D.

### Revocation of Registration

On October 21, 1977, a hearing was held before Administrative Law Judge, Francis L. Young, on the issues raised by an Order to Show Cause directed to Robert C. Berwick, M.D. (Respondent) as to why his DEA registration should not be revoked.

The Order to Show Cause was based upon a seven-count felony violation of section 841(a)(1), Title 21, United States Code and a four-count felony violation of section 846, Title 21, United States Code.

On March 31, 1978, the Administrative Law Judge certified to the Administrator, pursuant to 21 CFR 1316.65, his opinion and recommended ruling, findings of fact, conclusion of law, and decision.

The Administrative Law Judge concluded as a matter of law that there is a lawful basis for the revocation of Respondent's DEA registration. He found no evidence in the record sufficient to show any mitigating circumstances and recommended that Respondent's DEA registration be revoked.

The Administrator hereby adopts the findings of fact and conclusion of law as set forth in the Administrative Law Judge's opinion. Respondent has failed to show cause why his registration should not be revoked. (See In the Matter of Armand Lozano, M.D. 43 FR 11618.)

Having reviewed the entire record in this matter, the Administrator is satisfied that it would not be in the public interest to permit Respondent to retain his DEA registration.

Accordingly, under the authority vested in the Attorney General by the Comprehensive Drug Abuse Prevention and Control Act, redelegated to the Administrator of the Drug Enforcement Administration, it is ordered that Dr. Berwick's DEA registration AB1348475 be, and hereby is, revoked, effective immediately.

Dated: May 1, 1978.

PETER B. BENSINGER,
*Administrator, Drug Enforcement Administration.*

[FR Doc. 78-12308 Filed 5-4-78; 8:45 am]

[4510-30]

## DEPARTMENT OF LABOR

### Employment and Training Administration

### EMPLOYMENT TRANSFER AND BUSINESS COMPETITION DETERMINATIONS UNDER THE RURAL DEVELOPMENT ACT

#### Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is a factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within 2 weeks of publication of this notice to: Deputy Assistant Secretary for Employment and Training, 601 D Street NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 1st day of May 1978.

ERNEST G. GREEN,
*Assistant Secretary for Employment and Training.*

APPLICATIONS RECEIVED DURING THE WEEK ENDING APRIL 28, 1978

NAME OF APPLICANT, LOCATION OF ENTERPRISE AND PRINCIPAL PRODUCT OR ACTIVITY

Warren County News, Inc., McMinnville, Tenn.—Biweekly newspaper with related sales of advertising, notices, etc.
Americus Seed Processing Co., Inc., Americus, Ga.—Processing and bagging corn, soybean, and small grain (seed) for various seed companies.
Gilpin Concrete Products, Louisa, Ky.—Manufacture of concrete blocks.
J. D. Mullican, Inc., McMinnville, Tenn.—Construction of buildings.
Parker Agri-Enterprises, Inc., Drew, Miss.—Dry and store rough rice and soybeans.
Whittlesey's, Inc., Mission, Tex.—Processing of meats and meat products.
Transocean Contractors, Inc., Morgan City, La.—Activities to support oil explanation.
Rancho Shur-Sav, Inc., Alamogordo, N. Mex.—Retailers of groceries and meats.
Fiberglass Industries, Inc., Lecompte, La.—Manufacture of fiberglass products.
Texas Extrusion Corp., Inc., Farmersville, Tex.—Aluminum extrusion and the manufacture of aluminim extrusion presses.
The Blue Spruce Inn., Frisco, Colo.—Food and liquor sales.

[FR Doc. 78-12184 Filed 5-4-78; 8:45 am]

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[4510-30]

### Employment and Training Administration

### NATIONAL TRAINING AND EMPLOYMENT EFFORT

#### Skill Training Improvement Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: This notice announces availability of funds for a second solicitation of grant applications for the Skill Training Improvement Program (STIP), a national effort to provide skill training and private sector employment for unemployed and underemployed persons.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert Anderson, Administrator, Office of Comprehensive Employment Development, Room 6000, 601 D Street NW., Washington, D.C. 20213, phone 202-376-6254.

SUPPLEMENTARY INFORMATION:

1. *Scope and Program initiation.* The Employment and Training Administration (ETA) under Title III of the Comprehensive Employment and Training Act (CETA) solicited from CETA prime sponsors during August 1977, applications for the Skill Training Improvement Program and awarded grants to those applicants whose program designs met the objectives of the program.

CETA Title I prime sponsors are hereby being advised that additional STIP funds are now available for new STIP programs which will provide skill training in advanced skill occupations for long-term unemployed (15 weeks or more), low income persons and certain low income employed workers. This effort is being undertaken through competitive procurement procedures at the regional level of the Employment and Training Administration. A Solicitation for Grant Application (SGA) is being issued to all eligible applicants.

2. *Eligibility for a grant.* Only CETA fiscal year 1978 title I prime sponsors are eligible to apply for a grant. Included may be prime sponsors which have already received a STIP grant but which may apply for additional funds within the cost restrictions specified in the SGA. Prime sponsors may subgrant or contract certain program operations to organizations which are capable of effectively providing STIP services and are encouraged to contract with private employers to provide STIP training. Organizations or private employers which are interested in participating in this program may contact the prime sponsor for the area in which the organization or business is located.

3. *Application procedures.* A grant application is being mailed to each prime sponsor by the appropriate ETA regional office on or before April 28, 1978. Prime sponsors which have not received a grant application may contact their ETA regional office. Applications must be submitted to the appropriate ETA Regional Administrator no later than July 14, 1978.

4. Prime Sponsors may direct inquiries to the Regional Administrator for Employment and Training in the 10 regional offices listed below:

REGIONAL ADMINISTRATORS, EMPLOYMENT AND TRAINING ADMINISTRATION

Luis Sepulveda, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, Room 1703, J. F. Kennedy Building, Boston, Mass. 02203
Thomas Komarek, Acting, Regional Administrator, Employment and Training Ad-

ministration, U.S. Department of Labor, Room 3713, 1515 Broadway, New York, N.Y. 10036

J. Terrell Whitsitt, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, P.O. Box 8795, Philadelphia, Pa. 19101.

David T. Duncan, Acting, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, Room 405, 1371 Peachtree Street NE., Atlanta, Ga. 30309.

Richard C. Gilliland, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, Sixth Floor 230 South Dearborn Street, Chicago, Ill. 60604.

William S. Harris, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, 555 Griffin Square Building, Room 316, Dallas, Tex. 75202.

Richard G. Miskimins, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, Room 1000, 911 Walnut Street, Federal Building Kansas City, Mo. 64106.

Floyd E. Edwards, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, 16122 Federal Office Building, 1961 Stout Street, Denver, Colo. 80202.

William J. Haltigan, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, Box 36084, San Francisco, Calif. 94102.

Jess C. Ramaker, Regional Administrator, Employment and Training Administration, U.S. Department of Labor, Room 1145, Federal Office Building, 909 First Avenue, Seattle, Wash, 98174.

5. Availability of funds. It is anticipated that a total of $158 million will be available for this effort. Signed at Washington, D.C. this 25th day of April 1978.

ROBERT J. MCCONNON,
*Deputy Assistant Secretary for Employment and Training.*

[FR Doc. 78-12362 Filed 5-4-78; 8:45 am]

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[4510-30]

## YOUTH COMMUNITY CONSERVATION AND IMPROVEMENT PROJECTS (YCCIP) AND YOUTH EMPLOYMENT AND TRAINING PROGRAMS (YETP) FOR YOUTHS WHO ARE MEMBERS OF MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKER FAMILIES

### Potential Section 303 YCCIP and YETP Grantees

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: Pursuant to 29 CFR 97.913 and 97.1013, the Employment and Training Administration announces the selection of potential fiscal year 1978 sponsors for funds under title III, subpart J—Youth community conservation improvement project (YCCIP) and subpart K—Youth employment and training program (YETP) of the Comprehensive Employment and Training Act (CETA) of 1973, as amended and title II, subpart 2—Youth community conservation improvement projects (YCCIP) and subpart 3—Youth employment and training program (YETP) of the Youth Employment and Demonstration Projects Act (YEDPA) of 1977. Only current fiscal year 1978 sponsors receiving funds under Title III, Section 303 of the Comprehensive Employment and Training Act (CETA) of 1973, as amended can receive these YCCIP and YETP funds.

FOR FURTHER INFORMATION CONTACT:

Mr. Paul A. Mayrand, Director, Office of Farmworker Programs, Department of Labor, Employment and Training Administration, Room 7122, 601 D Street NW., Washington, D.C. 20213, telephone No. 202-376-7288.

SUPPLEMENTARY INFORMATION: *Potential sponsor designations.* The following section 303 fiscal year 1978 sponsors are to be designated as potential sponsors to provide services to youths who are members of migrant and other seasonally employed farmworker families with funds authorized under YEDPA, subparts 2—YCCIP and 3—YETP. Each section 303 applicant so designated as a potential YCCIP and/or YETP sponsor shall be notified in writing of the amount of YCCIP and/or YETP funds which may be granted the target areas to be served, the items to be negotiated and the time and place of negotiations. These designations are being made pursuant to 29 CFR 97.913 and 97.1013. Designation as a potential YCCIP and/or YETP sponsor does not commit the Department of Labor to award YCCIP and/or YETP funds to the designee, only to enter into negotiations. If negotiations fail to produce an acceptable grant, the Secretary reserves the right to terminate the negotiations.

POTENTIAL FISCAL YEAR 1978 SECTION 303 SPONSORS FOR YCCIP AND/OR YETP FUNDS

YETP—Youth Employment and Training Programs

REGION I

MAINE

Penobscot Consortium, Training and Employment Administration, 166 Union Street, Bangor, Maine 04401.

REGION II

NEW YORK

Program Funding, Inc., Suite 730, Powers Building, Rochester, N.Y. 14614.

REGION IV

FLORIDA

Florida Department of Education, Vocational Education Division, Capitol Building, Tallahassee, Fla. 32304.

MISSISSIPPI

Mississippi Delta Council for Farmworkers Opportunities, Inc., 1933 Fourth Street, Clarksdale, Miss. 38614.

REGION V

WISCONSIN

United Migrant Opportunity Services, Inc., P.O. Box 04129, 809 West Greenfield Avenue, Milwaukee, Wis. 53204.

ILLINOIS

Illinois Migrant Council, 202 South State Street, Chicago, Ill. 60604.

REGION VI

OKLAHOMA

Oklahoma Rural Opportunities Development Corp., 1100 North Classen Drive, P.O. Box 60126, Oklahoma City, Okla. 73106.

REGION VII

KANSAS

Oklahoma Rural Opportunities Development Corp., 1100 North Classen Drive, P.O. Box 60126, Oklahoma City, Okla. 73106.

REGION VIII

NORTH DAKOTA

North Dakota Migrant Council, P.O. Drawer X, Grand Forks, N. Dak. 58201.

REGION IX

HAWAII

Office of the Governor—OMP—Department of Labor and Industrial Relations, 1164 Bishop Street, Suite 600, Honolulu, Hawaii 96813.

REGION X

WASHINGTON

Northwest Rural Opportunities, Inc., 305 Euclid, Grandview, Wash. 98930

YCCIP—Youth Community Conservation Improvement Project

REGION VI

OKLAHOMA

Oklahoma Rural Opportunities Develoment Corp., 1100 North Classen Drive, P.O. Box 60126, Oklahoma City, Okla. 73106.

TEXAS

Economic Opportunities Development Corp. of San Antonio and Bexar County, 410 South Main Avenue, San Antonio, Tex. 78204.

Community Action Council of South Texas, 420 East Main Street, Rio Grande City, Tex. 78582.

REGION IX

CALIFORNIA

Proteus Adult Training, Inc., 1640 West Mineral King, P.O. Box 727, Visalia, Calif. 93277.

Signed in Washington, D.C., this 24th day of April 1978.

LAMOND GODWIN,
*Administrator,*
*Office of National Programs.*

[FR Doc. 78-12363 Filed 5-4-78; 8:45 am]

[4510-27]

**Office of Federal Contract Compliance Programs**

**WOMEN AND MINORITIES IN CONSTRUCTION**

**Goals and Timetables for Female and Minority Participaiton in the Construction Industry; Correction**

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Correction.

SUMMARY: This notice is a correction of the notice establishing goals and timetables for female and minority utilization for construction contractors and subcontractors subject to Executive Order 11246, as amended (30 FR 12319, 32 FR 14303).

EFFECTIVE DATE: May 8, 1978.

FOR FURTHER INFORMATION CONTACT:

William Raymond, Associate Director, OFCCP, 202-523-9447.

SUPPLEMENTARY INFORMATION: In FR Doc. 78-9084 appearing at 43 FR 14899 (April 7, 1978), the Department of Labor published a notice establishing goals and timetables for female and minority utilization for construction contractors subject to Executive Order 11246, as amended. The April 7, 1978, notice contained Appendix A which established goals and timetables for female utilization and Appendix B which established goals and timetables for minority utilization. A number of errors were contained in the appendices, and because the appendices are expected to be used constantly by procurement officers and full documents are republished in full as corrected.

Dated: April 25, 1978.

WELDON J. ROUGEAU,
*Director, OFCCP.*

APPENDIX A

The following goals and timetables for female utilization shall be included in all Federal and federally assisted construction contracts and subcontracts in excess of $10,000. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally-assisted construction contract or subcontract.

Area covered: Goals for Women apply nationwide.

*Goals and timetables*

| Timetable | Goals (percent) |
|---|---|
| From Apr. 1, 1978 until Mar. 31, 1979 | 3.1 |
| From Apr. 1, 1979 until Mar. 31, 1980 | 5.0 |
| From Apr. 1, 1980 until Mar. 31, 1981 | 6.9 |

APPENDIX B

Until further notice, the following goals and timetables for minority utilization shall be included in all Federal or federally-assisted construction contracts and subcontracts in excess of $10,000 to be performed in the respective covered areas. The goals are applicable to the contractor's aggregate on-site construction workforce whether or not part of that workforce is performing work on a Federal or federally-assisted construction contract or subcontract.

REGION I

BOSTON, MASS., AREA

Area covered: Arlington, Boston, Belmont, Brookline, Burlington, Cambridge, Canton, Chelsea, Dedham, Everett, Malden, Medford, Melrose, Milton, Norwood, Reading, Revere, Somerville, Stoneham, Wakefield, Westwood, Winthrop, Winchester, Woburn, and the islands of Boston Harbor, Mass.

*Goals and Timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 10.8 to 10.12 |
| Boilermakers | 9.6 to 12.0 |
| Bricklayers | 8.0 to 10.0 |
| Carpenters | 11.6 to 14.5 |
| Cement masons | 25.5 to 27.5 |
| Electricians | 6.0 to 7.0 |
| Elevator constructors | 9.5 to 11.4 |
| Glaziers | 8.8 to 11.0 |
| Ironworkers | 5.9 to 6.9 |
| Lathers | 6.9 to 8.9 |
| Operating engineers | 14.1 to 15.0 |
| Painters | 9.1 to 11.1 |
| Pipefitters | 11.0 to 12.1 |
| Plasterers | 20.5 to 22.5 |

[1] Until futher notice.

NEW BEDFORD, MASS., AREA

Area covered: New Bedford, Dartmouth, Fairhaven, Acushnet, Rochester, Marion, Mattapoisett, Wareham, Barnstable County, Duke's County, and Nantucket County, Mass.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 14.8 to 18.5 |

[1] Until further notice.

NEW HAVEN, CONN. AREA

Area covered: Woodbridge, Guilford, Clinton, Bethany, Madison, Killingworth, New Haven, Cheshire, Chester, North Haven, Wallingford, East Haven, Hamden, North Branford, West Haven, Branford, Durham, and Orange, Conn.

[1] Region refers to the 10 regions in which the U.S. Department of Labor has offices. These Regions are headquartered in Boston, New York, Philadelphia, Atlanta, Chicago, Dallas, Kansas City, Denver, San Francisco and Seattle, which are numbers I through X respectively.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Bricklayers | 31.3 to 36.3 |
| Carpenters | 28.8 to 33.8 |
| Elevator constructors | 20.8 to 25.6 |
| Glaziers | 26.9 to 32.1 |
| Operator engineers | 31.7 to 36.6 |
| Painters | 24.0 to 29.0 |
| Roofers | 31.6 to 36.7 |
| Tile and marble layers | 22.0 to 26.6 |
| All other trades | 20.0 to 25.0 |

[1] Until further notice.

STATE OF RHODE ISLAND AREA

Area covered: Statewide.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 5.0 |

[1] Until further notice.

REGION II

BUFFALO, N.Y. AREA

Area covered: Erie County and Buffalo, N.Y.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 10.6 to 13.2 |

[1] Until further notice.

CAMDEN, N.J. AREA

Area covered: Camden, N.J., area of Camden, Salem, and Gloucester Counties.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 11.6 to 14.5 |
| Boilermakers | 10.8 to 13.5 |
| Bricklayers | 17.8 to 20.0 |
| Carpenters | 11.2 to 13.0 |
| Cement masons | 12.0 to 15.0 |
| Electricians | 14.9 to 17.8 |
| Elevator constructors | 10.8 to 13.5 |
| Glaziers | 16.0 to 20.0 |
| Lathers | 10.8 to 13.5 |
| Operating engineers | 10.0 to 12.5 |
| Painters/decorators/paperchangers | 8.8 to 12.8 |
| Plasterers | 17.0 to 19.0 |
| Plumbers/pipefitters/steamfitters | 8.4 to 10.5 |
| Roofers | 8.4 to 10.5 |
| Sheetmetal workers | 11.2 to 14.0 |
| Sprinkler fitters | 10.8 to 13.5 |
| Structural metal workers | 12.9 to 15.3 |
| Wharf 7 dock builders | 10.8 to 13.5 |

[1] Until further notice.

ELMIRA, N.Y. AREA

Area covered: Chemung, Steuben, Schuyler, Tioga, and Yates Counties, N.Y.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 4.0 to 5.0 |

[1] Until further notice.

LONG ISLAND, N.Y. AREA

Area covered: Nassau and Suffolk Counties, N.Y.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 6.0 to 8.0 |

[1] Until further notice.

NEW YORK, N.Y. AREA

Area covered: City of New York, N.Y.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Electricians | 9.0 to 10.2 |
| Carpenters | 27.6 to 32.0 |
| Steamfitters | 12.2 to 13.5 |
| Metal lathers | 24.6 to 25.6 |
| Painters | 22.8 to 26.0 |
| Operating engineers | 25.6 to 26.0 |
| Plumbers | 12.0 to 14.5 |
| Iron workers (structural) | 25.9 to 32.0 |
| Elevator constructors | 5.5 to 6.5 |
| Bricklayers | 13.4 to 15.5 |
| Asbestos workers | 22.8 to 28.0 |
| Roofers | 6.3 to 7.5 |
| Iron workers (ornamental) | 22.4 to 23.0 |
| Cement masons | 23.0 to 27.0 |
| Glaziers | 16.0 to 20.0 |
| Plasterers | 15.8 to 18.0 |
| Teamsters | 22.0 to 22.5 |
| Boilermakers | 13.0 to 15.5 |
| All Other | 16.4 to 17.5 |

[1]Until further notice.

ROCHESTER, N.Y. AREA

Area covered: Rochester, N.Y. and Vicinity in Monroe, Livingston, Wayne and Ontario Counties.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 7.1 to 8.7 |
| Bricklayers and masons | 27.5 to 30.3 |
| Carpenters | 13.1 to 14.8 |
| Electrical workers | 12.1 to 14.5 |
| Elevator constructors | 7.1 to 8.6 |
| Glaziers | 21.9 to 26.1 |
| Iron workers | 27.9 to 30.8 |
| Lathers | 15.0 to 17.9 |
| Operating engineers | 7.7 to 9.0 |
| Painters | 9.4 to 11.2 |
| Plumbers | 13.8 to 16.8 |
| Sheetmetal workers | 9.7 to 11.4 |
| All Other | 23.9 to 24.9 |

[1]Until further notice.

SYRACUSE, N.Y. AREA

Area covered: Onondaga, Oswego and Madison Counties, N.Y.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 6.0 to 7.5 |

[1]Until further notice.

TRENTON, N.J. AREA

Area covered: Mercer and Burlington Counties, N.J.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 15.0 |

[1]Until further notice.

WESTCHESTER, N.Y. AREA

Area covered: Westchester County, N.Y.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 11.0 to 13.0 |

[1]Until further notice.

REGION III

STATE OF DELAWARE AREA

Area covered: State of Delaware.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 15.0 to 18.5 |

[1]Until further notice.

PHILADELPHIA, PA. AREA

Area covered: Bucks, Chester, Delaware, Montgomery and Philadelphia Counties, Pa.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Ironworkers | 22.0 to 26.0 |
| Plumbers and pipefitters | 20.0 to 24.0 |
| Steamfitters | 20.0 to 24.0 |
| Sheetmetal workers | 19.0 to 23.0 |
| Electrical workers | 19.0 to 23.0 |
| Elevator construction workers | 19.0 to 23.0 |

[1]Until further notice.

PITTSBURGH, PA., AREA

*Area covered:* Allegheny County, Pa.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 24.3 to 27.8 |
| Boilermakers | 33.8 to 37.7 |
| Bricklayers | 11.9 to 13.0 |
| Carpenters | 11.8 to 12.9 |
| Cement masons | 16.3 to 18.1 |
| Electricians | 17.0 to 20.3 |
| Glaziers | 26.9 to 30.4 |
| Ironworkers | 25.5 to 29.9 |
| Lathers | 12.7 to 13.8 |
| Operating engineers | 44.2 to 48.3 |
| Painters | 16.4 to 17.9 |
| Plasterers | 34.3 to 38.0 |
| Plumbers | 7.8 to 9.2 |
| Roofers | 47.1 to 50.1 |
| Sheetmetal workers | 26.0 to 26.9 |
| Steamfitters | 10.1 to 12.0 |
| Tile setters | 13.6 to 16.0 |
| All other | 27.6 to 31.5 |

[1]Until further notice.

WASHINGTON, D.C., AREA

Area covered: District of Columbia; the Virginia cities of Alexandria, Fairfax, and Falls Church; the Virginia counties of Arlington, Fairfax, Loudoun, and Prince William; and the Maryland counties of Montgomery and Prince Georges.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Electricians | 28.0 to 34.0 |
| Painters and paperhangers | 35.0 to 42.0 |
| Plumbers, pipefitters and steamfitters | 25.0 to 30.0 |
| Iron workers | 35.0 to 43.0 |
| Sheetmetal workers | 25.0 to 31.0 |
| Elevator constructors | 34.0 to 40.0 |
| Asbestos workers | 26.0 to 32.0 |
| Lathers | 34.0 to 40.0 |
| Boilermakers | 24.0 to 30.0 |
| Tile and terrazzo workers | 28.0 to 34.0 |
| Glaziers | 28.0 to 34.0 |

[1]Until further notice.

REGION IV

ATLANTA, GA., AREA

Area covered: Atlanta, Ga. Standard Metropolitan Statistical Area which includes Fulton, De Kalb, Cobb, Clayton, and Gwinnett Counties.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 28.5 to 33.5 |
| Carpenters | 18.3 to 22.0 |

*Goals and timetables*[1]—Continued

| Trade | Goal (percent) |
|---|---|
| Electricians | 14.9 to 18.5 |
| Elevator constructors | 14.1 to 17.3 |
| Glaziers | 31.6 to 39.5 |
| Ironworkers | 10.1 to 12.3 |
| Millwrights | 14.0 to 17.2 |
| Painters | 22.4 to 27.7 |
| Plumbers | 14.8 to 18.1 |
| Sheetmetal workers | 19.2 to 24.0 |

[1]Until further notice.

BIRMINGHAM, ALA., AREA

Area covered: Jefferson, Shelby, and Walker Counties, Ala.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 20.0 to 24.0 |

[1]Until further notice.

CHARLOTTE, N.C., AREA

Area covered: Mecklenburg and Union Counties, N.C.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 24.0 to 30.0 |

[1]Until further notice.

JACKSONVILLE, FLA., AREA

Area covered: Duval County, Fla.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 20.0 to 23.0 |

[1]Until further notice.

LOUISVILLE, KY., AREA

Area covered: Adair, Barren, Bullitt, Carrol, Edmundson, Grayson, Green, Hardin, Hart, Henry, Jefferson, Larue, Meade, Nelson, Oldham, Shelby, Spencer, Taylor, Trimble, Warren, Washington Counties, Ky.; and Clark, Floyd, Harrison Counties, Ind.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 12.0 to 16.0 |

[1]Until further notice.

MIAMI, FLA., AREA

Area covered: Dade County, Fla.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 20.0 to 40.0 |

[1]Until further notice.

NASHVILLE, TENN., AREA

Area covered: City of Nashville, Tenn.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 20.0 to 25.0 |

[1]Until further notice.

## REGION V

### AKRON, OHIO, AREA

Area covered: Summit, Portage, and Medina Counties, Ohio.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 10.0 to 12.5 |

[1]Until further notice.

### CANTON, OHIO, AREA

Area covered: Carroll, Holmes, Stark, Tuscarawas, and Wayne Counties, Ohio.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 7.0 to 8.4 |

[1]Until further notice.

### CHICAGO, ILL., AREA

Area covered: Cook, DuPage, Kane, Lake, McHenry, and Will Counties.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 8.6 to 10.3 |
| Bricklayers | 16.3 to 18.2 |
| Carpenters | 11.0 to 12.8 |
| Electricians | 10.9 to 12.2 |
| Elevators installers | 9.6 to 11.5 |
| Glaziers | 10.2 to 12.2 |
| Ironworkers | 14.0 to 16.0 |
| Metal lathers | 10.0 to 12.0 |
| Painters | 10.3 to 12.1 |
| Plumbers | 9.4 to 10.9 |
| Pipefitters | 9.4 to 10.9 |
| Plasterers | 24.4 to 25.8 |
| Roofers | 18.0 to 20.0 |
| Sheetmetal workers | 9.5 to 11.3 |
| Sprinkler fitters | 8.3 to 9.9 |
| Operating engineers | 15.7 & above |

[1]Until further notice.

### CINCINNATI, OHIO, AREA

Area covered: Ohio counties of Clermont, Hamilton, and Warren and in the Kentucky counties of Boone, Campbell, and Kenton, and in the Indiana county of Dearborn.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 9.3 to 11.2 |
| Boilermakers | 8.0 to 8.4 |
| Carpenters | 9.0 to 10.7 |
| Elevator constructors | 10.2 to 12.7 |
| Engineers (stationary) | 26.9 to 28.4 |
| Floor layers | 9.0 to 10.5 |
| Glaziers | 9.1 to 11.1 |
| Lathers | 9.3 to 10.6 |
| Marble, tile, and terrazzo workers and helpers | 8.3 to 9.9 |
| Millwrights | 9.1 to 10.3 |
| Painters | 11.0 to 13.5 |
| Pipefitters | 10.0 to 12.0 |
| Plasterers | 8.7 to 9.6 |
| Plumbers | 10.0 to 12.7 |
| Sheetmetal workers | 10.1 to 11.3 |
| All other | 11.0 to 11.8 |

[1]Until further notice.

### CLEVELAND, OHIO, AREA

Area covered: Ashland, Ashtabula, Crawford, Cuyahoga, Erie, Geauga, Huron, Lake, Lorain, Sandusky, and Seneca Counties, Ohio.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Art glass workers | 25.4 to 28.6 |
| Asbestos workers | 20.9 to 23.9 |
| Boilermakers | 16.3 to 18.9 |
| Bricklayers | 28.8 to 29.5 |
| Carpenters | ERR*18.0 to ERR*18.6 |
| Cement masons | 41.1 to 42.2 |
| Electricians | 15.8 to 18.1 |
| Elevator constructors | 28.9 to 32.5 |
| Glaziers | 35.8 to 40.0 |
| Ironworkers | 11.4 to 13.2 |
| Painters | 17.7 to 18.4 |
| Pipefitters | 15.7 to 17.9 |
| Plasterers | 21.6 to 23.2 |
| Plumbers | 20.8 to 23.4 |
| Roofers | 28.9 to 31.8 |
| All other | 17.0 to 18.8 |

[1]Until further notice.

### DAYTON, OHIO, AREA

Area covered: Greene, Miami, Montgomery, and Preble Counties, Ohio.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 10.6 to 11.8 |

[1]Until further notice.

### DETROIT, MICH., AREA

Area covered: Wayne, Oakland, and Macomb Counties, Mich.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 18.5 or above |

[1]Until further notice.

### EVANSVILLE, IND., AREA

Area covered: Vandeburgh County, Ind.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 6.3 to 7.6 |

[1]Until further notice.

### FORT WAYNE, IND., AREA

Area covered: Adams, Allen, De Kalb, Huntington, Lagrange, Noble, Steuben, Wells, and Whitley Counties, Ind.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Plumbers | 5.2 to 5.5 |
| Steamfitters | 5.2 to 5.5 |
| Carpenters | 5.7 to 6.2 |
| Bricklayers | 9.3 to 10.4 |
| Electricians | 5.2 to 5.9 |
| Sheetmetal | 4.4 to 5.2 |
| Ironworkers | 7.3 to 8.4 |
| Operating engineers | 5.2 to 6.0 |
| Painters | 11.0 to 12.0 |
| All other | 7.1 to 8.0 |

[1]Until further notice.

### INDIANAPOLIS, IND., AREA

Area covered: Marion County, Ind.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 32.2 to 37.7 |
| Bricklayers | 17.4 to 19.5 |
| Electricians | 6.6 to 7.8 |
| Elevator constructors | 15.5 to 18.0 |
| Glaziers | 25.2 to 28.6 |
| Ironworkers | 11.6 to 14.0 |
| Lathers | 21.1 to 22.0 |

*Goals and timetables*[1]—Continued

| Trade | Goal (percent) |
|---|---|
| Operating engineers | 7.7 to 8.8 |
| Painters | 22.4 to 25.0 |
| Plasterers | 27.5 to 30.4 |
| Plumbers | 25.5 to 30.0 |
| Roofers | 15.9 to 18.1 |
| Sheetmetal workers | 9.3 to 10.9 |
| Steamfitters | 14.9 to 17.1 |
| All other | 14.1 to 16.2 |

[1]Until further notice.

### PEORIA, ILL., AREA

Area covered: Peoria, Fulton, Tazewell, Woodford, Knox, Stark, Marshall, Hancock, Mason, McLean, McDonough, Henderson, Warren, Livingston, Bureau, Henry, and Putnam Counties, Ill.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 6.5 and above. |

[1]Until further notice.

### ROCKFORD, ILL., AREA

Area covered: Boone, Winnebago, Stephenson, De Kalb, Ogle, Lee, and Jo Daviess Counties; Cherry Grove, Shannon, Rock Creek, Lima, Wysox, and Elkhorn Townships in Carroll County; Genesee, Jordan, Hopkins, Sterling, Hume, Montmorency, Tampico, and Hahnaman Townships in Whiteside County, Ill.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 10.0 to 12.0 |

[1]Until further notice.

### SOUTH BEND, IND., AREA

Area covered: St. Joseph County, Ind.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 8.0 to 10.0 |

[1]Until further notice.

### TOLEDO, OHIO, AREA

Area covered: Defiance, Fulton, Hancock, Henry, Lucas, Ottawa, Williams, and Wood Counties, Ohio.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 10.7 to 12.3 |

[1]Until further notice.

### YOUNGSTOWN, OHIO, AREA

Area covered: Columbiana, Mahoning, and Trumbull Counties, Ohio; and Lawrence and Mercer Counties, Pa.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 6.0 to 7.1 |

[1]Until further notice.

## REGION VI

### EL PASO, TEX., AREA

Area covered: El Paso County, Tex.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 55.1 to 66.2 |

[1]Until further notice.

LAWTON, OKLA., AREA

Area covered: Commanche County, Okla.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 15.8 to 16.8 |

[1]Until further notice.

LITTLE ROCK, ARK., AREA

Area covered: Pulaski County, Ark.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 25.5 to 30.6 |

[1]Until further notice.

NEW ORLEANS, LA.

Area covered: Parishes of Orleans, Jefferson, St. Bernard, St. Tammany, St. Charles, St. John, Lafourche, Plaquemines, Washington, Terrebonne, Tangipahoa,[2] Livingston,[3] and St. James.[4]

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 20 to 23 |

[1]Until further notice.
[2]Area covered is East of the Illinois Central Railroad.
[3]Area covered is Southeast of the line from a point off the Livingston and Tangipahoa Parish Line adjacent from New Orleans and Baton Rouge.
[4]Area covered is Southeast of a line drawn from the town of Gramercy to the point of intersection of St. James, Lafourche and Assumption Parishes.

TULSA, OKLA.

Area covered: Tulsa, Creek, Mayes, Rogers, Okfuskee, Washington, Nowata, Craig, Ottawa, Delaware, Okmulgee Northern ½ Dividing Line Highway 16; Osage, Eastern ½ Dividing Line Highway 18; Pawnee Eastern ½ ; and Payne Eastern ½ Counties, Okla.

*Goals and timetables*[1]

| Trade | Goal percent |
|---|---|
| Bricklayers | 24.0 to 25.0 |
| Carpenters | 17.0 to 18.0 |
| Cement masons | 21.5 to 22.5 |
| Floor covers | 12.0 to 14.0 |
| Glaziers, glass workers | 14.7 to 17.3 |
| Operating engineers | 22.0 to 24.0 |
| Painters | 18.0 to 20.0 |
| Pipefitters | 10.0 to 12.0 |
| Plumbers | 11.6 to 13.2 |
| Roofers | 12.0 to 14.0 |
| Sheetmetal workers | 8.0 to 10.0 |
| All other trades | 12.0 to 14.4 |

[1]Until further notice.

## REGION VII

KANSAS CITY (KANS.) AND (MO.)

Area covered: Clay, Platte, Jackson, Bates, Carroll, Lafayette, Ray, Johnson, Henry, and Cass Counties, Mo. Wyandotte, Johnson, and Miami Counties, Kans.

*Goals and timetables*[1]

| Trade | Goal percent |
|---|---|
| Asbestos workers | 10.3 to 11.7 |
| Boilermakers | 5.9 to 6.4 |
| Bricklayers | 19.4 to 20.7 |
| Carpenters | 5.9 to 6.9 |
| Carpet, linoleum and resilient floor decorators | 5.5 to 6.4 |
| Cement masons | 25.5 to 26.5 |
| Elevator constructors | 9.2 to 10.7 |
| Electricians | 8.0 to 9.4 |
| Glaziers | 9.8 to 10.5 |
| Lathers | 14.5 to 15.6 |
| Marble masons, tile layers and terrazzo workers | 7.5 to 9.0 |
| Marble and tile helpers | 4.8 to 5.6 |
| Operating engineers | 9.0 to 10.0 |
| Painters | 14.3 to 15.8 |
| Pipefitters | 6.9 to 7.7 |
| Plasterers | 19.0 to 20.4 |
| Plumbers | 8.3 to 9.3 |
| Roofers | 14.0 to 15.0 |
| Sheetmetal workers | 7.0 to 8.0 |
| Teamsters | 25.0 to 26.0 |
| All other trades | 11.4 to 12.5 |

[1]Until further notice.

OMAHA, NEBR.

Area covered: Sharpy and Douglas Counties, Nebr.; Council Bluffs, Iowa (city limits only).

*Goals and timetables*[1]

| Trade | Goal percent |
|---|---|
| All | 9.0 to 10.0 |

[1]Until further notice.

ST. LOUIS, MO.

Area covered: City of St. Louis, Mo., and St. Louis County, Mo.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 5.2 to 5.7 |
| Boilermakers | 34.0 to 37.7 |
| Bricklayers | 12.6 to 14.2 |
| Carpenters | 8.2 to 8.9 |
| Cement and concrete finishers | 13.3 to 16.6 |
| Electricians | 13.6 to 16.1 |
| Elevator constructors | 8.7 to 9.3 |
| Glaziers | 28.7 to 34.5 |
| Ironworkers | 9.0 to 10.4 |
| Lathers and plasterers | 24.2 to 29.7 |
| Operating engineers | 13.2 to 15.7 |
| Painters and paperhangers | 25.1 to 29.3 |
| Plumbers and pipefitters | 13.2 to 15.4 |
| Roofers and slaters | 17.1 to 19.6 |
| Sheetmetal workers | 22.5 to 27.0 |
| Tile setters and terrazzo workers | 8.8 to 10.4 |

[1]Until further notice.

TOPEKA, KANS.

Area covered: Shawnee County, Kans.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 8.8 to 10.5 |

[1]Until further notice.

## REGION VIII

COLORADO

Area covered: State of Colorado.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 13 to 14 |

[1]Until further notice.

## REGION IX

ALAMEDA COUNTY, CALIF., AREA

Area covered: Almeda County, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 28.5 to 33.0 |

[1]Until further notice.

ARIZONA

Area covered: State of Arizona.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 25.0 to 30.0 |

[1]Until further notice.

CONTRA COSTA COUNTY, CALIF.

Area covered: Contra Costa County, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 17.0 to 19.5 |

[1]Until further notice.

FRESNO (COUNTY), CALIF.

Area covered: Fresno, Madera, Kings, and Tulare Counties, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 20.0 to 27.0 |

[1]Until further notice.

LAS VEGAS, NEV.

Area covered: Area of jurisdiction of the Building and Construction Trades Council of Clark, Lincoln, Nye, and Esmeralda Counties, Nev.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 17.7 to 20.2 |
| Bricklayers | 18.8 to 21.3 |
| Carpenters | 16.2 to 17.5 |
| Glaziers, floorcovers, painters, tapers, and wallcovers | 16.3 to 17.7 |
| Plasterers | 24.6 to 27.2 |
| Plumbers and pipefitters | 15.2 to 16.2 |
| Sheet metal workers | 16.2 to 17.7 |
| Wood, wire, and metal lathers | 18.1 to 19.3 |
| All other trades | 18.0 to 19.5 |

[1]Until further notice.

LOS ANGELES COUNTY, CALIF.

Area covered: Area of jurisdiction of the Los Angeles Building and Construction Trades Council.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 21.7 to 25.1 |

[1]Until further notice.

MONTEREY, CALIF.

Area covered: Monterey County, Calif., and within the jurisdiction of the Monterey County Building and Construction Trades Council, AFL-CIO.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 27.0 to 29.8 |

[1]Until further notice.

NORTH BAY, CALIF.

Area covered: Solano, Napa, Lake, Marin, Mendocino, and Sonoma Counties.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 10.5 to 12.6 |

[1]Until further notice.

SACRAMENTO, CALIF.

Area covered: Sacramento, Yolo, Amador, Placer, El Dorado, Nevada, and Sierra Counties, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 17.5 to 20.0 |

[1]Until further notice.

SAN DIEGO COUNTY, CALIF.

Area covered: San Diego County, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 24.0 to 30.0 |

[1]Until further notice.

SAN FRANCISCO CITY AND COUNTY, CALIF.

Area covered: City and County of San Francisco, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Electricians | 17.0 |
| Plumbers, pipefitters, and steamfitters | 14.0 |
| Structural metal workers | 20.0 |
| Sheet metal workers | 19.0 |
| Asbestos workers | 40.0 |

[1]Until further notice.

SAN MATEO COUNTY, CALIF.

Area covered: San Mateo County, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 12.0 to 14.0 |

[1]Until further notice.

SANTA CLARA COUNTY, CALIF.

Area covered: Santa Clara County, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 18.0 to 21.7 |

[1]Until further notice.

SANTA CRUZ COUNTY, CALIF.

Area covered: Santa Cruz County, Calif.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 17.0 to 20.4 |

[1]Until further notice.

REGION X

ALASKA

Area covered: State of Alaska.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Asbestos workers | 26.4 to 28.0 |
| Carpenters | 25.7 to 28.0 |
| Electricians | 25.7 to 28.0 |
| Ironworkers | 25.7 to 28.0 |
| Operating engineers | 26.1 to 28.0 |
| Painters | 25.8 to 28.0 |
| Pile drivers | 25.1 to 28.0 |
| Plumbers amd steamfitters | 25.4 to 28.0 |
| Roofers | 27.6 to 28.0 |
| Sheetmetal workers | 25.6 to 28.0 |
| Teamsters | 25.6 to 28.0 |
| All other | 26.1 to 28.1 |

[1]Until further notice.

PASCO, WASH.

Area covered: The area of jurisdiction of the Southeastern Washington Building and Construction Trades Council as follows: All of Benton, Franklin, and Walla Walla Counties, Grant County to Highway 2, and the southwest corner of Adams County, Wash.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| Boilermakers | 12.5 to 15.0 |
| Bricklayers | 11.0 to 13.5 |
| Carpenters | 9.8 to 12.3 |
| Cement finishers | 11.5 to 14.0 |
| Electricians | 10.0 to 12.5 |
| Ironworkers | 10.0 to 12.5 |
| Operating engineers | 10.2 to 12.7 |
| Painters | 10.0 to 12.5 |
| Plumbers and fitters | 9.9 to 12.4 |
| Sheetmetal workers | 10.8 to 13.3 |
| Laborers | 9.5 to 12.0 |
| All other | 10.0 to 12.5 |

[1]Until further notice.

PORTLAND, OREG.

Area covered: Multnomah, Clackamas, and Washington Counties, Oreg.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 5.5 to 6.5 |

[1]Until further notice.

SEATTLE, WASH.

Area covered: King County, Wash.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 8.8 to 11.5 |

[1]Until further notice.

SPOKANE, WASH.

Area covered: Washington counties: Spokane, Whitman, Lincoln, Adams, Stevens, Pend Oreille, Columbia, Garfield, Asotin, Ferry, Okanogan, Chelan, Douglas, and Grant (north of Highway 2), and in connection with Indian employment, parts of any other counties included in reservations incorporating portions of the above area. Idaho: Boundary, Bonner, Kootenai, Shoshone, Benewah, Latah, Clearwater, Nez Perce, Lewis, and Idaho, and in connection with Indian emloyment, any other territory included in reservations, part of which are in the above counties.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 2.0 and above |

[1]Until further notice.

TACOMA, WASH.

Area covered: Pierce, Thurston, Mason, Lewis, Grays Harbor, and Pacific Counties, Wash.

*Goals and timetables*[1]

| Trade | Goal (percent) |
|---|---|
| All | 2.2 to 15.0 |

[1]Until further notice.

[FR Doc. 78-11966 Filed 5-4-78; 8:45 am]

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[4510-43]

**Mine Safety and Health Administration**

## ADVISORY COMMITTEE TO REVIEW ADVISORY METAL AND NONMETALLIC MINE HEALTH AND SAFETY STANDARDS

### Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act, Pub. L. 92-463, and under section 301(b)(2) of the Federal Mine Safety and Health Amendments Act of 1977, Pub. L. 95-164, enacted November 9, 1977, notice is hereby given that the Advisory Committee to Review Advisory Metal and Nonmetallic Mine Health and Safety Standards will convene beginning at 9 a.m. on Monday, May 22, 1978, and continue each day thereafter, through Thursday, May 25, 1978, at Conference Room N5437, New Labor Department Building, 3rd and C Streets NW., Washington, D.C. 20210. The meetings of the Advisory Committee are open to the public and approximately 50 seats are available on a first-come first-served basis. Any member of the public may file a written statement with the Advisory Committee before and during the public meetings. The Committee Chairman, if he deems it appropriate, may permit members of the public to present oral statements at the meetings.

Copies of the agenda are available for examination by the public at the office of Frank J. Delimba, Executive Secretary, Room 704, Ballston Tower No. 3, 4015 Wilson Boulevard, Arlington, Va. 22203, telephone 703-235-8597. For further information, or for submission of written statements and comments, contact the Executive Secretary.

Dated: April 25, 1978.

ROBERT B. LAGATHER,
*Assistant Secretary for Mine Safety and Health.*

[FR Doc. 78-12346 Filed 5-4-78; 8:45 am]

[4510-28]

Office of the Secretary

[TA-W-3100]

GENERAL ELECTRIC CO. GAINESVILLE, FLA.

Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 the Department of Labor herein presents the results of TA-W-3100: investigation regarding certification of eligibility to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 9, 1978 in response to a worker petition received on January 26, 1978 which was filed on behalf of the International Brotherhood of Electrical Workers on behalf of workers and former workers producing nickel cadmium battery packs at the Gainesville, Fla. plant of the General Electric Co.

The Notice of Investigation was published in the FEDERAL REGISTER on February 24, 1978 (43 FR 7743). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the General Electric Company, the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met. It is concluded that all of the requirements have been met.

Imports of rechargeable batteries increased absolutely from $11.6 million in 1975 to $13.4 million in 1976 and increased to $15.6 million in 1977.

General Electric produces all of its requirements for nickel cadmium rechargeable batteries at it Gainesville, Fla. plant. Because of increasing price competition from foreign competitors, General Electric began the transfer of its final assembly of battery packs to a foreign facility in the fourth quarter of 1977. By the end of the first quarter of 1978 General Electric was importing 100 percent of its requirements for assembled battery packs from its foreign facility.

CONCLUSION

After careful review of the facts obtained in the investigation, I conclude that increases of imports like or directly competitive with rechargeable battery packs produced at General Electric contributed importantly to the decline in sales or production and to the total or partial separations of the workers at the Gainesville plant. In accordance with the provisions of the Act, I make the following certification.

All workers engaged in employment related to the production of rechargeable battery packs at the Gainesville, Fla. plant of General Electric who became totally or partially separated from employment on or after December 24, 1977 and before April 2, 1978 are eligible to apply for adjusment assistance under Title II, Chapter 2 of the Trade Act of 1974.

All employees separated after April 1, 1978 are denied eligibility to apply for adjustment assistance.

Signed at Washington, D.C., this 26th day of April 1978.

HARRY J. GILMAN,
*Acting Director, Office of Foreign Economic Research.*

[FR Doc. 78-12344 Filed 5-4-78; 8:45 am]

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[4510-28]

INVESTIGATIONS REGARDING CERTIFICATIONS OF ELIGIBILITY TO APPLY FOR WORKER ADJUSTMENT ASSISTANCE

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 19, 1978.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 19, 1978.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C., this 25th day of April 1978.

MARVIN M. FOOKS,
*Director, Office of Trade Adjustment Assistance.*

APPENDIX

| Petitioner: Union/workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| The Brandywine Corp., d.b.a. Earthlings (company). | Cambridge, Mass | Apr. 11, 1978 | Apr. 5, 1978 | TA-W-3,533 | The selling of men's, women's and children's "earth" shoes. |
| Canton Textile Mills, Inc. (ACTWU). | Canton, Ga | Apr. 13, 1978 | Apr. 10, 1978 | TA-W-3,534 | Cotton denim fabric. |
| Chicago Bridge & Iron Co. (USWA). | Birmingham, Ala | Apr. 12, 1978 | Apr. 1, 1978 | TA-W-3,535 | Fabricate steel plate. |
| Do | Cordova, Ala | do | do | TA-W-3,536 | Do. |
| Hackney Corp. (USWA) | Birmingham, Ala | do | do | TA-W-3,537 | Chain link fence and fittings. |
| Handi Bag Co., Inc. (workers). | New York, N.Y. | Apr. 4, 1978 | Mar. 28, 1978 | TA-W-3,538 | Ladies' vinyl handbags. |
| The Lamson & Sessions Co. (UAW). | Cleveland, Ohio | Apr. 12, 1978 | Mar. 21, 1978 | TA-W-3,539 | Threaded screws and nuts. |
| Lurie Sportswear (workers) | Stoughton, Mass | do | Apr. 5, 1978 | TA-W-3,540 | Ladies' blazers. |
| Norrwock Shoe Co. Plant No. 20 (workers). | Calais, Maine | do | Apr. 6, 1978 | TA-W-3,541 | Men's women's and children's shoe uppers. |

APPENDIX

| Petitioner: Union/workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Phelps Dodge Corp., Western Exploration (company). | Salt Lake City, Utah | Apr. 14, 1978 | Apr. 10, 1978 | TA-W-3,542 | Exploration for copper ore. |
| Do | Reno, Nev | do | do | TA-W-3,543 | Do. |
| Valley Mould Corp. (USWA) | Chicago, Ill | Apr. 12, 1978 | Apr. 1, 1978 | TA-W-3,544 | Ingot moulds. |
| Do | Cleveland, Ohio | Apr. 20, 1978 | do | TA-W-3,545 | Do. |
| Weld-Inc-Co. (workers) | Raritan, N.J | Apr. 12, 1978 | Mar. 22, 1978 | TA-W-3,546 | Men's outerwear. |

[FR Doc. 78-12347 Filed 5-4-78; 8:45 am]

[4510-28]

[TA-W-3057]

## U.S. STEEL CORP., U.S. STEEL PRODUCTS DIVISION, PETROLEUM, OHIO

### Notice of Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor herein presents the results of TA-W-3057: Investigation regarding certification of eligiblity to apply for worker adjustment assistance as prescribed in section 222 of the Act.

The investigation was initiated on February 6, 1978, in response to a worker petition received on January 16, 1978, which was filed by the United Steelworkers of America on behalf of workers producing carbon steel products at the Petroleum, Ohio (Sharon), plant of the U.S. Steel Products Division of the U.S. Steel Corp. The investigation revealed that the petitioners produce steel shipping containers.

The Notice of Investigation was published in the FEDERAL REGISTER on February 17, 1978 (43 FR 7064). No public hearing was requested and none was held.

The information upon which the determination was made was obtained principally from officials of the U.S. Steel Corp., the U.S. Department of Commerce, the U.S. International Trade Commission, industry analysts, and Department files.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Trade Act of 1974 must be met. The investigation revealed that, without regard to whether any of the other criteria have been met, the following criterion has not been met:

> That a significant number or proportion of the workers in such workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated;

Average employment at the plant increased in each quarter of 1977 compared to the respective quarter of 1976 and continued to increase during the first 2 months of 1978 compared to the like 1977 period. The average weekly number of hours worked per worker also increased in 1977 compared to 1976. There were no layoffs at the plant in 1977 or in the first 2 months of 1978.

### CONCLUSION

After careful review I conclude that all workers at the Petroleum, Ohio (Sharon), plant of the U.S. Steel Products Division of the U.S. Steel Corp. are denied eligibility to apply for adjustment assistance under title II, chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 26th day of April 1978.

HARRY J. GILMAN,
*Acting Director, Office of Foreign Economic Research.*

[FR Doc. 78-12345 Filed 5-4-78; 8:45 am]

[4510-26]

## Occupational Safety and Health Administration

## VERMONT STATE STANDARDS

### Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called the Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the act and 29 CFR Part 1902. On October 1, 1973, notice was published in the FEDERAL REGISTER (38 FR 28658) of the approval of the Vermont plan and the adoption of subpart U to part 1952 containing the decision.

The Vermont plan provides for the adoption of Federal Standards as State standards. On May 3, 1977, the Occupational Safety and Health Administration (OSHA) adopted, pursuant to section 6(c) of the act, an emergency temporary standard for benzene. On September 9, 1977, OSHA adopted an emergency temporary standard for 1,2-dibromo-3-chloropropane (DBCP) (42 FR 45536). By letter dated February 9, 1978, from Joel R. Cherington, Commissioner, Vermont Department of Labor and Industry, to Gilbert Saulter, Regional Administrator, and incorporated as part of the plan, the State submitted emergency temporary standards for benzene and DBCP. These standards, which are contained in section 1910 of Vermont's administrative rules were promulgated on December 12, 1977, in accordance with applicable State law.

2. *Decision.* Having reviewed the state submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly should be approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, U.S. Department of Labor—OSHA, Room 1804, J. F. Kennedy Federal Building, Government Center, Boston, Mass. 02203; State Office Building, Montpelier, Vt. 05602; and the Technical Data Center, Room N-2439, 200 Constitution Avenue, Washington, D.C. 20210.

4. *Public participation.* 29 CFR 1953.22(b)(1) provides that temporary standards which are identical to or "at least as effective as" the comparable Federal standards may be approved effective upon publication in the FEDERAL REGISTER. Under the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B), good cause exists for approval without further notice or public procedure, for the following reasons:

(1) The standards were adopted in accordance with the procedural requirements of State law which authorizes promulgation without public participation for emergency standards and participation at the Federal level would be impracticable.

(2) The emergency nature of the standards requires that approval be implemented immediately.

This decision is effective May 5, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Boston, Mass., this 2nd day of March 1978,

EDWIN J. RILEY, Jr.,
*Assistant Regional Administrator.*

[FR Doc. 78-12364 Filed 5-4-78; 8:45 am]

[4510-26]

## WASHINGTON STATE STANDARDS

### Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4), will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the act and 29 CFR Part 1902. On January 26, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington plan and the adoption of subpart F to part 1952 containing the decision.

The Washington plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the act.

Section 1952.120-124 of subpart F sets forth the State's schedule for the adoption of at least as effective State standards. By letter, dated December 14, 1977, from James Sullivan, Assistant Director, Department of Labor and Industries, to James Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1910.1029, Subpart Z—Coke Oven Emissions, as published in the FEDERAL REGISTER (41 FR 46742), dated October 22, 1976, and corrections published in the FEDERAL REGISTER (42 FR 3304), dated January 18, 1977. These standards, which are contained in chapter 296-62-200 WAC were promulgated after public hearing in Olympia on June 7, 1977, pursuant to 34.04 RCW and of the Open Public Meetings Act of 1971, Chapter 42.30.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Wash. 98274: Department of Labor and Industries, General Administration Building, Olympia, Wash. 98504; and Office of the Associate Assistant Secretary for Regional Programs, Room S-6212, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Section 1953.2(c) of this chapter provides that where State standards are identical to or "at least as effective" as comparable Federal standards and have been promulgated in accordance with State law, approval may be effective upon publication without an opportunity for further public participation. As the standards under consideration are identical to the Federal standards and have been promulgated in accordance with State law including an opportunity for public comment and/or a public hearing, they are approved without an opportunity for further public comment.

This decision is effective May 5, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Seattle, Wash., this 7th day of April 1978.

JAMES W. LAKE,
*Regional Administrator—OSHA.*

[FR Doc. 78-12365 Filed 5-4-78; 8:45 am]

[4510-26]

## WASHINGTON STATE STANDARDS

### Notice of Approval

1. *Background.* Part 1953 of Title 29, Code of Federal Regulations prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereinafter called Regional Administrator) under a delegation of authority from the Assistant Secretary of labor for Occupational Safety and Health (hereinafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(c) of the Act and 29 CFR Part 1902. On January 26, 1973, notice was published in the FEDERAL REGISTER (38 FR 2421) of the approval of the Washington plan and the adoption of Subpart F to Part 1952 containing the decision.

The Washington plan provides for the adoption of State standards which are at least as effective as comparable Federal standards promulgated under section 6 of the Act.

Section 1952.120-124 of Subpart F sets forth the State's schedule for the adoption of at least as effective State standards. By letter dated December 14, 1977, from James P. Sullivan, Assistant Director, Department of Labor and Industries, to James W. Lake, Regional Administrator, and incorporated as part of the plan, the State submitted State standards comparable to 29 CFR 1928.21, Agricultural Operations, as published in the FEDERAL REGISTER (39 FR 23780) dated June 27, 1974. These standards, which are contained in Chapter 296-306 WAC Safety Standards for Agriculture, were promulgated initially by emergency adoption of Temorary Labor Camp standards, as published in the FEDERAL REGISTER (42 FR 40278) dated August 9, 1977, and promulgated by permanent adoption after due notice and a public hearing held at Olympia, Wash., on June 23, 1977, pursuant to RCW 34.04 and of the Open Public Meetings Act of 1971, Chapter 42 30 RCW. State standards comparable to the remainder of 29 CFR 1928.21 were promulgated after public hearing in Yakima, Wash., on January 16, 1975.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the State standards are identical to the Federal standards and accordingly are hereby approved.

3. *Location of supplement for inspection and copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, Room 6003, Federal Office Building, 909 First Avenue, Seattle, Wash. 98274; Department of Labor and Industries, General Administration Building, Olympia, Wash. 98504; and Office of the Associate Assistant Secretary for Regional Programs, Room S-6212, 200 Constitution Avenue NW., Washington, D.C. 20210.

4. *Public participation.* Section 1953.2(c) of this chapter provides that where State standards are identical to or "at least as effective" as comparable Federal standards and have been promulgated in accordance with State law, approval may be effective upon publication without an opportunity for further public participation. As the standards under consideration are identical to the Federal standards and have been promulgated in accordance with State law including an opportunity for public comment and/or a public

hearing, they are approved without an opportunity for further public comment.

This decision is effective may 5, 1978.

(Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667).)

Signed at Seattle, Washington this 7th day of April 1978.

JAMES W. LAKE,
*Regional Administrator—OSHA.*

[FR Doc. 78-12366 Filed 5-4-78; 8:45 am]

[4510-27]

**Wage and Hour Division**

**CERTIFICATES AUTHORIZING THE EMPLOYMENT OF LEARNERS AT SPECIAL MINIMUM WAGES**

Notice is hereby given that pursuant to section 14 of the Fair Labor Standards Act (52 Stat. 1062, as amended; U.S.C. 214), Reorganization Plan No. 6 of 1950 (3 CFR 1949-53 Comp., p. 1004), and Administrative Order No. 1-76 (41 FR 18949), the firms listed in this notice have been issued special certificates authorizing the employment of learners at hourly wage rates lower than the minimum wage rates otherwise applicable under section 6 of the Act. For each certificate, the effective and expiration dates, number or proportion of learners and the principal product manufactured by the establishment are as indicated. Conditions on occupations, wage rates, and learning periods which are provided in certificates issued under the supplemental industry regulations cited in the captions below are as established in those regulations; such conditions in certificates not issued under the supplemental industry regulations are as listed.

The following certificates were issued under the apparel industry learner regulations (29 CFR 522.1 to 522.9, as amended and 522.20 to 522.25, as amended). The following normal labor turnover certificates authorize 10 percent of the total number of factory production workers except as otherwise indicated.

Bernice Industries, Bernice, La.; 1-1-78 to 12-31-78 (boys' shirts and girls' blouses).

Corbin, Ltd., Huntington, W. Va.; 1-22-78 to 1-21-79 (men's pants).

Crystal Springs Shirt Corp., Crystal Springs, Miss.; 1-1-78 to 12-31-78 (boys' shirts).

Donlin Sportswear, Inc., New Tazewell, Tenn.; 2-21-78 to 2-20-79 (men's shirts).

Flushing Shirt Mfg. Co., Inc., Grantsville, Md.; 1-18-78 to 1-17-79 (men's shirts).

H. & U., Inc., Avondale, Ariz.; 2-13-78 to 2-12-79; 10 learners for normal labor turnover purposes (women's blouses).

Hamburg Shirt Corp., Hamburg, Ark.; 1-1-78 to 12-31-78 (men's and boys' shirts).

Middleburg Sportswear, Inc., Middleburg, Pa.; 3-16-78 to 3-15-79; 10 learners for normal labor turnover purposes (women's dresses).

Steele Apparel Co., Steele, Mo.; 1-18-78 to 1-17-79; 10 learners for normal labor turnover purposes (ladies' dresses).

Utica Industries, Utica, Miss.; 2-13-78 to 2-12-79 (men's and boys' shirts).

The following plant expansion certificate was issued authorizing the number of learners indicated.

Flushing Shirt Mfg. Co., Inc., Waynesburg, Pa.; 1-24-78 to 7-23-78; 20 learners for plant expansion purposes (women's blouses).

Each learner certificate has been issued upon the representations of the employer which, among other things were that employment of learners at special minimum rates is necessary in order to prevent curtailment of opportunities for employment, and that experienced workers for the learner occupations are not available. The certificate may be annulled or withdrawn as indicated therein, in the manner provided in 29 CFR Part 528. Any person aggrieved by the issuance of any of these certificates may seek a review or reconsideration thereof on or before May 22, 1978.

Signed at Washington, D.C., this 1st day of May 1978.

ARTHUR H. KORN,
*Authorized Representative of the Administrator.*

[FR Doc. 78-12348 Filed 5-4-78; 8:45 am]

[4510-20]
[4830-01]

**DEPARTMENT OF LABOR**

**Pension and Welfare Benefit Programs**

**DEPARTMENT OF THE TREASURY**

**Internal Revenue Service**

**CERTAIN TRANSACTIONS INVOLVING EMPLOYEE BENEFIT PLANS AND BROKER-DEALERS**

**Proposed Extension of Existing Exemption; Hearing**

AGENCIES: Department of Labor, Department of the Treasury/Internal Revenue Service.

ACTION: Notice of proposed extension of existing exemption and notice of hearing.

SUMMARY: This document contains a notice of pendency before the Department of Labor and the Internal Revenue Service (hereinafter referred to collectively as the Agencies) of a proposed extension, until December 1, 1978, of that portion of an existing class exemption which permits securities broker-dealers, until May 1, 1978, to provide brokerage and incidental services, under certain circumstances, to employee benefit plans with respect to which they are fiduciaries. It is also proposed to make the exemption applicable with respect to transactions occurring between May 1, 1978, and such date as the proposed extension might be adopted. The proposed extension, if granted, might affect broker-dealers providing services to employee benefit plans, and participants and beneficiaries of such plans. In addition, this document contains a notice of hearing on the proposed extension.

DATES: Written comments on the proposed extension and requests for time to present oral comments at the hearing must be received by the Department of Labor on or before June 1, 1978.

ADDRESSES: Written comments and requests for time to present oral comments should be addressed to the Office of Regulatory Standards and Exceptions, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20216 Attention: Extension of Exemption for Certain Brokerage Transactions. All such communications and applications for exemption relating to this proposed extension will be available for public inspection at the Public Documents, Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue NW., Washington, D.C., and at the Internal Revenue Service National Office Reading Room, 1111 Constitution Avenue NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT:

Daniel J. Shapiro, Esq., Office of the Solicitor, Plan Benefits Security Division, Room C-4508, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210, 202-523-7931, or Ivan Strasfeld, Esq., Prohibited Transactions Staff, Employee Plans Division, Internal Revenue Service, 111 Constitution Avenue NW., Washington, D.C. 20224 (Attention: E:EP:PT), 202-566-3045. These are not toll free numbers.

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Agencies of a proposed extension of an existing class exemption from the restrictions of section 406 of the Employee Retirement Income Security Act of 1974 (the Act) and 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) of the code. The class exemption relates to certain securities transactions effected on behalf of employee benefit plans by persons who are fiduciaries of the plan. The existing class exemption applicable to these transactions, which is set forth as paragraph I(a) of Prohibited Transac-

tion Exemption 75-1,[1] will expire May 1, 1978. It is proposed to extend the exemption until December 1, 1978, and it is proposed also to make the extension apply retroactively from its effective date to May 1, 1978. It should be noted that the action being proposed herein by the Agencies relates only to that portion of Prohibited Transaction Exemption 75-1 which expires May 1, 1978. The other portions of that exemption would not be affected by this proposal. The extension is proposed pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Proc. 75-1 (40 FR 18471, April 28, 1975) and Rev. Proc. 75-26, 1975-1 C.B. 722.

A class application for an extension of paragraph I(a) of Prohibited Transaction Exemption 75-1 has been filed by the Securities Industry Association (SIA).[2] The SIA also has requested, in effect, a permanent extension and modification of paragraph I(a) of that exemption. In addition, the Agencies have received four applications for individual exemptions which might relate to the proposed extension.[3] To the extent that the transactions which are the subject of those applications are of the type described in this proposed extension of an existing class exemption, such transactions will be exempted if they satisfy the terms and conditions of such extension as might be granted. Because the Agencies believe that it would be administratively feasible to deal with these applications on a class basis, the Agencies, pursuant to section 3.01 of ERISA Proc. 75-1 and Rev. Proc. 75-26, have determined to group such applications in a class.

As stated in section 3.04 of ERISA Proc. 75-1 and Rev. Proc. 75-26, an application for an individual exemption will not ordinarily be considered separately if a class exemption which may encompass the applications for individual exemption is under consideration by the Agencies. Accordingly, the Agencies are notifying directly each applicant for an individual exemption of the fact that such applicant's application is not presently being considered separately from this proceeding, and that following disposition of this proposed extension and the above noted class application for permanent modification, such application might be closed, and, therefore, that such applicant's comments with respect to this proposed extension of a class exemption are sought by the Agencies.

In granting the pertinent portion of Prohibited Transaction Exemption 75-1, the Agencies determined that securities broker-dealers regularly provide research, information and advice concerning securities, and effect agency transactions for the purchase or sale of securities, in the ordinary course of their business as broker-dealers, and that the provision of a combination of such services by a fiduciary with regard to employee benefit plans would constitute prohibited transactions under the Act and the Code unless a statutory or administrative exemption is available. The Agencies took note that in the future most transactions by plan fiduciaries that would be covered by this portion of Prohibited Transaction Exemption 75-1 also would, in effect, be prohibited by section 11(a) of the Securities Exchange Act of 1934 (Exchange Act), as amended by the Securities Acts Amendments of 1975 (Pub. L. 94-29, 89 Stat. 110). That section prohibits any member of a national securities exchange from effecting any transaction on such exchange for an account with respect to which it or an associated person thereof exercises investment discretion.[4]

The Agencies noted also that section 11(a) of the Exchange Act provides an exception from the prohibition described above until May 1, 1978 for members of a national securities exchange who were members on May 1, 1975. The Conference Report relating to the Securities Acts Amendments of 1975 (H.R. Rep. No. 94-229, 94th Cong., 1st Sess. (1975)) indicated, at page 107, that it was the view of the conferees that the Agencies should grant an exemption from the prohibited transaction provisions of the Act and the Code to permit broker-dealers to continue to provide brokerage services to plans with respect to which they exercise investment discretion until May 1, 1978, in order to conform the pertinent provisions of the Act and Code to section 11(a) of the Exchange Act and thereby permit broker-dealers to phase out in an orderly fashion the business of both serving as investment advisers to plans and providing brokerage services to such plans.[5]

Therefore, with respect to a person who is a plan fiduciary, Prohibited Transaction Exemption 75-1 provided, in part, an exemption for effecting securities transactions on behalf of employee benefit plans and for functions performed incidental to the effecting of such transactions. The pertinent part of the exemption was available whether or not the transaction was effeted on a national securities exchange, but it applied only to persons who were ordinarily and customarily effecting securities transactions on May 1, 1975, and it was available only until May 1, 1978. The availability of Prohibited Transaction Exemption 75-1 was also subject to certain other conditions. In addition to the exemption requests noted above, legislation has recently been introduced in Congress to postpone the full effectiveness of section 11(a) of the Exchange Act until November 1, 1979.[6] This legislation has been passes by the House of Representatives.[7] The Senate has also passed a bill which, inter alia, would postpone the full effectiveness of section 11(a), but for a period of time shorter than that provided in the bill passed by the House.[7a] Furthermore, the Securities and Exchange Commission (SEC) has recently adopted a temporary rule[8] which has the effect of permitting certain transactions

[1] Notice of the granting of the exemption currently in effect was published in the FEDERAL REGISTER on October 31, 1975 (40 FR 50845).

[2] Exemption Application No. D-1026. The SIA does not specify in its application how long it requests the extension to be. Rather, the SIA requests that the extension be of sufficient duration to permit the Agencies to consider matters relevant to its application for permanent modification of paragraph I(a) of Prohibited Transaction Exemption 75-1.

[3] Exemption Application Nos. D-724, D-862, D-888 and D-981.

[4] The term "investment discretion" is defined in section 3(a)(35) of the Exchange Act. In general, a person who exercises investment discretion with respect to a plan within the meaning of that definition would also be a fiduciary with respect to the plan as defined in section 3(21) of ERISA and section 4975(e)(3) of the Code. A person also would be a fiduciary as a result of rendering investment advice for compensation (within the meaning of 29 CFR 2510.3-21(c) and section 54.4975-9 of the Pension Excise Tax Regulations) to a plan. It should be noted that the relief provided in paragraph I(a) of Prohibited Transaction Exemption 75-1 is available with respect to any fiduciary of the plan who meets the conditions of that paragraph, whether such person is a fiduciary by reason of exercising investment discretion or for some other reason. However, a broker-dealer which provides investment advice but does not exercise investment discretion with respect to a plan would, under certain circumstances, be able to effect brokerage transactions for the plan without relying upon the relief afforded by paragraph I(a) of Prohibited Transaction Exemption 75-1. This is because section 408(b)(2) of the Act and section 4975(d)(2) of the Code and regulations 29 CFR 2550, 408b-2 and section 54.4975-6 of the Pension Excise Tax Regulations thereunder provide, in effect, that a fiduciary does not engage in a transaction prohibited by section 406(b)(1) of the Act and section 4975(c)(1)(E) of the Code if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause a plan to pay additional fees for a service furnished by such fiduciary.

[5] *See also* Conference Report on the Act, H.R. Rep. No. 93-1280, 93d Cong., 2d Sess. 309-10(1974).

[6] 121 Cong. Rec. H1486 (daily ed. Feb. 23, 1978).

[7] H.R. 11567, 124 cong. Rec. H2429 (daily ed. April 4, 1978).

[7a] H.R. 8331, 124 cong. Rec. S6442 (daily ed. April 26, 1978).

[8] Rule 11a2-2(T) under the Securities Exchange Act, Securities Exchange Act Release No. 14563 (March 14, 1978), 43 Fed. Reg. 11542 (March 17, 1978).

which might otherwise be prohibited by section 11(a) of the Exchange Act after May 1, 1978. Such transactions, if they involve employee benefit plans, would be prohibited by the Act and the Code after the pertinent portion of Prohibited Transaction Exemption 75-1 expires on that date unless, under the particular facts and circumstances surrounding the transactions, they do not constitute acts of self-dealing under section 406(b)(1) of the Act and section 4975 (c)(1)(E) of the Code. The SEC has requested that the Agencies consider coordinating their activities in this area with those of the SEC.[9]

The applicant SIA suggests that, in view of the developments described above, it is appropriate for the Agencies to reconsider their earlier determination that the transactions described above should not be permitted by special exemption after May 1, 1978.

It is proposed to extend the pertinent portion of Prohibited Transaction Exemption 75-1 through the period ending December 1, 1978. During this period, the Agencies could observe any legislative developments in the area, and could consider other factors relevant to the question of whether additional exemptive relief should be provided after December 1, 1978, either in the form presently provided in paragraph I(a) of Prohibited Transaction Exemption 75-1 or in some other form. A separate issue is whether the extension, if granted, should be made retroactive to May 1, 1978, so as to avoid making the prohibitions of the Act and the Code applicable to transactions of the type described which might take place between May 1, 1978 and such date as the proposed extension might be adopted.

The Agencies note that, in the Conference Report accompanying the Act, the conferees indicated that they had not granted a statutory exemption to permit the provision to a plan of both discretionary investment management and brokerage services by the same broker-dealer, at least in part becuase of the difficulty of establishing precise statutory standards for protecting against potential abuses.[10] The conferees indicated the view that exemptive relief, to the extent it was consistent with the standards of the Act and the Code, would more appropriatedly be granted administratively provided that the Agencies determined that such arragements were in the interest plan participants and beneficiaries and satisfactory safeguards were provided.[11] In addition, the conferees noted that the general issue of institutional investment management by brokers was under consideration in separate legislation, and they made clear their expectation that any action taken by the Agencies on requests for exemptions in this area should be consistent with the outcome of such legislation.[12]

The Agencies are not at this time prepared to conclude, on the basis of the applications on file, that granting the proposed extension would be in accord with the relevant statutory standards and the legislative direction discussed above, and they specifically request that commentators discuss possible reasons why the expiration of paragraph I(a) of Prohibited Transaction Exemption 75-1 might adversely affect employee benefit plans. Interested persons should be cognizant of the fact that the Agencies will determine whether to grant all or any part of the proposed extension only after considering the written comments received and the testimony given at the public hearing.

All interested persons are invited to submit written comments concerning the proposed extension to the address noted above by June 1, 1978.

A public hearing with respect to the proposed extension will be held on June 12, 1978 beginning at 10 a.m. in Room N-3437-A, B, C and D, New Department of Labor Building, 200 Constitution Avenue NW., Washington, D.C.

Any interested person who desires to present oral comments at the hearing and who wishes to be assured of being heard should submit a statement to that effect, an outline of the topics to be discussed (at least six copies), and the time to be allocated to each topic by June 1, 1978. The statement and outline should be submitted to the address noted above.

An agenda will be prepared containing the order of presentation of oral comments and the time allotted to each commentator. Information with respect to the contents of the agenda may be obtained on or after June 7, 1978, by telephoning Daniel Shapiro, Esq., Washington, D.C. 202-523-7931. This is not a toll free number.

At the conclusion of oral comments by persons listed in the agenda, to the extent time permits, other persons will be permitted to make oral comments. The public hearing will be transcribed.

PROPOSED EXTENSION OF EXEMPTION

Accordingly, it is proposed that Prohibited Transaction Exemption 75-1, published on October 31, 1975 in the FEDERAL REGISTER (40 FR 50845), be modified by changing the date May 1, 1978 in paragraph I(a) thereof (relating to agency transactions and services) to December 1, 1978.

Signed at Washington, D.C. this 1st day of May 1978.

IAN D. LANOFF,
*Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration.*

T. R. KERN,
*Deputy Assistant Commissioner, Employee Plans and Exempt Organizations, Internal Revenue Service.*

[FR Doc. 78-12228 Filed 5-1-78; 4:02 pm]

[9] Letters from Harold M. Williams to Jerome Kurtz and Ian Lanoff, April 6, 1978.

[10] Conference Report, note 5 supra, at 309-10.

[11] *Id.* at 309.

[12] *Id.* at 310.

[4510-30]

## National Commission on Unemployment Compensation

### Meeting

The third meeting of the National Commission on Unemployment Compensation will be held at the Concourse Hotel in Madison, Wis. The meeting will begin at 9 am., Friday, May 12, 1978, concluding at 5:30 pm., and will resume at 8:30 am., Saturday, May 13, and adjourn at approximately 4 p.m.

It has been impossible to give the standard period of notice because scheduling was not finalized until April 27. Notice is hereby given that the June meeting of the Commission will be held in Washington, D.C., on June 26 and 27, 1978. Notice of the agenda will be published in a future issue of the FEDERAL REGISTER.

TENTATIVE AGENDA—MAY MEETING

FRIDAY, MAY 12

9 a.m.
Review of minutes of April meeting.
Old business.
Tour of Wisconsin Employment Security Agency and presentation by Wisconsin senior staff.

12:15 p.m.—Lunch—Open.

1:30 p.m.
Discussion: Original objectives of unemployment compensation; background and history of Wisconsin experience—Paul Rauschenbush, Ellis Taff, Saul Blaustein, and David Pearson.

4:30 p.m.
Commission business meeting (old business continued).

5:30 p.m.—Adjournment.

SATURDAY, MAY 13

8:30 a.m.
Commission Business Meeting: (a) Future subcommittee meetings.
(b) Plans for June meeting/hearings for Washington-based national organizations.

10 a.m.
Presentation: Differing Perspectives on Unemployment Compensation—Dr. Ray Munts, Dr. Irvin Garfinkel, and Dr. Robert Lampman, University of Wisconsin.

12:15 p.m.
Luncheon meeting with Wisconsin advisory council presentation by labor and management spokespersons of the council.

2:30 p.m.
Commission business meeting (continued): (c) Plans for summer meetings.

(d) New business.

4 p.m.—Adjournment.

Telephone inquiries and communications concerning this meeting should be directed to: Mr James M. Rosbrow, Interim Executive Director, National Commission on Unemployment Compensation, Room 7000, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213.

Mr. Rosbrow's telephone number is Area Code 202-376-7034.

Signed at Washington, D.C., this 1st day of May 1978.

JAMES M. ROSBROW,
*Interim Executive Director, National Commission on Unemployment Compensation.*

[FR Doc. 78-12352 Filed 5-4-78; 8:45 am]

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[7555-01]

## NATIONAL SCIENCE FOUNDATION

### ADVISORY COMMITTEE FOR POLICY RESEARCH AND ANALYSIS AND SCIENCE RESOURCES STUDIES

#### Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Policy Research and Analysis and Science Resources Studies.

Date and Time: May 23, 1978; 9 a.m. to 4:30 p.m.; May 24, 1978; 9 a.m. to 12 noon.

Place: Room 543 on May 23, and Room 338 on May 24, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Open.

Contact person: Mrs. Agnes Rhodes, Administrative Officer, Division of Policy Research and Analysis, STIA Directorate, Room 1233, National Science Foundation, Washington, D.C. 20550, telephone 202-632-5990. Anyone who plans to attend should contact Mrs. Rhodes by May 15, 1978.

Summary Minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice, recommendations, and oversight concerning program emphasis and directions of the Divisions of PRA and SRS.

Agenda:

MAY 23, 1978

Introductory remarks by the Chairman and NSF Senior Management; Review of SRS activities; Review of PRA activities;SRS/PRA Subcommittees will meet separately for a discussion of respective divisional issues.

MAY 24, 1978

Report of Subcommittees and joint discussion of issues; Committee member assignments and planning for next meeting.

M. REBECCA WINKLER,
*Committee Management Coordinator.*

MAY 2, 1978.

[FR Doc. 78-12281 Filed 5-4-78; 8:45 am]

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[7555-01]

### SUBCOMMITTEE ON GENETIC BIOLOGY

#### Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Genetic Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: May 22-24, 1978; 9 a.m. to 6 p.m. each day.

Place: Room 321, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Philip D. Harriman, Program Director, Genetic Biology Program, Room 326. National Science Foundation, Washington, D.C. 20550, telephone 202-632-5985.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in genetic biology.

Agenda: To review and evaluated research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552B(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Directors, NSF, on February 18, 1977.

M. REBECCA WINKLER,
*Committee Management Coordinator.*

MAY 2, 1978.

[FR Doc 78-12282 Filed 5-4-78; 8:45 a.m.]

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[7555-01]

### SUBCOMMITTEE ON METABOLIC BIOLOIGY

#### Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Metabolic Biology of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: May 22 and 23, 1978; 9 a.m. to 5 p.m. each day.

Place: Room 338, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Elijah B. Romanoff, Program Director, Metabolic Biology Program, Room 331, National Science Foundation, Washington, D.C. 20550, telephone 202-632-4312.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Metabolic Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. l. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
*Committee Management Coordinator.*

MAY 2, 1978.

[FR Doc. 78-12283 Filed 5-4-78; 8:45 am]

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[7555-01]

### SUBCOMMITTEE ON MOLECULAR BIOLOGY

#### Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Molecular Biology, Group A, of the Advisory Committee for Physiology, Cellular and Molecular Biology.

Date and time: May 22 and 23, 1978; 9 a.m. to 5 p.m. each day.

Place: Room 421, National Science Foundation, 1800 G Street, NW., Washington, D.C. 20550.

Type of meeting: Closed.

Contact person: Dr. Frederick I. Tsuji, Program Director, Biochemistry Program, Room 330, National Science Foundation, Washington, D.C., 20550, telephone 202-632-4260.

Purpose of subcommittee: To provide advice and recommendations concerning support for research in Molecular Biology.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552(c), Government in the Sunshine Act.

Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Diriector, NSF, on February 18, 1977.

M. REBECCA WINKLER,
*Committee Management Coordinator,*

MAY 2, 1978.

[FR Doc. 78-12284 filed 5-4-78; 8:45 am]

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[7555-01]

### SUBCOMMITTEE ON PSYCHOBIOLOGY

#### Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Psychobiology of the Advisory Committee for Behavioral and Neural Sciences.
Date: May 23, 24, and 25, 1978.
Time: 9 a.m. to 5 p.m. each day.
Place: Rooms 628 and 642, National Science Foundation, 1800 G Street NW., Washington, D.C. 20550.
Type of meeting: Part Open:

Open May 25; closed May 23 and May 24.

Contact person: Dr. Fred Stollnitz, Program Director, Psychobiology Program, Room 320, National Science Foundation, Washington, D.C. 20550, telephone 202-632-4264.
Summary minutes: May be obtained from the Committee Management Coordinator, Division of Financial and Administrative Management, Room 248, National Science Foundation, Washington, D.C. 20550.
Purpose of subcommittee: To provide advice and recommendations concerning support for research in Psychobiology.
Agenda: May 23 and 24: To review and evaluate research proposals as part of the selection process for awards.

MAY 25

1. Executive Committee's oversight review.
2. Issues posed by certain types of proposals.
3. Interfaces with other NSF programs.
4. NSF role in National Primate Plan.
5. Budget outlook for 1979.
6. Making the case for 1980 and beyond.
7. Selection of panelists and reviewers.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sunshine Act.
Authority to close meeting: This determination was made by the Committee Management Officer pursuant to provisions of section 10(d) of Pub. L. 92-463. The Committee Management Officer was delegated the authority to make such determinations by the Acting Director, NSF, on February 18, 1977.

M. REBECCA WINKLER,
*Committee Management Coordinator.*

MAY 2, 1978.

[FR Doc. 78-12285 Filed 5-4-78; 8:45 am]

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[7590-01]

## NUCLEAR REGULATORY COMMISSION

### AGREEMENTS FOR COOPERATION BETWEEN THE STATES OF NEW YORK, SOUTH CAROLINA AND VIRGINIA AND THE UNITED STATES NUCLEAR REGULATORY COMMISSION

The Commission, in mid-January 1976 adopted the policy of entering into agreements with States that have been delegated responsibility by EPA for issuance of National Pollutant Discharge Elimination System (NPDES) permits under section 402 of the FWPCA.

Although considerable latitude is provided, generally such agreements will embody the principles of the second Nuclear Regulatory Commission/Environmental Protection Agency Memorandum of Understanding (F.R. Vol. 40, No. 251, p. 60115 ff, December 31, 1975) for cooperation in the licensing of nuclear powerplants. In general, agreements will provide for:

The State and NRC to work together to identify and consolidate the environmental information needed for the early issuance by the State of NPDES (section 402) discharge permits.

The State to exercise its best efforts to issue NPDES permits prior to the planned date of issuance by NRC of the final environmental impact statement for the early site approval, construction permit or operating license for each nuclear powerplant.

The State to work closely with NRC to assure that water quality certifications under section 401 of the FWPCA are issued in advance of the planned date of issuance of NRC's final environmental impact statement.

NRC and the State to consider the feasibility of holding joint or concurrent hearings on the State's NPDES permits and NRC's construction permits for nuclear powerplants.

The State and NRC to explore means by which joint or cooperative preparation of parts of environmental impact statements for nuclear powerplants could be accomplished.

The State and NRC to maintain close contact on water quality matters throughout the entire environmental review process.

To date, three such agreements have been consummated. These agreements which are published below are as follows:

"Agreement Between the Virginia State Water Control Board and the U.S. Nuclear Regulatory Commission Pursuant to the Federal Water Pollution Control Act Amendments of 1972 (FWPCA)"—effective October 26, 1977.

"Memorandum of Understanding Between the New York State Board on Electric Generation Siting and the Environment and the Departments of Environmental Conservation and Public Service and the U.S. Nuclear Regulatory Commission"—effective March 30, 1978.

"Agreement Between the State of South Carolina and the U.S. Nuclear Regulatory Commission Pursuant to the Federal Water Pollution Control Act of 1972 (FWPCA)"—effective April 21, 1978.

FOR FURTHER INFORMATION CONTACT:

Bennett L. Harless, Division of Site Safety and Environmental Analysis, U.S. Regulatory Commission, Washington, D.C. 20555, telephone 301-492-8421.

Dated at Washington, D.C., this 1st day of May 1978.

For the Nuclear Regulatory Commission.

LEE V. GOSSICK,
*Executive Director for Operations.*

MEMORANDUM OF UNDERSTANDING BETWEEN THE NEW YORK STATE BOARD ON ELECTRIC GENERATION SITING AND THE ENVIRONMENT AND THE DEPARTMENTS OF ENVIRONMENTAL CONSERVATION AND PUBLIC SERVICE AND THE U.S. NUCLEAR REGULATORY COMMISSION

PURPOSE

This Memorandum of Understanding between the New York State Departments of Environmental Conservation and Public Service, and the New York State Board on Electric Generation Siting and the Environment (Siting Board) and the United States Nuclear Regulatory Commission (NRC), sets forth mutually agreeable principles of cooperation between the Siting Board, the two State agencies, and the NRC which relate to their respective obligations for environmental matters in areas subject to concurrent jurisdiction under State of New York and Federal laws and regulations governing approvals, licensing and regulation of nuclear electric generating facilities.

It is the intent of this Memorandum that the Siting Board, the two State agencies and the NRC regluarly consult and cooperate in exploring and implementing appropriate procedures designed to assure that delays in the siting of electric generation facilities and duplication of effort will be minimized and that effective use will be made of resources of the two State agencies and the NRC, particularly in the areas of professional expertise.

Close cooperation between the signatories will help assure that the goals and policies of State and Federal law and regulation will be carried out efficiently and expeditiously.

IMPLEMENTATION

1. The staffs of the two State agencies and the NRC will explore means whereby the staffs of the State agencies would prepare

analyses for NRC in areas of concurrent jurisdiction, such as, but not necessarily limited to, need for baseload facility, water quality, air quality, terrestrial and aquatic ecology, and land use and aesthetics. The analyses performed by the staffs of the State agencies would be prepared in accordance with specific supplemental agreements and under guidelines and criteria mutually acceptable to both the staff of the State agency preparing the evaluation and the NRC in order to assure that the needs of both are met. Any such agreement(s) will be subject to review and modification by the signatories as necessary.

2. The Siting Board and NRC will consider the feasibility of holding combined or concurrent hearings on the environmental aspects of proceedings before the Siting Board and the NRC, on a case-by-case basis.

3. The staffs of the two State agencies and the NRC will maintain close contact on environmental matters of concurrent jurisdiction during the entire environmental review, including:

(a) Open interagency communications, and mutual cooperation and coordination on all relevant environmental matters; and

(b) A status meeting(s), where appropriate, during the course of the environmental review or subsequent thereto, on any significant new considerations that develop, e.g., a major change in plant design or the identification of factors that could have a significant effect on the environment in areas that were not previously evaluated.

4. In areas of concurrent jurisdiction involving environmental impact where there are significant differences of opinion between the staffs of the two State agencies and NRC, every reasonable attempt will be made to identify and resolve these differences prior to the planned date of issuance of NRC's final environmental statement or the submission of the State agencies prefiled testimony to the Siting Board proceeding, whichever comes first.

5. The parties will explore means by which compensation may be made available to the Siting Board and the two State agencies for activities performed specifically for NRC under specific supplemental agreements to this Memorandum. The terms of any such agreement for compensation to the Board and the two State agencies shall be specified in writing in each supplemental agreement.

6. Nothing in this Memorandum is intended to restrict the statutory authority of either NRC or the Siting Board.

7. This Memorandum shall take effect immediately upon signing by the Chairman of the Siting Board, who is also Chairman of the Department of Public Service, the Commissioner of the Department of Environmental Conservation and the Nuclear Regulatory Commission, and may be terminated upon 30 days notice by any party.

8. This Memorandum shall apply to all pending and future applications for licenses or permits for nuclear electric generating facilities except that, with respect to applications for licenses or permits for facilities docketed prior to the effective date of this Memorandum, it shall only be applied to the maximum extend practicable.

9. The principal NRC contact under this Memorandum shall be the Assistant Director for Environmental Projects. The principal State contact under this Memorandum shall be the Secretary of the Siting Board or his designee.

10. If any provision of this Memorandum, or the application thereof to any person or circumstance is held invalid, the remainder of this Memorandum, and the application of such provisions to other persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

Dated: March 8, 1978.

For the New York State Board on Electric Generation Siting and the Environment and Department of Public Service.

CHARLES A. ZIELINSKI,
*Chairman.*

Dated: March 20, 1978.

For the Department of Environmental Conservation.

PETER A. A. BERLE,
*Commissioner.*

Dated: March 30, 1978.

For the United States Nuclear Regulatory Commission.

LEE V. GOSSICK,
*Executive Director for Operations.*

AGREEMENT BETWEEN THE STATE OF SOUTH CAROLINA AND THE U.S. NUCLEAR REGULATORY COMMISSION PURSUANT TO THE FEDERAL WATER POLLUTION CONTROL ACT OF 1972 (FWPCA)

The State of South Carolina, hereinafter referred to as the State, is a permit issuing State under section 402 of the Federal Water Pollution Control Act of 1972. As such the State is not directly affected by the "Second Memorandum of Understanding Regarding Implementation of Certain Nuclear Regulatory Commission and Environmental Protection Agency Responsibilities Under the Federal Water Pollution Control Act (FWPCA) and the National Environmental Policy Act of 1969." However, the State agrees with the principles embodied in the Second Nuclear Regulatory Commission (NRC)/Environmental Protection Agency (EPA) Memorandum and wishes to cooperate with NRC in implementing these principles.

Specifically, these cooperative efforts will extend to requirements for the control and consideration of impacts on water quality and biota associated with the licensing and regulation, including early site approval[1] of the following plants or facilities within South Carolina:

(a) Nuclear power and test facilities,
(b) Nuclear fuel reprocessing facilities,
(c) Uranium isotope enrichment facilities,
(d) Nuclear fuel fabrication plants,
(e) Nuclear waste treatment and storage plants if subject to licensing by NRC.

1. The State and NRC will work together to identify and consolidate the environmental information needed for early evaluations related to impacts on water quality and biota under the FWPCA with the objective that the scope, form and timeliness of the information to be submitted by the applicant satisfy the requirements of both the State and NRC. This will include information needed for issuance of State water quality certifications pursuant to section 401 and NPDES permits pursuant to section 402 (including where applicable section 316(b) considerations regarding best technology available as applied to cooling water intake structures and section 316(a) determinations regarding the granting of alternative effluent limitations for the thermal component of discharges) and information needed to evaluate the environmental impact of the facility based on compliance with FWPCA requirements.

2. The State and NRC will meet, as appropriate, at an early time prior to and/or during the environmental review process for each facility or plant subject to this Agreement to discuss potential impacts on water quality and biota.

3. The State will exercise its best efforts to evaluate the levels of discharges and impacts on water quality and biota pursuant to section 402 and 316(a), as appropriate, and complete cooling water intake structure evaluations pursuant to section 316(b) as far as possible in advance of the planned date of issuance by NRC of the final environmental impact statement for the construction permit for each nuclear power reactor. The State also will exercise its best efforts to make such evaluations as far as possible in advance of the planned date of issuance of the final environmental impact statement for any other plant or facility subject to this Agreement or issuance of early site approvals associated with nuclear power and other facilities.

Further, where possible, the State's comments on NRC's draft environmental impact statement for each such facility or plant will reflect such evaluations. The State will undertake to issue a complete section 402 permit as soon as possible prior to the planned date of authorization by the NRC of any commencement of construction[2] or issuance by NRC of any license, or early site approval, whichever is applicable.

Such permits will contain appropriate terms and conditions for all discharges of pollutants expected during the life of the permit (five years maximum) and terms and conditions with regard to cooling water intake structures and section 316(a) determinations concerning thermal discharges. Additional permit terms and conditions for discharges not contemplated during the life of the permit (such as certain chemical and other releases not expected until operation startup) may be derived from applicable State water quality standards and applicable new source performance standards contained in 40 CFR, Chapter I, Subchapter N. Permits may be reissued, or modified as appropriate, and any reissued or modified permit, to be effective at the commencement of actual discharge as provided above may require additional limitations and controls based on data gathered during the initial permit or may require additional section 316 (a) and (b) studies for the purpose of confirming conclusions reached from previous predictive studies. Applications for permit reissuance as provided above will be evaluated by the State in light of the policy to assure to the maximum extent possible that subsequent considerations regarding impacts on water quality and biota will not result in the need for significant changes in plant design or in cost and benefits of the operation of the facility subsequent to the completion of NRC's environmental review.[3]

4. The State will work closely with NRC to assure that water quality certifications

[1] See 10 CFR Part 2, Appendix A, Paragraph I(c).

[2] The term "commencement of construction" means commencement of construction as defined in 10 CFR 50.10(c).

[3] A facility which has been given § 316(a) alternative effluent limitations is not entitled to the 10-year grace period (or applicable amortization period) provided for in § 306(d) for new sources or in 316(c) for modified sources.

pursuant to section 401 for the facilities subject to this Agreement that require such certification are issued in advance of the planned date of issuance of NRC staff's final environmental impact statement for the facility.

5. The State and NRC will maintain close contact on water quality and related matters during the entire environmental review, including:

(a) Open interagency communications, and mutual cooperation and coordination on all relevant water quality matters;

(b) A status meeting, where appropriate, after completion of the environmental review or subsequent thereto, of any significant new considerations that develop, e.g., a major change in plant design or the identification of significant considerations regarding impacts on water quality or biota that were not previously evaluated as may result from a major change in plant design.

6. The State and NRC will consider the feasibility of holding combined or concurrent hearings on the State's section 402 permits and NRC's construction permits, or other actions, on a case-by-case basis. If there are areas involving impact on water quality or biota where there are significant differences of opinion between the State and NRC, every reasonable attempt will be made to identify and resolve these differences prior to the planned date of issuance of NRC's final environmental statement.

7. The principal NRC contact under this Agreement shall be the Assistant Director for Environmental Projects. The principal State contact under this Agreement shall be the Deputy Commissioner for the Office of Environmental Quality Control of the South Carolina Department of Health and Environmental Control or his designee.

8. Nothing in this Agreement is intended to restrict the statutory authority of either NRC or the State.

9. This Agreement shall take effect immediately upon signing by the State and the Nuclear Regulatory Commission. The Agreement shall apply to all pending and future applications for licenses or permits subject to this Agreement except that, with respect to applications for licenses or permits for facilities and plants docketed prior to the effective date of the Agreement, it shall only be applied to the maximum extent practicable.

Dated at Columbia, S.C., this 21st day of April 1978.

For the United States Nuclear Regulatory Commission.

LEE V. GOSSICK,
*Executive Director for Operations.*

Dated at Columbia, S.C., this 21st day of April 1978.

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL

JOHN E. JENKINS, P.E.,
*Deputy Commissioner.*

## AGREEMENT BETWEEN THE VIRGINIA STATE WATER CONTROL BOARD AND THE U.S. NUCLEAR REGULATORY COMMISSION PURSUANT TO THE FEDERAL WATER POLLUTION CONTROL ACT AMENDMENTS OF 1972 (FWPCA)

The Commonwealth of Virginia, by and through the State Water Control Board, hereinafter referred to as the Board, is a permit issuing State under section 402 of the Federal Water Pollution Control Act Amendments of 1972. As such the Board is not directly affected by the "Second Memorandum of Understanding Regarding Implementation of Certain Nuclear Regulatory Commission and Environmental Protection Agency Responsibilities Under the Federal Water Pollution Control Act (FWPCA) and the National Environmental Policy Act of 1969." However, the Board agrees with the principles embodied in the Second Nuclear Regulatory Commission (NRC)/Environmental Protection Agency (EPA) Memorandum and wishes to cooperate with NRC in implementing those principles.

Specifically, these cooperative efforts will extend to requirements for the control and consideration of impacts on water quality and aquatic biota associated with the licensing and regulation, including early site approval[4] of nuclear power plants within the Commonwealth.

1. The Board and NRC will work together to compile, identify and consolidate the environmental information needed for early evaluations related to impacts on water quality and aquatic biota, with the objective that the scope, form and timeliness of information to be submitted by the applicant satisfy the requirements of both the Board and NRC. This will include information needed for issuance of State water quality certifications pursuant to section 401 and NPDES permits pursuant to section 402 of the FWPCA and the State Water Control Law (including, where applicable, section 316(b) considerations regarding best technology available as applied to cooling water intake structures, and section 316(a) determinations regarding the granting of alternative effluent limitations for the thermal component of discharges), and information needed to evaluate the environmental impact of the facility based on compliance with FWPCA and State Water Control Law requirements.

2. The Board and NRC will meet, as appropriate, at an early time prior to and/or during the environmental review process for each nuclear power plant to discuss potential impacts on water quality and aquatic biota.

3. The Board will exercise its best efforts to evaluate the levels of discharges and impacts on water quality and aquatic biota pursuant to sections 402 and 316(a), as appropriate, and complete cooling water intake structure evaluations pursuant to section 316(b) as far as possible in advance of the planned date of issuance by NRC of the final environmental impact statement for the early site approval, construction permit or operating license for each nuclear power plant.

Further, where possible, the Board's comments on NRC's draft environmental impact statement for each nuclear power plant will reflect such evaluations. The Board will undertake to issue a complete permit pursuant to the State Water Control Law and Section 402 of the FWPCA as soon as possible prior to the planned date of authorization by the NRC of any commencement of construction[5] or issuance by NRC of any license, or early site approval, whichever is applicable.

Such permits will contain appropriate terms and conditions for all discharges of pollutants expected during the life of the permit (five years maximum) and terms and conditions with regard to cooling water intake structures and section 316(a) determinations concerning thermal discharges. Additional permit terms and conditions for discharges not contemplated during the life of the permit (such as certain chemical and other releases not expected until operation startup) may be derived from applicable State water quality standards and applicable new source performance standards contained in 40 CFR, Chapter I, Subchapter N. Permits may be reissued, or modified as appropriate, and any reissued or modified permit, to be effective at the commencement of actual discharge as provided above may require additional limitations and controls based on data gathered during the initial permit or may require additional section 316(a) and (b) studies for the purpose of confirming conclusions reached from previous predictive studies. Applications for permit reissuance as provided above will be evaluated by the Board in light of the policy to assure to the maximum extent possible that subsequent considerations regarding impacts on water quality and aquatic biota will not result in the need for significant changes in plant design or in cost and benefits of the operation of the facility subsequent to the completion of NRC's environmental review.[6]

4. The Board will work closely with NRC to assure that water quality certifications pursuant to section 401 for nuclear power plants are issued in advance of the planned date of issuance of NRC staff's final environmental impact statement for the facility.

5. The Board and NRC will maintain close contact on water quality and related matters during the entire environmental review, including:

(a) Open interagency communications, and mutual cooperation and coordination on all relevent water quality matters;

(b) A status meeting after completion or during the course of the environmental review, to assess any significant new considerations that develop, e.g., a major change inplant design or the identification of significant considerations regarding impacts on water quality or aquatic biota that were not previously evaluated as may result from a major change in plant design.

6. The board and NRC will consider the feasibility of holding combined or concurrent hearings on the Board's section 402 permits and NRC's construction permits, or other actions, on a case-by-case basis. If there are areas involving impact on water quality or aquatic biota where there are significant differences of opinion between the Board and NRC, every reasonable attempt will be made to identify and resolve these differences prior to the planned date of issuance of NRC's final environmental statement.

7. The Board and NRC will explore means by which joint or cooperative preparation of parts of environmental impact statements for nuclear powerplants could be accomplished. NRC will stand ready to assist the Board in every proper fashion with information and technical support.

8. The principal NRC contact under this Agreement shall be the Assistant Director for Environmental Projects. The principal State contact under this Agreement shall be the Deputy Executive Secretary of the State Water Control Board or his designee.

[4] See 10 CFR Part 2, Subpart F.

[5] The term "commencement of construction" means commencement of construction as defined in 10 CFR 50.10(c).

[6] A nuclear power plant which has been given 316(a) alternative effluent limitations is not entitled to the 10-year grace period (or applicable amortization period) provided for in 306(d) for new sources or in 316(c) for modified sources.

9. Nothing in this Agreement is intended to restrict the statutory authority of either NRC or the Board.

10. This Agreement shall take effect immediately upon signing by the Board and the Nuclear Regulatory Commission. This Agreement may be terminated upon 30 days notice by either party. This Agreement shall apliy to all future applications for licenses or permits subject to this Agreement.

Dated at Washington, D.C., this 7th day of September 1977.

For the United States Nuclear Regulatory Commission.

LEE V. GOSSICK,
*Executive Director for Operations.*

Dated at Richmond, Va. this 26th day of October 1977.

For the Virginia State Water Control Board.

R. V. DAVIS,
*Executive Secretary.*

[FR Doc. 78-12262 Filed 5-4-78; 8:45 am]

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[7590-01]

[Docket No. 50-333]

**POWER AUTHORITY OF THE STATE OF NEW YORK**

**Issuance of Amendment to Facility Operating License**

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 35 to Facility Operating License No. DPR-59, issued to Power Authority of the State of New York (the licensee), which revised Technical Specifications for operation of the James A. FitzPatrick, Nuclear Power Plant (the facility) located in Oswego County, N.Y. The amendment is effective as of its date of issuance.

This amendment revises the Technical Specifications to increase the operating minimum critical power ratio (MCPR) based on a reanalysis of Cycle 2 operation between End-of-Cycle minus 2000 megawatt days per ton and End-of-Cycle 2. The amendment also adds an additional exposure dependent MCPR at End-of-Cycle 2 minus 1000 MWD/T.

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 5, 1978, (2) Amendment No. 35 to License No. DPR-59, 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. and at the Oswego County Office Building, 46 East Bridge Street, Oswego, N.Y. 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, Md., this 28th day of April 1978.

For the Nuclear Regulatory Commission.

GEORGE LEAR,
*Chief, Operating Reactor Branch No. 3 Division of Operating Reactors.*

[FR Doc. 78-12263 Filed 5-4-78; 8:45 am]

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[7590-01]

[Docket Nos. 50-443 and 50-444]

**PUBLIC SERVICE CO. OF NEW HAMPSHIRE, ET AL. (SEABROOK STATION, UNITS 1 AND 2)**

**Reconstitution of Board**

John M. Frysiak, Esq., was Chairman of the Atomic Safety and Licensing Board for the above proceeding. Mr. Frysiak has tranferred to another Government agency, where he is serving as an Administrative Law Judge.

Accordingly, Ivan W. Smith, Esq., whose address is Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, is appointed Chairman of this Board. Reconstitution of the Board in this manner is in accordance with Section 2.721 of the Commission's Rules of Practice, as amended.

Dated at Bethesda, Md., this 1st day of May 1978.

JAMES R. YORE,
*Chairman, Atomic Safety and Licensing Board Panel.*

[FR Doc. 78-12264 Filed 5-4-78; 8:45 am]

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[7590-01]

[Docket No. 40-8502]

**WYOMING MINERAL CORP.**

**Availability of Draft Environmental Statement for Irigaray Uranium Solution Mining Project**

Notice is hereby given that a Draft Environmental Statement prepared by the Commission's Office of Nuclear Material Safety and Safeguards related to the proposed Irigaray uranium solution mining project to be located in Johnson County, Wyo., is available for inspection by the public in the Commission's Public Document room at 1717 H Street NW., Washington, D.C. 20555. The Draft Statement is also being made available at the State Clearinghouse, State Planning Coordinator, Office of the Governor, Capitol Building, Cheyenne, Wyo. 82001. Requests for copies of the Draft Environmental Statement (identified as NUREG-0399) should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Division of Technical Information and Document Control.

The Applicant's Environmental Report submitted by Wyoming Mineral Corp. is also available for public inspection at the above-designated locations. Notice of availability of the Applicant's Environmental Report was published in the FEDERAL REGISTER on September 1, 1977 (42 FR 44040).

Interested persons may submit comments on the Draft Environmental Statement for the Commission's consideration. Federal and State agencies are being provided with copies of the Draft Environmental Statement (local agencies may obtain these documents upon request). Comments by Federal, State, and local officials, or other persons received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, D.C. Comments are due by June 19, 1978. Upon consideration of comments submitted with respect to the draft environmental statement, the Commission's staff will prepare a final environmental statement, the availability of which will be published in the FEDERAL REGISTER.

Comments on the Draft Environmental Statement from interested persons of the public should be addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Fuel Cycle and Material Safety.

Dated at Silver Spring, Md. this 26th day of April, 1978.

For the Nuclear Regulatory Commission.

LELAND C. ROUSE,
*Chief, Fuel Processing & Fabrication Branch, Division of Fuel Cycle and Material, Safety.*

[FR Doc. 78-11989 Filed 5-4-78; 8:45 am]

[8025-01]

## SMALL BUSINESS ADMINISTRATION

### LOCAL DEVELOPMENT COMPANY LOANS, HANDICAPPED ASSISTANCE LOANS AND BUSINESS LOANS

#### Waiver of Administrative Ceilings

SBA has adopted administrative ceilings limiting the amount of financial assistance generally available to applicants for local development company loans (LDC), handicapped assistance loans (HAL) and regular business loans. [§§ 108.502-1(d)(3), 118.31(a)(1) and 122.5(b) of Title 13 CFR].

SBA has also adopted regulations authorizing the waiver of the applicable ceilings upon a determination by SBA that the particular loan furthers a "National, Agency or Regional program objective." [§ 108.502-1(d)(4), 118.31(a)(2) and 122.5(c)]. These sections further provide that SBA may publish from time to time standards or examples illustrating National, agency or regional objectives, and that SBA will not recognize any such objective until it has been published in the FEDERAL REGISTER.

In accordance with the above-cited regulations, the following examples of National, agency and regional objectives are published. To justify waiver of the applicable administrative ceiling, it must appear to SBA's satisfaction that any two of the listed objectives will be advanced by the loan in question. The objectives are:

1. Construction of medical facilities, the need for which has been certified by appropriate local authority;
2. Conservation or production of energy;
3. Creation or preservation of jobs;
4. Performance of a specific Government contract;
5. Stimulation of the economy of a labor surplus area;
6. Conservation of natural resources;
7. Improvement of mass transit facilities;
8. Economic development of depressed urban or rural area;
9. Assistance to broadcasting and cable TV operations;
10. Revitalization of SBA-designated neighborhood business areas.

(Catalog of Federal Domestic Assistance Programs Nos. 59.012, 59.013, and 59.021.)

Dated: April 27, 1978.

A. VERNON WEAVER,
*Administrator.*

[FR Doc. 78-12299 Filed 5-4-78; 8:45 am]

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[8025-01]

[License No. 05/05-5124]

### NEIGHBORHOOD FUND, INC.

#### Issuance of License To Operate as a Small Business Investment Company

On December 20, 1977, a notice was published in the FEDERAL REGISTER (42 FR 63841), stating that The Neighborhood Fund, Inc., located at 7054 South Jeffery Boulevard, Chicago, Ill. 60649, had filed an application with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1977), for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business January 4, 1978, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and all other pertinent information, SBA issued License No. 05/05-5124, on April 3, 1978, to operate as a small business investment company pursuant to Section 301(d) of the Act.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: April 27, 1978.

PETER F. MCNEISH,
*Deputy Associate Administrator for Investment.*

[FR Doc.78-12300 Filed 5-4-78; 8:45 am]

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[8025-01]

[Application No. 03/03-5137]

### SCI MEDIA VENTURES, INC.

#### Application for License to Operate as a Small Business Investment Company

An application for a license to operate as a small business investment company under the provisions of section 301(d) of the Small Business Investment Act of 1958, as amended (15 U.S.C. 661 et seq.), has been filed by SCI Media Ventures, Inc. (applicant), with the Small Business Administration (SBA), pursuant to 13 CFR 107.102 (1977).

The officers, directors, and stockholders of the applicant are as follows:

Herbert P. Wilkins, 5560 Shepherdess Court, Columbia, Md. 21045, President, Treasurer, and Director.
Ronald A. Brown, 1721 Corcoran Street NW., Washington, D.C. 20009, Vice President, Secretary, and Director.
Curtis T. White, 7515 Morningside Drive NW., Washington, D.C. 20012, Director.
Syndicated Communications, Inc., 100 percent Stockholder.

The applicant, a District of Columbia corporation, with its principal place of business located at 1625 I Street NW., Washington, D.C. 20006, will begin operations with $500,000 of paid-in capital and paid-in surplus, derived from the sale of 500,000 shares of common stock.

The applicant will conduct its activities primarily in the District of Columbia, but will consider proposals for assistance in other areas within the United States of America in order to increase diversification of control and ownership of broadcast media.

Applicant intends to provide assistance to all qualified socially or economically disadvantaged small business concerns as the opportunity to profitably assist such concerns is presented.

As a small business investment company under section 301(d) of the Act, the applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Small Business Investment Act of 1958, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the applicant include the general business reputation and character of the proposed management and the probability of successful operation of the applicant under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act and SBA Rules and Regulations.

Any person may, not later than May 22, 1978, submit to SBA written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 L Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Washington, D.C.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Dated: April 27, 1978.

*Peter F. McNeish,*
*Deputy Associate Administrator for Investment.*

[FR Doc. 78-12301 Filed 5-4-78; 8:45 am]

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[4810-22]

## DEPARTMENT OF THE TREASURY

### Office of the Secretary

### VISCOSE RAYON STAPLE FIBER FROM FRANCE

#### Antidumping Proceeding

AGENCY: United States Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether or not imports of viscose rayon staple fiber from France are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 28, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Avtex Fibers, Inc., Valley Forge, Pa., a domestic producer of the subject merchandise, indicating a possibility that viscose rayon staple fiber from France is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this notice, the term "viscose rayon staple fiber" refers to viscose rayon staple fiber, except solution dyed, in non-continuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments).

Margins of dumping are alleged which, based on a comparison of sales to the U.S. to sales in the home market, range from 13 percent to 16 percent. Petitioner has alleged, however, that sales in France of viscose rayon staple fiber are being made at prices below the cost of production as defined in section 205(b) of the Act (19 USC 164). A comparison of sales to the U.S. and the constructed value of rayon staple fiber in France as calculated and alleged by petitioner yields possible dumping margins from 64 percent to 67 percent. Treasury's investigation will seek to determine whether French home market sales are being made at prices below the cost of production as defined in section 205(b) and, if so, will disregard such sales in the calculation of foreign market value. If insufficient sales, either in the home market or to countries other than the U.S., remain at not less than the cost of production, then constructed value will be employed as a basis of fair value.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States that produces viscose rayon staple fiber. This information indicates that imports of viscose rayon staple fiber from France are underselling domestic manufacturers by margins that are completely accounted for by the alleged dumping margins. Petitioner has supplied information indicating that it has incurred significant losses from 1975-1977, that it has been operating at far below operating capacity over the same period and that it has been unable to raise its prices due to lower priced imports.

Imports of viscose rayon staple fiber from France increased in both absolute and relative terms in 1977 compared to 1976. In addition, Treasury is simultaneously initiating three antidumping investigations with regard to this product from Finland, Italy, and Sweden and is presently conducting an antidumping investigation of this product from Austria. Imports from Belgium of this product were also recently subjected to an antidumping investigation in which a "Determination of Sales at Less Than Fair Value" was published in the FEDERAL REGISTER on May 1, 1978 (43 FR 18619).

The cumulative effect of imports of a single fungible product from more than one country must, when appropriate, be considered in assessing the injurious effects of alleged "less than fair value" imports. When imports from France are cumulated with those alleged to exist from Finland, Italy, Sweden, Austria and Belgium, the level of import penetration is approximately 10 percent of current U.S. consumption. Accordingly, based upon available information of injury resulting from sales at less than fair value, no "substantial doubt" of injury exists and no reference of this case to the ITC will be made.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined that there are grounds for doing so, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to section 153.30 of the Customs Regulations (19 CFR 153.30).

ROBERT H. MUNDHEIM,
*General Counsel of the Treasury.*

APRIL 28, 1978.

[FR Doc. 78-12270 Filed 5-4-78; 8:45 am]

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[4810-22]

## VISCOSE RAYON STAPLE FIBER FROM FINLAND

### Antidumping Proceeding

AGENCY: United States Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether or not imports of viscose rayon staple fiber from Finland are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 28,1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Avtex Fibers, Inc., Valley Forge, Pa. a domestic producer of the subject merchandise, indicating a possibility that viscose rayon staple fiber from Finland is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this notice, the term "viscose rayon staple fiber" refers to viscose rayon staple fiber, except solution dyed, in non-continuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments).

Margins of dumping are alleged which, based on a comparision of sales to the United States to sales in the home market, range from 20 percent to 23 percent. Petitioner has alleged, however, that sales in Finland of viscose rayon staple fiber are being made at prices below the cost of production as defined in section 205(b) of the Act (19 U.S.C. 164). A comparison of sales to the United States and the constructed value of rayon staple fiber in Finland as calculated and alleged by petitioner yields possible dumping margins from 57 percent to 61 percent. Treasury's investigation will seek to determine whether Finnish home market sales are being made at prices below the cost of production as defined in section 205(b) and, if so, will disregard such sales in the calculation

of foreign market value. If insufficient sales, either in the home market or to countries other than the United States, remain at not less than the cost of production, then constructed value will be employed as a basis of fair value.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States that produces viscose rayon staple fiber. This information indicates that imports of viscose rayon staple fiber from Finland are underselling domestic manufacturers by margins that are completely accounted for by the alleged dumping margins. Petitioner has supplied information indicating that it has incurred significant losses from 1975–1977, that it has been operating at far below operating capacity over the same period and that it has been unable to raise its prices due to lower priced imports.

Imports of viscose rayon staple fiber from Finland increased in both absolute and relative terms in 1977 compared to 1976. In addition, Treasury is simultaneously initiating three antidumping investigations with regard to this product from France, Italy and Sweden and is presently conducting an antidumping investigation of this product from Austria. Imports from Belgium of this product were also recently subjected to an antidumping investigation in which a "Determination of Sales at Less Than Fair Value" was published in the FEDERAL REGISTER on May 1, 1978 (43 FR 18619).

The cumulative effect of imports of a single fungible product from more than one country must, when appropriate, be considered in assessing the injurious effects of alleged "less than fair value" imports. When imports from Finland are cumulated with those alleged to exist from France, Italy, Sweden, Austria and Belgium, the level of import penetration is approximately 10 percent of current U.S. consumption. Accordingly, based upon available information of injury resulting from sales at less than fair value, no "substantial doubt" of injury exists and no reference of this case to the ITC will be made.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined that there are grounds for doing so, the United States Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

APRIL 28, 1978.

ROBERT H. MUNDHEIM,
*General Counsel*
*of the Treasury.*

[FR Doc. 78-12273 Filed 5-4-78; 8:45 am]

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[4810-22]

## VISCOSE RAYON STAPLE FIBER FROM ITALY

### Antidumping Proceeding

AGENCY: United States Treasury Department.

ACTION: Initiation of Antidumping Investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether or not imports of viscose rayon staple fiber from Italy are being, or are likely to be, sold at less than fair value within the meaning of the Antidumping Act of 1921, as amended.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Duty Assessment Division, United States Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 28, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs Regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Avtex Fibers, Inc., Valley Forge, Pa., a domestic producer of the subject merchandise, indicating a possibility that viscose rayon staple fiber from Italy is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this notice, the term "viscose rayon staple fiber" refers to viscose rayon staple fiber, except solution dyed, in non-continuous form, not carded, not combed and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments).

Margins of dumping are alleged which, based on a comparison of sales to the United States to sales in the home market, range from 17 percent to 20 percent. Petitioner has alleged, however, that sales in Italy of viscose rayon staple fiber are being made at prices below the cost of production as defined in section 205(b) of the Act (19 USC 164). A comparison of sales to the U.S. and the constructed value of rayon staple fiber in Italy as calculated and alleged by petitioner yields possible dumping margins from 59 percent to 63 percent. Treasury's investigation will seek to determine whether Italian home market sales are being made at prices below the cost of production as defined in section 205(b) and, if so, will disregard such sales in the calculation of foreign market value. If insufficient sales, either in the home market or to countries other than the United States, remain at not less than the cost of production, then constructed value will be employed as a basis of fair value.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States that produces viscose rayon staple fiber. This information indicates that imports of viscose rayon staple fiber from Italy are underselling domestic manufacturers by margins that are completely accounted for by the alleged dumping margins. Petitioner has supplied information indicating that it has incurred significant losses from 1975–1977, that it has been operating at far below operating capacity over the same period and that it has been unable to raise its prices due to lower priced imports.

Imports of viscose rayon staple fiber from increased in both absolute and relative terms in 1977 compared to 1976. In addition, Treasury is simultaneously initiating three antidumping investigations with regard to this product from Finland, France and Sweden and is presently conducting an antidumping investigation of this product from Austria. Imports from Belgium of this product were also recently subjected to an antidumping investigation in which a "Determination of Sales at Less Than Fair Value" was published in the FEDERAL REGISTER on May 1, 1978 (43 FR 18619).

The cumulative effect of imports of a single fungible product from more than one country must, when appropriate, be considered in assessing the injurious effects of alleged "less than fair value" imports. When imports from Italy are cumulated with those alleged to exist from Finland, France, Sweden, Austria and Belgium, the level of import penetration is approximately 10 percent of current U.S. consumption. Accordingly, based upon available information of injury resulting from sales at less than fair value, no "substantial doubt" of injury exists and no reference of this case to the ITC will be made.

Having conducted a summary investigation as required by § 153.29 of the Customs Regulations (19 CFR 153.29) and having determined that there are grounds for doing so, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs Regulations (19 CFR 153.30).

APRIL 28, 1978.

ROBERT H. MUNDHEIM,
*General Counsel of the Treasury.*

[FR Doc. 78-12271 Filed 5-4-78; 8:45 am]

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[4810-22]

## VISCOSE RAYON STAPLE FIBER FROM SWEDEN

### Anitdumping Proceeding

AGENCY: U.S. Treasury Department.

ACTION: Initiaton of antidumping investigation.

SUMMARY: This notice is to advise the public that a petition in proper form has been received and an antidumping investigation is being initiated for the purpose of determining whether or not imports of viscose rayon staple fiber from Sweden are being, or are likely to be, sold at less than fair value within the meaning of the Anitdumping Act of 1921, as amended.

EFFECTIVE DATE: May 5, 1978.

FOR FURTHER INFORMATION CONTACT:

Michael E. Crawford, Duty Assessment Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229, telephone 202-566-5492.

SUPPLEMENTARY INFORMATION: On March 28, 1978, information was received in proper form pursuant to §§ 153.26 and 153.27, Customs regulations (19 CFR 153.26, 153.27), from counsel acting on behalf of Avtex Fibers, Inc., Valley Forge, Pa., a domestic producer of the subject merchandise, indicating a possibility that viscose rayon staple fiber from Sweden is being, or is likely to be, sold at less than fair value within the meaning of the Antidumping Act, 1921, as amended (19 U.S.C. 160 et seq.).

For purposes of this notice, the term "viscose rayon staple fiber" refers to viscose rayon staple fiber, except solution dyed, in noncontinuous form, not carded, not combed, and not otherwise processed, wholly of filaments (except laminated filaments and plexiform filaments).

Margins of dumping are alleged which, based on a comparison of sales to the United States to sales in the home market, range from 13 percent to 16 percent. Petitioner has alleged, however, that sales in Sweden of viscose rayon staple fiber are being made at prices below the cost of production as defined in section 205(b) of the Act (19 U.S.C. 164). A comparison of sales to the United States and the constructed value of rayon staple fiber in Sweden as calculated and alleged by petitioner yields possible dumping margins from 60 percent to 64 percent. Treasury's investigation will seek to determine whether Swedish home market sales are being made at prices below the cost of production as defined in section 205(b) and, if so, will disregard such sales in the calculation of foreign market value. If insufficient sales, either in the home market or to countries other than the United States, remain at not less than the cost of production, then constructed value will be employed as a basis of fair value.

There is evidence on record concerning injury to, or likelihood of injury to, or prevention of establishment of an industry in the United States that produces viscose rayon staple fiber. This information indicates that imports of viscose rayon staple fiber from Sweden are underselling domestic manufacturers by margins that are completely acoounted for by the alleged dumping margins. Petitioner has supplied information indicating that it has incurred significant losses from 1975-1977, that it has been operating at far below operating capacity over the same period and that it has been unable to raise its prices due to lower priced imports.

Imports of viscose rayon staple fiber from Sweden increased in both absolute and relative terms in 1977 compared to 1976. In addition, Treasury is simultaneously initiating three antidumping investigations with regard to this product from Finland, France, and Italy and is presently conducting an antidumping investigation of this product from Austria. Imports from Belgium of this product were also recently subjected to an antidumping investigation in which a "Determination of Sales at Less Than Fair Value" was published in the FEDERAL REGISTER on May 1, 1978 (43 FR 18619).

The cumulative effect of imports of a single fungible product from more than one country must, when appropriate, be considered in assessing the injurious effects of alleged "less than fair value" imports. When imports from Sweden are cumulated with those alleged to exist from Finland, France, Italy, Austria, and Belgium, the level of import penetration is approximately 10 percent of current U.S. consumption. Accordingly, based upon available information of injury resulting from sales at less than fair value, no "substantial doubt" of injury exists and no reference of this case to the ITC will be made.

Having conducted a summary investigation as required by § 153.29 of the Customs regulations (19 CFR 153.29) and having determined that there are grounds for doing so, the U.S. Customs Service is instituting an inquiry to verify the information submitted and to obtain the facts necessary to enable the Secretary of the Treasury to reach a determination as to the fact or likelihood of sales at less than fair value.

This notice is published pursuant to § 153.30 of the Customs regulations (19 CFR 153.30).

ROBERT H. MUNDHEIM,
*General Counsel of the Treasury.*

APRIL 28, 1978.

[FR Doc. 78-12272 Filed 5-4-78; 8:45 am]

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[7035-01]

## INTERSTATE COMMERCE COMMISSION

[Notice No. 653]

### ASSIGNMENT OF HEARINGS

MAY 2, 1978.

Cases assigned for hearing, postponement, cancellation, or oral argument appear below and will be published only once. This list contains prospective assignments only and does not include cases previously assigned hearing dates. The hearings will be on the issues as presently reflected in the official docket of the Commission. An attempt will be made to publish notices of cancellation of hearings as promptly as possible, but interested parties should take appropriate steps to insure that they are notified of cancellation or postponements of hearings in which they are interested.

No. MC 133937 (Sub-No. 22), Carolina Cartage Co., Inc., is now assigned for hearing July 11, 1978 (4 days), at Columbia, SC, at a location to be later designated.

No. MC-F 13266, Mason & Dixon Lines—Purchase—J. W. Craig, doing business as City Transfer & Storage Co., and MC 59583 (Sub-Nos. 163 and 164), the Mason & Dixon Lines, Inc., are now assigned for hearing July 17, 1978 (1 week), at Columbia, SC, at a location to be later designated.

No. MC 720 (Sub-No. 36), Bird Trucking Co., Inc., is now assigned for hearing June 6, 1978 (2 days), at Madison, WI, at a location to be later designated.

No. MC 75281 (Sub-No. 9), Righter Trucking Co., Inc., now being assigned June 5, 1978 (1 week), at St. Louis, MO, in a hearing room to be later designated.

No. MC 126679 (Sub-No. 6), Dennis Truck Lines, Inc., is now assigned for hearing July 17, 1978 (1 week), at Atlanta, GA, at a location to be later designated.

No. MC 87109 (Sub-No. 25), Tidewater Inland Express, Inc., doing business as T.I.E., Inc., is now assigned for hearing July 24, 1978, at the offices of the Interstate Commerce Commission, Washington, DC.

H. G. HOMME, Jr.,
*Acting Secretary.*

[FR Doc. 78-12311 Filed 5-4-78; 8:45 am]

[7035-01]

FOURTH SECTION APPLICATION FOR RELIEF

MAY 2, 1978.

This application for long- and short-haul relief has been filed with the ICC.

Protests are due at the ICC within 15 days from the date of publication of this notice.

FSA No. 43537, the East Asiatic Co., Ltd.'s No. 103, on intermodal rates on general commodities, between ports in the Orient, on the one hand, and rail terminals on the U.S. Atlantic and gulf coasts, on the other, by way of U.S. Pacific coast interchanges, to be published in its tariff No. 2, ICC No. 2, and other schedules named in the application. Grounds for relief—Water competition.

By the Commission.

H. G. HOMME, Jr.,
*Acting Secretary.*

[FR Doc. 78-12310 Filed 5-4-78; 8:45 am]

[7035-01]

[Notice No. 38]

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 a request for oral hearing, must be filed with the Commission by June 5, 1978. 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.

No. MC-F-C 76444. By order dated March 14, 1978, Division 3, acting as an Appellate Division approved the transfer to TRANS-NATIONAL FREIGHT, INC., 1200 Spruce Street, Roselle, NJ 07203, of that portion of the operating rights of Truck Transport, Inc., 29 Clayton Hills Lane, St. Louis, MO 63131, set forth in No. MC 115331 E-25, E-26, E-27, E-30, and a portion of E-44, published June 9, 1975, February 10, 1975, April 8, 1975, June 9, 1975, and April 28, 1976, respectively, which became effective 15 days after publication unless that day was a Saturday, Sunday, or legal holiday in DC, in which case the effective date is the next working day, and a portion of the operating rights of transferor as set forth in No. MC 115331 (Sub-No. 189), issued October 12, 1971, as follows: *Chemicals,* in containers, from and to points in NJ, AR, IL, IA, KS, MN, MO, NE, OK, WI, IN, KY, WV, PA, OH, MI, CA, TN, and NV. Leonard A. Jaskiewicz, 1730 M Street NW., Washington, DC 20036, and William J. Hanlon, 55 Madison Avenue, Morristown, NJ 07960, attorneys for transferor and transferee, respectively.

H. G. HOMME, Jr.,
*Acting Secretary.*

[FR Doc. 78-12312 Filed 5-4-78; 8:45 am]

[7035-01]

[Notice No. 37]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 5, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and transfer rules, 49 CFR Part 1132:

No. MC-F-C 77642. By application filed April 26, 1978, EQUIPMENT EXPRESS, LTD., 8105 Don Mills Road, Markham, ON, Canada L3R 2P1, seeks temporary authority to transfer a portion of the operating rights of (B) Barney Kosofsky, d.b.a. Barney's Cartage Co., an individual, operating as a sole proprietorship, Carlyle Towers, Apartment 903, 23300 Providence Drive, Southfield, MI, and (BB) Lee Goddard, Inc., James V. McTevia, trustee in bankruptcy, possessor under agreement of January 31, 1973, 19001 East 8 Mile Road, East Detroit, MI 48021, under section 210a(b). The transfer to Equipment Express, Ltd., of a portion of the operating rights of (B) Barney Kosofsky, d.b.a. Barney's Cartage Co., an individual, and (BB) Lee Goddard, Inc., James V. McTevia, trustee in bankruptcy, possessor under agreement, of January 31, 1973, is presently pending.

By the Commission.

H. G. HOMME, Jr.
*Acting Secretary.*

[FR Doc. 78-12313 Filed 5-4-78; 8:45 am]

[7035-01]

[Notice No. 36]

MOTOR CARRIER TRANSFER PROCEEDINGS

MAY 5, 1978.

Application filed for temporary authority under section 210a(b) in connection with transfer application under section 212(b) and Transfer rules, 49 CFR Part 1132:

No. MC-F-C 77641. By application filed April 26, 1978, BERNARD R. MATTINGLEY and JANICE A. MATTINGLEY, individuals (husband and wife), doing business as Key Mobile Homes, 3320 Mountain View Drive, Anchorage, AK 99504, seeks temporary authority to transfer the operating rights of Totem Toters, Inc., 300 Gull Avenue, Anchorage, AK 99501, under section 210a(b). The transfer to Bernard R. Mattingley and Janice A. Mattingley, individuals (husband and wife), doing business as Key Mobile Homes, of the operating rights of Leonard H. Gross and Claire G. Hegelien, individuals, doing business as Totem Toters, Inc., is presently pending.

By the Commission.

H. G. HOMME, Jr.,
*Acting Secretary.*

[FR Doc. 78-12314 Filed 5-4-78; 8:45 am]

[7035-01]

[Notice No. 16]

SPECIAL PROPERTY BROKERS

MAY 1, 1978.

The following applicants seek to participate in the property broker special licensing procedure under 49 CFR 1045A authorizing operations as a broker at any location, in arranging for the transportation by motor vehicle, in interstate or foreign commerce, of property (except household goods), between all points in the United States including AK and HA. Any interested person shall file an original and (1) copy of a verified statement in opposition limited in scope to matters regarding applicant's fitness within 30 days after this notice. Statements must be mailed to :

Broker Entry Staff, Room 2379, Interstate Commerce Commission, Washington, DC 20423.

Opposing parties shall serve one copy of the statement in opposition concur-

rently upon applicant's representative, or applicant if no representative is named.

If an applicant is not otherwise informed by the Commission, it may commence operation 45 days after this notice.

B-78-25, filed February 13, 1978. Applicant: LANDALE, INC., 1313 Southwest Third, Room No. 4, Oklahoma City, OK 73108. Applicant's representative: C. L. Phillips, Room 248, Classen Terrace Building, 1411 North Classen, Oklahoma City, OK 73106.

B-78-30, filed March 23, 1978. Applicant: STEVENS VAN LINES, INC., 121 South Niagara Street, Saginaw, MI 48602. Applicant's representative: Robert J. Gallagher, 1000 Connecticut Avenue NW., Suite 1200, Washington, DC 20036.

By the Commission.

H. G. HOMME, Jr.,
*Acting Secretary.*

[FR Doc. 78-12315 Filed 5-4-78; 8:45 am]

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**[7035-01]**

[No. 36437]

## DEPARTMENT OF DEFENSE—PETITION FOR DECLARATORY ORDER

### Establishing Effective Date of 3 Percent Increase

AGENCY: Interstate Commerce Commission.

ACTION: Notice of order to carriers having made charges other than specified in tariffs in effect at the time.

SUMMARY: Upon petition of the administrator of General Services (GSA) in a proceeding where it was found that collection of 3 percent increased charges on household goods prior to the effective date of a valid tariff constituted overcharges in violation of the Interstate Commerce Act the Commission issued the order reproduced below. By this Notice, the Commission wishes to protect the rights of any persons not parties to this proceeding and to give them an opportunity to be heard. Opening statements of fact and argument in opposition to the order reproduced below must be filed on or before May 25, 1978, with any replies due 20 days thereafter.

*It is ordered:* Within 90 days from publication in the FEDERAL REGISTER, each motor carrier member of HGCB shall:

1. Identify each shipper who paid charges pursuant to the "conversion chart" applied in lieu of the suspended tariff supplements identified in the division's report served October 14, 1977;

2. Notify each such shipper of the difference between the amount paid, and the charges computed on the basis of tariffs in effect on May 14, 1976;

3. With this notice, provide instructions for filing claims and furnish the necessary forms.

ADDRESS: Send notice of intent to participate and address to Office of Proceedings, (Room 5342), Interstate Commerce Commission, Washington, D.C., 20423.

FOR FURTHER INFORMATION CONTACT:

Janice M. Rosenak, Deputy Director, or Harvey Gobetz, Assistant Deputy Director, Section of Rates, Office of Proceedings, Interstate Commerce Commission, Washington, D.C. 20423, 202-275-7693.

Issued in Washington, D.C., April 26, 1978.

By the Commission, Division 1, Acting as an Appellate Division, Commissioners Brown, Gresham, and Christian.

H. G. HOMME, Jr.,
*Acting Secretary.*

## DEPARTMENT OF DEFENSE—PETITION FOR DECLARATORY ORDER

### RE: ESTABLISHING EFFECTIVE DATE OF 3 PERCENT INCREASE

In a report served October 14, 1977, Division 2 found that collection of 3 percent increased charges on household goods prior to the effective date of a valid tariff constituted overcharges in violation of Section 217 of the Interstate Commerce Act.

By petition filed November 14, 1977, Household Goods Carriers' Bureau, Inc. (HGCB), seeks administrative review of this report. Replies were filed by the Department of Defense on December 5, 1977 and by Aerospace Industries Association of America, Inc., on December 14, 1977. The petition does not show any material errors in the division's statement and evaluation of the facts, conclusions of law, or findings, and does not raise any matters of fact or law not adequately considered and properly disposed of in the division's report.

By petition filed November 14, 1977, the Administrator of General Services (GSA), seeks leave to intervene in this proceeding pursuant to Rule 70 of the Commission's General Rules of Procedure (49 CFR 1100.70), and to file a petition to "remove uncertainties arising" out of our report served October 14, 1977, finding that the lawful effective dates for the 3 percent increase filed by HGCB, contemplated in I. & S. Docket No. M-29035, were July 12 and July 25, 1976. This petition is treated as a petition for specific relief, rather than modification of the outstanding declaratory order.

A reply was filed by HGCB alleging (1) that GSA has not met the requirements of Rule 70 and (2), that the Commission has no jurisdiction to grant the substantive relief sought by GSA.

GSA substantially meets the requirements of Rule 70 and it is permitted to intervene and its tendered petition is accepted for filing.

The relief specifically sought by GSA is an order by this Commission with respect to the overcharges arising during the period from May 15, 1976, to July 12, or July 25, 1976, as applicable, making the following requirements:

1. Respondent carriers should identify each affected shipper;

2. Respondent carriers should notify each shipper of the amount of refund due on grounds of overcharge;

3. Respondent carriers, at time of notification, should give instructions for filing claims, and furnish necessary forms.

The Aerospace reply to HGCB's petition also supports these requests by GSA.

Although, under section 204a(2) of the act, we do not have jurisdiction to order motor carriers to pay overcharges, our general authority extends to discovery in aid of claims shippers may make of motor carriers pursuant to section 204a(2) of the Act. Cf. Loss and Damage Claims, 340 ICC 515, 539-543 (1972). Under the national transportation plicy, it is our responsibility to "promote safe, adequate, economical and efficient service * * *." Section 204(a)(6) orders us to "administer, execute and enforce all provisions of [Part II]" and "to make all necessary orders in connection therewith * * *." This includes the provision in section 217(b) that no motor carrier shall "collect or receive a greater or less or different compensation * * * than the rates, fares and charges specified in the tariffs in effect at that time * * *." As indicated in *American Trucking Assns.* v. *United States*, 344 U.S. 298, 313 (1952), "the power under § 204(a)(6) is geared to and bounded by the limits of the regulatory system of the Act which it suplements." We do not require the payment of money but merely direct the carriers to identify and notify affected shippers and provide them with the necessary instructions and forms to file overcharge claims. If, after the claims are filed, the carriers refuse to return the overcharged amounts to the shippers, the shippers' only recourse is still to seek money judgments against the carriers in court pursuant to section 204a(2). Identification and notification requirements in no way impinge on the jurisdiction of the courts. These are not burdensome because the information to be furnished is in the possession of the carriers.

*It is ordered:* Within 90 days from publication in the FEDERAL REGISTER, each motor carrier member of HGCB shall:

1. Identify each shipper who paid charges pursuant to the "conversion chart" applied in lieu of the suspended tariff supplements identified in the division's report served October 14, 1977;

2. Notify each such shipper of the difference between the amount paid, and the charges computed on the basis of tariffs in effect on May 14, 1976;

3. With this notice, provide instructions for filing claims and furnish the necessary forms.

4. This order shall be published in the FEDERAL REGISTER to protect the rights of other persons who might have an interest in this issue, with an invitation to intervene.

Decided April 26, 1978.

By the Commissions, Division 1, Acting as an Appellate Division, Commissioners Brown, Gresham, and Christian.

H. G. HOMME, Jr.,
*Acting Secretary.*

[FR Doc. 78-12316 Filed 5-4-78; 8:45 am]

[1505-01]

## INTERSTATE COMMERCE COMMISSION

[Notice No. 42TA]

### MOTOR CARRIER TEMPORARY AUTHORITY APPLICATIONS

*Correction*

In FR Doc. 78-8684 appearing at page 13944 in the issue for Monday, April 3, 1978, under No. MC 129021 (Sub-No. 4TA), appearing in the third column of page 13946, the italicized words *"common carrier"* should have read *"contract carrier"*.

# sunshine act meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409), 5 U.S.C. 552b(e)(3).

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[6320-01]

1

[M-127, April 28, 1978]

CIVIL AERONAUTICS BOARD.

TIME AND DATE: 1 p.m.—May 5, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT:

1. Ratification of items adopted by notation.
2. Docket 31789; Allegheny's Request for Change in Service Pattern at Lexington and New Haven (Memo No. 7930, BPDA).
3. Dockets 31003 and 32276; Application of National Airlines for deletion of Newport News; Application of Piedmont Aviation for removal of restriction between New York and Newport News (Memo No. 7575-A, BPDA, OCCR, OGC).
4. Docket 32009, National New Orleans-Orlando Subpart N Application (Memo No. 7818-A, BPDA).
5. Third-Party Access to ATC Agency List (Memo No. 7931, BPDA).
6. Docket 30861. Overseas National Airways, Inc., Prestwick Investments, Inc., and Marline Resources Co., Inc. (Memo No. 7941, BPDA).
7. Docket 32367, Mixed configuration cargo charter charges proposed by KLM (Memo No. 7940, BPDA, BIA).
8. Docket 31871, Report to the Congress on the Feasibility and Economic Impact of Youth Standby Fares (BPDA).
9. Docket 32446, Revision to consequential damage and liability rules (BPDA).
10. Docket 31071; Delta's application for Houston-New Orleans fill-up rights (Memo No. 7739-A, BPDA).
11. Docket 31373, Petition of Alaska Airlines to terminate a condition of Order 73-1-12 restricting non transport diversification (BPDA, OGC).
12. Docket 28800, Phoenix-Des Moines/Milwaukee Route Proceeding (Order on reconsideration of 78-1-116) (OGC).
13. Docket 30402, British Airtours Limited, Amendment of Foreign Air Carrier Permit (Memo No. 7932, OGC, BIA).
14. Docket 30682, *Investigation of Pan American's Washington/Baltimore/Chicago service, Routes 117 and 130,* Opinion and Order on Discretionary Review (OGC).
15. Docket 30782, California-Toronto, Montreal Route Proceeding, Opinion and Order on Review (OGC).
16. Dockets 32126, 30547, 32215, 31278, 30614, 32200, 31240, 32216, 29583, 31927, 31634, and 31385, *Twin-Cities-Kansas City-Oklahoma-Texas Route Proceeding,* Order 78-2-76 Order on requests for reconsideration, consolidation and intervention (Memo No. 7481-B, OGC).
17. Docket 30654, Proposed Rulemaking to eliminate charter tariffs, Supplemental Notice Proposed Rulemaking (Memo No. 7350-A, OGC, BIA, BPDA, BOE).
18. Docket 31044, *Hazardous Articles Rules and Practices Investigation*—Draft order asking for comments on whether to make section 418 carriers parties to the case (Memo No. 7210-B, OGC).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

[S-936-78 Filed 5-3-78; 9:04 am]

[6320-01]

2

[M-127, Amdt. 1, pub. May 2, 1978]

CIVIL AERONAUTICS BOARD.

NOTICE OF ADDITION OF ITEMS TO THE MAY 5, 1978 AGENDA

TIME AND DATE: 1 p.m.—May 5, 1978.

PLACE: Room 1027, 1825 Connecticut Avenue NW., Washington, D.C. 20428.

SUBJECT: 7a. Docket 32520, excess baggage charges proposed by United (BPDA); 7b. Passenger fare increases in the Honolulu-Pago Pago market proposed by Pan American (BPDA).

STATUS: Open.

PERSON TO CONTACT:

Phyllis T. Kaylor, the Secretary, 202-673-5068.

SUPPLEMENTARY INFORMATION:

May 5 is the last regularly scheduled meeting at which the Board can consider these proposals. Item 7a must be decided by May 10, and Item 7b by May 5. Accordingly, the following Members have voted that agency business requires the addition of these items to the May 5, 1978, agenda and that no earlier announcement of these additions was possible:

Chairman Alfred E. Kahn
Vice Chairman G. Joseph Minetti
Member Lee R. West
Member Richard J. O'Melia
Member Elizabeth E. Bailey

[S-937-78 Filed 5-3-78; 9:04 am]

[6351-01]

3

COMMODITY FUTURES TRADING COMMISSION.

TIME AND DATE: 11 a.m., May 12, 1978.

PLACE: 8th Floor Conference Room, 2033 K Street NW., Washington, D.C.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Market surveillance matters.

CONTACT PERSON FOR MORE INFORMATION:

Jane Stuckey, 254-6314.

[S-939-78 Filed 5-3-78; 11:10 am]

[6351-01]

4

COMMODITY FUTURES TRADING COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., May 5, 1978.

CHANGES IN THE MEETING: Meeting is cancelled.

[S-940-78 Filed 5-3-78; 11:10 am]

[6712-01]

5

FEDERAL COMMUNICATIONS COMMISSION.

TIME AND DATE: 9:30 a.m., and 2 p.m., Tuesday, May 9, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Special Open Commission Meeting.

MATTERS TO BE CONSIDERED:

*Agenda, Item No., and Subject*

Common Carrier—1—COMSAT rate case settlement proposal (Docket No. 16070).
Common Carrier—2—Petitions to reject and suspend Western Union's tariff filings, FCC Nos. 268 and 269, Transmittal Nos. 7347 and 7348 (CC Docket 78-97).
Common—Carrier—3—Applications to expand AT&T's Dataphone Digital Service to serve a total of 96 cities, W-P-C 1420.

2:00 p.m.

Renewal—1—Petitions to deny Educational Broadcasting Corporation's renewal application (WNET-TV, Newark, N.J.).
Renewal—2—The 1978 renewals of New York and Philadelphia stations serving New Jersey.
Cable television—1—State of New Jersey petition for special relief from §§ 76.59 and 76.61 of the Commission's rules.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC, Public Information Office, telephone 202-632-7260

Issued: May 2, 1978.

[S-942-78 Filed 5-3-78; 11:0 am]

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[6712-01]

6

FEDERAL COMMUNICATIONS COMMISSION.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2 p.m., Thursday, May 4, 1978.

PLACE: Room 856, 1919 M Street NW., Washington, D.C.

STATUS: Open Commission Meeting.

CHANGES IN THE MEETING: The following agenda items have been deleted:

*Agenda, Item No., and Subject*

Common Carrier—2—Amendment of section 21.13(f) of the Commission's rules deferring state certification until after construction of DPLMRS station (Docket No. 20870, 61 FCC 2d 266).
Common Carrier—3—Petitions to reject and suspend Western Union's tariff filings, FCC Nos. 268 and 269, Transmittal Nos. 7347 and 7348 (CC Docket 78-97).
Common Carrier—4—COMSAT rate case settlement proposal (Docket No. 16070).

CONTACT PERSON FOR MORE INFORMATION:

Samuel M. Sharkey, FCC, Public Information Office, 202-632-7260.

Issued: May 2, 1978

[S-943-78 Filed 5-3-78; 11:10 am]

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[6715-01]

7

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, May 10, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Audit Reports. Compliance. Personnel.

DATE AND TIME: Thursday, May 11, 1978, at 10 a.m.

PLACE: 1325 K Street NW., Washington, D.C.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Portions open to the public:

I. Future meetings.
II. Correction and approval of minutes.
III. Advisory Opinions: 1977-42; 1978-11; 1978-22; 1978-23; 1978-24; 1978-25. AOR Status Report.
IV. Appropriations and Budget (Budget Execution Report).
V. Management Report.
VI. Audit procedures for nonresponsive candidates and committees.
VII. Earmarked contributions.
VIII. Pending legislation.
IX. FOIA Regulations.
X. Pending litigation (Litigation Status Report).
XI. Liaison with other Federal agencies.
XII. Classification actions.
XIII. Routine administrative matters.
XIV. Non-filer procedures.

*Portions closed to the public:*

Any matters not concluded at the Executive Session of May 10, 1978.

PERSON TO CONTACT FOR INFORMATION:

Mr. David Fiske, Press Officer, telephone 202-523-4065.

MARJORIE W. EMMONS,
*Secretary to the Commission.*

[S-945-78 Filed 5-3-78; 3:22 pm]

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[6740-02]

8

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (Pub. May 1, 1978, 43 FR 18627).

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 3, 1978, 10 a.m.

CHANGE IN THE MEETING: The following item has been added:

*Item No., Docket No., and Company*

CP-14—City of Fulton, Miss., Mantachie Natural Gas District.

KENNETH F. PLUMB,
*Secretary*

[S-946-78 Filed 5-3-78; 3:22 pm]

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[6730-01]

9

FEDERAL MARITIME COMMISSION.

TIME AND DATE: May 11, 1978—10 a.m.

PLACE: Room 12126, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to the public:

Agreements Nos. T-3565 and T-3565-A between the Puerto Rico Ports Authority and Sea-Land Service, Inc., and Agreements Nos. T-3567 and T-3567-A between the Puerto Rico Ports Authority and the Puerto Rico Maritime Shipping Authority providing for use of marine terminal facilities at Puerto Nuevo, San Juan.

2. Special Docket No. 561: *Sunpak Movers, Inc.* v. *Sea-Land Service, Inc.*—Review of initial decision.

3. Informal Docket No. 405(I): *Paramount Export Company* v. *Sea-Land Service, Inc.*—Review of Settlement Officer's decision.

4. Docket No. 73-55: Uniform Rules and Regulations Governing Free Time on Import Containerized Cargo at the Port of New York—Discussion of record.

Portion closed to the public:

1. Docket No. 77-26: Independent Ocean Freight Forwarders License—E. L. Mobley Inc.—Request for settlement.

CONTACT PERSON FOR MORE INFORMATION:

Francis C. Hurney, Secretary, 202-523-5725.

[S-935-78 Filed 5-3-78; 9:04 am]

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[6210-01]

10

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.

TIME AND DATE: 10 a.m., Wednesday, May 10, 1978.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda: Because of their routine nature, no substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed expansion of the System's computer hardware monitoring program.
2. Proposed interpretation of Regulation A (Extensions of Credit by Federal Reserve Banks) to provide that a bankers' acceptance secured by a field warehouse receipt covering readily marketable staples is eligible for discount by a Federal Reserve Bank despite the fact that the warehouseman is an employee of the owner of the goods. (Proposed earlier for public comment; Docket No. R-0135).

Discussion Agenda:

1. Proposed adoption of a Uniform Interagency Bank Rating System.
2. Proposal to publish for comment as an additional permissible nonbanking activity for bank holding companies: underwriting property and casualty insurance related to extensions of credit.
3. Proposed amendments to Regulations C (Securities Credit by Persons Other Than Banks, Brokers, or Dealers), T (Credit by Brokers and Dealers), and U (Credit by Banks for the Purpose of Purchasing or Carrying Margin Stocks) to provide that only those dealers submitting bid and offer quotations to an automated quotation system will be counted in preparing the Board's Over the Counter list of margin stocks. (Proposed earlier for public comment; Docket No. R-0147).
4. Any agenda items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board, 202-452-3204.

[S-941-78 Filed 5-3-78; 11:10 am]

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[6750-01]

11

FEDERAL TRADE COMMISSION.

TIME AND DATE: 2 p.m., Thursday, May 4, 1978.

PLACE: Room 532 (open), Room 540 (closed), Federal Trade Commission Building, 6th Street and Pennsylvania Avenue NW., Washington, D.C. 20580.

STATUS: Parts of this meeting will be open to the public. The rest of the meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Portions open to public:

(1) Oral argument in TRW Inc., Docket No. 9084.

Portions closed to the public:

(2) Post-oral argument meeting to consider disposition of appeal from initial decision in TRW Inc., Docket No. 9084.

CONTACT PERSON FOR MORE INFORMATION:

Wilbur T. Weaver, Office of Public Information, 202-523-3830; Recorded message, 202-523-3806.

[S-944-78 Filed 5-3-78; 11:10 am]

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[7020-02]

12

[USITC SE-78-22]

UNITED STATES INTERNATIONAL TRADE COMMISSION.

TIME AMD DATE: 9:30 a.m., Tuesday, May 9, 1978.

PLACE: Room 117, 701 E Street NW., Washington, D.C. 20436.

STATUS: Emergency meeting—less than 10 days' prior notice. Open to the public.

MATTERS TO BE CONSIDERED:

1. Status report on the Office of Legal Services.
2. Status report on the Office of the Administrative Law Judge.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-947-78 Filed 5-3-78; 3:22 pm]

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[7020-02]

13

[USITC SE-78-20B]

UNITED STATES INTERNATIONAL TRADE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: (Pub. April 25, 1978.)

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:30 a.m., Thursday, May 4, 1978.

CHANGES IN THE MEETING: Agenda Item No. 7 [Photographic, color paper from Japan and West Germany (Inv. AA1921-Inq.-11 and -32)—briefing and vote], previously announced as open to the public, was closed to the public (discussion only) by a vote of a majority of the entire membership of the Commission.

CONTACT PERSON FOR MORE INFORMATION:

Kenneth R. Mason, Secretary, 202-523-0161.

[S-948-78 Filed 5-3-78; 3:22 pm]

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[3710-GX]

14

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: 8 a.m., May 15, 1978.

PLACE: On board MV *Mississippi* at foot of Ward Avenue, Caruthersville, Mo.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by the President on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in Memphis District.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rodger D. Harris, telephone 601-636-1311, extension 205.

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: 2 p.m., May 16, 1978.

PLACE: On board MV *Mississippi* at Helena Harbor, Helena, Ark.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by the President on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rodger D. Harris, telephone 601-636-1311, extension 205.

[S-952-78 Filed 5-3-78; 3:22 pm]

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[3710-GX]

15

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: 8:30 a.m., May 17, 1978.

PLACE: On board MV *Mississippi* at Lake Providence Harbor, Lake Providence, La.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by the president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in Vicksburg District.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Rodger D. Harris, telephone 601-636-1311, extension 205.

MISSISSIPPI RIVER COMMISSION.

TIME AND DATE: 8:30 a.m., May 18, 1978.

PLACE: On board MV *Mississippi* at Tri-G Marine Supply Company, Inc.,

foot of France Street, Baton Rouge, La.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: (1) Report by the president on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in New Orleans District.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Roger D. Harris, telephone 601-636-1311, extension 205.

[S-953-78 Filed 5-3-78; 3:22 pm]

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[4110-24]

16

NATIONAL MUSEUM SERVICES BOARD.

TIMES AND DATES: 9 a.m. Sunday, May 14, 1978 and 9 a.m. Monday, May 15, 1978.

PLACE: President's Room, Montana Hall, Montana State University, Bozeman, Mont.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Status of Institute of Museum Services' grants program.
2. Status of application's review process.
3. Chairman's report.
4. Director's report.

CONTACT PERSON FOR MORE INFORMATION:

Mrs. Leila Kimche, Director, Institute of Museum Services, 202-245-6753.

DATE OF NOTICE: May 5, 1978.

Signed at Washington, D.C. on May 2, 1978.

LEILA KIMCHE,
*Director, Institute of Museum Services.*

[S-949-78 Filed 5-3-78; 3:22 p.m.]

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[4910-58]

17

NATIONAL TRANSPORTATION SAFETY BOARD.

TIME AND DATE: 9:30 a.m., Thursday, May 11, 1978 (NM-78-21).

PLACE: NTSB Board Room, National Transportation Safety Board, 800 Independence Avenue SW., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. *Railroad Accident Report.*—Side Collision of Southern Railway Company Trains Nos. 1 and 152, Spencer, N.C., October 8, 1977.
2. *Letter.*—To Mr. William Fanning re reconsideration of probable cause, Falcon 20F, Naples, Fla., November 12, 1976.

CONTACT PERSON FOR MORE INFORMATION:

Sharon Flemming, 202-472-6022.

[S-938-78 Filed 5-3-78; 9:04 am]

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[7710-12]

18

UNITED STATES POSTAL SERVICE (BOARD OF GOVERNORS).

NOTICE OF VOTE TO CLOSE MEETINGS

On May 2, 1978, the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of its meetings currently scheduled for May 19 and June 6, 1978. Each of the members of the Board voted in favor of partially closing these meetings, which are expected to be attended by the following persons: Governors Wright, Holding, Ching, Codding, Hardesty, and Robertson; Postmaster General Bolger; Deputy Postmaster General Conway, and Secretary to the Board Cox.

The portion of the meeting to be closed will consist of a discussion of the Postal Service's possible strategies and positions in current collective bargaining negotiations involving parties to the 1975 National Agreement between the Postal Service and four labor organizations representing certain postal employees, which is scheduled to expire in July of 1978.

The Board of Governors is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors has determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, the portion of the meeting to be closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the portion of the meeting to be closed may properly be closed to public observation, pursuant to sections 552b(c)(3) and 552b(c)(9)(B) of title 5 and section 410(c)(3) of title 39, United States Code, and §§ 7.3(c) and 7.3(i) of title 39, Code of Federal Regulations.

LOUIS A. COX,
*Secretary.*

[S-950-78 Filed 5-3-78; 3:22 pm]

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[7710-12]

19

UNITED STATES POSTAL SERVICE (BOARD OF GOVERNORS).

NOTICE OF VOTE TO CLOSE MEETING

On May 2, 1978, the Board of Governors of the United States Postal Service unanimously voted to close to public observation a portion of its meeting. Each of the members of the Board voted in favor of partially closing the meeting, which was attended by Governors Wright, Holding, Ching, Codding, Hardesty, and Robertson; Postmaster General Bolger; Deputy Postmaster General Conway; and Secretary to the Board Cox.

The portion of the meeting closed consisted of a discussion of the Postal

Service's possible strategies and positions in the current collective bargaining negotiations involving parties to the 1975 National Agreement between the Postal Service and four labor organizations representing certain postal employees, which is scheduled to expire in July of 1978.

The Board of Governors is of the opinion that public access to any discussion of possible strategies that Postal Service management may decide to adopt, or the positions it may decide to assert, in any collective bargaining sessions that may take place would be likely to frustrate action to carry out those strategies or assert those positions successfully. In making this determination, the Board is aware that the effectiveness of the collective bargaining process in labor-management relations has traditionally depended on the ability of the parties to prepare strategies and formulate positions without prematurely disclosing them to the opposite party. The public has a particular interest in the integrity of this process as it relates to the Postal Service, since the outcome of the negotiations between the Postal Service and the various postal unions, and consequently the cost, quality and efficiency of postal operations, may be adversely affected if the process is altered.

Accordingly, the Board of Governors determined that, pursuant to section 552b(c)(3) of title 5, United States Code, and § 7.3(c) of title 39, Code of Federal Regulations, the portion of the meeting closed is exempt from the open meeting requirement of the Government in the Sunshine Act (5 U.S.C. § 552b(b)), because it is likely to disclose information prepared for use in connection with the negotiation of collective bargaining agreements under chapter 12 of title 39, United States Code, which is specifically exempted from disclosure by section 410(c)(3) of title 39, United States Code. The Board has determined further that, pursuant to section 552b(c)(9)(B) of title 5, United States Code, and § 7.3(i) of title 39, Code of Federal Regulations, the discussion is exempt, because it is likely to disclose information the premature disclosure of which is likely to frustrate significantly proposed Postal Service action. Finally, the Board of Governors has determined that the public has an interest in maintaining the integrity of the collective bargaining process and that the public interest does not require that the Board's discussion of its possible collective bargaining strategies and positions be open to the public.

In accordance with section 552b(f)(1) of title 5, United States Code, and § 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in his opinion the portion of the meeting closed may properly be closed to public observation, pursuant to sections 552b(c)(3) and 552b(c)(9)(B) of title 5 and section 410(c)(3) of title 39, United States Code, and §§ 7.3(c) and 7.3(i) of title 39, Code of Federal Regulations.

LOUIS A. COX,
*Secretary.*

[S-951-78 Filed 5-3-78; 3:22 pm]

FRIDAY, MAY 5, 1978
PART II

federal register

# DEPARTMENT OF HEALTH, EDUCATION AND WELFARE

## Public Health Service

■

## Project Grants for Genetic Diseases Testing and Counseling Programs

[4110-84]

## DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

### Public Health Service

[42 CFR Part 51f]

### PROJECT GRANTS FOR GENETIC DISEASES TESTING AND COUNSELING PROGRAMS

### Notice of Proposed Rulemaking

AGENCY: Public Health Service, HEW.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice sets forth proposals for implementing the administration of project grants for genetic diseases testing and counseling programs under the amendments to title XI of the Public Health Service Act. Interested parties are invited to submit written comments and recommendations concerning the proposals, as well as suggestions for alternative methods of implementing the programs. After consideration of the material received in response to this notice, the Secretary of Health, Education, and Welfare will issue final regulations.

DATE: Comments must be received by July 5, 1978.

ADDRESS: Written comments and recommendations should be submitted to the Director, Division of Policy Development, Bureau of Community Health Services, Health Services Administration, Room 6-17, 5600 Fishers Lane, Rockville, Md. 20857. All comments received in timely response to this notice will be considered and will be available for public inspection in the above-named office on weekdays between the hours of 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT:

Audrey Manley, M.D., Acting Chief, Genetic Services Branch, Office of Maternal and Child Health, Bureau of Community Health Services, Room 6-40, 5600 Fishers Lane, Rockville, Md. 20857, 301-443-1080.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, with the approval of the Secretary of Health, Education, and Welfare, proposes to issue regulations to implement amendments to title XI of the Public Health Service Act (42 U.S.C. 300b et seq.). These amendments were enacted by title IV of Pub. L. 94-278, the "National Sickle Cell Anemia, Cooley's Anemia, Tay-Sachs, and Genetic Diseases Act." The provisions of this Act replace former parts A and B of title XI of the Public Health Service Act, which authorized grants to programs for sickle cell anemia and Cooley's anemia. The new Act provides a broader and more flexible authority, enabling the Secretary to make grants for testing and counseling services for a wide range of genetic diseases.

The issues raised by the Act and the Department's proposed approaches for resolving them are as follows:

1. *Diseases to be included in program coverage.* The Act authorizes the Secretary to make grants for testing and counseling programs for genetic diseases, but does not explicitly require coverage of any particular disease, or group of diseases, under these programs. Over 2,000 different genetic diseases have been identified, so that coverage of each of these diseases under any program would be highly impractical, if not impossible, However, efficient utilization of genetic expertise and laboratory facilities is not limited to one disease, and, on a realistic basis, efficient utilization of such resources dictates the inclusion of as many diseases as feasible. Therefore, a determination is needed as to how many and which diseases are to be covered under the programs.

Nine diseases are specifically mentioned in the Act—sickle cell anemia, Cooley's anemia, Tay-Sachs disease, cystic fibrosis, dysautonomia, hemophilia, retinitis pigmentosa, Huntington's chorea, and muscular dystrophy. It is recognized that these nine genetic diseases are a heterogeneous group: (1) they are not necessarily the most prevalent or serious; (2) accurate screening and diagnostic procedures are not available for all; and (3) the service needs created by these nine diseases are disparate because of wide variations in such factors as the age of onset and the degree of disability. It is clear, however, that the statutory intent is to provide services for a broad range of genetic disorders inclusive of, but not limited to, the nine diseases listed in the Act, and the Secretary believes that coverage of these nine, as an initial requirement for each grantee, is a reasonable way to assure that the programs carry out the law. Therefore, the Secretary proposes that each project be required to provide services with respect to at least the nine specified diseases. If, however, there has been only a case or two of any one of those diseases in a project's catchment area within the past several years, the project would be required only to establish a plan for, and be capable of immediately implementing services for, that particular disease.

The Secretary proposes to develop a broad-based genetic disease program inclusive of, but not limited to, the nine diseases specified in the statute. The grantee would determine the additional conditions to be addressed based upon (1) a determination of priority needs within the proposed catchment area, and (2) the availability of reliable screening and diagnostic techniques for the detection of genetic disorders in the prenatal, neonatal, or early childhood periods, and the detection of carrier states. The Secretary would approve extended program coverage of additional genetic disorders in categories of early detection and carrier status, taking into account: (1) the need for such services; (2) the prevalence of the disease; (3) availability of reliable testing methods; and (4) availability of resources. Comments are solicited on the feasibility of this approach.

2. *Essential program services.* The Secretary believes that each grantee must be required to provide a certain minimum set of essential services, to insure maximum program effectiveness and uniformity. The Secretary proposes that the essential services of an approvable project include testing and confirmatory diagnostic procedures, counseling, referral for medical management, followup to assure that referrals have been accomplished, and facilitating services (such as transportation) when needed. Such services could be provided directly or indirectly, and at more than one location. The Secretary also proposes that each grantee be required to provide these services by appropriately qualified personnel who meet applicable certification and/or licensure requirements, and also that each grantee be required to make the services available to all residents of the catchment area.

3. *Catchment area.* The Act contains no explicit requirements as to the size of a catchment area to be served by a project. However, the Act does require the testing and counseling programs to be established and operated "primarily in conjunction with other existing health programs, including programs assisted under Title V of the Social Security Act." Fifty States currently have a statewide Maternal and Child Health and Crippled Children's Services Program; approximately 44 States have statewide screening programs for inborn errors of metabolism in newborn infants; and approximately 33 States have university-based genetic centers under State plans for genetic services, 21 of which are assisted under Title V of the Social Security Act. The Secretary feels that utilization of these existing programs and resources would facilitate the establishment of statewide networks of genetic disease services, and allow for the most rapid and effective use of funds under a grant or contract (Section 1104(b)). Therefore, the Secretary proposes that the minimum catchment area be no smaller than a State. Suggestions are solicited as to the appropriateness of this or any other catchment area proposal.

4. *Administrative requirements.* Section 1104(a) of the Act sets forth sev-

eral requirements for project administration. For example, each project must be administered by or under the supervision of the applicant, each applicant must provide for community representation where appropriate in the development and operation of the project, and each applicant must establish proper fiscal controls and accounting procedures. Similar requirements were in effect under the previous title XI sickle cell and Cooley's anemia programs. Comments relating to past experience, as well as suggestions for current implementation of these requirements, are invited.

Section 1104(a)(2) of the Act, relating to confidentiality of medical records and other information, also closely parallels a similar provision under the former legislation, with one significant modification. Section 1104(a)(2) specifically requires "informed consent" of the patient (or his guardian) to release identifying information. The Secretary invites suggestions as to how this requirement should be implemented and identification of foreseeable problems in its application, particularly when program services are provided by a third party.

5. *Criteria for evaluation of grant applications.* The act requires that in making a grant for testing and counseling programs, the Secretary shall "take into account the number of persons to be served by the program * * * and the extent to which rapid and effective use will be made of grant funds" (section 1104(b)). The Secretary proposed to interpret the latter half of this provision through use of the following specific criteria: (1) how well the requirements set forth in the regulations for approval of applications have been met; (2) the cost effectiveness of the proposal; (3) the feasibility of the plan for providing services and the rapidity with which services can be made available; (4) the extent to which services will be integrated with other existing programs, including title V programs and federally assisted sickle cell clincis in the catchment area; (5) the extent to which the program is part of a network of services which covers the catchment area; and (6) the soundness of the management capability of the applicant. The Secretary invites comments as to the utility of these standards, and suggestions as to other appropriate criteria.

6. *Priority for areas in greatest need.* Section 1104(b)(2) requires the Secretary to "give priority to programs operating in areas which the Secretary determines have the greatest number of persons who will benefit from and are in need of the services provided under such programs." Precise determination of the number of people in need of these programs is impossible, because uniform prevalence data for genetic diseases are not available. A significant proportion of genetic diseases, however, is found in the general population and is not specific to any one identifiable population group. Consequently, the Secretary believes that, if the programs do address coverage of a group of diseases, the primary determination of greatest need should be based on the population density of the proposed catchment area.

As stated above, the Secretary must also take into consideration the estimated unmet need for the services in the area. Suggestions are invited as to what factors should be considered in making this determination.

7. *Special consideration for prior sickle cell grantees.* Section 1104(c) requires the Secretary, in making grants under section 1101, to "give special consideration to applications from entities that received grants from, or entered into contracts with, the Secretary for the preceding fiscal year for the conduct of comprehensive sickle cell centers or sickle cell screening and education clinics." One of several different interpretations of the "special consideration" requirement could be adopted.

One possible approach, for example, would allow for "special consideration" in terms of a priority, in the event that the previous sickle cell grantee has fully satisfied all other statutory and regulatory requirements and is otherwise equal in all respects to alternative applicants. A different approach would allow continued funding for such applicants on a transitional basis if: (1) It is determined that the individual program has been effective and is still needed, (2) that the sickle cell services would be terminated or otherwise rendered ineffective during a transitional period of establishing new, more inclusive programs, and (3) that the applicant shows that it will investigate and, where in the judgment of the Secretary it is feasible and appropriate, take steps to become a comprehensive project as described above. The Secretary invites suggestions on how to implement this statutory provision.

Dated: March 20, 1978.

JULIUS B. RICHMOND,
*Assistant Secretary for Health.*

Approved: April 24, 1978.

JOSEPH A. CALIFANO, Jr.,
*Secretary.*

[FR Doc. 78-11806 Filed 5-4-78; 8:45 am]

Federal Register

FRIDAY, MAY 5, 1978
PART III

# DEPARTMENT OF LABOR

## Employment Standards Administration

■

# MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

## General Wage Determination Decisions

[4510-27]

## DEPARTMENT OF LABOR

### Employment Standards Administration

### MINIMUM WAGES FOR FEDERAL AND FEDERALLY ASSISTED CONSTRUCTION

### General Wage Determination Decisions

General Wage Determination Decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed in construction activity of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates, (37 FR 21138) and of Secretary of Labor's Orders 12-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General Wage Determination Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

#### MODIFICATIONS AND SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

Modifications and Supersedeas Decisions to General Wage Determination Decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the Modifications and Supersedeas Decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24-70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of Part 1 of Subtitle A of Title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 13-71 and 15-71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing General Wage Determination Decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and Supersedeas Decisions are effective from their date of publication in the FEDERAL REGISTER without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Office of Special Wage Standards, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rule-making procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Wage Determination Decision.

#### NEW GENERAL WAGE DETERMINATION DECISIONS

ALABAMA—AL78-1045.

#### 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.

| | |
|---|---|
| Arkansas: | |
| AR77-4173 | Aug. 19, 1977. |
| AR77-4285; AR77-4286; AR77-4287; AR77-4288. | Sept. 30, 1977. |
| AR78-4290 | Nov. 11, 1977. |
| California: | |
| CA78-5002 | Feb. 24, 1978. |
| Connecticut: | |
| CT78-3004 | Feb. 17, 1978. |
| Iowa: | |
| IA77-4223; IA77-4224; IA77-4225; IA77-4226; IA77-4227; IA77-4228; IA77-4229; IA77-4230; IA77-4231; IA77-4232; IA77-4233; IA77-4234; IA77-4235. | Sept. 30, 1977. |
| Maryland: | |
| DC78-3008 | Mar. 17, 1978. |
| Mississippi: | |
| MS78-1021 | Mar. 3, 1978. |
| Missouri: | |
| MO77-4271; MO77-4272 | Sept. 30, 1977. |
| Ohio: | |
| OH78-2002 | Feb. 10, 1978. |
| Oklahoma: | |
| OK77-4273; OK77-4274; OK77-4276; OK77-4277; OK77-4283; OK77-4284. | Sept. 30, 1977. |
| OK78-4022; OK78-4023 | Mar. 31, 1978. |
| Pennsylvania: | |
| PA76-3169 | May 21, 1976. |
| PA77-3060 | May 20, 1977. |
| PA77-3107 | Aug. 26, 1977. |
| PA77-3121; PA77-3122; PA77-3123; PA77-3124; PA77-3125. | Sept. 9, 1977. |
| PA77-3128 | Sept. 16, 1977. |
| PA78-3013 | Apr. 14, 1978. |
| Texas: | |
| TX77-4139 | July 1, 1977. |
| TX78-4030; TX78-4031; TX78-4036; TX78-4037; TX78-4040; TX78-4043.. | Apr. 14, 1978. |
| Virginia: | |
| DC78-3008 | Mar. 17, 1978. |
| Washington, D.C.: | |
| DC78-3008 | Mar. 17, 1978. |

#### SUPERSEDEAS DECISIONS TO GENERAL WAGE DETERMINATION DECISIONS

The numbers of the decisions being superseded and their dates of publication in the FEDERAL REGISTER are listed with each State.

Supersedeas Decision numbers are in parentheses following the numbers of the decisions being superseded.

| | |
|---|---|
| Kansas: | |
| MO77-4266 (MO78-4048); MO77-4267 (MO78-4049). | Sept. 30, 1977. |
| Missouri: | |
| MO77-4266 (MO78-4048); MO77-4267 (MO78-4049). | Sept. 30, 1977. |
| New Mexico: | |
| NM 78-4021 (NM 78-4046) | Mar. 10, 1978. |
| Ohio: | |
| OH77-2135 (OH78-2059) | Dec. 9, 1977. |
| Pennsylvania: | |
| PA77-3043 (PA78-3017) | Apr. 8, 1977. |

## NEW DECISION

STATE: Alabama
COUNTY: *See below
DECISION NUMBER: AL78-1045
DATE: Date of Publication
DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

*Counties: Barbour, Coffee, Covington, Dale, Geneva, Henry, Houston and Russell.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| AIR CONDITIONING MECHANIC | $ 5.25 | | | | |
| BRICKLAYERS | 5.00 | | | | |
| CARPENTERS | 4.16 | | | | |
| CEMENT MASONS | 4.00 | | | | |
| DRYWALL FINISHER | 5.50 | | | | |
| DRYWALL HANGER | 5.00 | | | | |
| ELECTRICIANS | 3.50 | | | | |
| INSULATORS | 3.00 | | | | |
| LABORERS | 2.75 | | | | |
| PAINTERS, Brush | 5.00 | | | | |
| PLUMBERS and PIPEFITTERS | 4.05 | | | | |
| ROOFERS | 4.25 | | | | |
| SHEET METAL WORKERS | 4.29 | | | | |
| SOFT FLOOR LAYERS | 3.30 | | | | |
| TRUCK DRIVERS | 3.50 | | | | |
| WELDERS - rate for craft | | | | | |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Bulldozers | 3.63 | | | | |

## MODIFICATIONS P. 1

| DECISION NO. AR77-4173 - Mod. #8 (42 FR 42063 - August 19, 1977 Jefferson County, Arkansas | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| BRICKLAYERS | $ 9.00 | .40 | .35 | | .04 |
| CARPENTERS: | | | | | |
| WORK in excess of $1,000,000.: | | | | | |
| Carpenters | 9.06 | .45 | .35 | | .05 |
| Millwrights-Piledrivermen | 9.56 | .45 | .35 | | .05 |
| WORK under $1,000,000.: | | | | | |
| Carpenters | 8.36 | .45 | .35 | | .05 |
| Millwrights-Piledrivermen | 8.86 | .45 | .35 | | .05 |
| ROOFERS | 8.65 | | .10 | | |
| DECISION NO. AR77-4285 - Mod. #7 (42 FR 52898 - September 30, 1977) Garland, Hot Springs and Clark Counties, Arkansas | | | | | |
| CHANGE: | | | | | |
| CARPENTERS: | | | | | |
| Garland County & Northern 2/3 of Hot Springs County: | | | | | |
| Carpenters contracts in excess of $1,000,000. | | | | | |
| Carpenters | 9.06 | .45 | .35 | | .05 |
| Millwrights-Piledrivermen | 9.56 | .45 | .35 | | .05 |
| Carpenters contracts under $1,000,000.: | | | | | |
| Carpenters | 8.36 | .45 | .35 | | .05 |
| Millwrights-Piledrivermen | 8.86 | .45 | .35 | | .05 |
| CARPENTERS (Remainder of Hot Springs County): | | | | | |
| Carpenters | 9.06 | .45 | .35 | | .05 |
| Millwrights & Piledrivermen | 9.56 | .45 | .35 | | .05 |
| ROOFERS | 8.65 | | .10 | | |
| DECISION NO. AR77-4286 - Mod. #7 (42 FR 52900 - September 30, 1977) Union & Ouachita Cos., Arkansas | | | | | |
| CHANGE: | | | | | |
| CARPENTERS: | | | | | |
| Carpenters | 8.36 | .45 | .35 | | .05 |
| Millwrights-Piledrivermen | 8.86 | .45 | .35 | | .05 |
| ROOFERS | 8.65 | | .10 | | |

| DECISION NO. AR77-4287 - Mod. #8 (42 FR 52903 - September 30, 1978) Pulaski County, Arkansas | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| BRICKLAYERS-STONEMASONS | $ 9.00 | .40 | .35 | | .04 |
| CARPENTERS: | | | | | |
| Carpenters | 9.06 | .45 | .35 | | .05 |
| Millwrights-Piledrivermen | 9.56 | .45 | .35 | | .05 |
| ROOFERS | 8.65 | | .10 | | |
| LINE CONSTRUCTION: | | | | | |
| Linemen | 11.60 | | 3% | | 3/8% |
| Cable splicers | 11.725 | | 3% | | 3/8% |
| Operator | 11.60 | | 3% | | 3/8% |

| DECISION NO. AR77-4288 - Mod. #6 (42 FR 52901 - September 30, 1977) Sebastian, Crawford and Washington Counties, Arkansas | | | | | |
|---|---|---|---|---|---|
| CHANGE: | | | | | |
| BRICKLAYERS-Stonemasons | 9.00 | .40 | .35 | | .04 |
| CARPENTERS: | | | | | |
| Sebastian & Crawford Counties: | | | | | |
| Carpenters | 8.52 | .45 | .35 | | .05 |
| Millwrights & Piledrivermen | 9.28 | .45 | .35 | | .05 |
| WASHINGTON COUNTY: | | | | | |
| Carpenters | 8.61 | .35 | .35 | | .05 |
| Millwrights & Piledrivermen | 9.11 | .35 | .35 | | .05 |
| ROOFERS | 8.65 | | .10 | | |

| DECISION NO. AR77-4290 - Mod. #6 (42 FR 58924 - November 11, 1977) Conway, Van Buren, Perry and Cleburne Counties, Arkansas | | | | | |
|---|---|---|---|---|---|
| CHANGE: | | | | | |
| BRICKLAYERS-Stonemasons | 9.00 | .40 | .35 | | .04 |
| CARPENTERS: (Cleburne, Van Buren County and the Eastern half of Conway and Perry Counties: | | | | | |
| Carpenters | 9.06 | .45 | .35 | | .05 |
| Millwrights & Piledrivermen | 9.56 | .45 | .35 | | .05 |
| WESTERN half of Conway and Perry Counties: | | | | | |
| Carpenters | 8.36 | .45 | .35 | | .05 |
| Millwrights-Piledrivermen | 8.86 | .45 | .35 | | .05 |
| ROOFERS | 8.65 | | .10 | | |



| DECISION NO. CA78-5002 - Mod.#2 (42 FR 7881 - February 24, 1978) Alameda, Alpine, Amador, Butte, Calaveras, Colusa, Contra Costa, Del.Norte, El Dorado, Fresno, Glenn, Humboldt, Kings, Lake, Lassen, Medera, Marin, Mariposa, Mendocino, Meced, Modoc, Monterey, Napa, Nevada, Placer, Plumas, Sacramento, San Joaquin, San Mateo, Santa Clara, Santa Cruz, Shasta, Sierra, Siskiyou, Solono, Sonoma, Stanislaus, Sutter, Tehama, Trinity, Tulare, Tuolumne, Yolo and Yuba Counties, California | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: Decision No. CA78-5002 - Mod. No. 1, in 43 FR 17162, dated April 21, 1978 to read: Decision No. CA78-5003 | | | | | |

| DECISION NO. CT78-3004- Mod #2 (43 FR 7117- February 17, 1978) Hartford, Middlesex, New Haven, New London, and Tolland Counties, Connecticut | | | | | |
|---|---|---|---|---|---|
| Change: | | | | | |
| Electricians: | | | | | |
| Middlesex Co.: Centerbrook, Chester, Clinton, Cobalt, Deep River, Durham, E. Hampton, Essex, Haddam, Higganum, Ivoryton, Middle Haddam, Moodus, Old Saybrook, Rockfall & Westbrook; New Haven Co.: Ansonia, Branford, Cheshire, Derby, Guilford, Madison, Meriden, New Have, N. Branford, N.Haven, Northford, Orange, S.Britain, Wallingford; New London Co.: E.Lyme, Groton, Lyme, New London, Old Lyme, & Waterford | $10.36 | 1.00 | 3%+.40 | | 1of1% |

| Decision #IA77-4223-Mod. #3 (42 FR-53002-September 30,1977) Blackhawk County, Iowa | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| PLUMBERS AND STEAMFITTERS | $ 10.77 | .75 | .96 | | .08 |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| **Decision #IA77-4224-Mod. #4 (42 FR-53004-September 30,1977) Cerro Gordo (City of Mason City) Iowa** | | | | | |
| Change: | | | | | |
| CEMENT MASONS | 10.40 | | | | |
| LABORERS: | | | | | |
| GROUP 1 | 7.99 | .30 | .40 | | |
| GROUP 2 | 8.24 | .30 | .40 | | |
| GROUP 3 | 8.49 | .30 | .40 | | |
| PLUMBERS AND STEAMFITTERS | 11.50 | .65 | .55 | | .04 |
| ROOFERS | 8.52 | | | | |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| **Decision #IA77-4225-Mod. #2 (42 FR-53006-September 30,1977) Clinton (City of Clinton and abutting municipalities) Iowa** | | | | | |
| Change: | | | | | |
| LABORERS: | | | | | |
| GROUP 1 | 8.93 | .30 | .60 | | |
| GROUP 2 | 9.18 | .30 | .60 | | |
| GROUP 3 | 9.23 | .30 | .60 | | |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| **Decision #IA77-4226-Mod. #3 (42 FR-53007-September 30,1977) Des Moines (City of Burlington and abutting municipalities and Burlington Ordinance Plant) Iowa** | | | | | |
| Change: | | | | | |
| PLUMBERS AND STEAMFITTERS | 12.05 | .50 | 1.35 | | .05 |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |



| Decision #IA77-4227-Mod. #3 (42 FR-53009-September 30,1977) Dubuque (City of Dubuque and abutting municipalities) Iowa | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| SPRINKLER FITTERS | $ 11.93 | .75 | 1.05 | | .08 |
| **Decision #IA77-4228-Mod. #3 (42 FR-53011-September 30,1977) Johnson (City of Iowa City and abutting municipalities) Iowa** | | | | | |
| Change: | | | | | |
| BRICKLAYERS | 11.89 | | .55 | | |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| **Decision #IA77-4229-Mod. #4 (42 FR-53013-September 30,1977) Linn County, Iowa** | | | | | |
| Change: | | | | | |
| BRICKLAYERS | 11.89 | | .55 | | |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| **Decision #IA77-4230-Mod. #5 (42 FR-53015-September 30,1977) Polk County, Iowa** | | | | | |
| Change: | | | | | |
| MARBLE,TILE,TERRAZZO FINISHERS | 9.16 | | | | |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| **Decision #IA77-4231-Mod. #3 (42 FR-53017-September 30,1977) Pottawattamie County, Iowa** | | | | | |
| Change: | | | | | |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |

MODIFICATIONS P. 6

| Decision #IA77-4232-Mod. # 2 (42 FR-53019-September 30,1977) Scott County, Iowa | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| POWER EQUIPMENT OPERATORS: | | | | | |
| GROUP 1 | $ 11.80 | .65 | .70 | | .08 |
| GROUP 2 | 10.40 | .65 | .70 | | .08 |
| GROUP 3 | 9.35 | .65 | .70 | | .08 |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| Decision #IA77-4233 Mod. #2 (42 FR-53020-September 30,1977) Story (City of Ames and abutting municipalities) Iowa | | | | | |
| Change: | | | | | |
| MARBLE,TILE,TERRAZZO FINISHERS | 9.16 | | | | |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| Decision #IA77-4234 Mod. #2 (42 FR-53022-September 30,1977) Webster (City of Fort Dodge) Ia | | | | | |
| Change: | | | | | |
| ROOFERS | 6.75 | | | | |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |
| Decision #IA77-4235-Mod. #4 (42 FR-53024-September 30,1977) Woodbury (City of Sioux City and abutting municipalities) Iowa | | | | | |
| Change: | | | | | |
| SHEETMETAL WORKERS | 10.50 | .50 | .44 | | .04 |
| SPRINKLER FITTERS | 11.93 | .75 | 1.05 | | .08 |

MODIFICATIONS P. 7

| DECISION #MS78-1021 - Mod. #2 (43 FR 9082 - dated March 3, 1978) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Area V Counties: Adams, Amite, Covington, Forrest, Franklin, Greene, Jefferson, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Marion, Perry, Pike, Walthall, Wayne, and Wilkinson Counties, Mississippi | | | | | |
| Change: | | | | | |
| Motor Patrol | $4.50 | | | | |
| DECISION #MO77-4271 - Mod. #3 (42 FR 53068 - September 30, 1977) Franklin, Jefferson, Lincoln, St. Charles, Warren Counties & City & County of St. Louis, Missouri | | | | | |
| Change: | | | | | |
| Sheet metal workers | $10.87 | .56+3% | .71 | .87 | .04 |
| DECISION #MO77-4272 - Mod. #2 (42 FR 53071 - September 30, 1977) Franklin, Jefferson, Lincoln, St. Charles, Warren Counties & City & County of St. Louis, Missouri | | | | | |
| Change: | | | | | |
| Laborers: | | | | | |
| Zone 1 | | | | | |
| Wrecking | 9.65 | .45 | 1.00 | | |
| Plumbers (Franklin, Jefferson, St. Charles, St. Louis and Warren Counties) | 11.155 | .80 | .80 | .80 | .20 |
| Sheet metal workers | 10.87 | .56+3% | .71 | .87 | .04 |
| Sprinkler fitters | 13.11 | .65 | .95 | | .11 |
| Omit: | | | | | |
| Laborers: | | | | | |
| Zone 1 | | | | | |
| Residential rehabilitation work | 6.05 | .45 | 1.00 | | |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. OH78-2002 - MOD. #1 (43 FR 5989 - February 10, 1978) Mahoning & Trumbull Counties, Ohio | | | | | |
| Change: | | | | | |
| CARPENTERS: | | | | | |
| Commercial Building | 10.74 | 1.07 | 1.10 | | .05 |
| Residential | 9.67 | 1.07 | 1.10 | | .05 |
| ELECTRICIANS: | | | | | |
| Mahoning (Austintown, Beaver, Berlin, Broadman, Canfield, Ellsworth, Coitsville, Goshen, Green, Jackson, Poland, Springfield, & Youngstown Twps.) & Trumbull (Hubbard & Liberty Twps.) Cos | 13.03 | .59 | 7% | | .3% |
| IRONWORKERS: | | | | | |
| Ornamental; Reinforcing; & Structural | 12.03 | .40 | 1.30 | | .07 |
| Sheeters | 12.53 | .40 | 1.30 | | .07 |
| Bucker-Up | 12.155 | .40 | 1.30 | | .07 |
| MILLWRIGHTS; Piledrivermen | 11.53 | 1.07 | 1.10 | | .05 |
| SHEET METAL WORKERS | 12.26 | .75 | .79 | | .04 |
| SOFT FLOOR LAYERS: | | | | | |
| Commercial Building | 10.20 | 1.07 | 1.10 | | .05 |
| Residential | 9.18 | 1.07 | 1.10 | | .05 |
| SPRINKLER FITTERS | 12.75 | .75 | 1.05 | | .08 |
| Add: | | | | | |
| MARBLE SETTERS; Terrazzo Workers; Tile Setters: Mahoning County | 12.305 | | | | |
| PLASTERERS: Mahoning County (Smith Twp.) | 10.79 | .85 | .60 | | .01 |



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. OK77-4273 - Mod. #7 (42 FR 53091 - September 30, 1977) Oklahoma, Cleveland, Caddo, Grady Canadian, Kingfisher, Logan, Lincoln, McClain, Seminole and Pottawatomie Counties, Oklahoma | | | | | |
| CHANGE: | | | | | |
| SPRINKLER FITTERS | $11.60 | .75 | 1.05 | | .08 |
| GLAZIERS | 9.30 | | | | |
| DECISION NO. OK77-4274 - Mod. #7 (42 FR 53094 - September 30, 1977) Garfield County, Oklahoma | | | | | |
| CHANGE: | | | | | |
| SPRINKLER FITTERS | 11.60 | .75 | 1.05 | | .08 |
| GLAZIERS | 9.30 | | | | |
| DECISION NO. OK77-4276 - Mod. #5 (42 FR 53099 - September 30, 1977) Wagoner County, Oklahoma | | | | | |
| CHANGE: | | | | | |
| SPRINKLER FITTERS | 11.60 | .75 | 1.05 | | .08 |
| DECISION NO. OK77-4277 - Mod. #3 (42 FR 53101 - September 30, 1977) Pittsburg County, Oklahoma | | | | | |
| CHANGE: | | | | | |
| SPRINKLER FITTERS | 11.60 | .75 | 1.05 | | .08 |
| DECISION NO. OK77-4283 - Mod. #4 (42 FR 53106 - September 30, 1977) McIntosh County, Oklahoma | | | | | |
| CHANGE: | | | | | |
| SPRINKLER FITTERS | 11.60 | .75 | 1.05 | | .08 |
| DECISION NO. OK77-4284 - Mod. #4 (42 FR 53109 - September 30, 1977) Muskogee, Adair, Cherokee and Okmulgee Counties, Oklahoma | | | | | |
| CHANGE: | | | | | |
| SPRINKLER FITTERS | 11.60 | .75 | 1.05 | | .08 |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. OK78-4022 - Mod. #1 (43 FR 11451 - March 17, 1978) Tulsa, Creek, Craig, Ottawa, Mayes, Delaware and Roger Counties, Oklahoma | | | | | |
| CHANGE: | | | | | |
| SPRINKLER FITTERS | 11.60 | .75 | 1.05 | | .08 |
| DECISION NO. OK78-4023 - Mod. #1 (43 FR 13736 - March 31, 1978) Comanche County, Oklahoma | | | | | |
| CHANGE: | | | | | |
| SPRINKLER FITTERS | 11.60 | .75 | 1.05 | | .08 |
| DECISION #PA76-3169 - Mod. #7 (42 FR-21133 - May 21, 1976) Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania | | | | | |
| Change: | | | | | |
| Power Equipment Operators Heavy Construction | | | | | |
| GROUP I | $12.75 | 7.3% | 10.3% | | 1.8% |
| GROUP II | 12.49 | 7.3% | 10.3% | | 1.8% |
| GROUP III | 11.62 | 7.3% | 10.3% | | 1.8% |
| GROUP IV | 11.41 | 7.3% | 10.3% | | 1.8% |
| GROUP V | 11.10 | 7.3% | 10.3% | | 1.8% |
| GROUP VI | 10.93 | 7.3% | 10.3% | | 1.8% |
| GROUP VII | 10.42 | 7.3% | 10.3% | | 1.8% |
| GROUP VIII | 9.68 | 7.3% | 10.3% | | 1.8% |
| Power Equipment Operators Highway Construction: | | | | | |
| WAGE GROUP 1 | 12.50 | 7.3% | 10.3% | a | 1.8% |
| WAGE GROUP 2 | 12.27 | 7.3% | 10.3% | a | 1.8% |
| WAGE GROUP 3 | 11.66 | 7.3% | 10.3% | a | 1.8% |
| WAGE GROUP 4 | 11.14 | 7.3% | 10.3% | a | 1.8% |
| WAGE GROUP 5 | 10.77 | 7.3% | 10.3% | a | 1.8% |
| WAGE GROUP 6 | 10.42 | 7.3% | 10.3% | a | 1.8% |
| WAGE GROUP 7 | 9.68 | 7.3% | 10.3% | a | 1.8% |



DECISION #PA77-3060 - Mod. #4
(42 Fr 26179 - May 20, 1977)
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, & York Counties Pennsylvania

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Carpenters/Piledrivermen | $ 9.47 | .50 | .55 | | |
| Laborers: | | | | | |
| Asphalt tampers, concrete pitmen, puddlers & rubbers, Highway guard rail, right of way and property line fence, Highway slab reinforcing placers, laborers, landscape, planter, seeders, and aborists, magazine tenders, railroad trackmen & signalmen, leaser beam men (pipe laying, paving machine) | 8.06 | .35 | .20 | | |
| Pnuematic and electric tool op. jackhammers, paving breakers, concrete saws, whacker vibrator, sheet hammers, steward, chain saws, pipelaycrs, asphalt rake, lute or screed men, concrete block layers | 8.26 | .35 | .20 | | |
| Caisson-open air-below 8 feet, cofferdam open air-below 8 feet where excavations for circular caissons and cofferdams 8 feet and below level of natural grade adjacent to starting point, formsetter (road) wagon drill, diamond point drill, gunite nozzle operators | 8.61 | .35 | .20 | | |
| Blasters | 8.84 | .35 | .20 | | |
| Reinforcing steel placers, bonding, aligning and securing and burning and welding in conjunction with reinforcing steel | 8.90 | .35 | .20 | | |
| Concrete surfaces | 9.28 | .35 | .20 | | |
| Free Air Tunnels and Rock Shafts | | | | | |
| Outside laborers in conjunction tunnels & rock shafts | 8.70 | .35 | .20 | | |
| Chuck tenders, muckers, nippers miners' & drillers helpers, inside laborers | 8.99 | .35 | .20 | | |

DECISION #PA77-3060 - Mod. #4

| Free Air Tunnels and Rock Shafts | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Miners, drillers, blasters pneumatic schield operators, lining, spotting & timers workmen, reinforcing steel placer placers, bonding, aligning and securing and concrete surfacers | $ 9.47 | .35 | .20 | | |
| POWER EQUIPMENT OPERATORS HEAVY CONSTRUCTION | | | | | |
| GROUP 1 | 12.44 | 7.3% | 10.3% | a | 1.8% |
| GROUP 2 | 12.15 | 7.3% | 10.3% | a | 1.8% |
| GROUP 3 | 11.28 | 7.3% | 10.3% | a | 1.8% |
| GROUP 4 | 10.51 | 7.3% | 10.3% | a | 1.8% |
| GROUP 5 | 10.04 | 7.3% | 10.3% | a | 1.8% |
| GROUP 6 | 9.13 | 7.3% | 10.3% | a | 1.8% |
| GROUP 7 | 12.69 | 7.3% | 10.3% | a | 1.8% |
| GROUP 7-A | 12.94 | 7.3% | 10.3% | a | 1.8% |
| GROUP 7-B | 13.18 | 7.3% | 10.3% | a | 1.8% |
| POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION | | | | | |
| GROUP 1 | 10.84 | 7.3% | 10.3% | a | 1.8% |
| GROUP 2 | 10.00 | 7.3% | 10.3% | a | 1.8% |
| GROUP 3 | 9.49 | 7.3% | 10.3% | a | 1.8% |
| GROUP 4 | 9.05 | 7.3% | 10.3% | a | 1.8% |
| GROUP 5 | 8.50 | 7.3% | 10.3% | a | 1.8% |
| GROUP 6 | 11.09 | 7.3% | 10.3% | a | 1.8% |
| GROUP 6-A | 11.34 | 7.3% | 10.3% | a | 1.8% |
| GROUP 6-B | 11.59 | 7.3% | 10.3% | a | 1.8% |
| TRUCK DRIVERS: | | | | | |
| Class I | | | | | |
| Helper, stake body truck (single axle), dumpster | 8.97 | | | | |
| Class II | | | | | |
| Dump trucks, tandem & batch trucks semi-trailers, agitator mixer trucks, ready mix and dumpcrete type vehicles, asphalt distributors, farm tractor when used for | | | | | |



DECISION #PA77-3060 - Mod. #4

| TRUCK DRIVERS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| transportation stake body truck (tandem) | $ 9.04 | | | | |
| CLASS III | | | | | |
| Euclid type, off-highway equipment back or belly dump truck and double hitched equipment, straddle (ross) carrier, low-bed trailers | 9.53 | | | | |
| DECISION #PA77-3107 - Mod. #9 (42 FR 43353 - August 26, 1977) Bucks, Chester, Delaware, Montgomery and Philadelphia Counties, Pennsylvania | | | | | |
| Change: | | | | | |
| Electricians | | | | | |
| Zone 5 | $10.99 | .78 | 3%+.20 | | .03 |
| Roofers | | | | | |
| Zone 1 | | | | | |
| Commercial | 12.07 | 1.40 | .95 | e | |
| Sprinkler Fitters | | | | | |
| Zone 1 | 12.31 | .75 | 1.05 | | .08 |
| Power Equipment Operators: | | | | | |
| Class I | 12.75 | 7.3% | 10.3% | | 1.8% |
| Class II | 12.49 | 7.3% | 10.3% | | 1.8% |
| Class III | 11.62 | 7.3% | 10.3% | | 1.8% |
| Class IV | 11.41 | 7.3% | 10.3% | | 1.8% |
| Class V | 11.10 | 7.3% | 10.3% | | 1.8% |
| Class VI | 10.93 | 7.3% | 10.3% | | 1.8% |
| Class VII | 10.42 | 7.3% | 10.3% | | 1.8% |
| Class VIII | 9.68 | 7.3% | 10.3% | | 1.8% |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION #PA77-3121 - Mod #6 (42 FR 45612 - September 9, 1977) Lebanon County, PA. | | | | | |
| Change: | | | | | |
| Asbestos Workers | $10.76 | .67 | .90 | | .01 |
| Sprinkler Fitters | 12.31 | .75 | 1.05 | | .08 |
| DECISION #PA77-3122 - Mod. #3 (42 FR 45614 - September 9, 1977) Cumberland, Dauphin, Perry, Juniata New Cumberland Depot in York County, Pennsylvania | | | | | |
| Change: | | | | | |
| Asbestos Workers | 10.76 | .67 | .90 | | .01 |
| Sprinkler Fitters | 12.31 | .75 | 1.05 | | .08 |
| DECISION #PA77-3123 - Mod. #6 (42 FR 45616 - September 9, 1977) Schuykill County, Pennsylvania | | | | | |
| Change: | | | | | |
| Electricians: | | | | | |
| North Brunswick, Wayne, Washington, Pottsville, Schuykill Haven Twps., Pine Grove Twps. | 10.99 | .78 | 3%+.20 | | .03 |
| Sprinkler Fitters | 12.31 | .75 | 1.05 | | .08 |
| DECISION #PA77-3124 - Mod. #4 (42 FR 45618 - September 9, 1977) Northampton County, Pennsylvania | | | | | |
| Change: | | | | | |
| Asbestos Workers | 10.76 | .67 | .90 | | .01 |
| Sprinkler Fitters | 12.31 | .75 | 1.05 | | .08 |
| Add: | | | | | |
| Soft Floor Layers | 8.80 | .44 | .72 | .45 | |



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION #PA77-3125 - Mod. #6 (42 FR 45620 - September 9, 1977) Berks County, Pennsylvania | | | | | |
| Change: | | | | | |
| Electricians: | | | | | |
| Remainder of County | $10.99 | .78 | 3%+.20 | | .03 |
| Sprinkler Fitters | 12.31 | .75 | 1.05 | | .08 |
| DECISION #PA77-3128 - Mod. #6 (42 FR 46901 - September 16, 1977) Adams & York Counties, PA | | | | | |
| Change: | | | | | |
| Asbestos Workers | 10.76 | .67 | .90 | | .01 |
| Sprinkler Fitters | 12.31 | .75 | 1.05 | | .08 |
| DECISION #PA78-3013 - Mod. # 1 (43FR - 16097 - April 14, 1978) Bedford, Cambria, Cameron, Clarion, Clearfield, Jefferson, Crawford, Venango Counties, Pennsylvania | | | | | |
| Change: | | | | | |
| Laborers: | | | | | |
| Zone 5 | | | | | |
| CLASS I | $7.55 | 10% | 8% | | |
| CLASS II | 7.90 | 10% | 8% | | |
| CLASS III | 8.15 | 10% | 8% | | |
| CLASS IV | 8.05 | 10% | 8% | | |
| CLASS V | 7.60 | 10% | 8% | | |
| Zone 6 | | | | | |
| CLASS I | 7.70 | 10% | 8% | | |
| CLASS II | 8.20 | 10% | 8% | | |
| CLASS III | 8.30 | 10% | 8% | | |
| CLASS IV | 8.20 | 10% | 8% | | |
| CLASS V | 7.75 | 10% | 8% | | |
| Truck Drivers: | | | | | |
| Zone 1 | | | | | |
| CLASS I | 8.42 | c | d | | |

MODIFICATIONS P. 16

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION #TX77-4139 - Mod. #1 (42 FR 34247 - July 1, 1977) Bee, Kleberg, Nueces & San Patricio Cos., Texas | | | | | |
| Change: | | | | | |
| Electricians | $10.55 | .60 | 3% | | 3/4% |
| DECISION #TX78-4030 - Mod. #1 (43 FR 16115 - April 14, 1978) Bee, Kleberg & Nueces Cos., Texas | | | | | |
| Change: | | | | | |
| Bricklayers - Kleberg & Nueces | 9.06 | .28 | .30 | | .05 |
| Carpenter: Carpenters | 7.99 | .51 | .30 | | .05 |
| Electricians: Electricians | 10.55 | .60 | 3% | | 3/4% |
| Cable splicers | 10.675 | .60 | 3% | | 3/4% |
| Line construction: | | | | | |
| Linemen | 10.68 | .50 | 3% | | 1/2% |
| Cable splicers | 10.805 | .50 | 3% | | 1/2% |
| Groundmen (1st. year) | 5.34 | .50 | 3% | | 1/2% |
| Groundmen | 5.87 | .50 | 3% | | 1/2% |
| Marble, tile & terrazzo workers | 8.43 | | | | .02 |
| Soft floor layers | 7.99 | .51 | .30 | | .05 |
| DECISION #TX78-4031 - Mod. #1 (43 FR 16116 - April 14, 1978) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas | | | | | |
| Change: | | | | | |
| Building Construction: | | | | | |
| Ironworkers | 10.05 | .55 | 1.00 | | .12 |
| DECISION #TX78-4036 - Mod. #1 (43 FR 16125 - April 14, 1978) El Paso County, Texas | | | | | |
| Change: | | | | | |
| Cement masons | 6.87 | .67 | | | .03 |
| Laborers - Group 1 | 6.31 | .53 | .45 | | |
| Group 2 | 6.06 | .53 | .45 | | |
| Group 3 | 5.81 | .53 | .45 | | |
| Group 4 | 5.69 | .53 | .45 | | |
| Group 5 | 5.56 | .53 | .45 | | |
| DECISION #TX78-4037 - Mod. #1 (43 FR 16127 - April 14, 1978) Galveston & Harris Cos., Texas | | | | | |
| Change: | | | | | |
| Carpenters: | | | | | |
| Carpenters & piledrivermen | 10.60 | .85 | .80 | | .07 |
| Millwrights | 10.985 | .85 | .80 | | .07 |

MODIFICATIONS P. 17

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION #TX78-4040 - Mod. #1 (43 FR 16131 - April 14, 1978) Jefferson & Orange Cos., Texas | | | | | |
| Change: | | | | | |
| Carpenters: | | | | | |
| Carpenters - Commercial | $10.965 | .55 | .30 | | .05 |
| Millwrights | 11.405 | .55 | .30 | | .05 |
| DECISION #TX78-4043 - Mod. #1 (43 FR 16134 - April 14, 1978) Travis County, Texas | | | | | |
| Change: | | | | | |
| Ironworkers | 10.05 | .55 | 1.00 | | .12 |
| DECISION NO. DC78-3008 - Mod. #2 (43 FR 11464 - March 17, 1978) District of Columbia; Maryland - Montgomery and Prince Georges; and D. C. Training School; Virginia - Independent City of Alexandria & Arlington | | | | | |
| Add: | | | | | |
| Laborers: | | | | | |
| Residential over 4 stories: | | | | | |
| Unskilled | $5.09 | .35 | | | .05 |
| Scaffold builders, paving breakers and mortar mixers | 5.24 | .35 | | | .05 |
| Work below 6 feet depth | 5.34 | .35 | | | .05 |

SUPERSEDEAS DECISION

STATE: Kansas & Missouri

COUNTIES: Cass, Clay, Jackson, Platte, Ray, Henry, Johnson & Lafayette Counties, Missouri; Johnson & Wyandotte Counties, Kansas.

DECISION NO: MO78-4047

DATE: Date of Publication

Supersedes Decision No. MO77-4267, dated September 30, 1977 in 42 FR 53061

DESCRIPTION OF WORK: Building Construction, (does not include single family homes and garden type apartments up to and including 4 stories) and heavy and highway construction in Johnson and Wyandotte Counties, Kansas only.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS | $11.87 | .60 | 1.55 | | .05 |
| BOILERMAKERS | 11.00 | 1.15 | 1.00 | | .02 |
| BRICKLAYERS AND STONEMASONS | 11.275 | .55 | .35 | 1.00 | |
| CARPENTERS: | | | | | |
| Zone 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas | | | | | |
| Carpenter, Millwrights and Piledrivermen | 11.00 | .50 | .30 | | .05 |
| Zone 2 - Henry and Johnson Counties, Missouri | | | | | |
| Carpenters | 10.625 | .50 | .30 | | .05 |
| Millwrights and Piledrivermen | 11.00 | .50 | .30 | | .05 |
| CEMENT MASONS (Building Construction) | | | | | |
| Zone 1 - Cass, Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas | | | | | |
| Cement masons | 10.925 | .65 | .50 | | |
| Composition | 11.225 | .65 | .50 | | |
| Zone 2 - Henry and Johnson Counties, Missouri | 9.325 | | | | |
| CEMENT MASONS (Heavy and Highway Construction): Johnson & Wyandotte Counties, Kansas | 11.80 | .65 | .50 | | |
| ELECTRICIANS: | | | | | |
| Zone 1 - Western half of Clay and Jackson Counties, Missouri not including Blue Springs; Northern half of Platte County, Missouri; Northwestern portion of Cass County, Missouri not including Pleasant Hill: | | | | | |
| Electricians | 11.82 | .54 | 3%+.51 | .95 | .06 |
| Zone 2 - Henry, Johnson and Lafayette Counties, Missouri and remainder of Clay, Jackson, Platte and Cass Counties, Missouri | | | | | |
| Electricians (contracts over $5,000) | 11.82 | .54 | 3%+.51 | .95 | .06 |
| Electricians (contracts $5,000 and under) | 11.27 | .54 | 3%+.51 | .95 | .06 |
| Zone 3 - Ray County, Missouri; | | | | | |
| Electricians (contracts over $5,000) | 11.82 | .54 | 3%+.51 | .95 | .06 |
| Electricians (contracts $5,000 and under) | 10.66 | .54 | 3%+.51 | .95 | .06 |
| Zone 4 - Johnson and Wyandotte Counties, Kansas | 11.82 | .54 | 3%+.51 | .95 | .06 |
| ELEVATOR CONSTRUCTORS | 11.97 | .745 | .56 | 3%+a | .025 |
| ELEVATOR CONSTRUCTORS' HELPERS | 70%JR | .745 | .56 | 3%+a | .025 |
| ELEVATOR CONSTRUCTORS' HELPERS (PROB.) | 50%JR | | | | |

FOOTNOTES: - a-Employer contributes 8% of basic hourly rate for over 5 years of service and 6% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Also 6 paid holidays.

| | | | | | |
|---|---|---|---|---|---|
| GLAZIERS | 9.90 | .55 | .59 | 16.48% | .03 |
| IRONWORKERS | 10.80 | .70 | 1.40 | 1.00 | .05 |
| LABORERS: | | | | | |
| Building Construction | | | | | |
| Zone 1 - Cass, Clay, Jackson and Platte Counties, Missouri; Johnson and Wyandotte Counties, Kansas | | | | | |
| GROUP 1 | 9.15 | .45 | .40 | .50 | .10 |
| GROUP II | 9.30 | .45 | .40 | .50 | .10 |
| GROUP III | 9.45 | .45 | .40 | .50 | .10 |
| Zone 2 - Lafayette and Ray Counties, Missouri | | | | | |
| GROUP I | 8.85 | .45 | .40 | .50 | .10 |
| GROUP II | 9.00 | .45 | .40 | .50 | .10 |
| GROUP III | 9.15 | .45 | .40 | .50 | .10 |

CLASSIFICATION DEFINITIONS

LABORERS

GROUP I - General labor; wiremesh handlers or setters; carpenter tender; track men; flagmen; signalmen; salamander tenders; window cleaners; floor cleaners; landscape man; sod layers; wrecker (for alterations or entire projects)

GROUP II - Plumber laborers (conduit pipe, sewer work, drain tile and duck lines, digging and backfilling), power tool operators; pier hole diggers (over 10 ft.); vibrator, jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch winch operators; swinging scaffolds cutting torch or burner men; goergia buggies (self-propelled) fork lift; hoseman; insulation man

GROUP III - Fork lift (masonry); brick tender; plaster tender; stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding) Barco, Jackson or similar tamp operators; asphalt rakers; powder men; mastic hot kettle men; sandblasting and gunnite nozzlemen; wagon and churn drill operators

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Zone 3 - Henry and Johnson Counties, Missouri | | | | | |
| GROUP I | 6.975 | .60 | .50 | .50 | .10 |
| GROUP II | 7.075 | .60 | .50 | .50 | .10 |
| GROUP III | 7.30 | .60 | .50 | .50 | .10 |

CLASSIFICATION DEFINITIONS

LABORERS:

GROUP I - Carpenter tenders, track men, wreckers (alterations or entire projects); reinforcing rod carriers; flagmen; signal men; all other general laborers

GROUP II - Plumber laborers; stonemason tenders; air tool operators, sewer work, water lines, conduit pipe, drain tile and duct lines; batter board man or pipe & ditch work; pier hole men working below ground; vibrator man; Jackhammer & chipping hammer operators; material batch hopper man; scaleman; spreader or screed man on asphalt machine; chain or concrete sawman; brush feeders on pulverizers; swinging scaffold; cement handlers (bulk or sack); laser beam man

GROUP III - Plaster tenders; hod carriers; brick tender; cutting torch & burner men; asphalt rakers; barco tamper; jackson or any similar tamps; power buggy operator; powderman; mastic kettlemen; sandblasting & gunnite nozzlemen; head pipe layer on sewer work; men working in tunnels; head form setters & stringline men; hot tar applicator



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS: Site preparation and grading, Heavy and Highway Construction Zone 4 - Johnson and Wyandotte Counties, Kansas | | | | | |
| GROUP I | 9.25 | .60 | .50 | .75 | .10 |
| GROUP II | 9.40 | .60 | .50 | .75 | .10 |
| GROUP III | 9.55 | .60 | .50 | .75 | .10 |
| GROUP IV | 9.75 | .60 | .50 | .75 | .10 |
| GROUP V | 10.05 | .60 | .50 | .75 | .10 |

CLASSIFICATION DEFINITIONS

LABORERS:

GROUP I - Carpenter tenders; salamander tenders; dump man and ticket takers on stock piles; flagman; loading trucks under bins, hoppers and conveyors track men and all other general laborers

GROUP II - Air tool operators; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgie buggies man; material batch hopper man; scale man; material mixer man (except on manholes, coffer dams, abutments and pier hole men working below ground); riprap pavers rock, block or brick; signalman; scaffolds over 10 ft. not self-supported from ground up; skip-man on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connectin with sewer, water, gas gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setter helpers; puddlers (paving only)

GROUP III - Crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); head pipe layer on sewer work; topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working underground tunnels where compressed air is not used.

GROUP IV - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any similar tamp wagon driller; churn drills; air track drills and all other similar drills; form setters; cutting torch man; liners and stringline man on concrete paving, curbs, gutters and etc.; hot mastic kettleman; hot tar applicator; hand blade operator; manhole builders helpers and mortar menon brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels

GROUP V - Manhole builder (brick or block); dynamite and powder man

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LATHERS | 11.98 | .40 | | | |
| LINE CONSTRUCTION: | | | | | |
| Zone 1 - Cass, Clay, Jackson, Platte and Ray Counties, Missouri; Wyandotte and remainder of Johnson Counties, Kansas | | | | | |
| Linemen | 12.28 | .45 | 3%+.15 | | ½% |
| Linemen operator | 11.43 | .45 | 3%+.15 | | ½% |
| Groundman | 8.09 | .45 | 3%+.15 | | ½% |
| Groundman (1st 6 mos) | 6.93 | .45 | 3%+.15 | | ½% |
| Zone 2 - Western 3/4 of Johnson County, Kansas | | | | | |
| Linemen | 10.25 | .45 | 3% | | ½% |
| Cable splicers | 10.76 | .45 | 3% | | ½% |
| Groundman, over 1 year | 6.38 | .45 | 3% | | ½% |
| Groundman, 1st year | 4.83 | .45 | 3% | | ½% |
| Powderman | 8.50 | .45 | 3% | | ½% |
| Line truck and equipment operators: | | | | | |
| 1st year | 6.53 | .45 | 3% | | ½% |
| 2nd year | 7.81 | .45 | 3% | | ½% |
| Over 2 years' experience | 8.50 | .45 | 3% | | ½% |
| MARBLE AND TILE SETTERS | 11.25 | 5% | 4.25% | | |
| MARBLE AND TILE SETTERS' HELPERS | 9.65 | | | | |
| PAINTERS: | | | | | |
| Zone 1 - Cass, Clay, Henry, Jackson, Johnson (excluding Whiteman Air Force Base), Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas | | | | | |
| Brush and tapers | 10.19 | .55 | .70 | | .08 |
| Spray | 11.19 | .55 | .70 | | .08 |
| Zone 2 - Johnson Co., Missouri (Whiteman Air Force Base only) | | | | | |
| Brush | 10.00 | | | | |
| Spray | 11.00 | | | | |
| PLASTERERS: | | | | | |
| Zone 1 - Cass,Clay, Jackson, Lafayette, Platte and Ray Counties, Missouri; Johnson and Wyandotte Counties, Kansas | 12.50 | | | | |



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Zone 2 - Henry and Johnson Counties, Missouri | 9.00 | | | | |
| PIPEFITTERS | 12.22 | .62 | 1.35 | | .12 |
| PLUMBERS | 12.59 | .75 | .85 | | .12 |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Building Construction | | | | | |
| GROUP I | 11.40 | .75 | 1.00 | .75 | .10 |
| GROUP II | 11.10 | .75 | 1.00 | .75 | .10 |
| GROUP III | 9.20 | .75 | 1.00 | .75 | .10 |
| GROUP IV | 9.70 | .75 | 1.00 | .75 | .10 |
| GROUP V | 9.95 | .75 | 1.00 | .75 | .10 |
| GROUP VI | 11.65 | .75 | 1.00 | .75 | .10 |
| GROUP VII | 11.90 | .75 | 1.00 | .75 | .10 |
| GROUP VIII | 11.35 | .75 | 1.00 | .75 | .10 |
| GROUP IX | 12.40 | .75 | 1.00 | .75 | .10 |
| GROUP X | 11.90 | .75 | 1.00 | .75 | .10 |
| GROUP XI | | | | | |
| (a) | 11.15 | .75 | 1.00 | .75 | .10 |
| (b) | 10.90 | .75 | 1.00 | .75 | .10 |
| (c) | 9.45 | .75 | 1.00 | .75 | .10 |

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS

GROUP I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe, all types; barber-greene loader (similar type); blade-power, all types; boats-power; boilers (2); boring machines (all types); cableways; cherry pickers (all types); chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders - all types; mechanic and welder; mucking machine; orange peels; pumps - material all types; push cats; scoops all types; self-propelled rotary drill; shovel, power side boom; skimmer scoop; testhole machine; throttle man

GROUP II - Boilers (1); brooms - power operated (all types); chip spreader (front man); clef plane operator; compressors (1) 150' or over; concrete saws, self-propelled); crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser hoist; hoist, endless chain - power operated; hopper - power operated; hydra hammer (all types); lad-a-vator - similar type; rollers - all types; siphons, jets, and jennies, sub-grader; tractors over 50 h.p.; compressors (2) 105 ft. or over not more than 20' apart; compressors-tandem (any sizes); compressors single, truck mounted; elevator; finishing machine

GROUP III - Oiler

GROUP IV - Fork lift-masonry; oiler drivers - all types

GROUP V - Tractors (except when hauling material) less than 50 h.p.; "A" frame trucks; fork lift-all types & sizes (except masonry); mixers (with side loaders); pumps (with well points) dewatering systems, test or pressure pumps

GROUP VI - Clamshells, 80 ft. of boom or over (including jib); crane or rigs 80 ft. of boom or over (including jib); draglines, 80 ft. of boom or over (including jib); piledrivers, 80 ft. of boom or over (including jib

GROUP VII - Crane or rigs, over 200 ft. of boom

GROUP VIII - Hoists each additional drum over 1 drum

GROUP IX - Master mechanic

GROUP X - Crane - tower or climbing

GROUP XI - Ready mixed concrete plants;
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor operator

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS (Contd:) | | | | | |
| Site preparation and grading, Heavy and Highway Construction Zone 1 - Johnson and Wyandotte Counties, Kansas | | | | | |
| GROUP I | 11.30 | .75 | 1.00 | .75 | .10 |
| GROUP II | 11.05 | .75 | 1.00 | .75 | .10 |
| GROUP III | 10.45 | .75 | 1.00 | .75 | .10 |
| GROUP IV | 9.20 | .75 | 1.00 | .75 | .10 |
| GROUP V | 9.70 | .75 | 1.00 | .75 | .10 |
| GROUP VI | 11.55 | .75 | 1.00 | .75 | .10 |
| GROUP VII | 11.30 | .75 | 1.00 | .75 | .10 |

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS
GROUP I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers - 2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator - 2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader - fork lift; hoistline engine - 2 active drums; locomotive operator, standard gauge; mechanics and welders, field or shop; maintenance operator; mucking



CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS - GROUP I (CONT'd)
machine; pile driver operator; pitman crane operator; pump - 2; push cat op.; quad-track; scoop operator - all types; scoops in tandem; self-propelled rotary drill (leroy or equal - not air trac); shovel operator; side discharge spreader; sideboom cats; skimmer scoop operator; slip - form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator - 2

Group II - A-frame truck; asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; back filler operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader; greaser; hoisting engine - 1 drum; latourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydra-hammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator tractor operator over 50 h.p.
Group III - Boilers - 1; chip spreader (front man); churn drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader oprator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; roller opr., other than dredge; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator -1
Group IV - Mechanic's helpers; oilers
Group V - Oiler driver, all types
Group VI - Clamshells, 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (including jib); draglines, 3 yds. capacity or over; piledrivers, 80 ft. of boom or over (including jib); shovels & backhoes, 3 yds. capacity or over
Group VII - Hoists (each additional drum over 1 drum)

Men working in tunnels or shafts (not air shafts or coffer dams) of twenty-five (25) ft or more in length or depth will be paid fifty cents (50¢) per hour above the regular classification.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ROOFERS: | | | | | |
| Roofers | 10.30 | .65 | .60 | | .14 |
| SHEET METAL WORKERS | 11.855 | .50 | .825 | | .08 |
| SOFT FLOOR LAYERS | 8.71 | .45 | .75 | 10% | 1% |
| SPRINKLER FITTERS | 12.63 | .65 | .95 | | .06 |
| SPRINKLER FITTERS (Henry, Johnson and Lafayette Counties, Missouri) | 11.93 | .75 | 1.05 | | .08 |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| TERRAZZO WORKERS | 10.91 | 5% | 4.25% | | |
| TRUCK DRIVERS: | | | | | |
| Building Construction: | | | | | |
| GROUP I | 10.175 | .75 | 1.00 | | |
| GROUP II | 10.225 | .75 | 1.00 | | |
| GROUP III | 10.30 | .75 | 1.00 | | |
| GROUP IV | 10.425 | .75 | 1.00 | | |
| GROUP V | 10.325 | .75 | 1.00 | | |
| GROUP VI | 10.525 | .75 | 1.00 | | |
| GROUP VII | 10.375 | .75 | 1.00 | | |
| GROUP VIII | 10.275 | .75 | 1.00 | | |

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS
Group I - Warehousemen and stock man

Group II - Flat beds; pick-ups; dump trucks, under 10 yds.

Group III - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers

Group IV - Straddle trucks, steel tractors (when used for towing); hydro lift trucks, hydraulically operated serial lifts; heavy hauling, a-frame winch and fork lifts; heavy excavating (dumpter, euclid, etc.); double bottom units (20 tons capacity and over)

Group V - Distributor truck drivers and oprators; oilers, greasers and mechanics' helpers

GROUP VI - Mechanics

GROUP VII - Transit mix, 5 yds. and over

GROUP VIII - Transit mix, under 5 yds.



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| TRUCK DRIVERS: | | | | | |
| Site preparation and grading, Heavy and Highway Construction | | | | | |
| Zone 1 - Johnson and Wyandotte Counties, Kansas | | | | | |
| GROUP I | 9.49 | .75 | 1.00 | .75 | |
| GROUP II | 9.69 | .75 | 1.00 | .75 | |
| GROUP III | 10.00 | .75 | 1.00 | .75 | |
| GROUP IV | 10.15 | .75 | 1.00 | .75 | |
| GROUP V | 9.265 | .75 | 1.00 | .75 | |

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS
Group I - One team; station wagons; pickup trucks; material trucks, single axle; tank wagon drivers, single axle
Group II - Material trucks, tandem; two teams; semi-trailers; winch trucks - fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers; single axle; tank wagon drivers tandem or semi-trailers; insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks; speedace; euclids and other similar excavating equipment
Group III - A-frame, lowboy, and boom truck driver
Group IV - Mechanics and welders
Group V - Mechanics' helpers, oilers and greasers

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

SUPERSEDEAS DECISION

STATE: Missouri & Kansas

COUNTIES: Cass, Clay, Jackson, Platte & Ray Missouri; Johnson & Wyandotte, Kansas

DECISION NO.: MO78-4048

DATE: Date of Publication

Supersedes Decision No. MO77-4266 dated September 30, 1977 in 42 FR 53056

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS | $11.87 | .60 | 1.55 | | .05 |
| BOILERMAKERS | 11.00 | 1.15 | 1.00 | | .02 |
| BRICKLAYERS & STONEMASONS | 11.275 | .55 | .35 | 1.00 | |
| CARPENTERS, MILLWRIGHTS, PILEDRIVERMEN | 10.50 | .50 | .30 | | .05 |
| CEMENT MASONS: | | | | | |
| Cement masons | 10.925 | .65 | .50 | | |
| Composition | 11.225 | .65 | .50 | | |
| ELECTRICIANS (Up to and including 3 stories); | | | | | |
| ZONE 1 - Johnson County, Kansas (that portion of Johnson County west of Aubry, Oxford and Shawnee Townships) | 7.60 | .45 | 3%+.20 | | .05 |
| ZONE 2 - Cass, Clay, Jackson, Platte and Ray Counties, Missouri; and Wyandotte County, Kansas; and remainder of Johnson County, Kansas | 8.76 | .54 | 3%+.51 | .80 | .06 |
| ELECTRICIANS (4 stories): | | | | | |
| ZONE 1 - Western half of Clay and Jackson Counties, Missouri not including Blue Springs; Northern half of Platte County; Northwestern portion of Cass County, Missouri, not including Pleasant Hill | 11.82 | .54 | 3%+.51 | .95 | .06 |
| ZONE 2 - Remainder of Cass, Clay, Jackson and Platte Counties, Missouri: | | | | | |
| Electricians (contracts $5,000 and over) | 11.82 | .54 | 3%+.51 | .95 | .06 |
| Electricians (contracts under $5,000) | 11.27 | .54 | 3%+.51 | .95 | .06 |



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ELECTRICIANS 94 stories); Contd; | | | | | |
| Zone 3 - Ray County, Missouri; | | | | | |
| Electricians (contracts over $5,000) | 11.82 | .54 | 3%+.51 | .95 | .06 |
| Electricians (contracts $5,000 and under) | 10.66 | .54 | 3%+.51 | .95 | .06 |
| ELEVATOR CONSTRUCTORS | 11.97 | .745 | .56 | 3%+a | .025 |
| ELEVATOR CONSTRUCTORS' HELPERS | 70%JR | .745 | .56 | 3%+a | .025 |
| ELEVATOR CONSTRUCTORS' HELPERS (PROB.) | 50%JR | | | | |

FOOTNOTES: - a-Employer contributes 8% of basic hourly rate for over 5 years of service and 6% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Also 6 paid holidays.

| | | | | | |
|---|---|---|---|---|---|
| GLAZIERS | 9.90 | .55 | .59 | 16.48% | .03 |
| IRONWORKERS | 10.80 | .70 | 1.40 | 1.00 | .05 |
| LABORERS: | | | | | |
| Building Construction | | | | | |
| Zone 1 - Cass, Clay, Jackson and Platte Counties, Missouri; Johnson and Wyandotte Counties, Kansas | | | | | |
| GROUP I | 9.15 | .45 | .40 | .50 | .10 |
| GROUP II | 9.30 | .45 | .40 | .50 | .10 |
| GROUP III | 9.45 | .45 | .40 | .50 | .10 |
| Zone 2 - Ray County, Missouri | | | | | |
| GROUP I | 8.85 | .45 | .40 | .50 | .10 |
| GROUP II | 9.00 | .45 | .40 | .50 | .10 |
| GROUP III | 9.15 | .45 | .40 | .50 | .10 |

CLASSIFICATION DEFINITIONS

LABORERS

GROUP I - General labor; wiremesh handlers or setters; carpenter tender; track men; flagmen; signalmen; salamander tenders; window cleaners; floor cleaners; landscape man; sod layers; wrecker (for alterations or entire projects)

GROUP II - Plumber laborers (conduit pipe, sewer work, drain tile and duck lines, digging and backfilling), power tool operators; pier hole diggers (over 10 ft.); vibrator, jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch winch operators; swinging scaffolds cutting torch or burner men; goergia buggies (self-propelled) fork lift; hoseman; insulation man

GROUP III - Fork lift (masonry); brick tender; plaster tender; stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding) Barco, Jackson or similar tamp operators; asphalt rakers; powder men; mastic hot kettle men; sandblasting and gunnite nozzlemen; wagon and churn drill operators

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS: (CONTD): | | | | | |
| Site preparation and grading | | | | | |
| Zone 3 - Johnson and Wyandotte Counties, Kansas; Site preparation, Incidental paving and utilities Clay, Jackson, Platte and Ray Counties, Missouri | | | | | |
| GROUP I | 9.25 | .60 | .50 | .75 | .10 |
| GROUP II | 9.40 | .60 | .50 | .75 | .10 |
| GROUP III | 9.55 | .60 | .50 | .75 | .10 |
| GROUP IV | 9.75 | .60 | .50 | .75 | .10 |
| GROUP V | 10.05 | .60 | .50 | .75 | .10 |

CLASSIFICATION DEFINITIONS

LABORERS:

GROUP I - Carpenter tenders; salamander tenders; dump man and ticket takers on stock piles; flagman; loading trucks under bins, hoppers and conveyors track men and all other general laborers

GROUP II - Air tool operators; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgie buggies man; material batch hopper man; scale man; material mixer man (except on manholes, coffer dams, abutments and pier hole men working below ground); riprap pavers rock, block or brick; signalman; scaffolds over 10 ft. not self-supported from ground up; skip-man on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connectin with sewer, water, gas gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setter helpers; puddlers (paving only)

GROUP III - Crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); head pipe layer on sewer work; topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working underground tunnels where compressed air is not used.

GROUP IV - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any similar tamp wagon driller; churn drills; air track drills and all other similar drills; form setters; cutting torch man; liners and stringline man on concrete paving, curbs, gutters and etc.; hot mastic kettleman; hot tar applicator; hand blade operator; manhole builders helpers and mortar menon brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels

GROUP V - Manhole builder (brick or block); dynamite and powder man



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LATHERS | 11.98 | .40 | | | |
| MARBLE AND TILE SETTERS | 11.25 | 5% | 4.25% | | |
| MARBLE AND TILE SETTERS' HELPERS | 9.65 | | | | |
| PAINTERS: | | | | | |
| Brush, tapers and Roller | 10.19 | .55 | .70 | | .08 |
| Spray | 11.19 | .55 | .70 | | .08 |
| PLASTERERS: | 12.50 | | | | |
| PIPEFITTERS | 12.22 | .62 | 1.35 | | .12 |
| PLUMBERS | 12.59 | .75 | .85 | | .12 |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Building Construction (Zone 1) | | | | | |
| GROUP I | 11.40 | .75 | 1.00 | .75 | .10 |
| GROUP II | 11.10 | .75 | 1.00 | .75 | .10 |
| GROUP III | 9.20 | .75 | 1.00 | .75 | .10 |
| GROUP IV | 9.70 | .75 | 1.00 | .75 | .10 |
| GROUP V | 9.95 | .75 | 1.00 | .75 | .10 |
| GROUP VI | 11.65 | .75 | 1.00 | .75 | .10 |
| GROUP VII | 11.90 | .75 | 1.00 | .75 | .10 |
| GROUP VIII | 11.35 | .75 | 1.00 | .75 | .10 |
| GROUP IX | 12.40 | .75 | 1.00 | .75 | .10 |
| GROUP X | 11.90 | .75 | 1.00 | .75 | .10 |
| GROUP XI | | | | | |
| (a) | 11.15 | .75 | 1.00 | .75 | .10 |
| (b) | 10.90 | .75 | 1.00 | .75 | .10 |
| (c) | 9.45 | .75 | 1.00 | .75 | .10 |

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS-Zone 1

GROUP I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe, all types; barber-greene loader (similar type); blade-power, all types; boats-power; boilers (2); boring machines (all types); cableways; cherry pickers (all types); chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders - all types; mechanic and welder; mucking machine; orange peels; pumps - material all types; push cats; scoops all types; self-propelled rotary drill; shovel, power side boom; skimmer scoop; testhole machine; throttle man

CLASSIFICATION DEFINITIONS (CONTD:)

POWER EQUIPMENT OPERATORS - ZONE 1 Contd:
GROUP II - Boilers (1); brooms - power operated (all types); chip spreader (front man); clef plane operator; compressors (1) 150' or over; concrete saws, self-propelled); crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser hoist; hoist, endless chain - power operated; hopper - power operated; hydra hammer (all types); lad-a-vator - similar type; rollers - all types; siphons, jets, and jennies, sub-grader; tractors over 50 h.p.; compressors (2) 105 ft. or over not more than 20' apart; compressors-tandem (any sizes); compressors single, truck mounted; elevator; finishing machine
GROUP III - Oiler
GROUP IV - Fork lift-masonry; oiler drivers - all types
GROUP V - Tractors (except when hauling material) less than 50 h.p.; "A" frame trucks; fork lift-all types & sizes (except masonry); mixers (with side loaders); pumps (with well points) dewatering systems, test or pressure pumps
GROUP VI - Clamshells, 80 ft. of boom or over (including jib); crane or rigs 80 ft. of boom or over (including jib); draglines, 80 ft. of boom or over (including jib); piledrivers, 80 ft. of boom or over (including jib
GROUP VII - Crane or rigs, over 200 ft. of boom
GROUP VIII - Hoists each additional drum over 1 drum
GROUP IX - Master mechanic
GROUP X - Crane - tower or climbing
GROUP XI - Ready mixed concrete plants;
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor operator

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS (CONTD | | | | | |
| Site preparation and grading Johnson and Wyandotte Counties, Kansas; Site preparation, Incidental paving and utilities Clay, Jackson, Platte and Ray Counties, Missouri | | | | | |
| Zone 2 | | | | | |
| GROUP I | 11.30 | .75 | 1.00 | .75 | .10 |
| GROUP II | 11.05 | .75 | 1.00 | .75 | .10 |
| GROUP III | 10.45 | .75 | 1.00 | .75 | .10 |
| GROUP IV | 9.20 | .75 | 1.00 | .75 | .10 |
| GROUP V | 9.70 | .75 | 1.00 | .75 | .10 |
| GROUP VI | 11.55 | .75 | 1.00 | .75 | .10 |
| GROUP VII | 11.30 | .75 | 1.00 | .75 | .10 |



CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS
GROUP I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers - 2; booster pump on dredge; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator - 2; concrete plant operator, central mix; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader - fork lift; hoistline engine - 2 active drums; locomotive operator, standard gauge; mechanics and welders, field or shop; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump - 2; push cat op.; quad-track; scoop operator - all types; scoops in tandem; self-propelled rotary drill (leroy or equal - not air trac); shovel operator; side discharge spreader; sideboom cats; skimmer scoop operator; slip - form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator - 2
Group II - A-frame truck; asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; back filler operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader; greaser; hoisting engine - 1 drum; latourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydra-hammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator tractor operator over 50 h.p.
Group III - Boilers - 1; chip spreader (front man); churn drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader oprator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; roller opr., other than dredge; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator -1
Group IV - Mechanic's helpers; oilers
Group V - Oiler driver, all types
Group VI - Clamshells, 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (including jib); draglines, 3 yds. capacity or over; piledrivers, 80 ft. of boom or over (including jib); shovels & backhoes, 3 yds. capacity or over
Group VII - Hoists (each additional drum over 1 drum)

Men working in tunnels or shafts (not air shafts or coffer dams) of twenty-five (25) ft or more in length or depth will be paid fifty cents (50¢) per hour above the regular classification.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ROOFERS: | | | | | |
| Roofers | 10.30 | .65 | .60 | | .14 |
| SHEET METAL WORKERS | 11.855 | .50 | .825 | | .08 |
| SOFT FLOOR LAYERS | 8.71 | .45 | .75 | 10% | 1% |
| SPRINKLER FITTERS | 12.63 | | | | |
| TERRAZZO WORKERS | 10.91 | 5% | 4.25% | | |
| TRUCK DRIVERS: | | | | | |
| Building Construction: Zone 1 | | | | | |
| GROUP I | 10.175 | .75 | 1.00 | | |
| GROUP II | 10.225 | .75 | 1.00 | | |
| GROUP III | 10.30 | .75 | 1.00 | | |
| GROUP IV | 10.425 | .75 | 1.00 | | |
| GROUP V | 10.325 | .75 | 1.00 | | |
| GROUP VI | 10.525 | .75 | 1.00 | | |
| GROUP VII | 10.375 | .75 | 1.00 | | |
| GROUP VIII | 10.275 | .75 | 1.00 | | |

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS - Zone 1
Group I - Warehousemen and stock man

Group II - Flat beds; pick-ups; dump trucks, under 10 yds.

Group III - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers

Group IV - Straddle trucks, steel tractors (when used for towing); hydro lift trucks, hydraulically operated serial lifts; heavy hauling, a-frame winch and fork lifts; heavy excavating (dumpter, euclid, etc.); double bottom units (20 tons capacity and over)

Group V - Distributor truck drivers and oprators; oilers, greasers and mechanics' helpers

Group VI - Mechanics

Group VII - Transit mix, 5 yds. and over

Group VIII - Transit mix, under 5 yds.



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| TRUCK DRIVERS: (CONTD:) | | | | | |
| Site preparation and grading - Johnson and Wyandotte Counties, Kansas; Site preparation, Incidental paving and utilities Clay, Jackson, Platte and Ray Counties, Missouri | | | | | |
| Zone 2 | | | | | |
| GROUP I | 9.49 | .75 | 1.00 | .75 | |
| GROUP II | 9.69 | .75 | 1.00 | .75 | |
| GROUP III | 10.00 | .75 | 1.00 | .75 | |
| GROUP IV | 10.15 | .75 | 1.00 | .75 | |
| GROUP V | 9.265 | .75 | 1.00 | .75 | |

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS-Zone 2
Group I - One team; station wagons; pickup trucks; material trucks, single axle; tank wagon drivers, single axle
Group II - Material trucks, tandem; two teams; semi-trailers; winch trucks - fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers; single axle; tank wagon drivers tandem or semi-trailers; insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks; speedace; euclids and other similar excavating equipment
Group III - A-frame, lowboy, and boom truck driver
Group IV - Mechanics and welders
Group V - Mechanics' helpers, oilers and greasers

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

SUPERSEDEAS DECISION

STATE: NEW MEXICO
DECISION NO. NM78-4046
COUNTY: STATEWIDE
DATE: Date of Publication
Supersedes Decision No. NM78-4021 dated March 10, 1978 in 43 FR 10244
DESCRIPTION OF WORK: Sewer & Water & Highway Construction

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CARPENTERS: | | | | | |
| Carpenters | $5.26 | .10 | .20 | .10 | .04 |
| Power saw operator-saw filer | 5.41 | .10 | .20 | .10 | .04 |
| Millwrights & Piledriver | 5.51 | .10 | .20 | .10 | .04 |
| CEMENT MASONS | 4.94 | .26 | | | |
| IRONWORKERS: | | | | | |
| Reinforcing | 5.05 | .25 | .25 | | |
| Structural | 7.99 | .50 | .75 | | .04 |
| PAINTERS: | | | | | |
| Brush | 4.57 | .35 | .20 | | .01 |
| Spray | 5.54 | .10 | .30 | | .04 |
| LABORERS: | | | | | |
| Common laborer; carpenter tender; concrete buggy operator (hand); concrete workers | 2.65 | .20 | .15 | | |
| Wagon, air track, drill & diamond drillers' tender (outside) | 2.95 | .20 | .15 | | |
| Air & power tool man; asphalt raker; batching plant scaleman; tenders (to cement masons and plasters); chain sawman; concrete touchup-man; concrete saw man; curbing machine; asphalt or cement; cutting torchman; metal form setter-road; grade setter; hod carrier; mortar mixer and mason tender; powderman or blaster helper; scaler; sandblaster helper; vibrator compactor (hand type); vibratorman (hand-type); concrete power buggyman, wagon; air track drill and diamond drillers (outside) | 2.95 | .20 | .15 | | |
| Gunite pumpcreteman & nozzleman; multiplate setter; pipelayer | 3.35 | .20 | .15 | | |
| Manhole builder | 3.35 | .20 | .15 | | |
| Powderman-blaster-make up | 3.35 | .20 | .15 | | |



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS: | | | | | |
| Group I | $4.88 | .15 | .10 | | .01 |
| Group II | 5.08 | .15 | .10 | | .01 |
| Group III | 5.66 | .15 | .10 | | .01 |
| Group IV | 5.68 | .15 | .10 | | .01 |
| Group V | 5.68 | .15 | .10 | | .01 |
| Group VI | 5.83 | .15 | .10 | | .01 |
| Group VII | 5.88 | .15 | .10 | | .01 |
| Group VIII | 6.03 | .15 | .10 | | .01 |
| Group IX | 6.53 | .15 | .10 | | .01 |
| Group X | 7.33 | .15 | .10 | | .01 |

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITION

GROUP I
Concrete paving curing machine

GROUP II
Belt type conveyors (material & concrete); broom (self propelled); fork lift; grease truck operator; head oiler; hydro lift; tractor (under 50 drawbar HP with or without attachment); Industrial locomotive brakeman; front end loader (2 cy or less); fireman; oiler; screedman; roller (pull type); mulching machine; roller (self-propelled)

GROUP III
Concrete paving form grader; concrete paving gang vibrator; concrete paving joint or saw machine; concrete paving sub grader; tractor with backhoe attachment; subgrade or base finisher; power plant (electric general or welding machine)

GROUP IV
Bulldozer (including self-propelled roller with dozer attachment); batch or continuous mix plant (concrete soil-cement, or asphalt); roller (steel wheel); front end loader (2 cy thru 10 cy); scraper operator; motor grader

GROUP V
Asphalt distributor; asphalt paving or laydown machine; asphalt retort heater; mixer, heavy duty, asphalt or soil cement; trenching machine; clam type shaftmucker; backhoe, clamshell, dragline, gradall, shovel(under 3/4 cy); elevating grader or belt loader; cranes (crawler or mobile) under 20 ton; air compressor (300 CFM & over); crushing screening and washing plants; drilling machine (cable core or rotary); mixer, concrete (1 cy and less); pump (6" intake or over); winch truck; hoist (1 drum); industrial locomotive motorman; lumber stacker; tractor (50 drawbar HP or over)

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITION (CONT'D)

GROUP VI

Concrete paver mixer; hoist (2 drum and over); sideboom; traveling crane; piledriver; backhoe, clamshell, dragline, gradall, shovel (3/4 cy to 3 cy); cranes (crawler or mobile) 20 ton to 40 ton; front end loader (over 10 cy); mixer, concrete (over 1 cy); mechanic and/or welder)

GROUP VII

Concrete slip-form paving machine; concrete paving finishing machine; concrete paving longitudinal float; gunite machine; refrigerator; jumbo form or drilling stage; slusher; concrete paving spreader; pumpcrete machine; grout pump operator

GROUP VIII

Mine hoist; bulldozer (multiple units); scraper (multiple units); mucking machine; backhoe, clamshell, dragline, gradall, shovel (over 3 CY); cranes (crawler or mobile) over 40 tons

GROUP IX

Belt loader (CMI types) operator; derrick, cableway

GROUP X

Pipemobile operator; mole operator

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| TRUCK DRIVERS: | | | | | |
| Distributor (asphalt) | $4.57 | .26 | | | |
| Dumpster or dumptor | 4.65 | .26 | | | |
| Dump or batch truck: | | | | | |
| Under 8 cy | 4.36 | .26 | | | |
| 8 cy and under 16 cy | 4.46 | .26 | | | |
| 16 cy and under 20 cy | 4.60 | .26 | | | |
| 20 cy and over | 4.65 | .26 | | | |
| Diesel-powered transport (non-self-loading) 10 yds & over | 4.88 | .26 | | | |
| Flatbed: | | | | | |
| 1-1/2 ton | 4.36 | .26 | | | |
| Over 1-1/2 ton | 4.51 | .26 | | | |
| Lumber carrier | 4.39 | .26 | | | |
| Lowboy, heavy equipment | 4.98 | .26 | | | |
| Lowboy, light equipment | 4.60 | .26 | | | |
| Off-highway hauler | 4.63 | .26 | | | |
| Pick-up truck 3/4 ton or under | 4.21 | .26 | | | |
| Service station attendant | 4.25 | .26 | | | |
| Spreader box | 4.30 | .26 | | | |
| Spreader box (self-propelled) | 4.54 | .26 | | | |
| Swamper or rider helper | 4.17 | .26 | | | |
| Tank Truck: | | | | | |
| 3,000 gal. or under | 4.44 | .26 | | | |
| 3,001 gal. to 6,000 gal. | 4.54 | .26 | | | |
| 6,001 gal. and over | 4.64 | .26 | | | |
| Teamster, 2 or 4 or more | 4.17 | .26 | | | |
| Trailer or semi-trailer dump | 4.73 | .26 | | | |
| Transit mix | 4.60 | .26 | | | |
| Warehousemen | 4.35 | .26 | | | |



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LINE CONSTRUCTION -- AREA I | | | | | |
| AREA I-A | | | | | |
| Lineman-Technician | 9.00 | .60 | 3%+.60 | | 1/2% |
| Cable splicers | 9.65 | .60 | 3%+.60 | | 1/2% |
| Equipment operator, includes helicopter operator | 8.58 | .60 | 3%+.60 | | 1/2% |
| Equipment mechanic, includes helicopter mechanic & powderman | 7.88 | .60 | 3%+.60 | | 1/2% |
| Groundman & Jackhammer operators: | | | | | |
| 1st 6 months | 4.88 | .60 | 3%+.60 | | 1/2% |
| 2nd 6 months | 5.51 | .60 | 3%+.60 | | 1/2% |
| Experienced | 6.36 | .60 | 3%+.60 | | 1/2% |
| AREA I-B | | | | | |
| Linemen-Technician | 9.82 | .60 | 3%+.60 | | 1/2% |
| Cable splicers | 10.51 | .60 | 3%+.60 | | 1/2% |
| Equipment operator, includes helicopter operator | 9.35 | .60 | 3%+.60 | | 1/2% |
| Equipment mechanic, includes helicopter mechanic & powderman | 8.58 | .60 | 3%+.60 | | 1/2% |
| Groundman & Jackhammer operators: | | | | | |
| 1st 6 months | 5.31 | .60 | 3%+.60 | | 1/2% |
| 2nd 6 months | 5.99 | .60 | 3%+.60 | | 1/2% |
| Experienced | 6.96 | .60 | 3%+.60 | | 1/2% |
| LINE CONSTRUCTION -- AREA II | | | | | |
| AREA II-A | | | | | |
| Lineman | 11.90 | .60 | 3%+.70 | | 1/2% |
| Cable splicers | 11.99 | .60 | 3%+.70 | | 1/2% |
| Equipment operator (includes helicopter operator) | 10.36 | .60 | 3%+.70 | | 1/2% |
| Equipment mechanic (includes helicopter mechanic) & powderman | 9.48 | .60 | 3%+.70 | | 1/2% |
| Groundman & Jackhammer operators: | | | | | |
| 1st 6 months | 5.89 | .60 | 3%+.70 | | 1/2% |
| 2nd 6 months | 6.65 | .60 | 3%+.70 | | 1/2% |
| Experienced | 7.74 | .60 | 3%+.70 | | 1/2% |
| AREA II-B | | | | | |
| Lineman | 11.66 | .60 | 3%+.70 | | 1/2% |
| Cable splicers | 12.75 | .60 | 3%+.70 | | 1/2% |
| Equipment operator (includes helicopter operator) | 11.12 | .60 | 3%+.70 | | 1/2% |
| Equipment mechanic (includes helicopter mechanic) & powderman | 10.24 | .60 | 3%+.70 | | 1/2% |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LINE CONSTRUCTION AREA II-B (CONTD): | | | | | |
| Groundman and Jackhammer operator: | | | | | |
| 1st 6 months | 6.65 | .60 | 3%+.70 | | 1/2% |
| 2nd 6 months | 7.41 | .60 | 3%+.70 | | 1/2% |
| Experienced | 8.50 | .60 | 3%+.70 | | 1/2% |
| AREA II-C | | | | | |
| Lineman | 12.32 | .60 | 3%+.70 | | 1/2% |
| Cable splicers | 13.41 | .60 | 3%+.70 | | 1/2% |
| Equipment operator (includes helicopter operator) | 11.78 | .60 | 3%+.70 | | 1/2% |
| Equipment mechanic (includes helicopter mechanic) & powderman | 10.90 | .60 | 3%+.70 | | 1/2% |
| Groundman & Jackhammer operators: | | | | | |
| 1st 6 months | 7.31 | .60 | 3%+.70 | | 1/2% |
| 2nd 6 months | 8.07 | .60 | 3%+.70 | | 1/2% |
| Experienced | 9.16 | .60 | 3%+.70 | | 1/2% |
| AREA II-D | | | | | |
| Lineman | 13.08 | .60 | 3%+.70 | | 1/2% |
| Cable splicers | 14.17 | .60 | 3%+.70 | | 1/2% |
| Equipment operator (includes helicopter operator) | 12.54 | .60 | 3%+.70 | | 1/2% |
| Equipment mechanic (includes helicopter mechanic) & powderman | 11.66 | .60 | 3%+.70 | | 1/2% |
| Groundman & Jackhammer operators: | | | | | |
| 1st 6 months | 8.07 | .60 | 3%+.70 | | 1/2% |
| 2nd 6 months | 8.83 | .60 | 3%+.70 | | 1/2% |
| Experienced | 9.92 | .60 | 3%+.70 | | 1/2% |

LINE CONSTRUCTION AREA DEFINITIONS

AREA I - Line construction work for electric and telephone utilities, REA Co-ops, railroads and municipalities:
AREA I-A -- BERNALILLO COUNTY
AREA I-B -- STATEWIDE, EXCEPT BERNALILLO COUNTY



AREA II - Other Line construction work including switching stations and sub-stations adjacent to power plants
AREA II-A -- From nearest basing point cities, towns and mileage from main post office
Albuquerque -- 15 miles from main post office
Santa Fe -- 15 miles from main post office
Las Vegas -- 8 miles from main post office
Farmington -- 8 miles from main post office
Raton -- 6 miles from main post office
Tucumari -- 6 miles from main post office
Aztec -- 6 miles from main post office
Roswell -- 12 miles from main post office
Ruidoso -- 12 miles from main post office
Portables -- 12 miles from main post office
Carrizozo -- 12 miles from main post office
Clovis -- 12 miles from main post office
Gallup -- 10 miles from main post office
*Pojoaque - 2 miles from main post office
*All areas adjacent to Pojoaque that are over two miles distant from the main post office in that town will be zoned out of Santa Fe.

AREA II-B - Extending up to 20 miles beyond Area II-A
AREA II-C - Extending up to 30 miles from Area II-A
AREA II-D - Anything beyond 30 miles from Area II-A

All work in Los Alamos County use Area II-C rates.

SUPERSEDEAS DECISION

STATE: Ohio
COUNTIES: Statewide
DECISION NO: OH78-2059
DATE: Date of Publication
Supersedes Decision No. OH77-2135, dated December 9, 1977 in 42 FR 62345
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. |
| ADAMS & SCIOTO Cos. | $ 9.90 | | | | |
| ALLEN, AUGLAIZE, MERCER & VAN WERT Cos. | 11.08 | | .20 | | |
| ASHLAND, CRAWFORD, HARDIN, HOLMES, MARION, MORROW, RICHLAND, & WAYNE (except Twps. of Milton & Chippewa) Cos. & WYANDOT Co. (except Twps. of Crawford, Richland, Ridge & Tymochtee) | | | | | |
| Bricklayers | 10.63 | .60 | 1.00 | | .02 |
| Sewer Bricklayers | 10.63 | .60 | 1.00 | | .02 |
| ASHTABULA County | | | | | |
| Bricklayers | 11.76 | .60 | .50 | | |
| Sewer Bricklayers | 12.01 | .60 | .50 | | |
| ATHENS County | 11.75 | .60 | .60 | | .05 |
| BELMONT & MONROE Counties & JEFFERSON County (Townships of Mt. Pleasant, & Warren & City of Dillonvale) | 9.60 | .60 | .25 | | .02 |
| BROWN, BUTLER, CLERMONT, HAMILTON, PREBLE (Twps. of Dixon, Gratis, Isreal, Lanier, & Somers), & WARREN COS. | 12.095 | .55 | .35 | | .02 |
| CARROLL, STARK & TUSCARAWAS Cos., MAHONING Co. (Twp. of Smith), COLUMBIANA Co. (Townships of Butler, Hanover, Knox & West) | 10.79 | .85 | .60 | | .01 |
| CHAMPAIGN, CLARK & LOGAN Cos. | 10.60 | | | | |
| CLINTON & HIGHLAND Cos. | 9.25 | | | | |
| COLUMBIANA Co., (Twps. of Center, Elk Run, Fairfield, Middletown, New Waterford, Perry, Salem & Unity), MAHONING Co. (except Smith Twp.) | 11.54 | .60 | .60 | | .02 |



DECISION NO. OH78-2059

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) | 10.30 | .60 | .50 | | |
| COSHOCTON, GUERNSEY, KNOX, LICKING, MORGAN, MUSKINGUM Counties | 10.33 | .60 | .50 | | .02 |
| CUYAHOGA Co. & MEDINA Co. (except the Twps. of Chatham, Wadsworth, Guilford, Westfield, Sharon, Lafayette, Harrisville, Homer, Litchfield & Spencer) | 12.90 | 1.00 | 1.00 | | .01 |
| DARKE, MIAMI, & SHELBY Cos. | 10.35 | .75 | .25 | | .02 |
| 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) | 11.72 | .93 | | | |
| DELAWARE, FRANKLIN, MADISON, PICKAWAY & UNION COS. Bricklayers | 10.64 | .80 | .80 | | .02 |
| ERIE, HANCOCK & HURON, OTTAWA, SANDUSKY, SENECA, WOOD (Perry & Bloom Twps.) WYANDOT (Tymochtee, Crawford, Ridge, & Richland Twps.) & ISLAND OF LAKE ERIE North of SANDUSKY Cos. | 11.14 | .60 | .50 | | .01 |
| FAIRFIELD, HOCKING & PERRY Cos. | 9.50 | .60 | .50 | | .02 |
| FAYETTE, ROSS & PIKE COS. | 11.35 | | | | |
| GALLIA & MEIGS Cos. | 11.25 | .50 | | | |
| GEAUGA & LAKE Cos. | 13.22 | .60 | .80 | | |
| GREENE & MONTGOMERY Cos. & the Remainder of PREBLE CO. | 10.35 | .75 | .75 | | .02 |

DECISION NO. OH78-2059

| BRICKLAYERS & STONEMASONS (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| NOBLE Co. (Twps. of Beaver, Buffalo, Marion, Seneca & Wayne) | 10.33 | .60 | .50 | | .02 |
| HARRISON Co. & the Remainder of JEFFERSON Co. | 10.53 | .50 | | | .02 |
| JACKSON & VINTON Cos. | 11.25 | | | | .05 |
| LAWRENCE County | 10.70 | | .50 | | .05 |
| LORAIN Co. & Medina Co. (Chatham, Harrisville, Homer, Litchfield, & Spencer Twps.) | 12.20 | | .40 | | .01 |
| LUCAS Co., the remainder of HENRY, FULTON & WOOD Cos. | 12.155 | .93 | .90 | | .01 |
| MEDINA (Remainder of Co.,) PORTAGE, SUMMIT & WAYNE COS. (Twps. of Milton & Chippewa) | | | | | |
| Bricklayers | 12.46 | .73 | .55 | | .02 |
| TRUMBULL COUNTY | 11.84 | .40 | .50 | | .02 |
| WASHINGTON Co., & the remainder of NOBLE CO. | 10.50 | .50 | | | .04 |
| CARPENTERS & PILEDRIVERMEN | | | | | |
| ADAMS, FAYETTE, GALLIA, HIGHLAND, JACKSON, LAWRENCE, MEIGS, PIKE, ROSS, & SCIOTO COS. | | | | | |
| Carpenters | 10.60 | .40 | .50 | | .03 |
| Piledrivermen | 10.89 | .40 | .50 | | .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 | 10.14 | .53 | .70 | | .02 |
| Piledrivermen | 10.79 | .53 | .70 | | .02 |



DECISION NO. OH78-2059

| CARPENTERS & PILEDRIVERMEN (Cont'd) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASHLAND, CRAWFORD, HURON, LORAIN and RICHLAND Counties | | | | | |
| Carpenters | 10.81 | .55 | 1.00 | | .04 |
| Piledrivermen | 10.66 | .70 | 1.00 | a | .04 |
| ERIE (East of B & O Rail Road Tracks) | | | | | |
| Carpenters | 10.66 | .70 | 1.00 | a | .04 |
| Piledrivermen | 12.10 | .77 | 1.25 | | .03 |
| ERIE (West of B & O Rail Road Tracks), OTTAWA, SANDUSKY and SENECA Counties and City of Fostoria in WOOD and HANCOCK Counties | | | | | |
| Carpenters | 10.66 | .70 | 1.00 | a | .04 |
| Piledrivermen | 11.97 | .73 | .50 | | .05 |
| ASHTABULA, CUYAHOGA, GEAUGA and LAKE Counties | | | | | |
| Carpenters | 12.10 | .77 | 1.25 | | .03 |
| Piledrivermen | 12.10 | .77 | 1.25 | | .03 |
| ATHENS, HOCKING, VINTON and WASHINGTON Counties | | | | | |
| Carpenters | 10.17 | .50 | .70 | | .02 |
| Piledrivermen | 10.82 | .50 | .70 | | .02 |
| BELMONT and MONROE Counties | | | | | |
| Carpenters | 10.27 | .50 | .75 | | .03 |
| Piledrivermen | 11.02 | .50 | .50 | | .03 |
| BROWN, BUTLER, CLERMONT, CLINTON, HAMILTON and WARREN Counties | | | | | |
| Carpenters | 11.40 | .60 | .65 | | .075 |
| Piledrivermen | 11.40 | .60 | .65 | | .075 |
| CARROLL, STARK, TUSCARAWAS and WAYNE Counties | | | | | |
| Carpenters | 10.28 | .50 | .50 | | .02 |
| Piledrivermen | 10.76 | .50 | .50 | | .02 |
| COLUMBIANA, HARRISON & JEFFERSON Counties | | | | | |
| Carpenters | 10.05 | .87 | .85 | | .02 |
| Piledrivermen | 11.15 | 5% | 10% | | .05 |

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DECISION NO. OH78-2059

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CARPENTERS & PILEDRIVERMEN (Cont'd) | | | | | |
| DARKE, GREENE, MIAMI, MONTGOMERY PREBLE and SHELBY Counties | | | | | |
| Carpenters | 10.35 | .60 | 1.00 | | .05 |
| Piledrivermen | 10.35 | .60 | 1.00 | | .05 |
| DEFIANCE, HENRY, PAULDING And WILLIAMS COUNTIES | | | | | |
| Carpenters; | 11.54 | .93 | .75 | | |
| Piledrivermen | 12.32 | .93 | .75 | | .05 |
| FULTON, HANCOCK, LUCAS and WOOD Counties, excluding the City of Postoria in HANCOCK and WOOD Counties | | | | | |
| Carpenters; Piledrivermen | 12.32 | .93 | .75 | | .05 |
| MAHONING and TRUMBULL Counties | | | | | |
| Carpenters | 10.74 | 1.07 | 1.10 | | .05 |
| Piledrivermen | 11.53 | 1.07 | 1.10 | | .05 |
| MEDINA, PORTAGE and SUMMIT Counties | | | | | |
| Carpenters | 11.55 | .50 | .70 | | |
| Piledrivermen | 12.10 | .77 | 1.25 | | .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 | 12.03 | .60 | .30 | | .02 |
| ASHTABULA, BROWN, BUTLER, CLERMONT, COLUMBIANA, DEFIANCE, ERIE, HAMILTON, HIGHLAND, HURON, MAHONING, MEDINA, OTTAWA, PAULDING, PORTAGE, SANDUSKY, SENECA, STARK, SUMMIT, TRUMBULL, WARREN and WILLIAMS | 11.38 | .60 | .30 | | .02 |
| REMAINING COUNTIES | 10.58 | .60 | .30 | | .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) | 10.75 | .50 | 3%+.50 | 1.02 | .04 |

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DECISION NO. OH78-2059

| 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. | 11.61 | .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 | 11.50 | .45 | 3%+.50 | | .1% |
| ASHTABULA Co. (all but Colebrook, Orwell, Wayne, Williamsfield & Windsor Twps.) | 13.05 | .90 | 3%+.85 | | .2% |
| ATHENS, MEIGS, MONROE, NOBLE & WASHINGTON Cos., & VINTON CO. (East of Clinton, Elk & Swan Twps.) | 10.65 | .50 | 3%+.77 | 1.27 | .04 |
| BELMONT Co. | 10.80 | .50 | 3%+.32 | 1.02 | .04 |
| BROWN, CLERMONT & HAMILTON COUNTIES | | | | | |
| Within 18 Mi. of Hamilton County Court House | 11.95 | .70 | 3%+.60 | | ½% |
| From 18 to 21 Miles | 12.25 | .70 | 3%+.60 | | ½% |
| From 21 to 25 Miles | 12.35 | .70 | 3%+.60 | | ½% |
| Over 25 Miles | 12.50 | .70 | 3%+.60 | | ½% |
| BUTLER County & WARREN CO. excluding Clear Creek, franklin & Wayne Twps.) West of Interstate 75 | 12.10 | .45 | 3%+.75 | | ½% |
| East of Interstate 75 | 12.65 | .45 | 3%+.75 | | ½% |
| CHAMPAIGN & CLARK Cos. & MADISON CO. (Twps. of Paint, Pike, Somerford, Stokes & Union) | 11.14 | .45 | 3%+.85 | | .04 |

DECISION NO. OH78-2059

| 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 | 11.58 | .75 | 3%+1.00 | | .5% |
| Beyond 11 Mi. Radius | 11.81 | .75 | 3%+1.00 | | .5% |
| COLUMBIANA Co. (except twps.of Butler, Fairfield, Knox, Perry, Salem & Unity) | 11.03 | 8% | 7% | | 1% |
| COSHOCTON Co., KNOX (Jackson, Clay, Morgan, Miller, Milford, Hilliard, Butler, Harrison, Pleasant, & College Twps.), LICKING CO., TUSCARAWAS CO. (S½ incl. Twps. of Auburn, Clay, Rush, York. Salem, Jefferson, Oxford, Washington, Perry, & Bucks) | 10.80 | .40 | 3%+.62 | | .03 |
| CUYAHOGA CO., LORAIN CO. (Twps. of Columbia), & GEAUGA Co. (Twps. of Bainbridge, Chester & Russell) | 13.75 | .55 | 3%+.48 | | .02 |
| DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAUDLING, 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.) | 11.48 | .40 | 3%+.87 | | .03 |
| ERIE CO., HURON CO. (Rem. of Co.) | 12.35 | .73 | 3% | | .1% |
| FAYETTE, HIGHLAND, HOCKING, & ROSS COS. & JACKSON CO. (Rem. of Co.), PICKAWAY, PIKE & VINTON COS. | 11.60 | .40 | 3% | | .02 |
| GALLIA CO. | 11.57 | .50 | 3%+.60 | 1.00 | .04 |



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| ELECTRICIANS (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GUERNSEY, MUSKINGUM and PERRY COS. | $10.80 | .40 | 3%+.62 | | .03 |
| HARRISON & JEFFERSON COUNTIES & CARROLL County (South of Fox, Harrison, Rose and Washington Twps.) | 12.95 | 6% | 9% | 8% | 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.) | 11.90 | .40 | 3%+.40 | | .3% |
| LAKE COUNTY & GEAUGA Co. (all but Auburn, Bainbridge, Chester, Middlefield, Parkman, Russell, & Troy Twps.) | 13.13 | .70 | 3%+.70 | | .3% |
| LAWRENCE COUNTY | 11.12 | .50 | 3%+.60 | 1.00 | .04 |
| LORAIN County (remainder of Co.) and MEDINA County (Twps. of Litchfield and Liverpool) | 12.50 | .60 | 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) | 12.33 | .47 | 3%+.50 | | .2% |
| MORGAN COUNTY | 10.65 | .50 | 3%+.75 | 1.25 | .04 |
| 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) | 12.59 | .60 | 7% | | .7% |

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| | 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 | 11.48 | .90 | 1.05 | | .03 |
| Reinforcing | 10.68 | .90 | 1.85 | | .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. | 11.08 | .70 | .75 | | .03 |
| CUYAHOGA, ERIE, GEAUGA, HURON, LAKE, LORAIN, MEDINA & SUMMIT, Cos., & ASHTABULA CO. (except The N/E ½), PORTAGE CO. (except the Ravenna Ordnance Depot) | 12.22 | .80 | 1.10 | | .03 |
| ASHTABULA (Remainder of Co.) | 11.08 | 1.86 | 1.01 | | .10 |
| ATHENS, MEIGS, MORGAN, NOBLE & WASHINGTON COS. | 10.92 | .75 | .85 | | .01 |
| BELMONT, GUERNSEY, HARRISON, JEFFERSON & MONROE COS. | 11.28 | .70 | .85 | | .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. | 11.10 | .90 | 1.55 | | .05 |
| DELAWARE, FAIRFIELD, LICKING, MADISON, PICKAWAY & UNION COS. | 11.00 | .90 | 1.55 | | .05 |
| FRANKLIN CO. | 10.85 | .90 | 1.55 | | .05 |
| DEFIANCE, PAULDING, PUTNAM, VAN WERT & WILLIAMS COS. | 11.20 | .90 | 1.20 | | .02 |
| FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, SANDUSKY, SENECA, & WOOD COS. | 12.30 | .93 | 1.11 | | .05 |
| GALLIA, LAWRENCE, SCIOTO, ADAMS (Pt.), JACKSON (S ½ of Co.), & | | | | | |



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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PIKE (Pt.) COS.: | | | | | |
| 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. & over from Union Hall | 11.62 | .90 | 1.05 | | .01 |
| LINEMEN | | | | | |
| 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. (East of Clinton, Elk, & Swan Twps.) | 11.28 | .45 | 3%+.50 | 1.00 | ½% |
| ALLEN, AUGLAIZE, HARDIN, LOGAN, MERCER, SHELBY, VAN WERT & WYANDOT Co. (Remainder of Co.) | 11.93 | .50 | 3% | | ½% |
| ASHLAND, CRAWFORD, MARION, MORROW, & RICHLAND Cos., HURON Co. (Twps. of Greenwich, New Haven, Richmond, & Ripley), KNOX Co. (North Half including the Twps. of Clinton, Howard, Liberty, Monroe, & Union), & WYANDOT CO. East Half including the Twps. of crane, Pitt & Tymochtee) | 11.50 | .45 | 3%+.50 | | ½% |
| ASHTABULA Co. except the Twps. of Colebrook, Orwell, Wayne, Williamsfield, & Windsor | 13.05 | .90 | 3%+.85 | | ½% |
| BELMONT CO. | 10.80 | .50 | 3%+.32 | 1.02 | ½% |
| BROWN, CLERMONT & HAMILTON COS. Within 18 Mi. of Hamilton County Court House | 11.95 | .70 | 3%+.60 | | .5% |
| From 18 to 21 Miles | 12.25 | .70 | 3%+.60 | | .5% |
| From 21 to 25 Miles | 12.35 | .70 | 3%+.60 | | .5% |
| Over 25 Miles | 12.50 | .70 | 3%+.60 | | .5% |
| BUTLER Co. & WARREN CO., except Twps. of Clear Creek, | | | | | |

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| LINEMEN (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Franklin & Wayne): | | | | | |
| West of Interstate 75 | $12.10 | .45 | 3%+.75 | | ½% |
| East of Interstate 75 | 12.65 | .45 | 3%+.75 | | ½% |
| CHAMPAIGN, & CLARK COS. | 9.11 | .35 | 3% | | .25% |
| CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY, & PREBLE Cos. & WARREN CO. (Rem. of Co.) | 11.58 | .75 | 3%+1.00 | | ½% |
| COLUMBIANA Co. except the Twps. of Butler, Knox, Fairfield, Perry, Salem & Unity | 11.03 | 8% | 7% | | ½% |
| COSHOCTON & TUSCARAWAS Cos. | 11.43 | .35 | 3% | | ½% |
| CUYAHOGA Co., & GEAUGA Co. (Twps. of Bainbridge, Chester, & Russell), LORAIN CO. (Columbia Twp.) | 12.73 | .35 | 3% | | ½% |
| DEFIANCE, FULTON, HANCOCK, HENRY, LUCAS, OTTAWA, PAULDING, PUTNAM, SANDUSKY, SENECA, WILLIAMS & WOOD Cos. | 13.46 | .50 | 3% | b | ½% |
| DELAWARE, MADISON, PICKAWAY & UNION Cos. | 12.41 | .35 | 3% | | ½% |
| ERIE Co., & HURON Co. (Remainder of Co.) | 12.35 | .73 | 3% | | ½% |
| FAIRFIELD & LICKING COS. & KNOX Co. (Remainder of Co.) | 11.73 | .50 | 3% | | ½% |
| FAYETTE, HIGHLAND, HOCKING & ROSS Cos. & the remainder of JACKSON, PIKE & VINTON Cos. | 10.95 | .28 | 3% | | ½% |
| FRANKLIN CO. | 9.88 | .35 | 3% | | ½% |



DECISION NO. OH78-2059

| LINEMEN (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GUERNSEY Co. | $11.43 | .35 | 3% | | ½% |
| MORGAN Co. | 12.41 | .35 | 3%+.62 | 1.02 | ½% |
| HARRISON, & JEFFERSON Cos. & CARROLL CO. (South of Fox, Harrison, Rose & Washington Twps.) | 12.95 | 6% | 9% | 8% | ½% |
| HOLMES & STARK Cos., CARROLL (Remainder of Co.), COLUMBIANA Co. (Knox Twp.), & WAYNE Co. (South of Bauchman, Chester, Green & Wayne Twps.) | 11.90 | .40 | 3%+.40 | | ½% |
| LAKE CO. & GEAUGA Co. except the Twps. of Auburn, Bainbridge, Chester, Middlefield, Parkman, Russell & Troy | 12.88 | .70 | 3%+.70 | | ½% |
| LORAIN Co. (except Columbia Tws.) & MEDINA CO. (Twp. of Litchfield & Liverpool) | 12.50 | .60 | 3%+.80 | | ½% |
| MAHONING & TRUMBULL Cos., ASHTABULA Co. (Remainder of Co.), COLUMBIANA CO. (Twps. of Butler, Fairfield, Perry, Salem & Unity), GEAUGA Co. (Towsnhips of Auburn, Middlefield, Parkman, & Troy) & PORTAGE Co. (Twps. of Charleston, Edinburg, Freedom, Hiram, Nelson, Palmyra, Paris & Windham) | 13.23 | .45 | 3% | | ½% |
| MONROE, NOBLE & WASHINGTON COS. | 12.41 | .35 | 3%+.62 | 1.02 | ½% |
| MUSKINGUM & PERRY Cos. | 11.43 | .35 | 3% | | ½% |
| SUMMIT Co. & the remainder of MEDINA, PORTAGE & WAYNE Cos. | 12.08 | .57 | 3%+.65 | | ½% |

FOOTNOTE:
b. 10 paid holidays: New year's Day; Good Friday; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day; Christmas Eve, New Year's Eve & Day after Thanksgiving Day.

PAINTERS

| ADAMS, HIGHLAND, JACKSON, PIKE, & SCIOTO COS. | | | | | |
|---|---|---|---|---|---|
| Brush | 11.65 | | .40 | | |
| Spray | 12.65 | | .40 | | |

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| PAINTERS (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ALLEN, AUGLAIZE, DEFIANCE, HARDIN, MERCER, PAULDING, PUTNAM, SHELBY, VAN WERT And WILLIAMS Counties | $10.10 | .73 | .50 | | .03 |
| ASHLAND, CRAWFORD, MARION, MORROW, & RICHLAND Counties | | | | | |
| Brush | 8.80 | | .50 | | |
| Structural Steel | 9.30 | | .50 | | |
| Spray | 9.55 | | .50 | | |
| ATHENS & HOCKING Counties: | | | | | |
| Brush | 11.08 | | | | |
| Spray | 12.08 | | | | |
| BELMONT County | 7.50 | .30 | .25 | | |
| BROWN, CLERMONT & HAMILTON Cos. | | | | | |
| Brush | 11.70 | | .25 | | |
| Spray | 12.10 | | .25 | | |
| BUTLER & WARREN Counties | | | | | |
| Brush | 10.23 | | | | |
| Spray | 10.73 | | | | |
| CARROLL, HOLMES, STARK, TUSCARAWAS & WAYNE Counties | | | | | |
| Brush | 9.91 | .78 | .60 | | .02 |
| Spray | 10.44 | .78 | .60 | | .02 |
| Structural Steel | 10.62 | .78 | .60 | | .02 |
| CHAMPAIGN, CLARK & LOGAN Cos. | | | | | |
| Brush | 7.80 | .10 | .25 | | |
| Structural Steel | 8.35 | .10 | .25 | | |
| Spray | 8.50 | .10 | .25 | | |
| CLINTON, DARKE, GREENE, MIAMI, MONTGOMERY & PREBLE Counties | | | | | |
| Brush | 11.05 | .40 | .40 | | .02 |
| Structural Steel | 11.45 | .40 | .40 | | .02 |
| Spray | 11.55 | .40 | .40 | | .02 |
| COSHOCTON: | | | | | |
| Brush | 6.10 | | | | |
| Roller | 6.25 | | | | |
| Spray; Sandblasting | 6.60 | | | | |
| Sandblasting pot tend | 5.60 | | | | |

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DECISION NO. OH78-2059

| PAINTERS: (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASHTABULA, CUYAHOGA, GEAUGA, & LAKE COUNTIES, LORAIN (North East Part) and PORTAGE & SUMMIT Counties (North of the Ohio Turnpike): | | | | | |
| Brush | $12.51 | .63 | .74 | | .05 |
| Bridge and open steel; closed steel over 55' | 13.21 | .63 | .74 | | .05 |
| Closed steel below 55'; Spray | 12.91 | .63 | .74 | | .05 |
| DELAWARE, FAIRFIELD, FAYETTE, FRANKLIN, MADISON, PICKAWAY And UNION Counties | | | | | |
| Brush | 10.69 | .65 | .65 | | .02 |
| Structural Steel | 10.99 | .65 | .65 | | .02 |
| Spray | 11.19 | .65 | .65 | | .02 |
| ERIE, HANCOCK, HURON, SANDUSKY, SENECA and WYANDOT Counties | | | | | |
| Brush | 9.40 | .50 | .60 | | 50 00 p/yr |
| Structural Steel and Bridges | 9.85 | .50 | .60 | | 50.00 p/yr |
| FULTON, HENRY, LUCAS, OTTAWA and WOOD Counties | | | | | |
| Brush | 10.81 | .93 | .90 | | |
| Spray | 11.36 | .93 | .90 | | |
| Structural Steel | 11.06 | .93 | .90 | | |
| GALLIA, LAWRENCE, MEIGS, and VINTON Counties | | | | | |
| Brush; Spray | 10.00 | | | c | |
| Sandblasting; Waterblasting | 10.30 | | | c | |
| GUERNSEY County | | | | | |
| Brush | 7.00 | | | | |
| Structural Steel, Spray | 7.50 | | | | |
| Tanks and Bridges | 8.75 | | | | |
| HARRISON & JEFFERSON Counties: | | | | | |
| Brush | 7.70 | .30 | .25 | | |
| Spray; Sandblaster | 8.10 | .30 | .25 | | |
| Hot Stacks | 9.30 | .30 | .25 | | |
| KNOX, LICKING, MUSKINGUM and PERRY Counties: | | | | | |
| Sandblasting; Steel; Bridge | 8.50 | | | | |
| Spray | 8.95 | | | | |
| LORAIN County (Remainder of Co.) | | | | | |
| Brush | 9.05 | | | | |
| Spray | 9.55 | | | | |
| Structural steel and Bridge | 10.35 | | | | |

DECISION NO. OH78-2059

| PAINTERS (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vocation | Education and/or Appr. Tr. |
| COLUMBIANA, MAHONING & TRUMBULL Cos. and the Ravenna Ordnance Depot in PORTAGE County | | | | | |
| Brush | 11.30 | .60 | .80 | | |
| Spray | 12.00 | .60 | .80 | | |
| MEDINA Co. & PORTAGE & SUMMIT Cos. South of Ohio Turnpike excluding the Ravenna Ordnance Depot in PORTAGE Co. | | | | | |
| Brush | 9.40 | .62 | .60 | | |
| Spray | 9.90 | .62 | .60 | | |
| Structural Steel | 9.65 | .62 | .60 | | |
| MONROE, MORGAN, NOBLE & WASHINGTON Cos. | 9.92 | | .20 | | .02 |
| ROSS County | | | | | |
| Brush | 10.00 | | | | |
| Spray | 10.25 | | | | |
| FOOTNOTE: c. 6 paid holidays: Decoration Day; July 4th; Thanksgiving Day; Christmas Day; New Year's Day; & Veteran's Day | | | | | |
| PLUMBERS & STEAMFITTERS: | | | | | |
| ADAMS, ATHENS, GALLIA, HIGHLAND, JACKSON, LAWRENCE, PIKE, SCIOTO, & VINTON Cos. | 11.67 | .55 | .75 | | |
| ALLEN, AUGLAIZE, HARDIN, MERCER, SHELBY & VAN WERT Cos. | 12.00 | .50 | .75 | | .05 |
| ASHLAND, CRAWFORD, ERIE, HURON, KNOX, LORAIN, MORROW, RICHLAND & WYANDOT COS. | 12.25 | .60 | .88 | | .05 |
| ASHTABULA, CUYAHOGA, GEAUGA & LAKE Cos., MEDINA Co. N. of RT. 18 & Smith Rd. & SUMMIT CO. N. of Rt. 303 - Plumbers | 13.13 | .75 | 1.00 | | .02 |
| Pipefitters | 11.97 | 1.05 | 1.10 | | .05 |
| BELMONT Co. & MONROE CO. South of RT. 78 | 10.45 | .40 | 8% | 10% | .05 |
| BROWN, CLERMONT, HAMILTON & WARREN COS. | | | | | |
| Plumbers | 12.27 | .75 | 1.05 | | .05 |
| Steamfitters | 12.20 | .90 | 1.225 | | .08 |



DECISION NO. OH78-2059

| PLUMBERS & STEAMPITTERS (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vocation | Education and/or Appr. Tr. |
| BUTLER Co. North Half | $12.35 | .60 | 1.00 | | .05 |
| BUTLER Co. South Half | 12.27 | .65 | 1.10 | | .02 |
| CARROLL Co. (except Twps. of Ross, Monroe, Union, Lee, Orange, Perry & London), STARK & WAYNE COS. | 12.32 | .45 | .55 | d | .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. | 10.83 | .45 | .50 | | .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) | 11.81 | .58 | .80 | | .04 |
| CLINTON, DARKE, FAYETTE, MIAMI, MONTGOMERY, PREBLE & GREENE Co. (Remainder of Co.) | 12.21 | .55 | .70 | | .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 | 12.31 | .75 | .50 | | .03 |
| COLUMBIANA (Washington & Yellow Creek Twps., & Liverpool Twp. secs 35 & 36 West of County Rd. #427), Harrison & Jefferson Cos. | 12.61 | .50 | 8% | 8% | .12 |

DECISION NO. OH78-2059

| 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. | 12.83 | .80 | .85 | | .09 |
| DELAWARE, FAIRFIELD, FRANKLIN, HOCKING, LICKING, MARION, PERRY, PICKAWAY, ROSS & UNION Cos. & MADISON (remainder of Co.) | 12.47 | .55 | .80 | | .05 |
| MEIGS, MONROE (Rem. of Co.), MORGAN (Remainder of Co.), & WASHINGTON COS. | 11.43 | .52 | .55 | | .045 |
| PORTAGE Co. & the remainder of MEDINA & SUMMIT Cos. | 12.31 | .79 | .90 | | .05 |
| TRUMBULL CO. (Remainder of Co.) | 10.75 | .57 | .65 | | .01 |
| HARRISON AND JEFFERSON Cos. | 12.61 | .50 | 8% | 8% | .12 |

FOOTNOTE:
d. One paid holiday: Labor Day providing employee has worked 5 consecutive days before and after the holiday.



DECISION NO. OH78-2059

| LABORERS | ZONE 1 | ZONE 2 | ZONE 3 |
|---|---|---|---|
| | Basic Hourly Rates | Basic Hourly Rates | Basic Hourly Rates |
| GROUP I | 10.03 | 9.20 | 8.77 |
| GROUP II | 10.155 | 9.325 | 8.895 |
| GROUP III | 10.23 | 9.40 | 8.97 |
| GROUP IV | 10.38 | 9.55 | 9.12 |
| GROUP V | 10.68 | 9.85 | 9.42 |

FRINGE BENEFITS FOR ALL ZONES AND CLASSIFICATIONS
$.70 - Health & Welfare
.70 - 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. OH78-2059

POWER EQUIPMENT OPERATORS
ZONE 1 - Columbiana, Mahoning & Trumbull Counties

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vocation | 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; Reigs-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); Whiley

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. OH78-2059

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. OH78-2059

| POWER EQUIPMENT OPERATORS | ZONE 2 Basic Hourly Rates | ZONE 3 Basic Hourly Rates | Fringe Benefits Payments H & W | Pensions | Vacation | Education and/or Appr. Tr. |
|---|---|---|---|---|---|---|
| CLASS A | 12.78 | 11.79 | .66 | 1.00 | | .15 |
| CLASS B | 12.68 | 11.67 | .66 | 1.00 | | .15 |
| CLASS C | 11.64 | 10 63 | .66 | 1.00 | | .15 |
| CLASS D | 11.17 | 10.20 | .66 | 1.00 | | .15 |
| CLASS E | 9.23 | 8.14 | .66 | 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; Trench 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. OH78-2059

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. OH78-2059

| 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 OH78-2059

| 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

SUPERSEDEAS DECISION

STATE: Pennsylvania

COUNTIES: Carbon, Monroe Counties, including Tobyhanna Army Depot and Pike County

DECISION No.: PA78-3017

DATE: Date of Publication

Supersedes Decision No. PA77-3043 dated April 8, 1977, in 42 FR 18783.

DESCRIPTION OF WORK: Building Construction, (does not including 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 | $10.70 | .65 | .60 | | .01 |
| BOILERMAKERS | 12.80 | 1.05 | 1.00 | | .02 |
| BRICKLAYERS & STONEMASONS | | | | | |
| ZONE 1 | 9.90 | 1.15 | 1.15 | | .01 |
| ZONE 2 | 10.85 | .50 | .50 | | |
| ZONE 3 | 10.10 | .65 | .70 | | .01 |
| ZONE 4 | 10.52 | .60 | .40 | | |

AREA COVERED BY BRICKLAYERS & STONEMASONS

ZONE 1 - Remainder of Carbon County
ZONE 2 - Kidder Township in Carbon County
ZONE 3 - Tobyhanna Army Depot in Monroe County
ZONE 4 - Pike County & Remainder of Monroe County

| | | | | | |
|---|---|---|---|---|---|
| CARPENTERS | | | | | |
| ZONE 1 | 10.20 | .44 | .72 | | .03 |
| ZONE 2 | 9.50 | .35 | .40 | | .02 |
| ZONE 3 | 9.73 | .44 | .72 | | .03 |
| ZONE 4 | 10.61 | .40 | .50 | | |

AREA COVERED BY CARPENTERS ZONES

ZONE 1 - Carbon County; including Twps. of Banks, Lausanna, Lehigh, Packer and Kidder
ZONE 2 - Remainder of Carbon County
ZONE 3 - Remainder of Monroe County
ZONE 4 - Tobyhanna Army Depot in Monroe County, Pike County in its entirety

| | | | | | |
|---|---|---|---|---|---|
| CEMENT MASONS | | | | | |
| ZONE 1 | 11.25 | | | | |
| ZONE 2 | 10.52 | .60 | .30 | | |
| ZONE 3 | 9.15 | .40 | .40 | | |

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County & Pike County
ZONE 3 - Remainder of Monroe County



DECISION NO. PA78-3017

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ELECTRICIANS | | | | | |
| ZONE 1 | 10.90 | .35 | 3%+.80 | | .02 |
| ZONE 2 | 10.77 | .55 | 3%+.25 | a | b |
| ZONE 3 | 11.20 | 6% | 3%+1.00 | | .02 |
| ZONE 4 | 10.65 | .50 | 3%+.50 | .50 | .10 |
| ZONE 5 | 11.40 | .50 | 3%+.50 | .50 | .10 |

AREA COVERED BY ELECTRICIANS ZONES

ZONE 1 - Carbon County, Towamensing, Lower Towamensing; E. Penn, Twps. the Borough of Parryville in their entirety
ZONE 2 - Remainder of Carbon County
ZONE 3 - Remainder of Monroe County
Zone 4 - Tobyhanna Army Depot in Monroe County
ZONE 5 - Pike County

| | | | | | |
|---|---|---|---|---|---|
| ELEVATOR CONSTRUCTORS | 11.04 | .745 | .56 | c+d | .025 |
| ELEVATOR CONSTRUCTORS HELPERS | 7.73 | .745 | .56 | c+d | .025 |
| ELEVATOR CONSTRUCTORS HELPERS (PROB.) | 5.52 | | | | |
| GLAZIERS | | | | | |
| ZONE 1 | 9.19 | .40 | .30 | | .01 |
| ZONE 2 | 9.75 | .40 | .70 | | |

AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Lausane, Penn. Forest, Towamensing, Lower Towamensing, Palmerton, E. Penn., Franklin, Mahoning, Packer, Lehigh, Banks Twps., in Carbon County
ZONE 2 - Remainder of Carbon County, Monroe County, including Tobyhanna Army Depot and Pike County in its entirety

| | | | | | |
|---|---|---|---|---|---|
| IRONWORKERS | | | | | |
| ZONE 1 | 11.45 | .84 | 1.21 | | |
| ZONE 2 | | | | | |
| Structural | 11.90 | e | | | .10 |
| Reinforcing | 11.80 | e | | | .10 |

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Carbon County, Monroe County, including Tobyhanna Army Depot
ZONE 2 - Pike County

DECISION NO. PA78-3017

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS | | | | | |
| ZONE 1 | | | | | |
| CLASS 1 | 8.20 | .48 | .50 | | |
| CLASS 2 | 8.35 | .48 | .50 | | |
| CLASS 3 | 8.60 | .48 | .50 | | |
| ZONE 2 | | | | | |
| CLASS 1 | 7.45 | .35 | .45 | | |
| CLASS 2 | 7.70 | .35 | .45 | | |
| CLASS 3 | 7.85 | .35 | .45 | | |
| CLASS 4 | 8.47 | .35 | .45 | | |
| CLASS 5 | 8.20 | .35 | .45 | | |

LABORERS CLASSIFICATIONS DEFINITIONS AND AREA COVERED

ZONE 1 - Pike County and Tobyhanna Army Depot in Monroe County
CLASS 1 - Unskilled and window cleaners
CLASS 2 - Semi skilled laborers; jackhammer operators, (each man when two required for operation of jackhammer) vibrator and buster men, wagon drill and all men handling dynamite, gas buggies 2" pumps and concrete mixers (up to 2 bags) and all pneumatic tools, non-mentallic pipe layers and making of joints, clay, terra cotta ironstone, vitrified concrete handling of burning torches, asphalt or other material
CLASS 3 - Plasterer tenders and mason tenders and handling of all material to be used - masons & scaffold builders
ZONE 2 - Carbon County and Remainder of Monroe County
CLASS 1 - Unskilled laborers & window cleaners
CLASS 2 - Operator of jackhammer, paving breaking & other pneumatic & mechanical tools coming under the jurisdiction of laborers, wagon drills & men handling burning torches in the wrecking of buildings, laying of all clay, terra cotta, ironstone, vitrified concrete or non-metallic pipe & the making of joints for the same & cofferdams (below 10')
CLASS 3 - Plasterer & mason tenders, scaffold builders & handling of all materials to be used by plasterers & masons, brick & block loaded on apllets, cement finisher tenders, gunniting & molded-D & sandblaster helpers, power buggies, to get mason tender rates, all floor hardener & "cure" application shall be the work of the mason tender. All pumps, such as the concrete, plasterer, mortar & water, installing plastic or other non-solid refactory materials in connection with boiler work
CLASS 4 - Barko tamper operator
CLASS 5 - Wagon drills and men handling burning torches in the wrecking of buildings



DECISION NO. PA78-3017

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LATHERS | | | | | |
| ZONE 1 | 10.04 | | .10 | | .01 |
| ZONE 2 | 10.21 | .40 | .25 | | .01 |

AREA COVERED BY LATHERS ZONES

ZONE 1 - Monroe County, including Tobyhanna Army Depot and Pike County
ZONE 2 - Carbon County

| | | | | | |
|---|---|---|---|---|---|
| LEADBURNERS | 10.75 | .40 | .25 | f | .01 |
| LINE CONSTRUCTION | | | | | |
| Lineman, dynamite man, heavy equipment operator | 10.80 | .50 | 3% | | 3/8% |
| Winch truck operator | 7.59 | .50 | 3% | | 3/8% |
| Groundman | 7.26 | .50 | 3% | | 3/8% |
| MARBLE SETTERS | | | | | |
| ZONE 1 | 8.50 | 1.00 | 1.15 | | |
| ZONE 2 | 9.50 | .50 | | | |
| ZONE 3 | 10.52 | .60 | .40 | | |

AREA COVERED BY MARBLE SETTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot & Pike County
ZONE 3 - Remainder of Monroe County

| | | | | | |
|---|---|---|---|---|---|
| MILLWRIGHTS | | | | | |
| ZONE 1 | 10.91 | .43 | .50 | | .05 |
| ZONE 2 | 10.13 | .44 | .72 | | .01 |
| ZONE 3 | 11.29 | .40 | .50 | | .03 |

AREA COVERED BY MILLWRIGHTS ZONES

ZONE 1 - Tobyhanna Army Depot in Monroe County
ZONE 2 - Remainder of Monroe County and Pike County in its entirety
ZONE 3 - Carbon County

DECISION NO. PA78-3017

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PAINTERS | | | | | |
| ZONE 1 | | | | | |
| Brush | 9.30 | .50 | .30 | | .05 |
| Tapers | 9.56 | .50 | .30 | | .05 |
| Hazardous | 10.56 | .50 | .30 | | .05 |
| ZONE 2 | | | | | |
| Brush & Roller | 8.10 | | 1.00 | | |
| Structural Steel | 9.10 | | 1.00 | | |
| Spray | 9.60 | | 1.00 | | |
| ZONE 3 | | | | | |
| Brush | 8.40 | 1.03 | .65 | | |
| Spray | 9.40 | 1.03 | .65 | | |
| Steel | 9.40 | 1.03 | .65 | | |

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

| | | | | | |
|---|---|---|---|---|---|
| PILEDRIVERMEN | 10.77 | 2.13 | 1.30 | g | .12 |
| PLASTERERS | | | | | |
| ZONE 1 | 9.75 | .60 | 1.05 | | .01 |
| ZONE 2 | 10.30 | .50 | .50 | | |
| ZONE 3 | 8.90 | .60 | .95 | | |
| ZONE 4 | 9.30 | .40 | .40 | | |
| ZONE 5 | 10.52 | .60 | .40 | | |

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Summit Hill, Mauch Chunck, Mahoning, Palmerton, Franklin, Towamensing, Lansford & Lower Towamensing Twps., in Carbon County
ZONE 2 - Kidder Township in Carbon County
ZONE 3 - Remainder of Carbon County
ZONE 4 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 5 - Remainder of Monroe County



DECISION NO. PA78-3017

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PLUMBERS | | | | | |
| ZONE 1 | 11.49 | .40 | .75 | | .04 |
| ZONE 2 | 11.49 | .40 | .75 | | .04 |
| ZONE 3 | 10.02 | .57 | .92 | | .01 |

AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 2 - Remainder of Monroe County
ZONE 3 - Carbon County

| | | | | | |
|---|---|---|---|---|---|
| ROOFERS | | | | | |
| ZONE 1 | | | | | |
| Composition & Slate | 10.93 | .15 | .50 | | |
| Slab & Concrete Plank | 11.43 | .15 | .50 | | |
| ZONE 2 | | | | | |
| Composition & Kettleman | 9.65 | .85 | .80 | | |
| ZONE 3 | | | | | |
| Composition & Kettleman | 10.63 | .72 | | | |

AREA COVERED BY ROOFERS ZONES

ZONE 1 - East Penn, Franklin, Lower Towamensing, Machoning and Towamensing Townships in Carbon County, Remainder of Monroe County
ZONE 2 - Remainder of Carbon County
ZONE 3 - Tobyhanna Army Depot in Monroe County & Pike County in its entirety

DECISION NO. PA78-3017

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS | | | | | |
| GROUP 1 | 12.44 | 7.3% | 10.3% | a | 1.8% |
| GROUP 2 | 12.15 | 7.3% | 10.3% | a | 1.8% |
| GROUP 3 | 11.28 | 7.3% | 10.3% | a | 1.8% |
| GROUP 4 | 10.51 | 7.3% | 10.3% | a | 1.8% |
| GROUP 5 | 10.04 | 7.3% | 10.3% | a | 1.8% |
| GROUP 6 | 9.13 | 7.3% | 10.3% | a | 1.8% |
| GROUP 7 | 12.69 | 7.3% | 10.3% | a | 1.8% |
| GROUP 7-A | 12.94 | 7.3% | 10.3% | a | 1.8% |
| GROUP 7-B | 13.18 | 7.3% | 10.3% | a | 1.8% |

CLASSIFICATIONS DEFINITIONS

GROUP 1 - Machines doing hook work, any machine handling machinery, cable spinning machines, helicopters, machines similar to the above

GROUP 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, hoist with two towers, pavers 21E and over all types overhead cranes, building hoists (double drum) gradalls, mucking machines in tunnel, all front end loaders 3-½ c.y. and over, tandem scrapers, pippin type backhoes, boat Captains, batch plant operators (concrete) drills, self-contained rotary drills, fork lift, 20 ft lift and over machine to the above

GROUP 3 - Conveyors, building hoists (single drum) scrapers and tournapulls, spreaders, high or low pressure boilers, concrete pumps, well drillers, bulldozers and tractors, asphalt plant engineers, roller (high grade finishing), ditch witch type trencher, all loaders under 3-½ cu. yds., mechanic-welders, motor patrols, drill helper-self contained rotary drills, core drill operators, forklift trucks under 20 ft lift, machines similar to the above

GROUP 4 - Welding machines, well points, compressors, pumps, heaters, farm tractors, form line graders, fine grade machines, road finishing machines, concrete breaking machines, rollers, seaman pulverizing mixer, power broom, seeding spreader, tireman (for power equipment), machines similar to the above

GROUP 5 - Fireman, grease truck

GROUP 6 - Oilers and deck hands (personnel boats), core driller helper

GROUP 7 - All machines with booms (including jib, masts, leads, etc.): 100 ft and over

GROUP 7A - 150 ft. and over

GROUP 7B - 200 ft. and over

FOOTNOTE:
a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day provided the employee works the day before and after the holiday.



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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SHEET METAL WORKERS | 11.12 | .73 | .40 | | .02 |
| SOFT FLOOR LAYERS | | | | | |
| ZONE 1 | 8.88 | .40 | .50 | | .03 |
| ZONE 2 | 10.61 | .43 | .50 | | .05 |
| ZONE 3 | 9.73 | .44 | .72 | | .02 |

AREA COVERED BY SOFT FLOOR LAYERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

| | | | | | |
|---|---|---|---|---|---|
| SPRINKLER FITTERS | 12.31 | .75 | 1.05 | | .08 |
| TERRAZZO WORKERS | | | | | |
| ZONE 1 | 8.75 | 1.00 | 1.15 | | |
| ZONE 2 | 9.50 | .50 | | | |

AREA COVERED BY TERRAZZO WORKERS

ZONE 1 - Carbon County
ZONE 2 - Monroe County, including Tobyhanna Army Depot & Pike County

| | | | | | |
|---|---|---|---|---|---|
| TILE SETTERS | | | | | |
| ZONE 1 | 8.70 | .80 | 1.15 | | |
| ZONE 2 | 9.50 | .50 | | | |
| ZONE 3 | 10.52 | .60 | .40 | | |

AREA COVERED BY TILE SETTERS ZONES

ZONE 1 - Carbon County
ZONE 2 - Tobyhanna Army Depot in Monroe County and Pike County in its entirety
ZONE 3 - Remainder of Monroe County

DECISION NO. PA78-3017

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| TRUCK DRIVERS | | | | | |
| Class I | | | | | |
| Helper, Stake Truck (single axle), Dumpster | 8.47 | | | | |
| Class II | | | | | |
| Dump Trucks, Tandem & batch trucks, semi-trailers, agitator mixer truck trucks, ready mix and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation stake body truck (tandem) | 8.54 | | | | |
| Class III | | | | | |
| Euclid type, off-highway equipment, back or belly dump trucks and double hitched equipment, straddle (ross) carrier, 20 low-bed trailers | 9.03 | | | | |
| Welders - Receive rate prescribed for craft performing operation to which welding is incidental | | | | | |

DECISION NO. PA78-3017

PAID HOLIDAYS: Where Applicable:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays: Independence Day and Labor Day

b. .12 per day per employee.

c. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

d. Paid holidays: A through F, plus the Friday after Thanksgiving Day.

e. Employer contributes $2.20 to a combined Health and Welfare and Pension Fund.

f. Nine paid holidays: A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 full days for the employer.

g. Paid Holidays: Washington's Birthday, Good Friday; Memorial Day; Labor Day; Presidential Election Day; Veterans' Day; Thanksgiving Day & Christmas Day.

SUPERSEDEAS DECISION

STATE: VIRGINIA

LOCATION: RADFORD ARMY AMMUNITION PLANT

DECISION NO.: VA78-3040

DATE: DATE OF PUBLICATION

Supersedes Decision No. VA77-3052 dated July 1, 1977 in 42 FR 34261

DESCRIPTION OF WORK: Building Construction, (does not include single family homes and garden type apartments up to and including 4 stories).

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vocation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS | 9.58 | .70 | .65 | | .01 |
| BOILERMAKERS | 10.20 | 1.00 | .90 | | .02 |
| BRICKLAYERS | 8.50 | | | | |
| CARPENTERS | 7.60 | .35 | .30 | | .02 |
| CEMENT MASONS | 5.95 | | | | |
| ELECTRICIANS | 9.50 | .50 | 3% | | ½% |
| IRONWORKERS: | | | | | |
| STRUCTURAL AND REINFORCING | 9.30 | .60 | .65 | | .03 |
| LABORERS: | | | | | |
| COMMON LABORERS | 5.15 | .25 | .25 | | .03 |
| MASON TENDERS | 5.25 | .25 | .25 | | .03 |
| AIR TOOL OPERATORS | 5.40 | .25 | .25 | | .03 |
| LATHERS | 8.25 | | | | |
| MILLWRIGHTS | 9.95 | .35 | .30 | | .02 |
| PAINTERS: | | | | | |
| BRUSH | 6.70 | .35 | .20 | | |
| SPRAY | 7.10 | .35 | .20 | | |
| PLUMBERS AND PIPEFITTERS | 9.25 | .35 | .65 | .25 | .05 |
| SHEET METAL WORKERS | 9.15 | .30 | .55 | | .04 |
| SPRINKLER FITTERS | 9.48 | .65 | .95 | | .08 |
| POWER EQUIPMENT OPERATORS: | | | | | |
| BACKHOE OPERATORS | 7.29 | | | | |
| BULLDOZER OPERATORS | 9.16 | .30 | .40 | | .03 |
| CRANE OPERATORS | 7.62 | | | | |
| OILERS | 4.88 | | | | |
| ROLLERS | 6.55 | .30 | .40 | | .03 |
| PILEDRIVERS | 6.32 | | | | |

SUPERSEDEAS DECISION

STATE: VIRGINIA

LOCATION: THE CITIES OF NORFOLK, CHESAPEAKE, PORTSMOUTH AND VIRGINIA BEACH

DECISION NO.: VA78-3041

DATE: DATE OF PUBLICATION

Supersedes Decision No. VA77-3090 dated July 1, 1977 in 42 FR 34264

DESCRIPTION OF WORK: Building Construction (does not include single family homes and garden type apartments up to and including 4 stories).

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vocation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS | $ 9.55 | .55 | .55 | | |
| BOILERMAKERS | 10.20 | 1.00 | .90 | | .02 |
| BRICKLAYERS AND STONE MASONS | 8.98 | .60 | .20 | | .03 |
| CARPENTERS AND SOFT FLOOR LAYERS | 9.00 | .40 | .35 | | .02 |
| CEMENT MASONS: | | | | | |
| Cement Masons | 8.40 | | | | |
| Machine and Scaffold Men | 8.50 | | | | |
| ELECTRICIANS AND CABLE SPLICERS | 9.75 | 5% | 8% | a | 1% |
| ELEVATOR CONSTRUCTORS | 8.80 | .745 | .56 | b+c | .025 |
| ELEVATOR CONSTRUCTORS HELPERS | 6.16 | .745 | .56 | b+c | .025 |
| ELEVATOR CONSTRUCTORS HELPERS PROBATIONARY | 4.40 | | | | |
| GLAZIERS | 5.95 | .30 | .10 | | .01 |
| IRONWORKERS: | | | | | |
| Reinforcing, Ornamental, Structural, Riggers, Fence Erectors, Machinery Movers | 9.60 | .60 | .85 | | .08 |
| LABORERS: | | | | | |
| Unskilled | 5.60 | .20 | .20 | | .05 |
| Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete Saw Operators, Air Tool and Vibrator Operators | 5.70 | .20 | .20 | | .05 |
| Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble, Tile and Terrazzo Workers Helpers | 5.85 | .20 | .20 | | .05 |
| Burners (wrecking) | 5.95 | .20 | .20 | | .05 |
| Floor, Base and Terrazzo Grinders | 6.00 | .20 | .20 | | .05 |
| Wagon Drill and Air Trac | 6.10 | .20 | .20 | | .05 |
| Powdermen | 6.35 | .20 | .20 | | .05 |
| LATHERS | 10.00 | | .25 | | |
| LEAD BURNERS | 10.75 | .40 | .25 | d | .01 |
| LINE CONSTRUCTION: | | | | | |
| Linemen and Cable Splicers | 9.75 | 5% | 8% | | |

DECISION NO. VA78-3041

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| MARBLE SETTERS | 7.80 | .60 | .20 | | |
| MILLWRIGHTS | 10.30 | .40 | .35 | | .01 |
| PAINTERS: | | | | | |
| Brush and Roller | 8.05 | | .40 | | |
| Structural Steel from Ground to 74 feet | 8.55 | | .40 | | |
| Spray, Paperhangers and Glove Work | 8.40 | | .40 | | |
| Any Work Over 74 Feet From the Ground | 9.35 | | .40 | | |
| Bituminous Coating and Hot Creosite | 9.70 | | .40 | | |
| Swing Stage Under 40 Feet, Rollers With 6 Feet Handles and Over, Epoxy Brushed or Rolled | 8.30 | | .40 | | |
| Swing Stage Over 40 Feet | 8.55 | | .40 | | |
| Epoxy, Sprayed | 8.65 | | .40 | | |
| Sandblasting | 8.80 | | .40 | | |
| PILEDRIVERMEN AND DOCKBUILDERS | 8.20 | .40 | .35 | | |
| PLASTERS | 10.51 | | | | |
| PLUMBERS AND STEAMFITTERS | 9.80 | .70 | .65 | | .09 |
| ROOFERS COMPOSITION | 6.20 | | | | |
| ROOFERS HELPERS | 4.35 | | | | |
| SHEET METAL WORKERS | 9.30 | .45 | .55 | | .005 |
| SPRINKLER FITTERS | 9.48 | .65 | .95 | | .08 |
| TERRAZZO AND TILE WORKERS | 7.80 | .60 | .20 | | |
| WELDERS-receive rate prescribed for craft performing operation to which welding is incidental. | | | | | |



DECISION NO. VA78-3041

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Workmen shall be allowed 2 hours with pay at the start or at the end of the work day on State and National Election days; Tuesday following the first Monday in November, provided they are qualified to and Vote.

b. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years service as vacation pay credit.

c. Holidays: A through F, Day after Thanksgiving.

d. Holidays: A through F; Washington's Birthday, Good Friday and Christmas Eve provided the employee has worked 30 full days during the 90 calendar days prior to the holiday and the regular scheduled work days immediately preceeding and following the holiday.

DECISION NO. VA78-3041

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION: | | | | | |
| GROUP 1 | 9.65 | .475 | .40 | | .08 |
| GROUP 2 | 7.70 | .475 | .40 | | .08 |
| GROUP 3 | 6.30 | .475 | .40 | | .08 |
| GROUP 4 | 6.10 | .475 | .40 | | .08 |
| GROUP 5 | 5.91 | .475 | .40 | | .08 |

CLASSIFICATIONS

GROUP 1
Tunnel machine, cranes, derricks, pile drivers, pavers, two or more drum hoist, finish motor grader, mechanic, batch plant, gradall, quad

GROUP 2
Cableways, tractors with attachments, combination front end loader and backhoe, front end loader, rubber tired scraper and pans, rough motor grader, 20-ton locomotive, bulldozers, pump crete, trenching machine, mixer larger than 16 S, fork lift

GROUP 3
Compressor over 125 cu. ft., bottom and end dumps, tractors without attachments, 1 drum hoist, rollers, welding machines (gas or diesel), locomotive under 20-tons, power plant, generator (1200 KW or larger), pumps (over 2 inches, including wellpoints), A-frame trucks, mechanic's helper

GROUP 4
Firemen

GROUP 5
Oilers

Virginia:
VA77-3052 (VA78-3040); July 1, 1977.
VA77-3090 (VA78-3041).

## Cancellation of General Wage Determination Decisions

None.

Signed at Washington, D.C., this 28th day of April 1978.

Dorothy P. Come,
*Acting Assistant Administrator,*
*Wage and Hour Division.*

[FR Doc. 78-12002 Filed 5-4-78; 8:45 am]

Federal Register

FRIDAY, MAY 5, 1978
PART IV

# DEPARTMENT OF LABOR

## Occupational Safety and Health Administration

■

# Occupational Exposure to Inorganic Arsenic

Final Standard

[4510-26]

Title 29—Labor

## CHAPTER XVII—OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION, DEPARTMENT OF LABOR

## PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

### Occupational Exposure to Inorganic Arsenic

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final Standard for Occupational Exposure to Inorganic Arsenic.

SUMMARY: This rule limits occupational exposure to inorganic arsenic to 10 $\mu g/m^3$ (micrograms per cubic meter of air) based on an 8 hour time-weighted average. The basis for this action is evidence that exposure to inorganic arsenic poses a cancer risk to workers. The purpose of this rule is to minimize the incidence of lung cancer among workers exposed to inorganic arsenic. Employees protected by this standard work principally in the nonferrous metal smelting, glass and arsenical chemical industries. Provisions for monitoring of exposures, recordkeeping, medical surveillance, hygiene facilities and other requirements are also included. The 10 $\mu g/m^3$ limit has been set because it will provide significant employee protection and is the lowest feasible level in many circumstances.

DATES: Effective date: August 1, 1978.

Startup dates:
August 1, 1978—Respirator use for employees exposed above 500 $\mu g/m^3$.
As soon as possible but no later than September 15, 1978—Completion of initial monitoring.
October 1, 1978—Complete establishment of regulated areas.
Respirator use for employees exposed above 50 $\mu g/m^3$.
Completion of Initial Training.
Notification of use.
December 1, 1978—Respirator use over 10 $\mu g/m^3$.
Completion of initial medical.
Completion of compliance plan.
July 1, 1979—Completion of lunch rooms and hygiene facilities.
December 31, 1979—Completion of engineering controls.

All other requirements of the standard have as their startup date August 1, 1978.

ADDRESS: For additional copies of this regulation contact: OSHA Office of Publications, U.S. Department of Labor, Room N-3423, Washington, D.C. 20210, telephone 202-523-8677.

FOR FURTHER INFORMATION CONTACT:

Mr. Gail Brinkerhoff, Office of Compliance Programs, OSHA, Third Street and Constitution Avenue NW., Room N-3112, Washington, D.C. 20210, telephone 202-523-8034.

SUPPLEMENTAL INFORMATION:

#### Introduction

This permanent occupational safety and health standard is issued pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (the Act) (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), the Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911. The new standard on occupational exposure to inorganic arsenic which appears at 29 CFR 1910.1018, applies to all employments in all industries covered by the Act with the following exceptions. For the reasons explained below, the standard does not apply to pesticide application, agriculture, and the treatment and use of arsenically preserved wood.

This document also amends Table Z-1 of 29 CFR 1910.1000. Entries for calcium arsenate and lead arsenate are deleted because they are replaced by the new standard. The existing entry, "Arsenic and its compounds (as As)—0.5 $mg/m^3$," is amended to read "Organic arsenic and its compounds (as As)—0.5 $mg/m^3$." The existing entry covers both organic and inorganic arsenicals. As the new standard covers inorganic arsenic, the entry in Table Z-1 is accordingly amended to clarify that it only covers organic arsenicals. The existing entry in Table 1 for arsine remains unchanged for the reasons discussed below.

Pursuant to section 4(b)(2) of the Act, The Occupational Safety and Health Administration (OSHA) has determined that this standard is more effective than the corresponding standards now applicable to the maritime and construction industries and currently contained in Subpart B of Part 1910, and Parts 1915, 1916, 1917, 1918, and 1926 of Title 29, Code of Federal Regulations. Therefore, those corresponding standards are superseded by the new inorganic arsenic standard in § 1910.1018. A new paragraph (e) is added to § 1910.19 to clarify the applicability of this new inorganic arsenic standard to the construction and maritime industries.

#### I. Background

Arsenic (As) is commonly present in amounts ranging from less than 0.001 percent to 6 percent in sulfide ores mined for their copper, lead, zinc, gold, and silver content. Arsenic is also widely distributed naturally in small amounts (2-5 ppm) throughout the earth's crust. For example, it is found in iron ore and coal. Further, trace amounts of organic arsenic (less than 1 ppm) are naturally present in most living organisms including those man uses for food.

Approximately 97 percent of arsenic enters end-product manufacture in the form of arsenic trioxide ($As_2O_3$ or "white arsenic"). This compound, which is used in the synthesis of many other arsenic compounds, is released by and obtained as a by-product of the smelting of sulfide ores of copper, lead, and zinc. Arsenic is generally regarded, however, as a troublesome impurity in these metals which is eliminated through the smelting process. The Tacoma, Wash., facility of ASARCO, Inc. (formerly the American Smelting & Refining Co.) is the sole U.S. producer of arsenic trioxide.

ASARCO's arsenic production capacity is estimated to be 11,000 tons per year. World arsenc trioxide production averages approximately 60,000 tons per year, while U.S. consumption averages 30,000 tons per year. Most of the 36 copper, lead, and zinc smelters produce some amount of arsenic-bearing flue dust as a by-product of their operations. In the past, some of this flue dust was reprocessed by ASARCO-Tacoma, in order to reclaim the amounts of precious metals and arsenic it contains. Recent information, however, indicates that ASARCO has been reducing the amount of flue dust it will accept for reprocessing, and that much of the dust is being stored by the originating smelters.

Arsenic and its compounds have a variety of applications. The major use (comprising approximately 69 percent of U.S. consumption) is for insecticides and herbicides. Before World War II inorganic arsenic compounds (primarily calcium arsenate and lead arsenate) were the most widely used pesticides. Substitutes have now replaced arsenicals in many uses. However, the record of this proceeding indicates that two arsenicals are used in the raising of cotton, especially dry field production in Texas. Arsenic acid, an inorganic pentavalent arsenical, is used as a desiccant. Methane arsonates, organic arsenicals (not covered by the standard), are used as pesticides. Approximately 40 percent of the U.S. consumption of arsenic trioxide (12,000 tons) is utilized in the synthesis of these two chemicals.

Approximately 11 percent of total U.S. arsenic trioxide consumption is used in glass production as a clarifying and reducing agent. Only small quantities (a few pounds per ton) are usually used in some forms of glass. This use has been reduced as substitutes have been developed.

Approximately 7 percent (2,100 tons) of the total U.S. consumption of arsenic trioxide is used in the synthesis of arsenical wood preservatives, principally chromated copper arsenate (CCA). Wood preservatives make wood more resistant to termites, fungi, and

rot. In doing so, they extend the useful life of the wood (from 6 to 36 years) helping conserve a natural resource and lessening the need for persistent insecticides for termite control. There are several types of wood preservatives, but for some uses, the record indicates that arsenical preservatives are preferred. (See the Final Environmental Impact Statement (FEIS) and its references.)

Other uses of inorganic arsenicals are for lead alloys (5 percent), flotation reagents for concentrating copper ores (5 percent), and feed additives (2 percent). Small quantities are used in the production of drugs, semi-conductors, light omitting diodes, devices to turn solar energy into electricity and in other electronic applications. Lengthier discussions of role of arsenicals can be found in the FEIS and in the Technological Feasibility Analysis and Inflationary Impact Statement (IIS) by Arthur Young & Co. (AY).

The exact number of workers exposed to inorganic arsenicals is unknown at this time. AY estimated that approximately 660,000 employees were involved in the commercial cycle of arsenic, and that 7,400 employees were exposed to over 4 $\mu g/m^3$ of inorganic arsenic. This latter number is an underestimate because of employee turnover and limited data in some areas and for some facilities.

## II. Pertinent Legal Authority

The primary purpose of the Act is to assure, so far as possible, safe and healthful working conditions for every working man and woman. One means prescribed by Congress to achieve this goal is the authority vested in the Secretary of Labor to set mandatory safety and health standards. Occupational safety and health standards provide notice of the requisite conduct or exposure level and provide a basis for assuring the existence of safe and healthful workplaces. The Act provides that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws. (s. 6(b)(5))

Sections 2(b)(5) and 6, 20, 21, 22, and 24 of the Act reflect Congress' recognition that conclusive medical or scientific evidence including causative factors, epidemiological studies or dose-response data may not exist for many toxic materials or harmful physical agents. Nevertheless, standards cannot be postponed because definitive medical or scientific evidence is not currently available. Indeed, standards need only be supported by the best available evidence. The legislative history makes it clear that: "it is not intended that the Secretary be paralyzed by debate surrounding diverse medical opinion." House Committee on Education and Labor, Report No. 91-1291, 91st Cong., 2d Session, p. 18 (1970). This Congressional judgment is supported by the courts which have reviewed standards promulgated under the Act. In sustaining the standard for occupational exposure to vinyl chloride (29 CFR 1910.1017), the U.S. Court of Appeals for the Second Circuit stated that: "it remains the duty of the Secretary to act to protect the working man, and to act even in circumstances where existing methodology or research is deficient." *Society of the Plastics Industry Inc.* v. *Occupational Safety and Health Administration*, 509 F. 2d 1301, 1308 (C.A. 2, 1975), *cert den sub nom, Firestone Plastics Co.* v. *United States Department of Labor*, 95 S. Ct 1998, 4 L.Ed. 2d. 482 (1975).

A similar rationale was applied by the U.S. Court of Appeals for the District of Columbia Circuit in reviewing the standard for occupational exposure to asbestos (29 CFR 1910.1001). The Court stated that:

> Some of the questions involved in the promulgation of these standards are on the frontiers of scientific knowledge, and consequently as to them insufficent data is presently available to make a fully informed factual determination. Decision-making must in that circumstance depend to a greater extent upon policy judgments and less upon purely factual judgments.

*Industrial Union Department, AFL-CIO* v. *Hodgson*, 499 F. 2d 467, 474 (C.A.D.C. 1974).

In setting standards, the Secretary is expressly required to consider the feasibility of the proposed standards. Senate Committee on Labor and Public Welfare, S. Rep. No. 91-1282, 91st Cong., 2d Sess., p. 58 (1970). Nevertheless, considerations of technological feasibility are not limited to devices already developed and in use. Standards may require improvements in existing technologies or require the development of new technology. *Society of the Plastics Industry, Inc.* v. *Occupational Safety and Health Administration*—supra at 1309; *American Iron & Steel Inst.* v. *OSHA*, No. 76-2358 (3rd Cir., 3/28/78).

Where appropriate, the standards are required to include provisions for labels or other forms of warning to apprise employees of hazards, suitable protective equipment, control procedures, monitoring and measuring of employee exposure, employee access to the results of monitoring, and appropriate medical examinations. Moreover, where a standard prescribes medical examinations or other tests, they must be made available at no cost to the employees (section 6(b)(7)). Standards may also prescribe record-keeping requirements where necessary or appropriate for enforcement of the Act or for developing information regarding occupational accidents and illnesses (section 8(c)).

## III. History of the Regulation

In 1943, the American Standards Association (now the American National Standards Institute or ANSI) proposed a standard for arsenic of not more than 15 micrograms of elemental arsenic per cubic meter of air (hereinafter $\mu g/m^3$). However, by 1945, this standard was increased by a factor of 10 to 150 $\mu g/m^3$.

In 1947, the American Conference of Governmental Industrial Hygienists (ACGIH) recommended a Maximum Airborne Concentration (MAC) of 100 $\mu g/m^3$. In 1948 this was changed to a Threshold Limit Value (TLV) of 500 $\mu g/m^3$. It appears that this level was set to protect against the hazard of dermatitis from arsenic trioxide, without consideration of carcinogenicity.

In 1976, based on its evaluation of evidence of carcinogenicity ACGIH adopted two new TLV's for arsenic trioxide. In the smelting environment, a level of 50 $\mu g/m^3$ (as arsenic) along with a ceiling of 5 ppm for sulfur dioxide and a level of 50 $\mu g/m^3$ for antimony trioxide (as antimony) was recommended. In non-smelting environments a level of 250 $\mu g/m^3$ (as arsenic) was recommended. The detailed basis for arriving at these levels is not clear on the record.

The ACGIH has separate standards for lead arsenate and calcium arsenate. A limit for lead arsenate of 150 $\mu g$ lead arsenate/$m^3$ has remained in effect since 1957. (There are at least six distinct lead arsenate compounds. Depending on the molecular formula, this limit expressed as elemental arsenic (As) can range from approximately 20 to 55 $\mu g/m^3$). According to ACGIH documentation, lead arsenate was considered to present the double threat of chronic toxicity due to its lead content and acute toxicity due to its arsenic content. The limit for calcium arsenate of 100 $\mu g/m^3$, adopted by ACGIH in 1957, was later changed to the present 1,000 $\mu g$ (1 mg) calcium arsenate/$m^3$ (equivalent to 380 $\mu g$ As/$m^3$).

In 1969, the Secretary of Labor promulgated the 1968 Threshold Limit Values of the ACGIH including the limit for "arsenic and its compounds" (500 $\mu g/m^3$ as arsenic) lead arsenate (150 $\mu g/m^3$ as lead arsenate) and calcium arsenate (1,000 $\mu g/m^3$ as calcium arsenate), under the Walsh-Healy

Public Contracts Act (41 U.S.C. s35 et seq.) (34 FR 788-796) after an opportunity for a public hearing and written comments (33 FR 14258). These standards were subsequently adopted as established Federal Standards under section 6(a) of the Occupational Safety and Health Act of 1970 (36 FR 10466, 36 FR 15101) and included in what is now table Z-1 of § 1910.1000.

The Occupational Safety and Health Administration began the process of revising the current standard governing occupational exposure to inorganic arsenic after receipt of the National Institute for Occupational Safety and Health (NIOSH) document, "Criteria for a Recommended Standard * * * Occupational Exposure to Inorganic Arsenic," in January 1974. On September 20, 1974, after notice published in the FEDERAL REGISTER, OSHA conducted an informal fact-finding hearing[1] on the possible health hazards associated with occupational exposure to arsenic and its inorganic compounds. Findings presented at the hearing and through post-hearing comments implicated inorganic arsenic as a human carcinogen. Recent mortality studies conducted both in the United States and abroad furnished strong additional evidence to corroborate previous studies which showed excess respiratory and lymphatic cancer mortality among workers exposed to inorganic arsenic.

In view of this additional information, NIOSH submitted revised recommendations to OSHA on November 8, 1974, advocating that occupational exposure to arsenic and its inorganic compounds be limited to "no detectable level." NIOSH later published a new criteria document containing these modified recommendations and a discussion of the new information considered. The new NIOSH recommendations called for controlling occupational exposure to inorganic arsenic so that no worker is exposed to a concentration of arsenic in excess of 0.002 mg (2 μg) per cubic meter of air as determined by a 15-minute sampling period.

On January 21, 1975, a proposed standard to control occupational exposure to inorganic arsenic was published in the FEDERAL REGISTER (40 FR 3392). The proposal included a detailed preamble describing the necessity for the proposed standard, the information relied upon in its development and the terms of the proposal in its entirety. The notice requested the submission of written comments, data, views and arguments on the issues raised by the proposal and scheduled an informal hearing pursuant to section 6(b)(3) of the Act (29 U.S.C. 655(b)(3)) for April 8, 1975. The hearings lasted 6 days.[1]

On November 8, 1974, a notice of OSHA's intent to prepare an environmental impact statement was published in the FEDERAL REGISTER (39 FR 39617) pursuant to 29 CFR 1999.3(d). Subsequent to the publication of that notice, a draft environmental impact statement (DEIS) was prepared and on March 21, 1975, the Council on Environmental Quality published a notice of availability of the inorganic arsenic DEIS (40 FR 12841). In addition to the 45 day comment period specified in 29 CFR 1999.4(g), the environmental impact, if any, of the proposed standard was also an issue for the informal hearing as provided by 29 CFR 1999.4(h) and the notice of proposed rulemaking (40 FR 3392).

In addition to the DEIS, OSHA also prepared the "Technological Feasibility Analysis and Inflationary Impact Statement" (IIS). On June 24, 1976 a notice was published in the FEDERAL REGISTER (41 FR 26029) announcing the availability of the document. This notice also announced that the second phase of the rulemaking hearing on the economic impact and technological feasibility of the proposed standard, as well as certain new scientific evidence which had been developed or obtained since the April 1975 hearing, would be held.

On July 16, 1976, a second FEDERAL REGISTER notice announced the intention to include, as an issue in the forthcoming hearing, testimony and information on the advisability of including sputum cytology as part of required medical surveillance provisions in the final standard for inorganic arsenic (41 FR 29425). Following this second hearing (September 8-14, 1976)[1] post-hearing comments were received until November 2, 1976.

On November 5, 1976, a notice announcing the availability of certain new analyses of the potential carcinogenicity of pentavalent arsenic, as well as other information, was published (41 FR 48746). This notice provided for the submission of comments on the new materials by December 9, 1976.

The entire record, including 193 exhibits and approximately 2,500 transcript pages was certified by the Presiding Administrative Law Judges on January 27, 1977, and February 3, 1977, respectively, in accordance with 29 CFR 1911.17.

Prior to promulgation of the final standard, OSHA prepared a final environmental impact statement (FEIS) in accordance with 29 CFR 1999.5. Notice of the availability of the FEIS was published by the Council on Environmental Quality on February 11, 1977 (42 FR 8690).

This standard on occupational exposure to inorganic arsenic is based on a full consideration of the entire record of this proceeding including materials discussed or relied on in the proposal, the record of the informal hearing, all written comments and exhibits.

[1]Throughout this document references will be made to hearing transcript pages as follows: Fact-finding hearing (September 20, 1974)—FTR; Hearing, April 8-15, 1975—ATR; Hearing, September 8-14, 1976—STR.

## IV. OCCUPATIONAL HEALTH IMPLICATIONS

The impetus for this new inorganic arsenic standard is evidence of its carcinogenicity. This section analyzes that evidence in depth and is divided into seven parts as follows:

A. *Summary and General Considerations.* A discussion of some of the general considerations appropriate to the evaluation of epidemiologic studies.

B. *Respiratory Cancer.* A discussion of the study designs and the authors' conclusions; and OSHA's conclusion based on its analysis of the studies as well as some of the criticisms and comments contained in the record of the arsenic proceeding.

C. *Lymphatic Cancer.* Presentation of available data on the causal agents implicated in the lymphatic cancer deaths observed in two of the studies.

D. *Dose-Response.* A presentation of dose-response data derived from some of the studies, criticisms and adjustments where appropriate, as well as OSHA's analysis.

E. *Animal Studies.* A presentation of, and evaluation of animal studies pertinent to the evaluation of occupational carcinogenesis.

F. *Valence Considerations.* A discussion and comparison of acute toxicity, mechanistic interactions and interconversion between trivalent and pentavalent arsenic, and an evaluation of the present relevance of this information on the assessment of carcinogenic risk.

G. *Conclusion.* Separate summaries, analyses and conclusions on the carcinogenic risk of exposure to trivalent and pentavalent arsenic.

### A. SUMMARY AND GENERAL CONSIDERATIONS

OSHA has carefully reviewed the substantial body of evidence relating to the carcinogenicity of inorganic arsenic and has concluded that it is clearly a human carcinogen. There is virtually no dispute as to the carcinogenicity of trivalent arsenic. There is a substantial body of epidemiologic studies of arsenic-exposed workers in varying environments showing excess risk of lung cancer where the one common factor is exposure to inorganic arsenic. Moreover, excess risk increases consistently with increasing degree and exposure to inorganic arsenic. In addition as discussed in detail below, both the available evidence and policy considerations have led OSHA to conclude that pentavalent arsenic should be regulated as a human carcinogen.

The following sections analyze in depth the most important epidemiolo-

gic studies which are part of the record. A brief review of the nature of epidemiology may clarify that analysis.

Epidemiology is the study of the distribution and determinants of disease in humans. It focuses not on any single individual but on groups of individuals. Evidence of carcinogenicity in humans can be derived from two types of epidemiological studies (1) descriptive epidemiological studies in which the morbidity or mortality of cancer in human populations is found to vary (spatially or temporally) with exposure to the agent and (2) analytical epidemiological studies (e.g., case-control or cohort studies) in which individuals' exposure to the agent are found to be associated with an increased risk of cancer. Epidemiological studies, when done properly, are the most direct measure of the carcinogenicity of an agent since man himself is the subject of these studies.

In contrast to the controlled experimental study of animal species, epidemiological studies of necessity rely upon the untoward effects of unplanned events in the past. For that reason, it may be difficult, in any one epidemiological study, to account for all potential confounding variables. Thus while a single epidemiological study may in some cases demonstrate a cause-effect relationship, the most convincing evidence of causality from epidemiological studies comes when several independent studies done under diverse circumstances result in positive findings.

Any epidemiological study showing or not showing a positive association between an agent and an increased risk of cancer may be weighted to a greater or lesser extent insofar as the following criteria are met:

(1) *Definition of Study Population.* A clear description is made of the population from which the study group was selected, the method of selecting the subjects of the study group, the criteria and rationale for inclusion or exclusion of study subjects and the procedure and rationale by which the study subjects were classified according to presence or absence and degree of exposure.

(2) *Reference Population.* A clear description is made of the reference or standard population against which the study group is contrasted and the procedure and rationale for selecting that reference or standard population.

(3) *Disease Ascertainment and Classification.* A clear statement is made of the specific procedures and sources for disease ascertainment including the degree of completeness of that ascertainment track for the study and the reference population. The criteria are specified for classification of morbidity and mortality (e.g., nosology) and a statement is made addressing the comparability of study and reference population regarding this classification scheme.

(4) *Positive or Negative Bias or Confounders.* As the operation of factors in the study design or execution may lead erroneously to an observed excess or deficit of cancer risk among exposed individuals, a clear statement is made of the magnitude of over or underestimating disease risk in the study group. Such factors to be considered are selection of healthy individuals for work and ethnicity and life-style differentials.

(5) *Dose-Response Relationship.* A dose-response relationship is demonstrated, that is an increase in cancer morbidity or mortality with an increase in degree of exposure. Demonstration of such a relationship provides strong evidence for incriminating the agent under study as a causal factor in the etiology of cancer causation. However, because of difficulty in the quantification of actual degree of exposure (dose-rate, deposition, retention, excretion) such relationships may not always be apparent. For that reason the lack of a demonstrated dose-response relationship may not negate the carcinogenicity of an agent.

In addition to these criteria, it must be recognized that any epidemiological study will have confidence limits around estimates of association or relative risks (e.g., around Standardized Mortality Ratios etc). In a study reported as "negative", the upper confidence limit may fall at a relative risk considerably above unity and thus the study cannot be regarded as negative but only as excluding a relative risk that is above this upper limit. Finally a "negative" epidemiological study may be relevant only to dose levels within or below the range of those observed in the study and is pertinent only if sufficient time has elapsed since first human exposure to the agent. Experience with human cancers of known etiology suggests that the period from first exposure to a chemical carcinogen to development of clinically observed cancer is usually measured in decades and may be in excess of 30 years.

Epidemiologic evidence must be viewed in its entirety. Such evidence is strengthened when similar findings are repeated or occur in different settings and environments. Accordingly, after discussing and analyzing individual studies, OSHA draws its conclusions based on all studies taken as a whole, scientific opinion, and OSHA policy.

### B. RESPIRATORY CANCER

Two significant studies became available before the fact-finding hearing. The first, a study by Ott, Holder, and Gordon (Ex. 1A 3-1) concerning the relationship between respiratory cancer and occupational exposure to dry arsenicals was submitted to OSHA by the Dow Chemical Company in response to the advance notice of proposed rulemaking (39 FR 10494). According to the study report, the dry arsenicals to which the workers were exposed were the following, listed in order of decreasing production: lead arsenate (59 percent), calcium arsenate (34 percent), copper aceto-arsenite (5 percent) and magnesium arsenate (2 percent).

The Dow study compared the proportionate mortality rate of arsenic-exposed employees with that of non-exposed employees over a 37-year period (1919-1956). The "exposed" employee group included those workers who had spent 1 or more days in the arsenical production area, while the "control" group had never worked in the arsenic exposure area.

An increased percentage of cancer deaths was observed among the exposed worker population (32.9 percent) versus the nonexposed (20.7 percent). The authors' analysis of the data indicated an approximate threefold increase in lung cancer for the exposed population (16.2 percent) over the nonexposed (5.7 percent). Lymphatic cancer occurred 2.5 times the expected rate (3.5 percent versus 1.4 percent). Fewer cancers of the digestive system were found in the exposed population than were expected.

To supplement the results of the first analysis, Ott also performed a cohort analysis by examining mortality data for 603 men who had worked for at least 1 month in the exposure area. Ott observed 35 cancer deaths among the exposed group versus 19.4 deaths expected on the basis of the U.S. white male age-calender time-cause specific rate. Of the 35 total cancer deaths among the exposed population, 20 lung cancer deaths were observed where only 5.8 would have been expected. Additionally, there were 5 deaths attributable to lymphatic cancer where 1.3 were expected. Thus, the results of the cohort analysis confirmed the findings of excess respiratory cancer mortality in the earlier analysis.

Of interest was the fact that of 173 deaths recorded for workers in the exposed population, 138 of the workers had worked in the exposure area for a period of less than 1 year, and of these 138, 16 died of lung cancer.

The National Academy of Science (NAS) report (Ex. 180, p. 313) noted that 60 percent of the respiratory cancer deaths reported in the Ott study were observed among those workers who had worked in the plant 1 year or less. Since the study included only those workers who remained with the company, the report recommended that the excess in this group be verified by following all short term work-

ers. The report also noted that while the excess respiratory cancer mortality among these short-term workers might or might not be ascribable to arsenic, 4- to 6-fold excess respiratory cancer mortality was observed among the longer-term workers.

OSHA agrees it is conceivable that the excess among the short-term workers might not be ascribable to arsenic. However, there is no data to support this hypothesis and the long-term workers were at elevated risk of dying of respiratory cancer. OSHA thus accepts the study findings of excess respiratory cancer mortality among workers in the Dow plant.

The Allied Chemical Corp. submitted an epidemiological study to OSHA which contained findings of an excess of respiratory and lymphatic cancer deaths similar to the Dow studies (Ex. 1A-24). The Allied facility had also been engaged in the manufacture of dry arsenicals for pesticides. Further, like the Dow process, arsenic trioxide was the starting compound for the subsequent synthesis of lead arsenate, calcium arsenate, and other chemicals.

The Allied study, performed by Baetjer et al., compared the mortality experience of retired arsenic workers with that of the general population of Baltimore, Md., the location of the Allied pesticide facility. It focused on 27 deaths occurring between 1960 and 1972. Of the total deaths, 19 were due to cancer, including 10 from respiratory cancer and 3 from leukemia or lymphosarcoma. The expected numbers of deaths, however, based on figures adjusted for the combined age, race, and sex-specific relative frequencies of the general population of Baltimore, were only 5.6, 1.5, and 0.18, respectively.

When an analysis was made of mortality among only male retirees from the pesticide plant, Baetjer found even greater differences between observed and expected deaths from all types of cancer, as well as respiratory and leukemia-lymphatic cancers. Specifically, there were 17 deaths from all forms of cancer versus 1.35 expected, 10 respiratory cancer deaths versus 0.4 expected, and 3 deaths from leukemia-lymphatic cancers versus 0.05 expected.

OSHA recognizes that the Baetjer study is a preliminary study which will be followed by a more thorough analysis. OSHA agrees with Arthur D. Little, Inc. (Ex. 26B, p. 36) that the study does not eliminate other potential associations of workers with respiratory cancer such as smoking, common ethnicity or demography. As ADL noted, the lack of such analysis weakens the inference of a relationship between the plant environment and death by cancer. However, OSHA concludes that the magnitude of the excess of respiratory cancer mortality (28 and 17 times the expected Baltimore rates for 1960 and 1970, respectively) makes this study strong evidence of excess risk among workers exposed to arsenicals.

The studies by Ott et al. and Baetjer et al. because of their significant impact on the assessment of carcinogenic risk to exposure to arsenicals, have come under the most detailed scrutiny of any studies in the record. In the context of deciding the issue of carcinogenicity of pentavalent arsenic, many analyses have focused on the fact that workers were exposed to both trivalent and pentavalent arsenicals as well as other chemicals. In April 1975 OSHA asked the Allied and Dow Chemical Companies what chemicals the workers in the two studies were exposed to and what was their estimate of the degree and duration of exposure to each chemical (Ex. 101, Ex. 102).

Allied responded "we cannot establish with certainty the exact nature of exposures to which our people were subjected. Some were predominantly exposed to arsenic trioxide plus sodium arsenite, Paris Green and the Arsenates, while the female packers (not included in the Baetjer Phase I study, but among whom is a cancer survivor in remission) were exposed only to calcium arsenate, lead arsenate, and Paris Green." (Ex. 55.)

Dow responded:

> Unfortunately, at this time we cannot assess the relative importance of trivalent vs pentavalent arsenic. The men were exposed to the following materials: arsenic acid, lead arsenate, calcium arsenate, copper acetoarsenite, acetic acid, gum arabic, Rhodamin B, and finally lead oxide.
>
> Since the insecticide department was somewhat seasonal in its operation, the turnover of employees was considerable. It was, for many, the entry job into the company from which a considerable number of employees went on to other jobs with other exposures. The random nature of this movement is such that it is impossible to establish any pattern of exposure to other chemical entities. (Ex. 102.)

Ott's response to a question at a 1975 symposium on the health effects of arsenic and lead helps clarify this further.

> Arsenic trioxide was present in one building which was apart from the packaging building where most of the employees worked. Lead oxide was mixed with the arsenic trioxide and the arsenic was converted to the pentavalent form in the first building. The material was then pumped over to the finishing building in a slurry and dried and processed for packaging. (Ex. 182.)

Furthermore, as noted earlier, nearly 95 percent of the arsenicals produced in the Dow plant were pentavalent arsenicals.

Based on the Allied and Dow responses, it appears that the workers in the Allied study were primarily exposed to trivalent arsenic while those in the Dow study were primarily exposed to pentavalent arsenic. It is the case that workers in these two studies were exposed to other chemicals besides inorganic arsenic. However, their primary exposure was to trivalent and pentavalent arsenic, as these were the primary starting materials and primary products of the two plants. At the same symposium, Ott later stated:

> We have evaluated, using proportionate mortality techniques, every production unit in that location. The judgment was made, based on having looked at all these production units in relation to the arsenicals one, that the experience in the arsenicals area was unique to that unit. This is not to say that those people did not have other observed chemical exposure and I do not think we attributed all the effects to arsenicals. It was felt that regardless of whether there was some synergism present or not, the experience we were seeing was unique and not duplicated in any other production. (Ex. 182E, p. 314.)

While exposures to other chemicals (none of which are known to be carcinogenic) may have contributed to the excess cancer mortality observed, OSHA believes that is is appropriate to conclude that inorganic arsenic is the primary causal agent for the excess cancer mortality observed because of the large magnitude of excess risk and because the predominant exposure was to arsenicals. As discussed below, the conclusion is reinforced by the other studies indicating excess risk among arsenic-exposed workers.

For further presentation and analysis of the data in the Ott study see section IV-D of this preamble.

In 1969, Lee and Fraumeni, (Ex. 5D) in an effort to clarify the role of arsenic in human carcinogenesis, studied and compared the mortality data of 8,047 white, male Anaconda copper smelter workers in Montana exposed to both arsenic trioxide and sulfur dioxide and other co-contaminants during 1938–1963, with that of the white male population in the State of Montana. As of December 1963, 5,397 of these 8,047 workers were known to be alive; 1,877 were deceased; and 773 were unknown status. When compared to the control population (white, male Montanans) there were 1,877 observed smelter worker deaths as contrasted with 1,634 expected deaths (P less than 0.01).

The authors analyzed the study group according to duration and degree of exposure to arsenic trioxide and sulfur dioxide. The excessive lung cancer mortality among the copper smelter workers was found to increase consistently with increasing lengths of employment at the smelter. These increases ranged from 2.03 times the expected for those employed from 1 to 4 years, to 4.7 times the expected rates for those employees working 15 years or more prior to 1938.

Lee and Fraumeni further divided the groups into "heavy," "medium,"

and "light" exposures to arsenic trioxide, based on the amount of arsenic trioxide to which the employees had been exposed. According to testimony given by H. F. Morris (Ex. 28B) the Anaconda workers studied by Lee and Fraumeni would have been exposed to the following average levels of arsenic trioxide from 1943 to 1957: heavy—11.27 mg/m³; medium—0.58 mg/m³; light—0.29 mg/m³. As Morris stated, respirators were supplied in the heavy and some of the medium exposure areas and "used with varying degrees of faithfulness."

Additionally the authors discovered that lung cancer mortality increased consistently with increasing degree and duration of exposure in each of the "heavy," "medium," and "light" categories. Lung cancer mortality ranged from 4.4 to 8 times expected in the "heavy" exposure group, 2.63 to 6.7 times expected in the "medium" group, and 2.1 to 2.5 times expected in the "light" exposure category. Further, it is significant that the 2,862 men who worked less than 12 months in their category of maximum arsenic exposure category, were found to have an incidence of lung cancer 2.86 times that of the control population.

Similarly, workers were grouped according to the duration and degree of their exposures to sulfur dioxide. Again, excess lung cancer mortality was found with increasing exposure to sulfur dioxide. The greatest excess of lung cancer was found among the workers exposed to both high concentrations of arsenic trioxide and medium or high concentrations of sulfur dioxide. Lee and Fraumeni concluded that their findings were "consistent with the hypothesis that exposure to high levels of arsenic trioxide, perhaps in interaction with sulfur dioxide or unidentified chemicals in the work environment, is responsible for the threefold excess of respiratory cancer deaths among smelter workers." For a more detailed analysis of this dose—response data in this study, see section IV-D of this preamble.

The finding of excess lung cancer mortality is of great significance because this study meets most of the criteria of an ideal epidemiological study. The study carefully followed up the population at risk for a substantial period of time. The size of the population at risk, allowed for both a high degree of statistical significance, as well as for breakdown into large exposure categories for gradients of risk of exposure to arsenic trioxide and other agents to be examined. The exposure categories were further substantiated by contemporaneous measurements, which were submitted to the record of this proceeding.

Certain other factors such as smoking and place of birth were only qualitatively evaluated. However, as discussed below, these were not of sufficient magnitude to eliminate the excesses observed.

The strength of the Lee and Fraumeni study was also discussed by Arthur D. Little, a consulting firm hired by Kennecott Copper, to review the evidence. ADL, in comparing this study to other studies discussed in the body of the study pointed out the other "studies which neither in volume, duration or methodological excellence could compete with this exceptional investigation." (Ex. 26B, p. 32).

There have been three studies which examined the mortality experience of ASARCO, Tacoma, Wash., copper smelter workers. The first, Pinto and Bennett (Ex. 3Z) suffers from the inappropriate choice of nonexposed control groups for the arsenic-exposed population (ATR 772-73). The second study, Milham and Strong (Ex. 1A-7H) shows excess lung cancer mortality. The third, by Pinto and Enterline (Ex. 29B and Ex. 111, Attachment 4) presents the most thorough examination of ASARCO, Tacoma worker mortality. Consequently, only the latter study is examined in detail.

At the April 1975 rulemaking hearing, Pinto and Enterline (Ex. 29B) presented results of a mortality study of retirees receiving pensions from ASARCO, Tacoma. The retiree population included those who were alive on January 1, 1961, and who had reached age 65 prior to December 31, 1973 (Ex. 29B). An updated report (Ex. 111, Attachment 4) included pensioners who were alive as of January 1, 1949, and who had reached age 65 before December 31, 1960. For the years 1949 to 1973, 324 deaths were recorded, with 69 due to cancer. Of the 69 cancer deaths, 32 were due to lung cancer, a rate 3 times that of the Washington State population.

Pinto and Enterline considered the lifetime arsenic exposure of each member of the study population from two aspects—total exposure duration and average exposure—the exposure values being constructed from separate departmental averages of a large number of employee urine samples taken in 1973. These levels were used to calculate an arsenic exposure index for each pensioner studied. The pensioners were then divided into four groups based on their exposure indexes.

Pinto and Enterline found that respiratory cancer was related to the average urinary arsenic levels. No excess lung cancer mortality was observed in workers employed less than 25 years prior to retirement, who had average urinary arsenic levels less than 200 micrograms/liter. However, statistically significant excess lung cancer mortality was observed in all groups exposed 25 years or more.

On the basis of their findings Pinto and Enterline concluded, "results thus far indicate that there is a relationship between exposure to arsenic trioxide, or associated agents in the smelter atmosphere, and increased risk of respiratory cancer."

In the updated report (Ex. 111, Attachment 4), the authors also analyzed the effect of smoking on a population of 419 retirees alive on January 1, 1961. Among the 377 workers in this group for whom smoking histories were available, 191 were smokers and 186 were not (nonsmokers were defined as those who had not smoked in the last 10 years). Respiratory cancer mortality rates for the smoking retirees were compared with smokers in the general population of Washington State (1961-70) and the rates of nonsmoking retirees were compared with nonsmokers in the general Washington population. As a result, the authors were able to provide a numerical estimate of the adjustment for smoking on the lung cancer mortality rates observed in the study.

It should be noted that the Pinto and Enterline study, like the Lee and Fraumeni study, is an excellent study and deserves considerable credence. The study was based upon careful followup of a group of long-term exposed workers. Exposure indices, based on 1973 values, provided for a maximum utilization of the data. The consistent dose-response relationship between 1973-based urinary arsenic levels and lung cancer mortality strengthens the association of the disease with worker exposure to arsenic. Thus, OSHA accepts, the overall findings of excess lung cancer mortality observed in the study. The data from this study is analyzed in greater detail in Section IV-D of this premble.

There was considerable analysis in the record of the effects of smoking and place of birth on the findings of Pinto and Enterline, and Lee and Fraumeni, and other studies. Pinto and Enterline found the lung cancer rate among the smoking retirees to be 2.6 times that of the general population smokers, and the rates of the nonsmoking retirees to be 4.6 times that of the general population of nonsmokers. Pinto and Enterline, on the basis of a 1975 survey of current worker smoking habits, calculated that a 17 percent adjustment of lung cancer mortality was necessary to adjust for the smoking patterns of present Tacoma smelter workers. Dr. Enterline concluded:

> There appears to be some interaction between smoking and arsenic exposure, but not the multiplying effect observed for some other substances. Smokers have slightly higher total arsenic exposures at retirement, but definitely not enough to account for the added deaths. Table 3 (of the study) provides only very rough estimates, but it

does suggest that the excess in SMR's for respiratory cancer are not due to smoking.

As noted by Dr. Weir (Ex. 29N) smoking should be considered in the evaluation of the Lee and Fraumeni and Pinto and Enterline studies. Dr. Weir has coauthored several studies which investigated the smoking patterns of various occupational classes of workers. Weir indicated the greatest adjustment necessary to account for increased degree of smoking among the skilled occupational laborers studied was 18 percent. In these circumstances, OSHA is unwilling to assume that smoking alone accounted for more than a 17 percent excess in lung cancer mortality.

OSHA accepts the fact that some adjustment to standardized mortality ratio in other studies, needs to be made, as in the case of the Tacoma workers to take into account for possibly higher smoking pattern (relative to the general population) among smelter workers. But if the 17 percent adjustment at Tacoma is typical, this would not significantly modify the findings of 2 to 8 times excess mortality found in this and other studies. Therefore, OSHA agrees with Dr. Fraumeni (ATR 182) that smoking could not account for the excess mortality in the "light" category of the Lee and Fraumeni study and of course, would not account for the larger excesses in the "medium" and "heavy" exposure categories.

Another factor known to affect excess respiratory cancer observed in the two studies is place of birth (Ex. 29N, 26B). As noted and displayed in table 7 of the Lee and Fraumeni study, foreign-born workers had higher SMR's for respiratory cancer than native-born workers, but exhibited similar gradients by degree and duration of exposure. Lee and Fraumeni stated,

> The greater excess of respiratory cancer mortality among foreign-born workers can be attributed, at least in part, to the fact that the periods of employment were generally longer than those for the native-born. In addition, the extent of the overall excess of respiratory cancer and the mortality gradients associated with specific exposures in the smelter cannot be explained by other factors which affect cancer mortality, such as socio-economic status, genetic susceptibility, availability of medical care, accuracy of death certificates, and urbanization. (Ex. 5D pp. 1049-50.)

Because the paper provided no data to assess the effect of duration of employment on foreign born worker respiratory cancer mortality, Weir analyzed the effect of birthplace on mortality risk for all causes. Weir stated that the figures based on mortality risk of all causes do not necessarily mean that the authors were incorrect in assigning the excess respiratory cancer risk to occupational exposure. However, if these two groups are similar, Weir calculated that as much as 15 percent of the respiratory cancer risk could be reassigned to place of birth (Ex. 29N, p. 21). It should be noted that this is only an approximation. The approach one would prefer (assuming one had access to the original data) would be to assess the influence of birth on the disease being assessed, lung cancer, and not make approximations based upon deaths from all causes. Since 33.7 percent of the deaths of Lee and Fraumeni and approximately 40 percent in the Pinto and Enterline were among foreign-born, Weir believed that the effect was at least as great in the Pinto and Enterline study (Ex. 29N, p. 21).

OSHA accepts Weir's analysis that this birthplace variable may influence the excess respiratory cancer mortality among these workers in these two studies. The exact degree is unknown but 15 percent seems a reasonable high-side estimate. As Weir later noted, the absolute value of the risk gradients by exposure level, would be reduced, the relative values would be unchanged.

Even if the adjustments for smoking (17 percent) and upper bound estimate for place of birth (15 percent were applied, there still would be a substantial excess respiratory cancer mortality in all categories (heavy, medium, and light) of the Lee and Fraumeni study and those in which a statistically significant excess lung cancer mortality was observed in 3 categories in the Pinto and Enterline study.

It can be speculated that these adjustments should be higher and that therefore a greater portion of the excess mortality in the exposed groups is accounted for by smoking and place of birth. But such speculation is not supported by concrete data. OSHA does not judge it appropriate when analyzing studies for the purpose of adopting health standards to apply all speculative hypotheses that might reduce reported risk. Accepting such hypotheses is, in effect, a bias against worker protection. Thus, OSHA concludes that the evidence indicates that some adjustment to the mortality rates is needed to take into account smoking and place of birth. But even allowing for adjustment for smoking and place of birth, there is still substantial excess respiratory cancer mortality among the exposed workers in the Lee and Fraumeni, and Pinto and Enterline Studies. Exposure to arsenic still remains the best explanation for the observed excess risk.

A two-part investigation of the worker population of an English factory which manufactured a sodium arsenite sheep dip was published in 1948. The first part of this study, reported by Hill and Faning, (Ex. 5B) compared mortality data of the factory worker population with that of workers in other occupations in the same community, during the years 1910 to 1943. Hill and Faning found 22 cancer deaths (29.3 percent) among 75 deceased workers, compared to 157 cancer deaths (12.9 percent) among 1,216 deceased workers from other occupations. The percentage of cancer deaths due to cancer of the respiratory system was 31.8 percent for the sodium arsenite workers compared to 15.9 percent for the control group, and from skin cancer, 13.6 percent compared with 1.3 percent for workers from other occupations.

The second part of the study, reported by Perry et al. (Ex. 5C), consisted of a clinical and environmental investigation of the same factory during 1945 and 1946. Although the study was limited in scope and design, Perry's results showed some correlations between the levels of arsenic found in the hair and urine of workers, and the levels of airborne arsenic contamination to which workers were exposed.

The Hill and Faning study is an example of a carefully done case-control study. The control group, a group of comparable socio-economic status with that of the exposed group, provided for internal control of many variables (smoking, place of birth) important for the evaluation of relative risk due to exposure to chemicals. The excesses, although based on a small sample size, are given added importance when considered in conjunction with the findings of the Ott and Baetjer studies (discussed previously) and taken together strongly supports the findings of excess cancer mortality risk among nonsmelter workers exposed to arsenicals.

In 1951 Snegireff and Lombard (Ex. 5E) conducted a statistical study of cancer mortality in the metallurgical industry. They concluded that the frequency of cancer deaths of all types among the employees of a plant handling arsenic trioxide was not significantly different from that of a control population (workers in a plant stated to be identical to the first except that it handled no arsenic trioxide). As a result of this lack of statistical significance, the authors concluded that arsenic trioxide was not carcinogenic.

Both NIOSH (Ex. 99, p. 32-35) and ADL (Ex. 26B, p. 15-20) analyses found the author's statistical analysis and conclusions to be of questionable validity. Using a number of assumptions, NIOSH observed that both worker populations were subject to large excess respiratory cancer mortality. NIOSH concluded that the authors should have chosen a more suitable control population, and focused their analysis on respiratory cancer mortality. ADL in a detailed analysis of the statistics of the paper noted several serious misapplications of sta-

tistical analysis as well as errors in interpretation (Ex. 26B, p. 18-20). OSHA concludes along with ADL and NIOSH that the statistics and analysis do not support the authors' conclusions. Accordingly, OSHA places no weight on this study.

In October 1974, the Kennecott Copper Corporation (KCC) submitted a survey of mortality from respiratory diseases observed among its active and retired employees for the period 1950 to 1972 (Ex. 1A-30). The study, performed by Milby and Hine, compared the ratios of observed employee deaths to the expected deaths and the proportion of deaths due to cancers of all types, respiratory cancer, and nonmalignant respiratory diseases among KCC employees with corresponding data for the United States and for the State of Utah. They found that the proportion of respiratory cancer deaths among KCC employees was not very different from either the total U.S. respiratory cancer death rate or that of the State of Utah.

Both NIOSH (Ex. 99, p. 47-8) and ADL (Ex. 26B, p. 38) noted that a major flaw in the Milby-Hine study was the inclusion of all workers from all Kennecott facilities in the mortality analysis. NIOSH noted that approximately 80 percent of the study population were miners, concentrator workers, and refinery workers. Miners and concentrator workers were not exposed to arsenic but rather to complex ore in which arsenic is bound in such a manner that workers are exposed to the "ore" and not free, unbound arsenic compounds. The arsenic in such ores might not be biologically available and therefore might not elicit a carcinogenic response. As noted in the Rencher-Carter study, none of these groups of workers have been shown to be at increased risk. This resulted in a significant dilution effect in which the mortality experience of smelter workers was masked by the inclusion of workers at other work sites. NIOSH also noted that insufficient time may have elapsed to allow for the latency period of arsenic-associated carcinogenesis. Thus, NIOSH felt that the study did not reliably evaluate the effects of exposure at the Kennecott, Utah, smelter.

OSHA concludes that the overbroad inclusion of workers at work sites not at excess risk, diluted results which would have been associated with smelter workers. Additionally, more information than provided in the study is necessary to evaluate whether sufficient time has elapsed to allow for latency period. In view of these difficulties, less weight can be placed on the findings of the Milby-Hine study, particularly in relation to the Lee and Fraumeni, and Pinto and Enterline studies.

A study by Kuratsune et al. (Ex. 1A-7G) published in 1974, reported a high frequency of respiratory cancer mortality among workers at a Japanese copper smelter. On the basis of Kuratsune's findings, the Japanese Ministry of Labor judged that the cases of lung cancer were due to occupational exposure to arsenic trioxide and other compounds released during the smelting of copper ores. Kuratsune's study is consistent with the findings of excess mortality among workers in some American smelters.

In 1976 Tukadome and Kuratsune (Ex. 191), in a follow-up to their 1974 study, published a study of the mortality in an experience of 2,675 male Japanese smelting and refinery workers for the period 1949 to 1971. The workers were divided into 5 cohorts according to their jobs, considering both the areas and tasks to which they were assigned. Standardized Mortality Ratios (SMR's) were calculated by applying the age-specific death rates to the mid-year populations by each year from 1949 to 1971 and summing over all calendar years.

Among copper smelter workers, statistically significant mortality excesses were observed for cancer of all sites, cancer of the colon and lung cancer. The ratio of observed to expected deaths for lung cancer was 11.9 (29 deaths observed, 2.44 expected) cancer of the liver 3.4 (11 observed, 3.26 expected), and cancer of the colon 5.1 (3 observed, .59 expected). In contrast, no excess cancer mortality was observed in any of the other cohorts.

The authors then grouped the copper smelter workers by duration (length of employment) and degree of exposure to arsenic and other compounds. These relative exposure designations were made without any quantitative exposure data, but were based on the relatively high arsenic content of the ores and judgments of persons familiar with the process. The excessive risk of lung cancer mortality was found to increase consistently with increasing length of employment at the smelter. This risk ranged from 5.63 times the expected for those working 1 to 9 years, to 19 times the expected for those working 20 or more years. Similarly, mortality increased consistently with increasing degree of exposure to arsenic ranging from 6.35 times the expected in the "light" exposure category to 14.9 times the expected in the "heavy" exposure category.

While noting the excess mortality due to liver cancer; the authors stated, "Since the majority of these deaths were unspecified malignant neoplasms of liver without adequate diagnostic validity, any further reference can hardly be made with confidence. It seems highly desirable that similar epidemiologic studies with particular attention to this site of cancer should be made at other copper refineries."

Based on their findings, the authors concluded that the findings of increased lung cancer mortality and demonstrable dose-response relationship supports the findings of Lee and Fraumeni and Ott et al. of increased lung cancer risk among workers exposed to arsenicals (Ex. 191, p. 315).

Kennecott Copper stated (Ex. 190-1) the Tukudome study provided no further information beyond the other studies previously examined which indicate a causal relationship between inorganic arsenic and respiratory cancer. Kennecott further noted that there was no environmental data available to indicate what chemicals and to what degree workers were exposed, and that the authors appeared to rely solely on their judgment in deriving the relative exposure classifications. Finally, Kennecott noted that the authors had no data to support their judgment that arsenic compounds and sulfur dioxide as well as possibly other carcinogens such as polycyclic aromatic hydrocarbons are responsible for the excess respiratory cancer observed.

OSHA accepts some of the above criticisms of the study. One of the weaknesses of the study is there is no quantitative exposure data. Thus, great weight cannot be placed on the exposure classifications used. What is useful, however, is the fact that only the cohort of smelter workers were subject to excess risk. Consequently in the absence of exposure data and in light of the relatively primitive processes used in the plant from 1919 to 1946, one can state that these findings are consistent with the findings of other studies of excess respiratory cancer mortality among smelter workers exposed to arsenic trioxide and other compounds.

ASARCO suggested that employees placed in the cohort of refinery workers observed to have no excess mortality, may indeed have had some exposure to arsenic based on analogy with similar operations at their Tacoma plant (Ex. 190-3). Again little weight can be placed on this suggestion because no quantitative data is available to confirm the degree and duration of exposure.

In January 1975, OSHA received the Rencher-Carter (BYU) study of worker mortality in the Utah Division of the Kennecott Copper Corp. (Ex. 5F). For the period 1959 to 1969, 965 deaths were identified and divided into four categories: Smelter workers, mine workers, concentrator workers, and others. The authors then calculated the percentages of deaths from specific causes in each category, and compared their findings with the 1968 mortality data for the State of Utah.

Smelter workers were found to have the highest percentage of deaths due to lung cancer (7 percent), while mine and concentrator workers had 2.2 percent of deaths due to lung cancer. As noted earlier in the discussion of the

Milby-Hine study, it is uncertain whether mine and concentrator workers are exposed to biologically available arsenic. No lung cancer deaths were observed in the "other" category (refinery, office, and research center workers). The corresponding 1968 lung cancer mortality figure for Utah was 2.7 percent.

Next, the authors investigated the influence of smoking on lung cancer mortality. Based on a complete survey of the smoking habits of the deceased smelter workers, and random samples of the deceased mine and concentrator workers, they found that nearly the same percentage of all three groups were smokers (approximately 60 percent). After dividing each of the three groups into smokers and non-smokers, Rencher and Carter observed that both smoking and non-smoking smelter workers had lung cancer mortality rates in excess of their counterparts in the mine and concentrator groups.

After determining the age of the workers at death, the authors calculated age-adjusted death rates and compared them to the State rates. Smelter workers were found to have a rate of lung cancer mortality three times that of the State population (10.1 versus 3.3). The mine workers had a lower lung cancer rate than the State population (2.1 versus 3.3). An examination of work histories revealed that all but one of the smelter workers who died of lung cancer had worked in one of four plant areas having the highest average exposure levels for five contaminants (arsenic, sulfur dioxide, sulfuric acid mist, lead, and copper). After calculating cumulative exposure indices for each smelter worker, for each contaminant, and averaging each category, it was found that all five average cumulative exposure indices were higher for the lung cancer group. This indicates that these smelter workers had either worked longer at the smelter or in areas of higher exposure. The findings of this study are consistent with findings of excess lung cancer mortality of smelter workers exposed to arsenic.

In 1973, W. C. Nelson et al. (Ex. 1A-28) of the Environmental Protection Agency (EPA), published a followup mortality study for a cohort of 1,231 individuals in Wenatchee, Wash., who had participated in a 1938 mortality survey of the effects of exposure to lead arsenate insecticide spray (Neal et al., Public Health Bulletin 267, 1941). The population surveyed was classified by spray exposure, duration of exposure, age and sex. Additionally, three exposure groups were identified: Orchardists, those having the highest exposure; consumers, those having no exposure; and a third group, having intermediate exposures.

Nelson located over 97 percent of the original 1938 study group. The Standard Mortality Ratio (SMR) technique was used to compare the total death rate to the expected death rate in the State of Washington. The authors concluded that excess mortality did not occur consistently with the degree of exposure to lead arsenate spray. In fact, the orchardists, the most highly exposed group, had the lowest SMR of the three groups analyzed.

The American Wood Preservers Institute (AWPI) (Ex. 115, p. 15-18) and others suggest that the Nelson study provides convincing evidence that lead arsenate specifically, and pentavalent arsenic in general, are not carcinogenic. They indicated that the study is a careful followup of the cohort of orchardists studied by Neal et al. (Ex. 62) exposed to substantial quantities of lead arsenate spray during their working lives. Due to the "substantial" exposure and careful methodology, AWPI concluded that lead arsenate is not carcinogenic (Ex. 115, p. 18).

NIOSH on the other hand stated:

> We question also the pertinence of the study by Nelson et al. All that is known about the exposure of those people to arsenates is that during 1938 they were exposed for 8-14 hours per day for not more than 12 weeks, and some for as little as 2 weeks, to airborne concentrations of arsenic somewhere between 0.02 and 261.2 mg/10 cu m. The group considered to be the most heavily exposed orchardists, had a mean concentration of arsenic in their urines at some unspecified time during the day and at unspecified dates in relation to their actual contacts with arsenic that was about 2.2× that in the urines of a control group. We know nothing about their previous or later exposures to arsenates and cannot assume that they continued to have annual exposures to similar environmental concentrations of arsenate throughout the 30 years from 1938 to 1968, when the retrospective study was performed. The exposure during 1938 could be the only one that some of the subjects ever had. The finding of no excess cancer in the most heavily exposed group cannot be assigned any high significance in consideration of the many unknown factors in the study (Ex. 192A).

In its analysis of this paper ADL noted (Ex. 26B, p. 45) "The most serious deficiency of this study deals with the difficulty in identifying the actual level and duration of lead arsenate exposure of its subjects. Frequent and serious errors in such classification of subjects relative to their exposure can mask a relationship that might exist between exposure and mortality."

OSHA concludes that the Nelson study is not a valid basis for judging the potential carcinogenicity of lead arsenate. While it was a careful followup of persons included in the 1938 study, the exposure classifications were based solely on measurements made in 1938. As the authors noted (Ex. 1A-28, p. 110) the 1938 categories were kept constant, regardless of subsequent work or retirement. As NIOSH indicated, exposures may have differed dramatically from those measured in 1938.

Especially noteworthy, also, is the authors' discussion of their own study design. In this discussion, the authors noted that it was difficult to be sure of the exposure dosage categories, and that they lacked data for individual exposure measurements. Nelson stated that they could not be positive about whom the most exposed individuals were, and that the dosage levels were especially a problem for the intermediate group, who had the most heterogeneous exposures. Nelson also stated that it is difficult to interpret the study results due to the relatively small number of individuals involved. In fact, Nelson stated that some of the more suggestive excesses in mortality cannot be considered significant because of small numbers and that many of the volunteers in the 1938 study "are still too young to have reached high risk mortality age" (Ex. 1A-28).

NIOSH attempted to independently evaluate the Nelson study findings using two types of data sources, the first data being occupational mortality data for adult white males in the State of Washington for the period 1950-71 (Ex. 1A-34). The other source reviewed was the age-adjusted mortality rates for specific types of cancer for the three-county area from which the Nelson orchardist sample was drawn. Here again, because of many unknown factors, including lack of data necessary to determine degree and duration exposure to lead arsenate as well as documented use of a variety of other pesticides (Ex. 31C), OSHA feels that this data cannot be relied on to make a judgment on the carcinogenicity of pentavalent arsenic.

In July 1976, American Wood Preservers Institute submitted the finalized form of a mortality study of Hawaiian carpenters, conducted for AWPI by the Pacific Biomedical Research Center of the University of Hawaii (Ex. 137-6). Preliminary results of the study had been submitted during the April 1975 hearings. (Ex. 31C, Attach. 71) The study was undertaken to analyze the mortality experience of carpenters in Hawaii before and after the introduction of water soluble arsenical wood preservatives.

In making this study, the death records of 227 carpenters who died between June 1947, and May 1951 (Group A), and 293 carpenters who died between January 1970, and December 1973. (Group B), were matched with the death records of non-carpenters of the same sex, race and age (within 5 years). Although arsenical wood preservatives had been used in Hawaii since 1935, prior to World War II the use of arsenate-treated wood was negligible. After World War II, however, according to this study, most

of the lumber used in construction was treated. Therefore, the investigators assumed that the carpenters who died in the early period (Group A) constituted an unexposed control group with respect to arsenate-treated wood, and that the carpenters who died in the later period (Group B) had substantial exposure to arsenical-based preservatives.

Comparison of the death rates among carpenters with the total death rate in the general population showed a significant increase in deaths among carpenters. The relative risk for all causes of death for carpenters was 2.15 for Group A and 2.29 for Group B. The relative risk for cancer death among carpenters was 3.58 for Group A and 2.72 for Group B. The authors concluded that there was no significant difference in cancer mortality between Group A and Group B. Similarly, the authors found that there were no significant differences in cancer of trachea, bronchus and lung, or lymphatic and hematopoietic system between the carpenters and non-carpenters and that the differences between Group A and Group B were not significant.

Based on their findings the authors concluded, "Our study is in agreement with Milham's and others with respect to excess cancer deaths among carpenters. However, the relative risk for cancer among carpenters exposed to arsenate-treated wood does not show a significant excess for the periods studied."

Unfortunately, there is no data on individual carpenter exposure of the exposed group. Thus, we cannot define who was "exposed", who was "nonexposed", and what the degree of exposure was. Specifically, it is not clear that the Group B carpenters had higher exposures to inorganic arsenic than the "nonexposed" group. Additionally, there is some question whether the Group B carpenters had been followed for a sufficient number of years to allow for the long latency period (20 years or more) observed in other studies for the development of arsenic-related respiratory cancer. (See also the analyses of this study by E. Baier of NIOSH, Dr. Kraybill of NCI, Dr. Lloyd of the Steelworkers (Ex. 192).) Consequently, the conclusions of this study are not sufficiently documented to support a conclusion that pentavalent arsenic is not a carcinogen. As discussed in the scope and application section, however, OSHA has concluded that it is not appropriate to include arsenically treated wood within the scope of this standard.

In 1969, Denk et al. (Ex. 109C-87) reported the autopsy findings of 100 Moselle vineyard workers exposed to arsenical pesticides. From 1923 until 1942 vines were sprayed from May to June with "Urania Green" and "Silesia Green", two pesticides containing 54 to 56 percent arsenic trioxide, and also with calcium arsenate. In addition to inhalation exposure, workers consumed large quantities of "home brew" (a wine residue) containing 2.0 to 8.9 mg arsenic trioxide per liter.

Cases were selected from among those petitioning from 1960 to 1966 to the Rhine Agricultural Professional Society for recognition of the effects of arsenic as an occupational disease. One hundred cases were chosen, without regard to expert evaluation, from among those autopsied for which precise medical diagnoses were available for evaluation. Cancer was listed as cause of death in 75 of the 100 cases, and as a secondary disease in 10 others. The 85 cases were distributed over the various organ sites as follows: 65 cases of lung cancer, 29 cases of skin cancer, 3 of laryngeal cancer, 2 of stomach cancer and 2 of pancreatic cancer, and one each for 8 other sites.

In 1957 and 1958, Roth (Ex. 65, 109C No. 88) published the results of his autopsy findings of vine growers from the Moselle region in Germany who were exposed by inhalation of pesticides containing 4.3 to 56 percent arsenic trioxide and by drinking wine containing 1.5 to 8.2 mg arsenic trioxide per liter. In the 1958 report, cancer was listed as the cause of death in 30 of the 47 cases (64 percent), 18 of which were due to lung cancer (38 percent), 6 to liver sarcomas (12.8 percent), 5 to cancer of the esophagus (10.8 percent), and 1 to bile duct cancer (2.1 percent). Arsenic cirrhoses were listed as the cause of death in 8 of the 47 cases and were observed in 15 other cases. Roth also found 10 cases of multiple tumors of the skin and 4 cases of melanoses of the skin. Roth also surveyed the lung cancer mortality rate in the general population of vineyard and nonvineyard areas of the Moselle and vineyard areas of the Ahr districts of Germany. In general, Roth found higher rates of lung cancer mortality in vineyard areas using arsenical insecticides than in all other areas.

The Denk and Roth studies have been discussed in detail, because of the considerable analyses on them made during the record of this proceeding. The major route of exposure for these pesticide workers was ingestion of arsenic contaminated wine. These studies thus, provide further evidence of the carcinogenic potential of inorganic arsenic by another route of exposure, ingestion.

### C. LYMPHATIC CANCER

With the exception of the Allied and Dow studies, no excesses of lymphatic cancer mortality were reported in the arsenic epidemiological literature. In many studies, no analyses were made for the risk of lymphatic cancer. In letters to Allied (Ex. 101) and Dow (Ex. 102) OSHA asked whether they had any reason to suspect exposure to a particular agent or agents used in their plants, and not found in the environment of nonferrous smelters, as a causative agent or agents for lymphatic cancer. Allied responded,

> That the difference is either due to route of exposure (skin contact versus inhalation) or to the specific properties of sodium arsenite and/or Paris green (copper aceto-arsenite). In our earlier reviews and reports to you, we did not recognize the significance of the fact that sodium arsenite was produced concurrently as a product in a separate operation in the arsenic acid plant area, and was also used as a raw material in the insecticide plant. Doctor Baetjer advises us that the clinical literature supports the position that sodium arsenite is a systemic carcinogen, whether by skin absorption or by ingestion.
>
> We have also learned from personal interrogation that at least some of the people contracting non-pulmonary cancer had prior conditions of arsenical keratoses subsequent to skin irritation or contaminated wounds. We have determined that among the dry products only the Paris green acted as a skin irritant under normal conditions of personal cleanliness and hygiene. The arsenates of lead and calcium were essentially non-irritating. We are somewhat reassured by the fact that both skin irritation and keratoses are historical in nature, and that no new keratoses have been logged for at least twenty years. This corresponds roughly in point of time with our revisions to the arsenic acid/sodium arsenite processes and to our termination in 1947 of Paris green manufacture and packaging.

The Allied response continued,

> We consider it significant that arsenites were involved in the two American studies and the English "sheep dip" study, whereas arsenates were apparently not involved in the British experience. According to Hunter ("Diseases of Occupations: 4th Edition, pp. 337-342) both Paris green and sheep dip have produced skin cancers by contact, some of which progressed to other sites.
>
> We have also been able to retrieve two rather ancient clinical studies: Archives of Dermatology and Syphilology 32: 218-33 (1935), Montgomery: Arsenic as an Etiologic Agent in Certain Types of Epithelioma, and American Journal of Cancer 22: 287-207 (1934) Franseen and Taylor: Arsenical Keratoses and Carcinomas. These papers, which relate mainly to medicinal use of sodium or potassium arsenites, both comment on the fact that a significant fraction of those patients with skin cancer at the site of arsenical keratoses later developed lymphatic and other "metastases" after apparently successful removal of the original lesions.
>
> These reports, considered jointly, all seem to corroborate the inferences we have drawn from the limited number of cases among our own people on which we have been able to secure reasonably complete case histories: i.e. that there is no objective evidence that arsenates have produced human cancer when arsenites were not also present, and that irritation, generally followed by keratoses resulting from skin contact, is an important factor in non-pulmonary arsenical cancers. (Ex. 55)

Dow Chemical Co. responded that they could not identify any agent responsible. (Ex. 102)

Thus, based on the above limited data and data from the clinical literature, it appears that copper-acetoarsenite, sodium arsenite, and potassium arsenite may be the causal agents in the observed lymphatic cancer cases. By regulating inorganic arsenic for purposes of reducing respiratory cancer mortality, exposures will be maintained sufficiently low so that the potential risk of lymphatic cancer will also be minimized.

D. DOSE-RESPONSE

Two of the epidemiologic studies (Pinto and Enterline, and Lee and Fraumeni), provide evidence of a dose-response relationship for the carcinogenic effects of arsenic, i.e., higher exposures for longer periods is associated with higher incidence of disease.

As discussed earlier, Pinto and Enterline conducted a mortality study of retirees receiving pensions from the ASARCO Tacoma smelter. Pinto and Enterline considered the lifetime arsenic exposure of each member of the Tacoma smelter study population from two aspects, total exposure duration and average exposure. The exposure values were constructed from departmental averages of a large number of urine samples taken in 1973. These levels were used to calculate an arsenic exposure index (μg/l-years) for each pensioner studied. The pensioners were divided into 4 groups based on their exposure indexes.

Pinto and Enterline found that respiratory cancer mortality was related to both the arsenic exposure index and the average intensity of urinary arsenic value. This is clearly demonstrated by data presented in Table 1 and 2 of their study (Attachment 4, Exhibit 111) which showed that SMR's for respiratory cancer increased consistently with increasing arsenic exposure index.

TABLE 1 (EXCERPTED)

| Urinary arsenic exposure index (yrs-μg/l urine) | Observed deaths | SMR |
|---|---|---|
| Under 3000 | 5 | 165.6 |
| 3000-5999 | 11 | 279.4** |
| 6000-8999 | 7 | 306.9** |
| 9000-11999 | 4 | 568.5** |
| 12000+ | 5 | 810.5** |

**Significant at the 5% level.

Respiratory cancer mortality also increased consistently with increasing average intensity of exposure and duration of exposure.

TABLE 2 (EXCERPTED)

1. EXPOSED FOR LESS THAN 25 YEARS

| Average Intensity (μg/l Urine) | Number of Retirees | Observed Deaths | SMR |
|---|---|---|---|
| 50-199 | 99 | 2 | 95.6 |
| 200-349 | 77 | 4 | 257.2 |
| 350 and over | 25 | 3 | 595.3** |

2. EXPOSED FOR 25 YEARS OR MORE

| Average Intensity (μg/l Urine) | Number of Retirees | Observed Deaths | SMR |
|---|---|---|---|
| 50-199 | 191 | 10 | 237.7** |
| 200-349 | 106 | 8 | 368.7** |
| 350 and Over | 28 | 5 | 859.5** |

** Significant at the 5 pct level

There is a weak to moderate correlation between urinary arsenic levels and airborne arsenic levels. This is discussed in exhibit 111 attachment 4, which indicates that a urinary level of 100 μg/l is roughly equivalent to 31 $\mu g/m^3$ in air. As shown above, no excess lung cancer mortality was observed in those workers employed at the smelter less than 25 years having average urinary arsenic levels less than 200 μg/l (mean of 123 μg/l). However, excess lung cancer mortality was observed in all groups of pensioners who had worked at the smelter for 25 years or more.

From the results of this study Pinto and Enterline concluded, "results thus far indicate that there is a relationship between exposure to arsenic trioxide, or associated agents in the atmosphere, and increased risk of respiratory cancer."

On December 5, 1975, Dr. Enterline submitted a further analysis of the evidence of the existence of a threshold for arsenic exposure.

"As you know, the tables we prepared on retired smelter workers show no excess for men working less than 25 years and with mean urinary arsenic values less than 200. The SMR of 95.6 for this group, while based on only 2 observed deaths, is supported by SMR's in adjacent intensity exposure levels. The relationships appear to be linear with 97 percent of the variation in SMR's explained by the combination of intensity and duration. Thus, the findings for men exposed less than 25 years (mean 20.1) and at levels between 50-199 μg/l (mean 123) seem to be real enough (if linear relationships exists). This is not to say, however, that our data are ideal. Any interpretations must be conditioned by their limited nature (e.g.; older males, unknown cigarette smoking histories, etc.).

There are at least two interpretations that can be placed on our data for men working less than 25 years with urinary arsenic under 200:

(a) Exposure at the level produces cancer but we simply were unable to follow these men long enough to observe an excess or;

(b) This truly represents a threshold limit value.

In support of the first interpretation, there are data which suggest that latency in cancer is a function of dose, with low doses requiring very long latent periods (e.g.: $t=(1/d)^{1/3}$ power). The low dose retirees were followed an average of 8.7 years after retirement and since they had worked an average of 20.1 years, the mean latent period observed is 28.8 years. For most carcinogens with which I am familiar, 20 years is long enough to observe effects in humans. If arsenic exposure which cause mean urinary levels of 123 over a period of 20 years also cause lung cancer, the median latent period must be very long indeed in this population of older males probably longer than they're likely to live.

In support of the second interpretation, an examination of SMR's among retirees for respiratory cancer by age shows a decline with time since termination of exposure (retirement) so that further follow-up may not show any effect:

| Age | Observed | Expected | SMR |
|---|---|---|---|
| 65 to 69 | 14 | 4.1 | 345.0 |
| 70 to 74 | 11 | 3.5 | 315.5 |
| 75 to 79 | 5 | 2.0 | 250.0 |
| 80 plus | 2 | 1.0 | 200.0 |

This looks like the experience with cigarette smoking. That is, lung cancer risk for persons who stop smoking seems to approach normal with the passage of time. Do I think there is a TLV for airborne arsenic? It's unfortunate that we must have an answer at this moment. We have now microfilmed personnel records at the Tacoma smelter for all men who worked a year or more during the period 104-01963 and in about a year should have the answer. The only relevant data now available, however, suggests that there is a TLV for men who retired from the smelter, and if the effects of arsenic tend to disappear with time (as cigarettes) this may apply to other age groups as well." (Ex. 133)

For an analysis of the threshold question, see the analysis below.

In 1969 Lee and Fraumeni published a study of the mortality experience of 8,047 white male smelter workers who had been employed at the Anaconda, Montana smelter for at least 1 year prior to 1957. From January 1, 1938 to December 31, 1963, 1,877 deaths were recorded, 147 deaths of which were due to respiratory cancer, a rate 3.3 times the respective rate in the Montana population (p less than 0.01).

For each year of the study period, workers were assigned to one of five cohorts on the basis of duration of

their employment in smelter. These cohorts were defined as follows:

Cohort 1, 15 or more years with 15th year completed before 1938
Cohort 2, 15 or more years with 15th year completed 1938–1963
Cohort 3, 10 to 14 years
Cohort 4, 5 to 9 years
Cohort 5, 1 to 4 years

The study group was further divided according to heavy, medium and light exposure to arsenic trioxide, sulfur dioxide and other chemicals based on measurements made at the smelter at the time of the study. The authors stated, "While measurements in work areas may have varied over time, it seems reasonable to assume that these 3 broadly defined categories denoting relative exposure remain fixed." This statement was supported by testimony presented by H. F. Morris, Consulting Engineer for Anaconda (Exhibit 28B). Based on measurements made by Anaconda, the mean arsenic exposure from 1943 to 1959 were as follows: Heavy (11.27 mg/m3), medium (0.58 mg/m3), and light (0.29 mg/m3). Thus, as the authors stated, these categories appear to represent relative exposures.

Lee and Fraumeni found that respiratory cancer mortality increased consistently with increasing duration and degree of exposure to arsenic trioxide. This gradient is clearly demonstrated by data presented in Table 5 of their study.

| Cohort | Respiratory cancer mortality | Maximum exposure to arsenic (12 mo or more) | | |
|---|---|---|---|---|
| | | Heavy | Medium | Light |
| All cohorts combined | Observed | 18 | 44 | 45 |
| | Expected | 2.7 | 9.2 | 18.8 |
| | SMR | *667 | *478 | *239 |
| 1 | Observed | 8 | 22 | 14 |
| | Expected | 1 | 3.3 | 5.6 |
| | SMR | *800 | *667 | *250 |
| 2 | Observed | 6 | 12 | 9 |
| | Expected | .9 | 2.2 | 2.9 |
| | SMR | *667 | *545 | *310 |
| 3 to 5 combined | Observed | 4 | 10 | 22 |
| | Expected | .9 | 3.8 | 10.3 |
| | SMR | **444 | **263 | *214 |
| Number of persons in arsenic category*** | | 402 | 1,526 | 3,257 |

*Significant at the 1 pct level.
**Significant at the 5 pct level.
***The remaining 2,862 men in the study worked less than 12 mo in their category of maximum arsenic exposure and had an SMR of 286*.

Sulfur dioxide exposure and respiratory cancer mortality were also positively related, with observed deaths ranging from 6.0 to 2.6 times expected in the heavy, medium, and light categories. This is demonstrated in table 6 of the study.

| Cohort | Respiratory cancer mortality | Maximum exposure to $SO_2$ (12 or more months) | | |
|---|---|---|---|---|
| | | Heavy | Medium | Light |
| All cohorts combined | Observed | 46 | 23 | 39 |
| | Expected | 7.7 | 8.0 | 15.2 |
| | SMR | *597 | *288 | *257 |
| 1 | Observed | 24 | 10 | 12 |
| | Expected | 3 | 1.7 | 5.1 |
| | SMR | *706 | *588 | **235 |
| 2 | Observed | 13 | 6 | 8 |
| | Expected | 1.7 | 2.4 | 2.2 |
| | SMR | *765 | 250 | *364 |
| 3 to 5 combined | Observed | 9 | 7 | 19 |
| | Expected | 2.6 | 3.9 | 7.8 |
| | SMR | *346 | 179 | *244 |
| Number of persons in $SO_2$ category*** | | 1,144 | 1,506 | 2,444 |

*Significant at the 1 pct level.
**Significant at the 5 pct level.
***The remaining 2,953 men in the study worked less than 12 mo in their category of maximum $SO_2$ exposure and had an SMR of 283*.

The authors stated, "exposures to both arsenic trioxide and sulfur dioxide were found to be associated with an excess of respiratory cancer deaths in this study. It is difficult to separate the effects associated with these two exposure variables, since most work areas having "heavy" arsenic exposure were also "medium $SO_2$" and conversely, all jobs with "heavy $SO_2$" exposure were "medium arsenic". However, further investigation revealed that per-

sons with heaviest exposure to arsenic and moderate or heaviest exposure to $SO_2$ were most likely to die of respiratory cancer" (Ex. 5D, p. 1047).

As described in detail in section IV-B of this preamble, Ott, Holder and Gordon showed that workers exposed to primarily pentavalent inorganic arsenic were at a 3.5-fold excess risk of dying of respiratory cancer and 3.8-fold excess risk of dying of lymphatic cancer. (Ex. 1A 3-1)

The authors divided the arsenical workers into 4 groups based on estimated arsenic exposures. This data is presented in Table 1 (page 251 of the study) which is reproduced below.

TABLE 1.—*Estimated arsenic levels by job category*

| Job category | 8-hr TWA[1] |
|---|---|
| Group 1 | 5.0 |
| Group 2 | 3.0 |
| Group 3 (jobs associated with arsenical production out of the area of high dust exposure) | 1.0 |
| Group 4 (jobs involving either the formulation of nonarsenicals within the production unit or requiring only intermittent time in the areas of high exposure) | 0.1 |

[1]Mg As/m³.

The authors described the derivation of these categories as follows:

"Over the course of 37 years, numerous modifications in job classification terminology were encountered. Fifty different job titles were identified, including those later found to refer to the same job. Next, job descriptions and exposure measurements were used to combine the jobs into four exposure classifications. Time-weighted average concentrations were assigned to the various groupings with emphasis on maintaining properly spaced ratios between the exposure groups. The estimates shown in Table 1 were obtained through the consensus of two industrial hygienists familiar with the processes, the available industrial hygiene data, and job descriptions.

The concentrations of arsenic experienced by employee while in group 1 jobs were quite variable, and included the likelihood of brief exposures to very high levels. Respirators were available, but were not worn consistently. Individuals on group 2 jobs were exposed to dust levels generally at lower, less variable concentrations, but over longer periods of time. Some employees, for example, spent up to 6 hours a day performing tasks near the packaging machines. Few measurements were available for group 3 or group 4 jobs because the exposure was apparently thought to be of relatively less concern. Thus, the greatest subjectivity was used in estimating time-weighted average concentrations for these groups. Since no adjustments were made for the wearing of respirators, or for the fact that production occurred on a somewhat intermittent basis, it is likely that actual exposure dosages were overstated rather than understated by the above estimates. However, the imprecision in the time-weighted average estimates would not be expected to lead to appreciable distortions in the relative dosage exposure rankings, since duration of exposure, which was determined quite precisely, varied considerably from individual-to-individual."

In a letter submitted to Mr. David Miller, an attorney for ASARCO (submitted as Exhibit 29(0)), Dr. Gordon presented a further breakdown of respiratory cancer mortality by exposure intensity group. This data is reproduced below.

SUMMARY OF 173 DEATHS BY EXPOSURE INTENSITY GROUPS

| Highest exposure intensity | Total decedents | Respiratory malignancy deaths |
|---|---|---|
| Total | 173 | 28 |
| Group 1 | 30 | 8 |
| Group 2 | 92 | 14 |
| Group 3** | 44 | 6 |
| Group 4 | 7 | 0 |

**Groups 3 and 4 include individuals exposed only at those levels.

Groups 1 and 2 include individuals who experienced limited exposure intensities, as a result of having changed jobs during their employment in the arsenicals production unit.

In a subsequent letter to Dr. Gordon, OSHA asked whether he considered the findings of 0 respiratory malignancy deaths among the 7 decedents in Group 4 to be evidence of a threshold effect. Dr. Gordon responded, "The small number of individuals in Group 4 does not permit the establishment of a threshold; however, it encourages one to think that a threshold may exist." (Exhibit 102.)

Using a six-term equation, Ott et al., calculated the number of respiratory cancer deaths and ratio of observed to expected respiratory cancer deaths in various arsenic exposure categories (see table 4 of the study). The authors described this derivation as follows:

The expected proportion of deaths due to respiratory malignancy in relation to year of death and age of death was estimated based on a weighted least squares analysis of the control population. The 1,809 deaths among the controls were categorized by 10-year age groups and intervals of 5 calendar years within each age group. A six-term equation, utilizing age and year of death, explained 57 percent of the variability between the categories and provide a reasonable fit to the data in the region of interest.

The limitations inherent in data contained in table 4 must be analyzed. As stated previously, 16 respiratory cancer deaths were observed among the 138 decedents who had worked in arsenic exposure areas for 1 year or less. Consequently, it is not appropriate to extrapolate short-term dosages in terms of long-term "equivalent" career dosages.

Furthermore, as ADL noted (Ex. 26B) although work histories seemed well documented, the quantitative exposure could not be accurately specified. The authors based the four daily exposure categories on limited exposure data and a consensus judgment among individuals familiar with the operation. ADL stated, "They fail to acknowledge here that their most dramatic conclusion relates excessive incidence of death by respiratory cancer to a distribution of career dosages, where both the death excess and the career dosage depend on the value assumed by the four daily exposure levels" (Ex. 26B, p. 33). ADL also noted that the six-term regression equation which yielded the weights for the least squares fit of dose-response was not sufficiently documented to permit evaluation.

OSHA agrees with the ADL analysis. We have no way of evaluating individual worker exposure for potential error. Application of the six-term equation to this data, thus can provide no acceptable data for an estimate of dose-response. In contrast to the Lee and Fraumeni and Pinto and Enterline studies, we have insufficient exposure data to provide verification of exposure categories. Accordingly, OSHA cannot rely on the dose-response data or analyses thereof as a basis for the final standard. As noted in section IV-B of this preamble, OSHA does rely however on the study findings of excess mortality risk among arsenic-exposed workers.

As discussed in respiratory cancer section of this preamble, both the Lee and Fraumeni and Pinto and Enterline studies meet many requirements of an ideal epidemiological study and great weight can be placed on their findings. Their further finding of a consistent dose-response relationship provides strong and convincing evidence of the carcinogenicity (or co-carcinogenicity) of some inorganic arsenicals. As also discussed above, the exposure classifications and analyses thereof in the Ott study and therefore the Blejer-Wagner analysis of the Ott study (Ex. 99, p. 55-6) have major methodological limitations and therefore it is not appropriate to draw firm conclusions as to the exact nature of the dose-response curve. However, the Ott study provides firm evidence of excess lung cancer mortality of workers exposed to arsenicals.

Based upon the above data, several participants at the hearing believed that there was a threshold level, below which no increased cancer risk would be observed. Representative of this discussion, was the following discussion by ASARCO (Ex. 118, p. 42-3):

In the Dow study it was estimated that employees in Group 4 had a time-weighted average exposure to inorganic arsenic of 100 $\mu g/m^3$. As we have previously noted, none of the employees who remained in Group 4 for their employment period in the study died of lung cancer. While there are only seven persons in this group and their experience does not conclusively establish a threshold, it encourages one to think that a threshold may exist.

Similarly, the Pinto and Enterline data suggest the existence of a safe level. The

group whose exposure index was under 3,000 in table 1 of Dr. Enterline's letter (Ex. 111, Attach. 4) had a SMR of 165.6 for respiratory cancer, a value not different statistically from 100 * * *.

The group in table 2 whose average intensity of exposure was under 200 μg/l and who worked less than 25 years had an SMR for respiratory cancer of 95.6. The data concerning the experience of retirees from 1961-1973, who probably had lower exposures than the 1949-1973 group, contain SMR's even closer to the norm (Ex. 29B). The SMR for respiratory cancer for the group whose exposure index was under 3,000 was 130.6, and for those with an average intensity of exposure under 175 with 25 years or less experience the SMR was 117.4—neither figure being significantly different from 100 by standard statistical tests.

ASARCO concluded, citing the Dow and Pinto and Enterline studies as the best available evidence. "Those materials would support a finding that there is a no-effect level, or at least a level of respiratory cancer risk reduced to the insignificant, at inorganic arsenic concentrations of about 100 $\mu g/m^3$ in air or 250 μg/l in urine" (Ex. 118, p. 45).

A number of witneses, however, gave their expert opinions that there is not yet enough knowledge about the mechanisms of carcinogenicity to determine a threshold level.

Dr. Kraybill stated:

> There is a general policy or concept among epidemiologists that there is no safe level. Why do we say that? Because we have no scientific method as of yet—1975—to prove otherwise (ATR p. 186).

This was Dr. Radford's view also (ATR 562).

Dr. Wagoner concluded:

> I think the overwhelming body of scientific judgment in the United States and internationally is of the opinion—and it has been very aptly put by the Surgeon General's ad hoc Committee on low level environmental carcinogens—that the present state of technology does not permit the determination of safe levels for a carcinogen (ATR 334-335).

OSHA believes it is not appropriate to set an exposure limit based on the belief that a threshold may exist because of these considerations. As noted above, OSHA does not regard the exposure categories of the Dow study to be sufficiently supported to make further judgments on dose-related effects. Furthermore, the last category (Group 4), composed of seven deaths, is far too small for conclusions as to a threshold to be made.

The Pinto-Enterline data is more satisfactory (Ex. 29B). However, workers exposed more than 25 years in all exposure categories including those with average intensity less than 200 μg/l had statistically significant excess respiratory cancer mortality. In this study, as well, the limited number of workers in the exposure category in which no excess was observed is far too small to statistically test whether a threshold exists for the entire population at risk (arsenic-exposed workers). Therefore, no level has been satisfactorally demonstrated that will eliminate increased lung cancer mortality among all arsenic-exposed workers.

Further, this limited amount of epidemiologic evidence is not sufficient to overcome the substantial body of scientific opinion that there is not sufficient knowledge to determine a threshold for a carcinogen.

In view of OSHA's obligation to protect workers and the substantial body of scientific opinion that no safe level of exposure to a carcinogen can be shown, OSHA must exercise its discretion in favor of assuring worker protection. OSHA and other Federal agencies responsible for protecting individuals from the hazards posed by carcinogenic substances have consistently followed the view that no safe level of exposure can be established based on current scientific knowledge.

### E. ANIMAL STUDIES

In its 1973 criteria document, NIOSH evaluated 18 animal studies involving inorganic arsenic exposures. However, only two of these were studies of the effects of exposure to airborne concentrations, and neither of these were designed to observe lung cancer.

The first was an inhalation study, by Rozenshtein (14), of albino rats exposed to arsenic trioxide for 24 hours per day, for 3 months. The study was designed to observe the effects of atmospheric pollution. The second study, by Bencko and Symon (2), involved an evaluation of hairless mice exposed to fly ash containing 0.1 percent arsenic trioxide. The authors observed an accumulation of arsenic in the animals' livers and kidneys from exposure to the fly ash.

Dr. Kraybill of the National Cancer Institute presented testimony at both the fact-finding and April 1975 hearings in which he discussed the failure of experimental animal studies to confirm the epidemiological findings concerning arsenic exposure. Some of the reasons for this failure could be, according to Dr. Kraybill, that "(a) the proper animal model has not been tried, (b) the proper route of administration has not been tried, i.e., inhalation, (c) sufficient numbers of animals have not been in the study for statistical validation of results, and (d) the role of arsenic as an interactant or synergist and establishment of it as a possible co-carcinogen has not been determined" (Ex. 16A). Dr. Kraybill stated during the fact-finding hearing, "Arsenic stands out as the one substance for which human carcinogenicity has been demonstrated, but for which an animal model has yet to be found to reproduce this effect" (FTR p. 40).

Though there are no positive animal studies which confirm the epidemiological findings of excess respiratory cancer mortality among workers exposed to inorganic arsenic, OSHA believes that the epidemiological studies clearly establish the carcinogenicity of inorganic arsenic. Once epidemiological findings are found to be convincingly related to exposure to particular substance(s), OSHA must regulate in such a manner to minimize such risk to workers.

### F. VALENCE CONSIDERATIONS

The acute toxic effects of inorganic arsenic compounds on man following ingestion are well known. It is also known, that the severity of toxic reaction varies significantly with inorganic arsenic's valence states. According to the published literature (Ex. 31C-41) and testimony by Drs. Wacker and Peoples (Ex. 31A and 31D), trivalent arsenic (arsenite) is more toxic when ingested than pentavalent arsenic (arsenate).

Schroeder and Balassa (Ex. 31C-41) and Wacker (Ex. 31A) and Peoples (Ex. 31D) stated that trivalent arsenic's greater toxicity is due to its rapid binding with sulfhydryl groups. This binding results in the inhibition of many important enzymes such as alcohol dehydrogenase, enzymes which synthesize the components of DNA and RNA, and enzymes which synthesize DNA and RNA. In contrast, pentavalent arsenic (arsenate) does not react with sulfhydryl groups, but is known to inhibit the synthesis of ATP, an important metabolite, by uncoupling oxidative phosphorylation.

Based on his evaluation, Dr. Wacker concluded, "I find the conclusions reached by OSHA in its proposal (to treat both pentavalent and trivalent inorganic arsenic as carcinogens) to be highly implausable on scientific grounds, considering the chemical and toxicological characteristic of the various arsenical compounds in question. Indeed, I am baffled by the absence of any extensive consideration of the chemical and toxicological differences between these compounds as the differences are so great. I am convinced * * * they should be considered separately." (ATR 845.)

Dr. Radford commented (Exhibit 192B) that, "the acute toxicity of pentavalent arsenic compounds given parenterally is much less than for trivalent compounds. This well-accepted difference implies that if pentavalent compound are reduced to trivalent compounds in the body, either the conversion is slow, or they are converted to inactive forms or the distribution of the trivalent compounds is to relatively insensitive issues (i.e. conversion in the kidneys and rapid excretion in the urine). Another interpretation possible is that no significant conver-

sion to trivalent arsenic occurs, and pentavalent forms have toxic actions different from trivalent."

Dr. Radford later stated, "We do not know the mechanism of action of arsenites as carcinogens, but it is at least conceivable that they act by conversion to the pentavalent form and displacing phosphate in nucleic acids as Rosen has suggested." (Ex. 192B, p. 3.)

Dr. Kraybill of NCI concluded, "Doctors Wacker, Peoples and perhaps others have made interesting comments on the relative toxicity of the trivalent and pentavalent arsenic. The proposition concerning the relative avidity of trivalent and pentavalent ion SH groups (sulfhydryl groups) or glutathione as the protective mechanism is a most attractive and interesting concept. While this appears attractive to us on theoretical grounds, we would like to see some basic data (biochemical, pharmokinetic) in this area which would be helpful in describing the relative carcinogenic potential of trivalent and pentavalent arsenic on a mechnistic basis. Having such information and data could provide some evidence to better assess the significance of epidemiological studies. Perhaps this is the strongest reason for doing some good studies with appropriate animal models and using relevant routes of administration." (Ex. 192C.)

The most thorough analysis of the issue whether pentavalent arsenic is converted in the body to trivalent arsenic was presented by Dr. Peoples (Exhibit 193, Attachment B). Dr. Peoples reviewed findings by Winkler that after feeding rats trivalent arsenic, arsenic in their liver was largely pentavalent. When fed pentavalent arsenic, no trivalent arsenic was found in rat livers. He reported that the findings of Ginsburg (Ex. 63, Ex. 64) in which he reported some reduction of pentavalent arsenic to trivalent arsenic in the kidney of dogs after feeding with arsenate, could not be relied on because the analytical method was not accurate in the range of the reported sample size. Finally, he reviewed the findings of Crecelius (Exhibit 193, Attach. B) that no trivalent arsenic was found in the urine of a human who had drunk water containing 200 μg of pentavalent arsenic. He stated, "The level of As(III) remained at the control level. There was an increase in As(V) peaking at 5 hours then returning to normal in 10 hours. The mono methylarsonate remained near the control but the dimethylarsonate (cacodylic acid) rose to a high level and remained so during the 80-hour observation period. In other words, As(V) is not reduced in the body to As(III). It is almost entirely metabolized to cacodylic acid."

Thus OSHA concludes, that the presently available evidence indicates that there is little or no conversion of pentavalent to trivalent arsenic in the body. Given the unknown relevance of acute toxicity and biochemical reactions of trivalent and pentavalent arsenic to the assessment of carcinogenic risk and the findings that pentavalent arsenic is not converted to trivalent arsenic, OSHA concludes that it must, principally rely on the findings of the epidemiological studies, expert opinion, and general policy considerations in determining whether to regulate pentavalent arsenic as a carcinogen.

### G. CONCLUSIONS

(1) *Trivalent Arsenic.* Based on the entire set of studies, OSHA believes that exposure to trivalent arsenic has been shown to cause respiratory cancer. Studies in the copper smelting industry (Lee and Fraumeni, Pinto and Enterline, Rencher, and Carter) have shown statistically significant increased lung cancer mortality among workers exposed to arsenic trioxide, sulfur dioxide and other cocontaminants released during the smelting of copper ores. As Lee and Fraumeni stated, it is impossible to differentiate in these cases between the effects of exposure to arsenic and these other cocontaminants. However, the finding that lung cancer mortality increased consistently with degree and duration of exposure to arsenic trioxide provides substantial evidence that exposure to trivalent arsenic is a cause of respiratory cancer (as was discussed in detail in the dose-response section). This data, particularly that of Lee and Fraumeni and Pinto and Enterline has been discussed in detail in section IV-D of this preamble and accordingly will not be repeated here.

The findings of studies by Baetjer et al. and Hill and Faning serve as positive controls for the findings in the smelting industry. That is, these workers studied by Baetjer et al. were exposed principally to trivalent and some pentavalent arsenicals, and Hill and Faning sodium arsenite (a trivalent arsenical); and to a limited number of other chemicals (Ex. 5B). They were not exposed, however, to most of the other cocontaminants found in the smelter environment.

There have been many analyses by experts during the hearing. Both Dr. Fraumeni (ATR 168) and Dr. Kraybill (ATR 161) stated that inorganic arsenic is strongly incriminated as an occupational carcinogen. NIOSH recognized that each epidemiological study alone has its limitations, but stated: "However, when all reports of occupational exposure to inorganic arsenic are considered together, NIOSH believes it undeniable that there have been carcinogenic effects which must be attributed to inorganic arsenic." (ATR 54-5).

During April 1975, Dr. Enterline was asked whether, based on the whole constellation of studies, inorganic arsenic is a carcinogen. Dr. Enterline responded:

> Yes, I think that it's certainly related to respiratory cancer based on reading these studies. Obviously, I can't tell whether it's something that goes with it or it's arsenic itself. But, the studies—and particularly the more recent studies, the Allied and Dow studies, the Allied in particular—are very impressive studies. They present in my mind pretty overwhelming evidence. (ATR 775.)

Dr. Weir of the Johns Hooper Foundation on the basis of his evaluation stated that there is an association of moderate overall magnitude between arsenic exposure and respiratory cancer (ATR 1381). He based his conclusion on a detailed analysis of the epidemiologic studies and on his evaluation of seven general factors for evaluating whether exposure to chemical agents such as arsenic and observed health outcomes (i.e., lung cancer mortality) is a causal relationship (Ex. 29N). These seven factors are as follows:

> (1) Strength of association.
> (2) Time sequence.
> (3) Consistency with findings in other research areas.
> (4) Failure to find alternative explanations.
> (5) Gradient of risk.
> (6) Consistency of association over several studies.
> (7) Specificity.

In summary, Dr. Weir noted that the strength of association between exposure to arsenic and lung cancer mortality was moderate (2 to 3 times expected lung cancer mortality). He noted that lack of an animal model somewhat lessened the confidence which one could place on the degree of association. He further noted that the association is strengthened by the occurrence of a gradient of risk (dose-response), repeated findings over several studies and settings, and failure to find other explanations which could account for the excess risk. He concluded:

> The surest route to reducing unnecessary mortality is to apply standards on the belief that arsenic is a probable cause of mortality increase, and is, therefore, the best available factor by which we can expect to successfully intervene in the causal network, and then to proceed expeditiously to make whatever commitment of human and financial resources is necessary to establish with reasonable scientific certainty the definitive factor in the observed association. (ATR 1385-6.)

Arguments have been made that the relationship between arsenic and respiratory cancer cannot be presently stated to be causal (ATR 1381-6, Ex. 26B, p. 5) due to the fact that workers were exposed to other workplace contaminants. OSHA agrees, at least in the case of the copper smelting industry, that one cannot conclude with complete certainty, that the associ-

ation is causal. The degree of association is strengthened by the findings in pesticide plants (Baetjer et al., Ott et al., Hill, and Faning). OSHA recognizes that, these workers too were exposed to other chemicals. However their work environment was substantially different from that of smelter workers and they were not exposed to most of the other chemicals to which workers are exposed in the smelting industry (compounds of lead, antimony, cadmium, sulfur, etc.). The fact that workers exposed to arsenic in substantially different environments were subject to excess respiratory cancer mortality is strong evidence that arsenic was an important etiologic factor in the observed excess mortality. OSHA cannot rule out the possibility that these other chemicals may have influenced excess respiratory cancer and lymphatic cancer mortality. However, even if it should later be shown that arsenic is not the sole factor, the regulation and resultant minimization of worker exposure to inorganic arsenic will, we believe, intervene in the causal network and reduce, to the extent feasible, worker risk of lung cancer. Thus in agreement with experts from NCI, NIOSH and industry, OSHA has concluded that trivalent arsenic must be regulated as an occupational carcinogen.

Confirming animal studies would be helpful, but OSHA believes that the best available evidence is the observed effects on man, himself as a compelling indication of risk and the lack of an animal model does not detract from this conclusion.

(2) *Pentavalent arsenic.* One of the most controversial and difficult issues during the arsenic hearings is whether pentavalent arsenic should be regulated as a carcinogen. The National Cancer Institute and NIOSH have recommended that pentavalent arsenic should be treated as a carcinogen; while the American Wood Preservers Institute has argued that the evidence is not strong enough for such a determination to be made. Three types of evidence have been submitted in the record: epidemiologic evidence, chemical evidence, and opinions of experts in the field.

A brief review of the epidemiological studies may be helpful. The Ott study showed a substantial excess cancer mortality among workers exposed principally to pentavalent arsenicals. The study includes a reasonable analysis of exposed and nonexposed workers. The AWPI suggested that pentavalent arsenic should not be implicated as a causal factor because there was some degree of exposure to trivalent arsenic and suggests that further research be done. On the other hand, NIOSH stated:

> With relation to the paper by Ott et al., it seems to be a reasonably valid study of the results from exposure to arsenates. Although it is true that the employees involved were exposed to both arsenites and arsenates, the authors state that 95 percent of the exposure was to arsenates and only 5 percent to arsenites. It seems not to be illogical or unjustified to attribute most, if not all, the excess of malignancies in the exposed group (incidence rate almost 60 percent greater than that in the control group) to the pentavalent arsenical compounds (Ex. 192A).

OSHA agrees with NIOSH that in view of the relative degree of exposure to pentavalent arsenic in comparison to trivalent arsenic, it is reasonable to accept the Ott study as evidence that pentavalent arsenic should be regulated as a carcinogen.

The Baetjer study also shows excess cancer mortality, but it is clear that many of these workers were exposed primarily to trivalent arsenicals. Because the predominant exposure was to trivalent arsenic, it would be inappropriate to implicate pentavalent arsenic on the basis of this study. In this instance, all one can state is that exposure to inorganic arsenic is the most reasonable explanation for the observed excess cancer mortality.

The AWPI places principal reliance on 2 studies, Nelson and Budy-Rashad, where excess respiratory cancer mortality was not observed. But the former study suffers from the deficiency that actual degree and duration of exposure to lead arsenate was not identified. In the Budy-Rashad study, the carpenters were not exposed to pentavalent arsenic, but rather to a stable arsenic-wood complex. Thus, carpenter exposure to this arsenic-wood complex cannot be considered a priori, equivalent to exposure to unbound pentavalent arsenic. No data is available on individual carpenter exposures to verify degree and duration of exposure. Additionally, insufficient time has elapsed to allow for sufficient latency period, for arsenic induced respiratory cancer. For the above reasons, it is difficult to make conclusions based upon these two studies.

Although the epidemiologic evidence does not as clearly indicate the carcinogenicity or cocarcinogenicity as in the case of trivalent arsenic, the Ott study provides epidemiologic support for the proposition that pentavalent arsenic, for the purposes of regulatory action to protect employees should be treated as a carcinogen.

The chemical questions discussed in the record principally relate to the differences in biochemical mechanisms between trivalent and pentavalent arsenic, and whether pentavalent arsenic is converted to trivalent arsenic in the body.

Peoples and Wacker discussed the well-accepted fact that while trivalent arsenic reacts with sulfhydryl groups, pentavalent arsenic can substitute for phosphate groups, thus decoupling oxidative phosphorylation. Peoples reviewed his studies and the literature and concluded that pentavalent arsenic is not converted to trivalent arsenic in the body. Studies by Ginsburg suggest that there is some conversion.

OSHA believes that the Peoples studies are more extensive and analytically reliable and therefore are more convincing. However, as the causal mechanisms of arsenic-related carcinogenesis are not known, OSHA must conclude that the fact that trivalent and pentavalent arsenic have different biochemical mechanisms, is not in itself sufficient evidence to indicate that respiratory cancer is not caused by both. The actual mechanism(s) may be substantially different from any of those suggested.

Dr. Peoples and Wacker stated that in view of the different mechanisms, pentavalent arsenic should not be treated as a carcinogen. Dr. Radford concluded:

> Because inorganic pentavalent arsenic is not yet known to produce cancer in man either directly or from conversion to trivalent arsenites, I do not believe that arsenates should be included with the inorganic trivalent forms as carcinogens. Thus a separate standard may be appropriate for pentavalent arsenic, just as is required for arsine. It may be that a reevaluation of the distinction between the two valence states of arsenic in relation to their exposure limits may be necessary as better evidence is obtained. It would seem to be imperative to obtain more experimental and epidemiologic data to resolve the questions concerning the health effects of pentavalent arsenic. (Ex. 192B.)

On the other hand, NIOSH stated that while trivalent arsenic is clearly a carcinogen, pentavalent arsenic should be so treated until convincing evidence is presented to the contrary (Ex. 192A). Similarly, Dr. Kraybill stated:

> But in essence the sorting out of trivalent from pentavalent arsenic with regards to their carcinogenic activity on the basis of the epidemiological studies is not facilitated since several studies impugned pentavalent possibly confounded with trivalent exposures. Thus, at the present time, we are left with a situation wherein we cannot help but implicate the pentavalent arsenic ion.
>
> Doctors Wacker and Peoples present some interesting toxicological evidence on the relative difference between trivalent and pentavalent arsenic. These postulates of the "tri" and "penta" states although interesting do not provide the actual verification in animal carcinogenicity studies. If we have overlooked some reports in the area, we would welcome them for our review. Until then, we have to make our assessments on the basis of available data and specific evidence. (Ex. 192C.)

The situation presented is identical to the one in *I.U.D.* v. *Hodgson:*

> "the questions involved are on the frontiers of scientific knowledge and consequently as to them insufficient data is presently available to make a fully informed factual judgment. Decision making must in that circum-

stance depend to a great extent upon policy judgments and less upon purely factual analysis * * *.

For example, in this case the evidence indicated that reliable data is not currently available with respect to the exposure to asbestos dust; nevertheless, the Secretary was obligated to establish some specific level as the maximum permissible exposure. After considering all the conflicting evidence, the Secretary explained his decision to adopt, over strong employer objection, a relatively low limit in terms of the severe health consequences which could result from over-exposure. Inasmuch as the protection of the health of employees is the overriding concern of OSHA, this choice is doubtless sound, but it rests in the final analysis on an essentially legislative policy judgment, rather than a factual determination, concerning the relative risks of underprotection as compared to overprotection.

In summary the Ott study provides epidemiologic evidence that pentavalent arsenic is a carcinogen, and a significant body of expert opinion including representatives of the National Cancer Institute and the National Institute for Occupational Safety and Health recommends that pentavalent arsenic be regulated as an occupational carcinogen. Further, in view of the long latency period and irreversible nature of lung cancer, it is OSHA's policy to act in the manner most protective of employee health. Although there are chemical differences between pentavalent and trivalent arsenic, viewing all the considerations and evidence as a whole, including the strong evidence that trivalent arsenic is a carcinogen, OSHA believes it necessary to regulate pentavalent arsenic as a carcinogen. Further research is always useful, but there has to be a stage when a decision is taken, since there always remain byways of possible research.

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(4) R. Denk, H. Holzmann, H. Lange, D. Greve [Concerning the Long-Term Effects of Arsenic as Seen From Autopsies on Moselle Vineyard Workers], Mediz. Welt, 11:557-67 (1967).

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(7) A. M. Lee and J. F. Fraumeni, Jr.—"Arsenic and Respiratory Cancer in Man—An Occupational Study," J. National Cancer Institute, *42*, 1045-52 (1969).

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(9) S. Milham, Jr., T. Strong—"Human Arsenic Exposure in Relation to a Copper Smelter," Environ. Res. *7*, 176-82 (1974).

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(13) S. S. Pinto, B. M. Bennett—"Effect of Arsenic Trioxide Exposure on Mortality," Arch. Environmental Health, *7*, 583-91 (1963).

(14) S. S. Pinto, P. E. Enterline—"Mortality Study of ASARCO Tacoma Smelter Workers," unpublished.

(15) S. S. Pinto, C. M. McGill—"Effect of Arsenic Trioxide Exposure in Industry," Ind. Med. Surg., *22*, 281-7 (1953).

(16) A. C. Rencher, M. W. Carter—"A Retrospective Epidemiological Study at Kennecott's Utah Smelter" (April 1971), unpublished.

(17) F. Roth [Concerning the Long-Term Effects of Chronic Arsenical Poisoning of Moselle Vineyard Workers], Dtsch. Med. Wschr., *6*, 211-16 (1957).

(18) F. Roth [Bronchial Cancer in Vintners Suffering from Arsenic Poisoning], Virch. Arch, *331*, 119-37 (1958).

(19) I. S. Rozenshtein—"Sanitary Toxicological Assessment of Low Concentrations of Arsenic Trioxide in the Atmosphere," Hgy. Sanit., *35*, 16-21 (1970).

(20) L. S. Snegireff and O. M. Lombard—"Arsenic and Cancer Observations in the Metallurgic Industry," Arc. Ind. Hyg. Occup. Med., *4*, 199-205 (1951).

(21) S. Tukodome, M. Kuratsune—"A Cohort Study on Mortality from Cancer and Other Causes Among Workers at a Metal Refinery," Int. J. Cancer, *17*, 310-17 (1976).

## V. Permissible Exposure Limit

The final standard establishes a permissible exposure limit (PEL) of 10 $\mu g/m^3$ averaged over an eight hour period. This represents the lowest level which OSHA believes is feasible. In determining the appropriate PEL, OSHA relies in part on the record of the proceeding and in part on policy considerations which lead the Agency to conclude that in dealing with a carcinogen or other toxic substances for which no safe level of exposure has been demonstrated, the permissible exposure limit must be set at the lowest level feasible. Such a determination OSHA believes is justified by the nature of the hazard being dealt with, and the intent of the Act.

As already discussed, insufficient evidence has been introduced into this proceeding to demonstrate the existence of a safe level of exposure to inorganic arsenic. In the absence of a demonstrated safe level, OSHA will not assume that one exists because of the irreversibility and long latency period for lung cancer. An erroneous determination that a threshold exists would cause an irreversible illness leading to death. This would be inconsistent with OSHA's statutory responsibility to set a level that will assure that no employee will suffer material impairment of health.

The statutory requirement also mandates that OSHA set a feasible level. A zero level, although ideal, is not feasible given arsenic's utilization in large scale, high temperature processes which cannot be completely enclosed. The record indicates that 10 $\mu g/m^3$ is the lowest level which generally can be achieved in most copper smelters and many of the other processes in which inorganic arsenic is used primarily by joint use of engineering and work practice controls.

OSHA has determined that the 10 $\mu g/m^3$ exposure limit is the level which properly balances the above factors and most adequately assures to the extent feasible, the protection of workers exposed to inorganic arsenic. This level will provide a dramatic reduction in the lung cancer mortality of workers exposed to inorganic arsenic. It is also a level which is generally achievable through engineering and work practice controls, the preferable control strategy. This level is achievable almost entirely through engineering and work practice controls at 11 of the 16 U.S. copper smelters, and for the large majority of employees in other industries and facilities. Moderate or limited use of respirators will be needed in 4 copper smelters, and in a relatively few locations in other industries. One smelter will require extensive respirator use and is discussed at length below.

The scientific and policy determinations underlying the regulation of inorganic arsenic as a carcinogen were mentioned in the preamble to the proposal and were discussed in the course of this rulemaking. These determinations are consistent with other OSHA regulatory actions for carcinogens made after considerable scientific debate. For example, see the preambles to OSHA's carcinogen standard, applicable to 14 selected substances, 29 CFR 1910.1003-1910.1016 (39 FR 3758) aff'd. *Synthetic Organic Chemical Manufacturers Assn.* v. *Brennan*, 503 F. 2d 1155 (3rd Cir. 1974); the vinyl chloride standard, 29 CFR 1910.1017 (39 FR 35892), aff'd, *The Society of the Plastics Industry* v. *OSHA* 509 F. 2d 1301 (2nd Cir.) cert. den. 421 U.S. 992 (1975); the coke ovens emissions proposal (40 FR 32268 (1975)) and final, 29 CFR 1910.1029 (41 FR 46742 (1976)), aff'd. *American Iron and Steel Institute, et al.* vs. *OSHA*, No. 76-2358 (3rd Cir., 3-28-78); and the DBCP

emergency temporary standard, 29 CFR 1910.1044 (42 FR 45536 (1977)).

OSHA has followed a similar course on regulation of carcinogens, including a detailed discussion of the scientific evidence supporting such regulation, in the proposed rules on identification, classification, and regulation of toxic substances posing a potential occupational carcinogenic risk ("Cancer Policy") which was published in the FEDERAL REGISTER on October 4, 1977 (42 FR 54148). In the proposed Cancer Policy, OSHA restates the determination that as a prudent policy matter, in the absence of a demonstrated safe level or threshold for exposure to a carcinogen " * * * (o)nce a qualitative presumption of carcinogenicity has been estabished for a substance, any exposure to the substance must be considered to be attended by risk when considering any given population. No exception to this point has yet been demonstrated." (42 FR at 54166).

The record of the arsenic proceeding independently clearly supports this general policy. Dr. Wagoner concluded:

> I think the overwhelming body of scientific judgment in the United States and internationally is of the opinion—and it has very aptly put by the Surgeon General's ad hoc Committee on low level environmental carcinogens—that the present state of technology does not permit the determination of safe levels for a carcinogen. (ATR 334-5.)

Dr. Kraybill stated:

> There is a general policy or concept among epidemiologists that there is no safe level. Why do we say that? Because we have no scientific method as of yet—1975—to prove otherwise. (ATR 186.)

This was Dr. Radford's view also (ATR 562). And NIOSH has taken the position that in regulating cancer-causing substances it is not possible to determine a safe exposure level (Revised Arsenic Criteria Document, 1975 (Exhibit 99)).

The exposure limit is based upon what can be achieved by the affected industries taken as a whole using available technology or technology looming on todays horizon. Alternatives to this approach have been considered in the context of the arsenic proceeding. As will be discussed, arsenic exposure in the most affected industry, copper smelting varies significantly among the 16 U.S. copper smelters due to variability in smelting conditions and variability of arsenic content in the ore.

Difficulties which may arise at individual facilities or processes in particular plants will be considered at the compliance level which is specifically oriented to consider problems at individual locations. The compliance plan process provides the mechanism to resolve these problems.

One alternative would be to establish the lowest feasible level for each of the 16 smelting plants as well as for each of the many other plants in the other affected industries. Such an approach would be extremely difficult to implement. It would strain limited agency resources including trained manpower and time. By concentrating on the arsenic issue, the Agency would have to reduce efforts in other important health areas. Accordingly, this feasibility determination is based upon analysis of the entire affected industries taken as a whole.

Another alternative would be to base the determination on a worst case basis, that is those situations where the level is most difficult to meet. This alternative is also unacceptable. It would allow most workers to be exposed to much higher exposure levels, than could generally be achieved through engineering and workpractice controls and thus subject them to a potentially increased risk of arsenic-induced lung cancer.

A third alternative is to set the level based on what could be achieved by these facilities with the least problems. In the case of the copper smelters, this would be based on the level achievable for those smelters with the lowest arsenic content in the feed and with the processes most adaptable to control. Such an approach would make it impossible to achieve such a limit for the majority of affected workers in the majority of plants without resort to full time respirator use by most employees. Because of problems inherent in their use (see Section on Respiratory Protection), this alternative is not ideal, though in certain circumstances it may be necessary to give needed health protection.

The approach OSHA believes appropriate and has chosen for this and other standards is the lowest level achievable through engineering controls and work practices in the majority of locations. This approach is intended to provide maximum protection without excessively heavy respirator use. Respirator use in the interval when engineering controls are being installed is more acceptable because their use is temporary. Further, their use is acceptable for those employees in peak exposure areas. Adequate supervision can be given if respirator use is concentrated in a few peak exposure areas and programs can be devised for a relatively few locations to minimize the full time use of respirators. (See the discussion of the Tacoma smelter below where such a strategy is outlined.)

The level achievable is based on available engineering controls and those controls which can be adapted from other uses or which are looming on the horizon and can reasonably be expected to be developed. The OSHA Act is a technology forcing act as discussed in Section II of this preamble. However, OSHA does not interpret this to mean an open ended commitment to research and develop unforeseeable new technologies, but rather the adaptation and development of controls from existing known practices and principles.

OSHA contracted for two detailed studies of technological and economic feasibility considerations:

1. D. B. Associates (D.B.), "Feasibility and Estimated Costs of Compliance for Three U.S. Smelters," (Ex. 18).
2. Arthur Young & Co. (AY), "Technological Feasibility and Inflationary Impact Statement," (Ex. 135A).

The AY study was based upon analysis of data in the D.B. report, industry studies and data from industry sources. The AY analysis was further amplified in the document entitled, "Detailed Account of Certain Compliance Costs," (Ex. 148A, 173A). Testimony indicated that certain costs were under-estimated in the D.B. study. AY corrected for those underestimates.

ASARCO, Inc. commissioned a study by Industrial Health Engineering Associates (IHEA, Ex. 29M) which presented a detailed analysis of technical feasibility and costs of engineering controls at ASARCO facilities. Additionally, ASARCO hired Arthur D. Little, Inc. (ADL Ex. 111-7) to integrate the cost data of IHEA with other cost data provided in testimony by ASARCO management and to estimate the proposed standard's impact on its Tacoma smelter and on ASARCO as a whole.

The Anaconda Co. presented a report by Phillip A. McKee & Associates (Ex. 28B). Kennecott Copper supplied a less detailed estimate of the costs of compliance and Phelps Dodge supplied an overall estimated cost figure without supplying any documentation (Exs. 12, 156A, 157). A combined cost estimate for these four major copper smelting firms was presented in Exhibit 156A.

Industries other the copper smelting, generally did not submit specific studies, but did give some testimony on feasibility issues. In addition to specific studies, a substantial amount of testimony and some written submissions addressed feasibility questions.

The copper smelting industry is the industry most affected by the standard. Analysis of feasibility in that industry is complicated not only because exposure varies significantly between processes in a given smelter but they also vary substantially among smelters. A major reason is the differing percentages of arsenic in the smelter feed ranging from 5 percent to under 0.001 percent. The following Table indicates that variation.

TABLE I.—*Percent arsenic in feed, U.S. copper smelters*

| Smelter | Percentage arsenic in— | | Approximate annual tons copper concentrates, 1971–73 |
|---|---|---|---|
| | Overall feed | Copper concentrates | |
| ASARCO: | | | |
| El Paso, Tex | 0.8 | 0.21 | 295,600 |
| Hayden, Ariz | 0.04 | 0.005 | 529,812 |
| Tacoma, Wash | 5.2 (12.8 max) | 4.2 | 273,603 |
| Phelps Dodge: | | | |
| Ajo, Ariz | Not available | Less than 0.005 | 206,471 |
| Douglas, Ariz | do | 0.1 to 0.3 pct | 680,509 |
| Morenci, Ariz | do | 0.001 pct | 810,000 |
| Tyrone, N. Mex | do | Not detectable | (1) |
| Kennecott: | | | |
| Garfield, Utah | 0.135 | 0.15 | 780,542 |
| Hayden, Ariz | 0.015 | 0.016 | 298,282 |
| Hurley, N. Mex | 0.005 | Less than 0.006 | 265,442 |
| McGill, Nev | Not available | Not available | 283,196 |
| Inspiration: Miami, Ariz | do | do | 282,200 |
| Magma: San Manuel, Ariz | do | 0.007 | 798,500 |
| Anaconda: Anaconda, Mont | 0.96 | 0.97 | 647,870 |
| Copper Range: White Pine, Mich | 0.002 | 0.003 | 247,100 |
| Cities Services: Copper Hill, Tenn | Not available | Not available | (1) |

[1] Not available.

Other factors also affect existing levels such as layout of plant, smelting process, and age of equipment. Some smelters use a roasting process, which results in additional sources of arsenic exposure during roasting and during transfer of the hot roasted material (calcine). Some of the recently modernized or new smelters make use of processes such as the Noranda Process or electric smelting which reduce the number of sources of exposures or make the control of such emissions less difficult. Exposures are also affected by the uniformity of the arsenic content. A uniform feed usually results in a smelting process which is easier to control and this tends to make it easier to control emissions.

There is a substantial body of evidence on the record to aid in analyzing feasibility in copper smelters. In addition to the DB, IHEA, AY, and McKee studies mentioned above, fairly extensive exposure data is available in Exhibits 6, 7, 12, 28A, 29G, 31C, and 188. Further, Burton of DBA, Caplan of IHEA, and Brazie of AY specifically addressed these points in their testimony.

The Arthur Young, Inc. analysis indicated that the 4 $\mu g/m^3$ level could be achieved with engineering controls and extensive use of respirators at Tacoma, moderate use of respirators in smelters which they grouped into categories 2 and 3, very limited use of respirators in category 4 smelters and essentially without respirators in category 5 and 6 smelters. Sometimes they gave specific estimates of the number of employees required to wear respirators. In other instances their estimate can be approximately computed by dividing $4,000 into their estimate of respirator annual costs.

Brazie of AY also pointed out that in those smelters with low levels of arsenic in the material stream, very low levels of exposure can be achieved solely be engineering and work practice controls (STR 120). The details of the AY analysis can be found in Exhibits 148A and 173A. Their smelter categories are listed on page 2 of Exhibit 148A.

Caplan, an ASARCO witness, indicated the difficulties in achieving 50 $\mu g/m^3$ for the Tacoma smelter with engineering controls alone and stated that extensive use of respirators would be needed to reach a 4 $\mu g/m^3$ level there and at the El Paso smelter. He also discussed generally the difficulty of reducing exposures to 50 $\mu g/m^3$ in uranium processing and compared this to copper smelters. At various places he seemed to imply that these difficulties could apply to copper smelting generally.

It is accepted that at Tacoma engineering controls in a number of places (though not all) will have difficulty reducing exposures below 50 $\mu g/m^3$. It is also accepted that in large scale, high-temperature, heavy-industry processes, reducing exposure levels below 50 $\mu g/m^3$ may be difficult for substances which are present in relatively high percentage in the material streams. This analysis is clearly applicable to Tacoma with 5 percent arsenic in the concentrate feed. But Caplan's analysis has only very limited applicability in smelters with approximately 1 percent arsenic in the feed and is not applicable at all to smelters with feed typically ranging from 0.1 percent to .001 percent arsenic, where the large majority of exposure levels are already lower than 50 $\mu g/m^3$ and still further reductions are clearly achievable. Caplan himself has stated (ATR, p. 1310) that lower levels are achievable when toxic substances are present as only a small fraction of the material stream. Further this report did not cover in detail those smelters with lower percentages of arsenic in the feed, nor did it take into account the existing lower levels of exposure (see Ex. 12 for example) for many employees.

Burton of D. B. Associates did not make specific judgments as to levels achievable but did make predictions as to whether there was a good, fair, or poor chance of reaching a 4 $\mu g/m^3$ level with engineering controls alone at various locations in the three smelters he studied. Generally his analyses indicated a greater likelihood of reaching a 4 $\mu g/m^3$ level through engineering controls alone than Caplan's analysis.

Burton also testified as to general degree reduction in exposure achievable through engineering controls. He stated that as a rule of thumb, 95 to 99 percent reduction in the concentration of an air contaminant is possible for emissions from definable sources, while 80 percent reduction in emissions may be achieved when more sources and more ill-defined sources

are added (STR 278). Given the age of most smelter facilities, and the numbers of the major emission sources, OSHA believes it prudent to utilize Burton's lower estimate of the effectiveness of engineering controls. It should be noted, however, that as smelters are modernized and newer more continuous processes are adopted, engineering controls should succeed in reducing exposures to lower levels.

In some operations the 80 percent reduction will be achieved, and in others it will not. It is not possible to predict the exact degree of improvement to be obtained from engineering controls until they are actually implemented. Further, the degree of additional control possible depends on how extensive existing controls are.

Applying the above testimony and principles to the data presented in the record, the Tacoma smelter will require extensive respirator use at the 10 $\mu g/m^3$ level. Because of that, a specific compliance strategy is discussed below which will alleviate the hardships of wearing respirators and reduce as much as possible full time use of respirators.

At the ASARCO El Paso smelter, a substantial number of employees are exposed in the range of 50 $\mu g/m^3$ (Ex. 29G, App. 3). Applying Burton's estimate of 80 percent reduction in exposure, a significant number of those employees in this range will have their exposures reduced to 10 $\mu g/m^3$. Employees in this group whose exposures are not reduced below 10 $\mu g/m^3$ through engineering controls still may have their exposures reduced sufficiently low so that in conjunction with clean rooms respirator use will be limited. Engineering controls alone are not anticipated to reduce exposures to 10 $\mu g/m^3$ for those employees working in the high exposure areas such as the roasters and reverberatory furnaces where existing exposures are sometimes as high as several hundred micrograms per cubic meter. Therefore respirator use will be necessary to reduce exposures to 10 $\mu g/m^3$ level for the limited number of employees working in these areas. As discussed in the Tacoma section full time use of respirators can be avoided even for many of these employees. Much smelter work is of an intermittent or watching nature so employees can go into clean rooms or filtered air pulpits during part of the day and be protected without wearing respirators.

Arthur Young estimated that 70 employees would need to wear respirators at the 4 $\mu g/m^3$ level at El Paso. Utilizing Burton's 80 percent analysis, OSHA believes that the 70 number might be on the low side at 4 $\mu g/m^3$ proposed level but that it may be a reasonable estimate at the 10 $\mu g/m^3$ level set by this standard. It is possible that the number will be higher than this. See the economic considerations section for a discussion of ASARCO's estimate of respirator use at the 4 $\mu g/m^3$ level which is not broken down by facility.

It is accepted that it is a major engineering task to accomplish these goals at El Paso. But installation of the engineering controls discussed in the AY and IHEA studies will substantially reduce exposure levels.

At the Anaconda smelter many exposure emissions from the traditional copper smelting technology have ranged between 10 $\mu g/m^3$ and 50 $\mu g/m^3$ with a few somewhat higher (Ex. 28, p. 165). Applying the above principles to these exposures, 10 $\mu g/m^3$ would be a challenging engineering task which should be achieved a significant percentage of time with engineering controls and work practices alone. Some employees will need to wear respirators to achieve 10 $\mu g/m^3$. The same principles discussed for El Paso will limit respirators use to part-time for most employees who need to use them. The difficulty in achieving 10 $\mu g/m^3$ may be lessened due to the installation of the electric furnace, although that may not reduce the problems in the converter aisle where exposures average approximately 46 $\mu g/m^3$.

The Kennecott-Garfield smelter is being completely rebuilt utilizing the Noranda Process. Accordingly, a feasibility analysis of the new smelter is difficult. But, based on the fact that arsenic in the feed is between the levels existing at Anaconda and El Paso on the one hand and ASARCO-Hayden on the other, and the limited exposure data supplied by Kennecott in higher exposure process areas, the problems of compliance should be less than those at Anaconda and El Paso. The new Kennecott smelter's continuous and more enclosed process should improve conditions as well.

At the ASARCO-Hayden smelter many exposures are in the 10 $\mu g/m^3$ range such as at the converter aisle and acid plant (Ex. 29A, App. 4). However, exposures in the reverberatory furnace area are in the 100–200 $\mu g/m^3$ range and are approximately 75 $\mu g/m^3$ by the roasters. The 10 $\mu g/m^3$ will be achievable for the employees in the low exposures area with engineering controls and will require some respirator use for employees exposed in the higher range. AY estimated that 45 employees would need to wear respirators at a 4 $\mu g/m^3$ level. The ASARCO data is discussed in economic considerations.

Arthur Young used Hayden as the basis for its analysis for the four other smelters in Group 4. However, it is quite possible that AY has underestimated the success that engineering controls will have in achieving the permissible exposure limit at those four smelters and that even the limited use of respirators which AY estimated at those smelters is an over estimate. In addition to the increase in the permissible exposure level, those four smelters have much lower levels of arsenic in their feed than ASARCO-Hayden ranging from .015 percent to .002 percent in comparison to the .04 percent at Hayden. Therefore, though there is little exposure data supplied by those smelters, it seems likely that they will find it easier to comply than ASARCO-Hayden.

On the other hand, Arthur Young may have placed Phelps-Dodge's Douglas smelter in too low a group. The level of arsenic in its feed is higher than at other smelters in Groups 4 and 5. Exposure data in Exhibit 12 indicates that most exposures are near 10 $\mu g/m^3$. However, a few exposures readings are between 10 and 80 $\mu g/m^3$.

In all the remaining smelters most exposures are quite low and concentrate levels are less than 0.02 percent. Those smelters can clearly meet the the 10 $\mu g/m^3$ level in virtually all of the places most of the time. Arthur Young estimated that very few if any of the employees at those smelters (in Groups 5 and 6) would need to wear respirators on a regular basis in these smelters at a 4 $\mu g/m^3$ level.

In summary, the three expert witnesses, Caplan, Burton and Arthur Young agreed that a 4 $\mu g/m^3$ level was technically achievable with engineering and work practice controls and respirators use, though varying on the extent of their estimates of respirator use. However, the 10 $\mu g/m^3$ level comports more clearly with the concept of technical feasibility, especially in the smelter environment. It provides a very high degree of protection with less extensive respirator use. Certainly a higher number would give less protection and lead to less respirator use. A lower number possibly might provide more protection and certainly would substantially increase respirator usage.

The 10 $\mu g/m^3$ level is achievable at 11 of the smelters with engineering and work practices and only very limited use of respirators. Limited use of respirators will be needed at the ASARCO-Hayden smelter, moderate use at the El Paso smelter and Anaconda smelters, and the Kennecott Garfield smelter will probably fall in between the two groups in terms of respirator use. The Tacoma smelter will require extensive respirator use and an appropriate compliance strategy to mitigate the problems created is discussed below.

Exhibit 5G contains a discussion of new technologies which may become available in the future. These, because of their more enclosed and continuous

nature or because of their use of newer technology will ultimately lead to still lower exposures. However, those technologies (some of which are unproven) commonly require building a new smelter which may cost in the $150 to $250 million range. Since these new technologies are generally not yet looming on the horizon, the feasibility analysis has not been based on them.

The Arthur Young study (Ex. 148A) also considered other affected industry groups. However, those industries which are covered by this final standard did not specifically submit any detailed studies themselves though they made a few comments.

AY estimates the 4 $\mu g/m^3$ was achievable with engineering and work practice controls alone in zinc smelters. Arthur Young and Arthur D. Little (Ex. 111-7, p. 37) clearly considered the 4 $\mu g/m^3$ level feasible at primary lead smelters though it is unclear to what extent limited respirator use might be needed.

Arthur Young estimated that the glass, and desiccant manufacturer industries could achieve 4 $\mu g/m^3$ with engineering controls alone. They estimated that the herbicide and pesticide manufacturers, wood preservative manufacturers and lead arsenical industry could achieve 50 $\mu g/m^3$ with engineering controls alone but would require some respirator use to achieve 4 $\mu g/m^3$. As the former two industries are chemical industries where enclosed processes can often be utilized, OSHA believes that the 10 $\mu g/m^3$ level can be achieved without respirator use. There may be limited use of respirators needed at the 10 $\mu g/m^3$ level in the lead arsenical segment.

In conclusion, the 10 $\mu g/m^3$ exposure level is the lowest feasible level for exposure to inorganic arsenic. It minimizes, to the maximum extent feasible, excess lung cancer deaths resulting from exposure to inorganic arsenic. It is achievable generally through engineering and work practice controls. Limited respirator use will be needed to achieve the limit in some locations in some facilities, and one facility will require extensive respirator usage. The absolute degree of control of work exposure will be certain only after inplementation of engineering and work practice controls. What is clear is this standard will provide significant protection of workers from arsenic-induced lung cancer.

## VI. Economic Considerations

In setting standards for toxic substances, the Secretary is required by section 6(b)(5) of the Act to give due regard to the question of feasibility. Section 6(b)(5) mandates that final standards be set which most adequately assure employee safety and health "to the extent feasible, on the basis of the best available evidence" and further requires that, in the development of occupational safety and health standards, "considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws."

While the precise meaning of feasibility is not clear from the Act, it is OSHA's view that the term may include the economic ramifications of requirements imposed by standards. The determination that OSHA has the authority to consider economic feasibility factors in developing standards has been endorsed by the courts. *Industrial Union Dept., AFL-CIO* v. *Hodgson*, 499 F. 2d 467 (C.A.D.C., 1974); *AFL-CIO* v. *Brennan*, 530 F. 2d 109 (C.A. 3, 1975); *American Iron & Steel Inst.* v. *OSHA*, No. 76-2358 (3rd Cir., 3/28/78). As pointed out by the D.C. Court of Appeals, Congress did not intend the Secretary to promulgate standards which drive entire industries or large numbers of employers out of business. On the other hand, "standards may be economically feasible even though, from the standpoint of employers, they are financially burdensome and affect profit margins adversely". Further, the Court said, the concept of economic feasibility does not "necessarily guarantee the continued existence of individual employers." *Industrial Union Dept., AFL-CIO* v. *Hodgson, supra*, at page 478. In accordance with the Secretary's position, it has been OSHA's practice to analyze the economic impact of proposed standards where significant impact on employers covered by the proposals seem likely. OSHA then makes, such analyses available to affected parties for comment and subsequent hearing prior to issuance of final rules, and invites the submission of other information on the economic impact and feasibility of proposed standards. In developing a final standard OSHA evaluates the economic impact of the final standard on the basis of the entire rulemaking record, including the information developed by its own studies of the proposal and submissions by the public. On the basis of the best available evidence, therefore, OSHA has determined, as explained in detail below, that the permanent standard is economically feasible.

A number of studies were done of economic considerations resulting from an arsenic standard. The Arthur Young study (Ex. 135A) contracted for by OSHA considered economic factors for all affected industries. Other studies submitted concentrated on the copper smelting industry. These are listed in section V of this preamble. In addition the matter was specifically considered in testimony at the hearings.

The copper smelting industry is the most affected industry. Table 2 summarizes the Arthur Young and industry cost estimates for a 4 $\mu g/m^3$ level and Arthur Young's estimates for a 50 $\mu g/m^3$ level. However more than half of the industry's total cost estimate was comprised of hypothesized worker rotation costs for Anaconda and Kennecott. The industry hypothesized that the OSHA proposal required that industry use employee rotation, rather than respiratory protection, if engineering controls and work practices were sufficient by themselves to achieve the proposed 4 $\mu g/m^3$ exposure level. Although it is true that Arthur Young's cost estimates includes in a few instances a limited amount of worker rotation, the proposal does not contain any language specifying worker rotation. Like the proposal, the final standard contains no requirement that worker rotation be used rather than respiratory protection when engineering and work practice controls do not succeed in reaching the permissible exposure limit (sometimes referred to in this document as the PEL or TWA limit). Therefore OSHA does not consider it appropriate to include worker rotation costs and Table 2 also presents the industry estimate adjusted to exclude worker rotation costs.

TABLE 2.—*Cost of compliance for copper smelters*

[Millions of dollars]

| Source of estimate | 50 $\mu g/m^3$ | | | 4 $\mu g/m^3$ | | |
|---|---|---|---|---|---|---|
| | Capital | Annual | Annualized | Capital | Annual | Annualized |
| AY (Ex. 135A) | 85.9 | 6.2 | 23.5 | 103.9 | 11.2 | 32.0 |
| Industry (Exs. 156a, 111-7) | | | | 224.2 | 153.7 | 198.8 |
| Industry adjusted | | | | 224.2 | 49.6 | 94.7 |

Annual costs include the additional costs resulting from the standard for fuel, medical examinations, monitoring, maintenance, etc., as well as potential loss of efficiency through respirator use. Annualized capital costs are 20 percent of initial capital costs. These are then added to annual costs to derive annualized costs.

The industry cost figures cited in Table 2 do not include costs for four of the 16 U.S. primary copper smelters which are not owned by the four major companies. The Arthur Young estimate includes costs for all 16 U.S. primary copper smelters. The ASARCO estimates, included in the overall industry cost figure includes costs of compliance for some of their non-copper operations as well as their copper smelters and thus to that extent the industry figure overstates costs which are attributable to copper smelting alone.

OSHA believes that at the 10 $\mu g/m^3$ level the adjusted industry cost estimates are too high. Respirator costs will be reduced substantially from the 4 $\mu g/m^3$ level because engineering controls will succeed in reaching the 10 $\mu g/m^3$ level more frequently. There will be a limited reduction in the cost of engineering controls at the 10 $\mu g/m^3$ level at Kennecott and Phelps-Dodge. The Phelps-Dodge capital costs estimate of $80 million, supported by no underlying data, seem, much too high relative to other industry estimates. They had originally estimated $22 million (Ex. 12). Kennecott, with higher exposures and a larger scale of operation, estimated capital costs at $28.5 million.

Kennecott's estimate of $9.9 million in annual energy costs to reheat stack gasses is unsubstantiated. Anaconda's estimate of $30 cfm estimate for ventilation controls is approximately double other estimates used for ventilation controls on the record (Ex. 29 m, Ex. 148A).

The ASARCO cost estimate includes annual costs of $10.57 million for loss of efficiency from respirator use and $231 million for respirator expenses at the 4 $\mu g/m^3$ level. These figures are based on approximately 900 employees at Tacoma and approximately 2000 employees at other ASARCO facilities wearing respirators full time. Loss of efficiency through respirator use is computed by ASARCO at 20 percent or $3600 per man year. Respirator costs are estimated at approximately $800 per man year.

OSHA believes these ASARCO figures are substantial over-estimates at the 10 $\mu g/m^3$ level. As analyzed in detail below, in the Tacoma section, ASARCO's estimate of employees on respirators at Tacoma is probably double the correct figure and the 20 percent estimate of loss of efficiency for respirator use is probably more than double the correct estimate. Therefore the loss of efficiency through respirator use at Tacoma is probably more than $2.43 million too high.

OSHA believes that substantially fewer than 2,000 employees will need to wear respirators full time at non-Tacoma ASARCO facilities at the 10 $\mu g/m^3$ level. ADL does not make clear how this figure is derived, but it appears to be based on all production employees at El Paso, Hayden, East Helena and possibly other ASARCO facilities wearing respirators at the 4 $\mu g/m^3$ level. However ASARCO Exhibit 29G indicates that many employees at those locations (except El Paso) have exposures already below 10 $\mu g/m^3$ and other are exposed at levels sufficiently close to 10 $\mu g/m^3$ so that engineering controls will in many instances succeed in reducing exposures below 10 $\mu g/m^3$. In any event full time use of respirators by many of these employees is not likely to be necessary.

Further David Burton and AY estimated that approximately 50 employees would need to wear respirators at Hayden at the 4 $\mu g/m^3$ level. (Ex. 18, p. 67, Ex. 173A). Arthur Young estimated that approximately 70 employees at El Paso will need to wear respirators full time at the 4 $\mu g/m^3$ level (Ex. 173A). These estimates would indicate much lower respirator use than the ADL estimate at 4 $\mu g/m^3$.

Based on the change to the 10 $\mu g/m^3$ level, existing exposure levels, the effectiveness of engineering controls and estimates of other experts, OSHA believes that fewer than 500 employees will be wearing respirators at ASARCO's non-Tacoma facilities. Further as discussed below in the Tacoma section, the 20 percent figure for loss efficiency through respirator use is too high and 10 percent may be a more reasonable high side estimate. Therefore the ASARCO estimate of $8.86 million in total respirator expenses at non-Tacoma facilities ($7.33 million loss of efficiency plus $1.54 million respirator costs) is probably overstated by a factor of seven-eighths. In any event, full time use of respirators by many of these employees is not likely to be necessary. However to be certain that respirator costs are not underestimated, it will be assumed for purposes of this analysis that these respirator costs are overestimated by three-quarter or $6.65 million. Therefore the total ASARCO estimate for respirator expenses is overestimated at least $9 million per year at the 10 $\mu g/m^3$ level ($2.43 million overestimate at Tacoma and $6.65 million non-Tacoma). The ASARCO capital cost figure will also be reduced in the short and middle term by the likelihood of less capital investment at Tacoma as discussed below. In the longer term that investment will be necessary.

The above overestimates come to $32.1 million per year in annualized costs. Subtracting the overestimates from the industry estimate of $94.7 million leaves a balance of $62.6 million in annualized costs. The computations to derive the $32.1 million figure are as follows: Capital costs at Phelps Dodge should be no more than the Kennecott estimate of $28 million, saving $52 million in capital costs from the Phelps Dodge $80 million estimate or $10.4 million in annualized costs. Even the $28 million figure is likely to be an overestimate for Phelps Dodge since Exhibit 12 indicates that existing exposures are low. Caplan, an ASARCO witness estimated $16 per CFM for difficult ventilation jobs. Applying that figure to the Anaconda estimate of 1 million CFM results in costs of $16 million rather than the $30 million Anaconda estimate. This saves $14 million in capital costs or $2.8 million in annualized costs. Arthur Young believed the $30 CFM figure was too high but nonetheless utilized it in their analysis. They believed the capacity required was overestimated as well. Also subtracted are $9 million in excess respirator costs at ASARCO and $9.9 million in excess fuel cost at Kennecott. (10.4+2.8+9.0+9.9=$32.1 million in overestimates).

Changes in the standard from the proposal will also result in substantial cost savings from the industry estimates. Monitoring costs will be reduced by approximately two-thirds due to the reduction in monitoring frequency. Medical, laundering and hygiene costs will also be reduced significantly by the change in the definition of covered employees and the reduction in laundering frequency. These savings have not been subtracted from the various estimates.

It also should be noted that both industry and Arthur Young figures are based on a 20 percent factor covering interest and depreciation to annualize capital costs. A figure commonly used in other OSHA proceedings has been

15 percent. To the extent that the 15 percent figure is more realistic, all of the estimates have exaggerated the annualized cost figures.

The Arthur Young cost estimates are reasonably detailed and based to a substantial extent on detailed underlying data. Caplan of IHEA testified that AY did not always give sufficient reasons when choosing the DBA report as the basis for estimates rather than selecting the IHEA estimates. (STR p. 629.) Nonetheless, the choice was made by qualified persons and general considerations and sometimes specific reasons were given in Exhibits 148A and 173A. The DBA costs, when chosen, were detailed and made by a qualified expert. DBA estimates were adjusted by AY to fully account for overhead costs.

Some of the AY costs based on DBA estimates may be too low. For example, in OSHA's experience the estimate of $5,350 for enclosing, filtering, and air conditioning an overhead crane (Ex. 148A, p. 8) may be too low. Also, the AY computation of costs for Phelps-Dodge smelters may be too low based on exposure levels at the Douglas smelter and interpolation of AY cost data. These underestimates are at least in part compensated for by the lessening of costs at the 10 $\mu g/m^3$ level from the 4 $\mu g/m^3$ level.

It therefore appears to OSHA that the AY 4 $\mu g/m^3$ estimate is a reasonable estimate at the 10 $\mu g/m^3$ level. It also appears that the industries adjusted figure for the 4 $\mu g/m^3$ level is high at a 10 $\mu g/m^3$ level, though an estimate in between those two figures of approximately $63 million would also be a reasonable high-side estimate. The adjusted industry figure with some of the probable overestimates substracted would come out to approximately $63 million in annualized costs.

The smelters not included in the industry compilation will probably have costs in the lower range in comparison with other smelters at the 10 $\mu g/m^3$ level since exposures are already in the lower range. In addition, it is not unreasonable to assume that as they did nbot actively participate in the hearing process, they did not believe it difficult to comply. It also should be noted that the profit figures used below do not include profits for the other smelters and therefore understate industry profits.

In considering economic impact, it is inappropriate to assume that the industry will have to absorb all these costs. Some of the increased costs will be offset by increases in smelting charges. Since the early 1970's smelting charges have risen from about 6 cents to 12 cents per pound of copper and combined smelting and refining charges have increased from about 10 cents to 20 cents per pound in response to higher energy, environmental and other costs. (Ex. 111-7, p. 24-25.) Also ASARCO has successfully increased smelting charges to independent mines to assist in offsetting costs of environmental controls. (STR. pp. 457-458.) Notes 1 and 6 of the 1975 ASARCO Annual Report indicate that ASARCO has been receiving approximately $12 million per year in environmental surcharges.

A. D. Little suggested that those costs of controls which affected most smelters can be passed on to consumers by smelting operations without disruption in time of "normal" copper prices. (Smelting charges are normally assumed by copper analysts to be paid by the mine which takes the gains and losses from rises and falls in copper prices.) ADL estimated that 2 cents per pound of copper could be passed along. (Ex. 111-7, pp. 35-37.) Arthur Young estimated that there would only be a "negligible" increase in copper prices based on the low impact of the proposal on some smelters, ADL's estimate that there is a surplus of smelting capacity abroad, and that their study was directed at long-term impacts. (Ex. 135, p. VI-10, Ex. 184.)

A 2 cent increase in smelting charges would result in increased revenue to smelters of $60 million per year and a 1 cent increase of $30 million per year based on a typical figure of 1.5 million tons of copper smelted per year in the U.S. In view of past increases in smelting charges to cover increased costs, OSHA believes some part of the increased costs of the regulations can be recovered by the smelters in increased smelting charges to mitigate the impact of the cost of arsenic controls. There are costs in shipping copper from overseas and some overseas smelters are also facing increased environmental costs. Therefore despite a possible surplus of overseas capacity, OSHA believes that a part of the cost increases can be recovered in increased smelting charges.

The average annual pretax profits over the 10 year period 1966-1975 for the four largest copper smelting companies total $525 million excluding extraordinary items (Standard and Poors). Industry profits need to be averaged over a period of time because of their historically large fluctuations. It is appropriate to compare costs against pretax profits since depreciation and interest are tax deductible. (Such a comparison may still overstate the impact of the costs because there is a tax credit for capital investment that would have the effect of reducing net capital outlays.)

Using the industry's adjusted estimate of costs of $94.7 million and a low estimate at increased smelting charges of 1 cent per pound ($30 million), the copper smelting industry would be left to absorb $64.7 million of costs, or 12.3 percent of average pretax profits. As discussed above, that percentage is probably too high at a 10 $\mu g/m^3$ level because the $94.7 million cost figure appears to be too high. Using the AY figure of $32 million in costs and the 1 cent per pound increase in revenues, the costs to be absorbed by the industry would be a negligible $2 million. This net figure is probably low. At the $32 million cost figure only a lower increase in smelting charges would probably be passed on because of the different cost impacts of the standard on different smelters.

An intermediate analysis would be to consider costs at the 10 $\mu g/m^3$ level as midway between the AY and industry adjusted estimate or $63 million. With increased smelting charges of 1 cent per pound this would result in the industry absorbing $33 million in increased costs, or 6.3 percent of historical pretax profits.

It would appear to OSHA that these percentages indicate that the cost of the arsenic standard is well within the economic capabilities of the copper smelting and refining industry as a whole. It is true that the copper smelting industry is also being required to spend substantial sums on environmental controls. However, no witnesses have testified that costs of this magnitude would be infeasible for the copper smelting industry as a whole.

This conclusion is consistent with the conclusions of A. D. Little, ASARCO's witness, that the cost to the copper and lead smelting industries can be passed on without any major dislocations except in times of abnormally low metal prices (Ex. 111-7, p. 37). They believed the exception to this was the additional compliance costs to ASARCO at their Tacoma and El Paso facilities over and above the level of costs at other smelters.

OSHA is aware that subsequent to the close of the record in this rulemaking, that copper prices have been very low and some copper companies have been in a loss position on their copper operations. It is also true that subsequent to the close of the record Kennecott received a very large sum in cash from the sale of Peabody Coal Co., Anaconda was purchased by Atlantic-Richfield and Bendix has invested in ASARCO. The Financial Press has speculated about high copper prices in the 1980's.

OSHA has not considered these factors in its analysis. However at the compliance level, feasible compliance plans are worked out for specific facilities. To the extent that a specific company can prove that serious economic feasibility difficulties exist, the compliance plan can be adjusted to include a more extended period for the installation of required engineering controls with more extensive use of respirators in the short term.

It is not appropriate to reopen the record each time the state of the economy or the price of a specific commodity changes. These fluctuations are frequent and it would become difficult ever to close a record and issue a final standard. In consequence needed health protection for employees would be further delayed. Such changes are better addressed at the compliance level where more detailed information is available. See *Atlantic and Gulf Stevedores* v. *OSHA*, 534 F. 2d 541 (3rd Cir. 1976). No party has petitioned to reopen this proceeding.

### Lead and Zinc Smelters

The IIS estimated annualized costs to primary lead smelters of $9.3 million and of $940,000 to zinc smelters at a 4 $\mu g/m^3$ level. It found no economic impact of sufficiently great magnitude to create questions of economic feasibility or supply problems. In addition no detailed industry analyses were made indicating that any problems of economic feasibility existed.

### Economic Impact—Other Industries

Interested parties in other industries did not bring to OSHA's attention major problems of economic feasibility. The IIS estimated substantial ($30 million annualized) costs of compliance at the 4 $\mu g/m^3$ level in the glass industry but did not indicate that difficult economic feasibility questions existed. The costs are distributed broadly across a reasonably large industry. In addition arsenic use in glass has been going down as substitutes have been developed. Manufacturers are continuing to reduce the already small percentage of arsenic in glass and to develop complete substitutes which will reduce the costs of compliance. The costs will be further reduced by the change to the 10 $\mu g/m^3$ level.

The IIS estimates $6.7 million in annualized costs for secondary lead smelters. It suggests that a few of the smaller firms may have some difficulty in raising capital to meet the costs of controls though no smelters have presented specific evidence on this point. This evidence indicates that the standard is feasible for the industry as a whole.

The IIS estimates that annualized costs of compliance were not over $1 million at the 4 $\mu g/m^3$ in any of the other industries studied. Although the IIS suggests that one or two individual plants may have difficulty in raising capital, no specific evidence has been presented to OSHA. In view of the relatively small amounts involved at a 4 $\mu g/m^3$ level, no significant questions of economic feasibility appear to be presented for these industries as a whole at a 10 $\mu g/m^3$ level.

### Benefits

The legislative history and language of the Occupational Safety and Health Act, as distinguished from some other environmental and safety legislation, clearly indicate that Congress has already arrived at a judgment concerning the balancing of cost and benefit, with the result that worker safety and health are to be heavily favored over the economic burdens of compliance. Specifically, Section 6(b)(5) of the Act provides that:

> The Secretary, in promulgating standards dealing with toxic materials or harmful physical agents under this subsection, shall set the standard which most adequately assures, to the extent feasible, on the basis of the best available evidence, that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life. Development of standards under this subsection shall be based upon research, demonstrations, experiments and such other information as may be appropriate. In addition to the attainment of the highest degree of health and safety protection for the employee, other considerations shall be the latest available scientific data in the field, the feasibility of the standards, and experience gained under this and other health and safety laws.

Thus, while feasibility is an appropriate consideration, the Secretary is directed to set standards which attain the "highest degree of health and safety protection for the employee * * *."

This does not mean, however, that a systematic evaluation of costs and benefits is not to be encouraged within the limits of the estimation techniques. In considering the issue of feasibility in this rulemaking, as in others, OSHA has carefully evaluated the cost of compliance which may be incurred by the directly affected employers and their ability to comply. Additionally, OSHA believes that a standard for a substance which has been found to pose a cancer risk to workers, in this case inorganic arsenic, must assure maximum benefit (i.e. prevention of serious illness or death), constrained only by the limits of feasibility.

There is general agreement that inorganic arsenic exposure causes cancer. In spite of the certainty of this conclusion, and that there is a reasonable dose-response relationship for exposures in the hundreds of micrograms per cubic meter, there does not exist an adequate scientific basis for determining a quantitative dose-exposure relationship at the lower levels of exposures necessary to reduce the risk as much as is feasible. The uncertainty in both the actual magnitude of expected deaths and in the theory of extrapolation from existing data to the exposure level set by this standard places the estimation of benefits on "the frontiers of scientific knowledge."

While the actual estimation of the number of cancers to be prevented is highly uncertain, the evidence indicates that the number is likely to be appreciable. A dose-response relationship, that is a lower incidence of excess risk at lower levels of exposure is likely to exist at lower as well as higher levels of exposure to inorganic arsenic. Therefore reductions in exposure to lower levels is accompanied by a reduced risk, even though a precise quantitative relationship cannot be established.

The epidemiologic studies discussed in the health effects section give an indication of the magnitude of the excess risk which will be reduced by this standard. For example, the excellent Lee and Fraumeni study considered the employees at one copper smelter. This study indicated that over a 25 year period, there were 147 lung cancer deaths where only 45 deaths would be expected (Ex. 5D, Table 3, p. 1048). Exposures of groups of employees showing excess risk were both above and below the existing 500 $\mu g/m^3$ limit. It is clear that the new standard would contribute very substantially to reducing the 102 excess lung cancer deaths at that one copper smelter. In light of the uncertainties in this area of scientific knowledge, OSHA believes that it is required by the statutory mandate to adopt a highly protective posture in considering the evidence for health benefits.

We recognize that in view of the latency period usually associated with the induction of cancer, significant reductions in mortality may not be seen for many years. However, unless exposures are reduced now, OSHA believes that the mortality rate will not decline and employees exposed to inorganic arsenic will continue to suffer excess mortality.

Based upon the foregoing and the record as a whole, OSHA finds that compliance with the standard is well within the financial capability of the covered industries. Moreover, although the benefits of the standard cannot rationally be quantified in dollars, OSHA has given careful consideration to the question of whether these substantial costs are justified in light of the hazards of exposure to inorganic arsenic. OSHA concludes that these costs are necessary in order to effectuate the statutory purpose of the Act and to adequately protect employees from the hazards of exposure to inorganic arsenic.

In making judgments about specific hazards, OSHA is given discretion which is essentially legislative in nature. In setting an exposure limit for a substance like inorganic arsenic, OSHA has concluded that it is inappropriate to substitute cost benefit criteria for the legislatively determined directive of protecting all exposed employees against material impairment of health or bodily function. Where

the health effectiveness of alternative approaches are extremely uncertain and likely to vary from situation to situation, OSHA believes it is appropriate to adopt the compliance strategy which provides the greatest certainty of worker protection even if the approach carries with it greater economic burdens for the affected employers.

In the case of the inorganic arsenic standard, the evidence in the record indicates that the costs of compliance are not overly burdensome to industry. Having determined that the benefits of the proposed standard are likely to be appreciable, OSHA is not obligated to carry out further exercises toward more precise calculations of benefit which would not significantly clarify the ultimate decision. Previous attempts to quantify benefits as an aid to decisionmaking in setting health standards have not proved fruitful (41 FR 46742).

### Impacts on Price Indexes

Both the IIS (Ex. 135, p. VI-5) and the Council on Wage and Price Stability (STR, pp. 845-6) estimate that the overall impact on general price indexes of the inorganic arsenic standard indexes will be "negligible." Arsenic products have a very small weight in these indexes and even substantial increases in individual arsenicals would have no significant impact. The likelihood of a 50 percent increase in the price of arsenic trioxide is discussed below. But such an increase would have very little impact on the prices of finished chemicals, cotton, or preserved wood because the cost of the arsenic trioxide is generally a small part of the cost of the finished product. See the discussion in the Final EIS of how even a 100 percent increase in the cost of arsenic trioxide would only have a negligible impact on the cost of cotton production, the largest user.

This preamble utilizes a 1 cent per lb increase in the price of copper as a low side estimate of the increase in price of copper for purposes of estimating impacts on copper smelters. ADL originally suggested a 2 cent increase in price. At the September 1976 hearing they suggested the possibility of a 5 cent increase if the Tacoma smelter shut down. As discussed below OSHA believes a compliance strategy exists which will assist in maintaining the continued viability of the Tacoma smelter.

OSHA does not believe that sufficient evidence has been introduced to permit it to evaluate the validity of ADL's second prediction. No doubt a 5 cent increase in the price of copper is not insignificant to copper users. However the market price frequently fluctuates by much greater amounts in the course of a year. Such an increase would still have a negligible impact on general price indexes, $150 million in a $1.5 trillion plus GNP. If it did occur, it would interestingly make the copper industry as a whole much more profitable and substantially improve its capabilities for paying for needed environmental and occupational safety controls.

### The Arsenic Market

A. D. Little speculated that if Tacoma closes, the other producers of arsenic, Sweden, Mexico and Southwest Africa may form a cartel and force up the price of arsenic (Ex. 167A, p. II-16). Arthur Young points out that their speculation is not "obvious" though the IIS did not specifically consider this contention. (Ex. 184, p. 15)

The compliance strategy suggested for Tacoma will assist in maintaining its continued viability, so the basis for ADL's speculation may not occur. In any event OSHA believes the ADL suggestion is based on mere conjecture and is highly speculative. Further the flue dusts of many copper smelters are rich in arsenic and precious metals. These dusts, which in some cases now are stored, might very well become additional sources of arsenic if price relationships were suitable.

### The Econometric Model

The 115 includes an econometric model. Arthur D. Little presented extensive criticisms of the model (Ex. 167, 167A, 186, 190(3)). Arthur Young responded to the criticisms in Ex. 173B and 184. OSHA has made its own independent interpretation of economic considerations in this preamble based on the data in the record. Therefore, it has not found it necessary to attempt to resolve the differing views on the econometric model.

## VII. The Tacoma Smelter

The above analysis indicates that the final arsenic standard is feasible for the industries affected. However, the record also indicates that for copper smelters the magnitude of the task to achieve compliance will vary substantially among the different facilities in the industry. As discussed above, OSHA believes that it is inappropriate to make feasibility determinations based on those few facilities which have the most difficult compliance problems. To do so would deny necessary and achievable health protection to the majority of employees in facilities where a much lower level can be achieved.

When there are some facilities which cannot comply with the standard in the medium term using principally engineering controls, for technical reasons or because of serious economic difficulties, then a more elaborate compliance plan is required. Such a plan is to achieve compliance with the exposure limit in the near term through a carefully planned mix of feasible engineering controls, work practices and personal protective equipment. The plan should set priorities for the adaptation and installation of further engineering controls which will be put in place as soon as possible. It should also include strategies for reducing the difficulties in using personal protective equipment.

Normally, these situations will be dealt with at the compliance level. Considering the unusual circumstances at a few locations in a general rulemaking hearing would excessively lengthen the hearing with its many participants, and would reduce resources available to respond to major health questions with broad implications. Also solutions to the compliance problems are best incorporated in the compliance plan for a specific location so they can be tailored to specific difficulties.

However, a substantial amount of evidence has been placed on the record in regard to the Tacoma smelter of ASARCO, Inc. which has the most difficult compliance problems. OSHA has spent a substantial amount of time analyzing those data and members of its standards staff have visited the Tacoma smelter. Therefore, to assist the compliance process to more quickly and effectively reduce exposure levels, the evidence is analyzed here. This discussion will also provide useful information for other facilities. The outline of a feasible compliance plan is also described. Such a plan will permit compliance with the final standard including the 10 $\mu g/m^3$ level, substantially reduce the elevated lung cancer mortality reported among workers at the Tacoma smelter and alleviate the hardships of respirator use. It will assist in maintaining the continuing viability of the Tacoma smelter and the employment for its approximately 1,000 employees.

The details and changes based on new evidence will be worked out at the compliance level where the most recent evidence will be available to closely scrutinize compliance efforts and capabilities. Also, a joint EPA and OSHA study will be available which will integrate and set priorities for occupational and environmental health controls.

The evidence indicates that Tacoma is principally a copper smelter and similar to the other 15 in the United States. Like many of the others it is an older facility which smelts copper through a high temperature pyrometalurgical process involving the open transference of molten and fuming mineral complexes between and from furnaces. The employees at Tacoma carry out many tasks in a manner similar to other copper smelters. Compliance, as at other smelters, requires

principally enclosure, hooding, and ventilation to the extent feasible at the various steps in the process.

However, the record indicates that the degree of difficulty to achieve compliance is greater at Tacoma. Two reasons principally account for this. First, the level of arsenic in Tacoma's copper concentrate feed (4 to 5 percent overall) is five times that at the two smelters with the next highest levels of arsenic in their feed and at least 40 times greater than the other smelters. Second, Tacoma is the only domestic producer of arsenic-trioxide.

Both Knowlton Caplan, expert witness for ASARCO (Ex. 29m, pp. 66–67; ATR p. 1314) and David Burton, expert witness for OSHA (Exs. 18, 150; STR p. 279), suggested that in a number of areas at Tacoma, ventilation and enclosure controls by themselves would have a low probability of reducing exposures below 50 $\mu g/m^3$. Arthur Young did not specifically express a judgment on this point, but did suggest that to reach a 4 $\mu g/m^3$ level, engineering controls would have to be coupled with substantial use of clean rooms, respiratory protection and some worker rotation.

Arthur Young estimated that the capital cost of all technically feasible engineering controls at Tacoma would be $31 million and that the annualized cost would be $10 million at the 4 $\mu g/m^3$ level. A. D. Little estimated capital costs at $41 million and annualized cost at $16 million at that level. Costs of all technically feasible engineering controls would be similar at the 10 $\mu g/m^3$ and 4 $\mu g/m^3$ levels at Tacoma because of the high current exposure levels. ASARCO stated that pretax profits at Tacoma had averaged $1.9 million per year but supplied no underlying data (STR, p. 439). ASARCO's pretax profits have averaged $92 million in the 10 year period 1966–1975 (Standard and Poors). As discussed below, Tacoma is integrated into other ASARCO operations. This evidence indicates that part of the costs of controls should be borne by ASARCO as a whole.

The standard requires that employers install at the earliest possible time but no later than December 31, 1979, necessary engineering controls except to the extent the employer can show that those controls are not feasible. Unless the evidence supplied by ASARCO does not represent the current circumstances, ASARCO may be able to show that installing all of the technically feasible engineering controls discussed in the IHEA, DBA and Arthur Young studies are not feasible in that period at Tacoma. In addition, substantial respirator usage will be required.

If this is the case, the standard requires ASARCO to develop a compliance plan for installing the most effective feasible controls in the near term, mitigate the difficulties of substantial respirator use and provide a framework for complete compliance in the long term. ASARCO is obligated to install additional engineering controls as they become feasible.

The most effective types of engineering controls to be installed by December 31, 1979, would include the following three types of controls. Controls should be installed which would most effectively reduce background levels of arsenic contamination at the smelter. This includes enclosure, hooding, and ventilating sources of arsenic contamination which are currently uncontrolled or only partially controlled. Possible examples are controls at the roaster flue cleanout and enclosure of the fine ores bin. Other examples are hooding and ventilation of sources of arsenic emissions at the roaster, and during charging and tapping at the reverberatory furnaces and convertors to the extent that current systems are insufficient or incomplete. Also, some steps in the arsenic-trioxide production process are basically uncontrolled at present and reasonable controls should be installed to reduce background contamination. For example, hand tools are used in the open to "pull" (remove) arsenic-trioxide out of the "kitchens" (condensers) with little in the way of even basic forms of enclosure, ventilation or mechanization leaving a visible residue of arsenic-trioxide.

Lowering background arsenic levels makes controls at other specific locations easier to devise and reduces the need for full time use of respirators. It lessens respirator use in those areas of the plant where little arsenic is emitted and where most exposure is from background sources. Such controls by reducing fugitive arsenic emissions, reduce the spread of arsenic outside of the plant boundaries. They thereby reduce potential exposure in the surrounding community. These types of engineering controls must necessarily be coupled with good housekeeping practices such as promptly cleaning up spills, cleaning larry car tops and furnace doors for better seals, and cleaning of maintenance shops. A conscientiously carried out program of such practices can substantially reduce background levels of arsenic.

Secondly, those engineering controls which will reduce exposures below the 10 $\mu g/m^3$ limit for significant numbers of employees should be installed. This will eliminate the need for respirator usage in those locations.

Thirdly, filtered-air pulpits and clean rooms should be utilized where appropriate. Many production jobs in a smelter are of a tending or intermittant nature. A clean room or filtered air pulpit provides an environment below the 10 $\mu g/m^3$ level, where the employee can stay with his respirator off in between tasks, or while monitoring controls. As a result, the employee's exposure is substantially reduced without the full-time use of respirators.

Both D. B. Associates and Arthur Young emphasized the importance of these controls, which are effective at moderate cost and which in OSHA's experience are commonly used by industry. Caplan testified that at Tacoma, clean rooms might not succeed in reducing exposures to the 4 $\mu g/m^3$ because of high background levels. OSHA believes that well designed clean rooms will succeed in keeping exposures below the 10 $\mu g/m^3$ level. Good design includes adequate filtration and vacuums for the employee to dust himself off before entering.

The above discussion is not intended to be determinative, but to provide general guidance. The specific plan for setting installation priorities for engineering controls needs to be worked out at the compliance level where all necessary details can be taken into account. It is clear that such a plan can be devised. Caplan testified that he indeed could develop a compliance plan which would rationally set priorities for the installation of engineering controls, and that the study which he submitted to the record did not do that (STR, pp. 642–643). Similarly, the D.B. Associates study did not prioritize controls, but Burton himself did indicate the beginnings of a plan to do that in his testimony (STR, pp. 270–281).

In conjunction with the installation of the most effective feasible engineering controls, substantial respirator use will be necessary in the medium term to meet the 10 $\mu g/m^3$ exposure limit. Therefore, the standard requires the compliance plan to include provisions for a respiratory protection program designed to reduce the burden on the employees of widespread respirator use as well as assuring the effective use of respirators.

The plan for engineering controls discussed above is the first step in such a respiratory protection program. It will provide a basis for reducing the need for full time respiratory use. Many employees will be able to spend part of the day in clean rooms and pulpits where they may remove their respirators. Another part of the day, the employee will have to wear a respirator. However, properly fitted and selected respirators in many circumstances will reduce exposures substantially under 10 $\mu g/m^3$. That, in conjunction with a general lowering of background exposure levels, will permit employees to spend part of the day not wearing respirators outside of the clean room and still maintain 8 hour time weighted average under the 10 $\mu g/m^3$ limit set by the standard.

The standard also requires quantitative fit testing for facilities with widespread respirator use. Such testing will permit a more accurate assessment of the degree of protection the respirator is giving each employee. It will also permit determination of what part of the day the employee may go without wearing his respirator, and still be under the exposure limit.

The standard also gives the employees the option of wearing powered air purifying respirators and requires employers to furnish them when requested. Those respirators, as discussed below, are often more comfortable for the employee and can provide a higher degree of protection than negative pressure respirators. In addition, the process of developing new and more comfortable forms of powered air purifying respirators continues. OSHA is willing to consider granting experimental variances or other appropriate action to permit use of such respirators or other respirators which increase comfort and reduce safety problems before certification by NIOSH is granted, if quantitative fit tests indicate they are providing proper protection in the Tacoma environment.

A compliance plan for Tacoma following the above outlines will mitigate the hardships of respirator use at Tacoma. It will reduce the need to wear respirators for the entire work day and will encourage the use of more comfortable types of respirators. It also will be beneficial to ASARCO because the loss of efficiency through respiratory use is less when they need not be worn all day and more comfortable types can be worn. It is recognized that for some employees, such as crane chasers, electronic communication equipment needs to be incorporated into the respirator to permit adequate communication.

The feasible compliance plan for Tacoma would not be appropriate in most other circumstances. As explained above, the substitution of respirators for feasible engineering controls is not acceptable because of the difficulties in properly fitting and insuring that they are used. Moreover many types of respirators are uncomfortable to wear, and it is inappropriate to place the burden of compliance on the employee when it is the employer who has not removed toxic substances from the workplace.

Further a program of averaging exposures with the respirator on and off to prevent full time use is also not acceptable in most circumstances. It is difficult to administer such a program, enforce it and insure that employees are not over exposed.

However Tacoma presents difficult circumstances. There are serious health and feasibility problems. In these limited circumstances, the above program is appropriate despite its difficulties. If carefully administered by ASARCO, it will provide needed health protection for the employees and respond to the feasibility questions.

In the longer term installation of additional engineering controls, modernization of the Tacoma facility and technological development will reduce exposure levels. As this occurs less reliance on respiratory protection will be needed.

The case of *IUD* v. *Hodgson* (supra) suggests that consideration may be given to setting a different exposure level for different industries. Such a response does not seem proper in these circumstances. OSHA does not believe that the carcinogenic risk at higher worker exposure levels is acceptable, and an approach is available which can provide the Tacoma employees with the same level of protection as other employees, although in a less satisfactory manner. In addition Tacoma is primarily a copper smelter and does not constitute a separate industry.

The rulemaking record includes analyses of economic feasibility for Tacoma by Arthur D. Little, Inc., Arthur Young & Co., Dr. Arvil Adams, and ASARCO management officials. Based on this record OSHA believes ASARCO is in position to spend a substantial capital sum towards the installation of effective engineering controls and carry the provisions of the compliance plan described.

Final determination of the most effective economically feasible schedule for installation of engineering controls will be determined at the compliance level. Latest information and internal financial data will be available at that stage. This information is discussed here to assist in a more rapid determination at the compliance level and to give guidance to the parties.

Tacoma is integrated into other ASARCO operations as pointed out by Strauss, ASARCO's Executive Vice-President (STR, p. 443) and by A. D. Little, ASARCO's own witness (Ex. 111-7, pp. 29-30). Although ASARCO supplied little evidence upon which to estimate the value of the services it performs for other ASARCO facilities, they involve treating $30 million in metal values per year (Ex. 111-7, p. 30). ASARCO has stated it would involve new capital expenditures to perform those services at its El Paso smelter (STR. p. 443). On this basis and because of the serious health problems at Tacoma it is appropriate that the initial capital investment for engineering controls should be in major part charged to ASARCO as a whole, and not specifically come only from Tacoma resources.

ASARCO recently completed an $18 million program for reduction of environmental sulfur dioxide emissions at Tacoma. It has committed itself to spending $6 million for environmental arsenic controls there, knowing about the pendency of OSHA arsenic regulations. The expenditure of sums in this range will go a long way towards completing, or complete by 1980 the installation of those most effective engineering controls describes above. Obviously ASARCO management has considered it economically feasible to invest sums of this size in environmental controls in the recent past at Tacoma. However, in view of the severe health hazards, it is OSHA's view that a substantial sum must be invested in engineering controls, no matter what the circumstances, in order to significantly reduce that hazard and indicate that a major effort to reduce exposures is being made.

In considering economic feasibility at Tacoma it is also necessary to take into account additional revenues which will be generated at the smelter as a result of this standard. As discussed above in the feasibility analysis for the copper smelting industry, there will be conservatively an additional 1¢ per pound in copper smelting charges as a result to the standard. Based on approximately 75,000 tons of copper per year smelted at Tacoma, this will come to $1.5 million in increased revenues.

In addition, as a result of this standard Tacoma will receive increased revenues from the sale of arsenic-trioxide over its arsenic-trioxide revenues at the time this record was compiled. Both Arthur Young and A. D. Little analyzed the arsenic market at considerable length in Exhibits 135A and 111-7. Arthur Young suggested that, so long as Tacoma produced arsenic, prices would not increase significantly because of import competition. A. D. Little suggested that ASARCO might raise its arsenic-trioxide approximately 50 percent ($150 per ton) and still sell its entire annual production though not reduce its inventories existing at the time of the report. It is OSHA's understanding that Tacoma arsenic inventories have been substantially reduced and therefore pricing to reduce inventories would not now be necessary.

Foreign prices have in the last several years risen to levels higher than domestic prices. The largest foreign producer, Boliden in Sweden, may currently have less arsenic-trioxide to sell; it's inventories have shrunk with the exhaustion of some of its sources of high arsenic concentrates. Foreign arsenic-trioxide prices have increased about 300-400 percent over the last eight years. More recently domestic prices have risen 200-300 percent and domestic inventories have declined. Foreign prices are now greater than domestic prices. Domestic consumption has been maintained or increased.

The cost of arsenic-trioxide is only a small part of the cost of the finished products in which it is used and for some uses substitutes are less satisfactory. (This aspect is discussed at greater length in the final EIS.) Based on this, many of the purchasers of arsenic compounds should be able to absorb significantly increased prices without reducing consumption substantially.

A 50 percent increase in arsenic prices would increase Tacoma revenues by approximately $1.5 million per year based on 10,000 tons produced per year and a $300/ton price at the time of this record. It would appear to OSHA that a price and revenue increase of this magnitude would be quite possible in view of the recent price history and other reasons discussed above.

This standard will therefore result in additional smelting revenues of $1.5 million and additional arsenic revenues of $1.5 million, or total increased revenues of $3 million annually. ASARCO has stated that Tacoma pretax profits averaged $1.9 million and these two figures total $4.9 million.

The Arthur Young estimate for annual costs at the 4 $\mu g/m^3$ level is $3.85 million. This number is based on some assumptions based upon the provisions of the proposal and not the final standard. There will be a lower level of operating costs initially as a result of the immediate installation of fewer engineering controls. The increased exposure limit will reduce respirator use, but the installation of fewer engineering controls will increase it. Hence the changes will, at least in part, balance out.

The ASARCO estimate for annual costs at Tacoma is summarized by A. D. Little at page 15 of their Report. The basis of this data is testimony by ASARCO management and Caplan. A. D. Little did not independently review the figures. The figure estimated in $7.68 million. Other figures given are capital charges which are discussed above.

However the ASARCO estimate includes two figures which are substantial over-estimates. The operating expenses for engineering controls given are $2.77 million based on immediate installation of $41.1 million of engineering controls. If for example it is decided at the compliance level that it is only feasible to install one-third of those controls by 1980, then the operating costs of engineering controls would be reduced by approximately two-thirds or $1.84 million to $0.93 million.

ASARCO estimates a $3.24 million annual cost for loss of efficiency from respirator use. This is based on all 900 production employees wearing respirators full time giving protection to the 4 $\mu g/m^3$ level and an estimated average loss of efficiency of 20 percent. There are other estimates on the record of loss of efficiency of respirator use ranging down to 8 percent. In addition the change in the final standard from the proposal and new developments in respirator protection since that estimate was made, should substantially reduce the loss of efficiency associated with respirator use.

The change to the 10 $\mu g/m^3$ level and the use of exposure averaging (which would be based on mean exposure levels), will mean that a significant number of employees may not need to wear respirators at all and many employees will only need to wear respirators part time. Further employees need not wear respirators when in clean rooms. In a number of areas at Tacoma, existing mean exposures (based on personal samples as required by the standard if that data is available) are below 20 $\mu g/m^3$. Exhibit 29G, Appendix 3 supplied by ASARCO indicates that the Acid Plant, Slimes Building, Electric Shop, Fine Castings, Ore Dock, Main Office, Warehouse, Machine Shop, Anode Department, Mobile Equipment Repair and Bucking Room come in this category. The installation of the most effective engineering controls discussed above, good housekeeping and clean up may eliminate the need for respirators in those areas or greatly minimize it.

The ASARCO estimate is based on employees exposed over 4 $\mu g/m^3$ having to wear fullface piece respirator which ASARCO believes are less comfortable. It is also based on a substantial number of employees wearing airline respirators. These substantially reduce efficiency in jobs requiring mobility because the hoses interfere. It is not completely clear whether the estimated reduction in efficiency includes an element of the very high loss of efficiency in wearing heavy self-contained breathing apparatus. However it appears from the questioning that Mr. Lindquist's estimate of 20 percent loss of efficiency includes some allowance for that. It also should be noted that the study, which Mr. Lindquist stated he relied on for his 20 percent estimate, was not systematic and did not involve any actual time and motion analysis of lost efficiency.

The final standard will permit one-half facepiece respirators to 100 $\mu g/m^3$ which will reduce loss of efficiency from possible discomfort wearing full facepieces. There is now a certified dust and acid gas cartridge. Therefore when the SO2 limit is exceeded, the employee is permitted to wear a one-half facepiece respirator up to a concentration of 100 $\mu g/m^3$ of arsenic and 10 times the sulfur dioxide limit.

In addition there is now available a portable, battery operated certified powered air-purifying respirator (PAPR) which weights only 5 pounds, mostly carried at the belt. Because the face fit is loose, there is a cooling air stream, no breathing resistance and light weight, this type of respirator creates a loss of efficiency substantially below 20 percent and probably below the low end (8 percent) estimate on the record. These respirators may be used where exposures do not exceed 10,000 $\mu g/m^3$ thus offering the opportunity for replacing airline respirators, negative pressure respirators and self-contained breathing apparatus in the vast majority if not all locations. (See Table 1, paragraph g of standard)

In view of all these factors, OSHA believes that the loss of efficiency from respirator use will be, at most, no more than one-half of the ASARCO estimate. Further OSHA believes that with the increase in the permissible exposure level to 10 $\mu g/m^3$ and the compliance strategy described, approximately one-half of the number of full time equivalent employees will need to wear respirators as ASARCO estimated. Therefore the loss of efficiency through respirator use is likely to be reduced three-quarters or $2.43 million from ASARCO's $3.24 million estimate.

In view of these two factors, OSHA believes that the ASARCO estimate of annual compliance costs should be reduced by $4.27 million ($2.43 million respirator efficiency plus $1.84 operating costs engineering controls over-estimates) to $3.41 million. OSHA, however, would expect that ASARCO would spend several hundred thousand dollars more on improved housekeeping than the $0.14 million ASARCO estimated.

Based on the above analysis. OSHA believes that the operating cost of the compliance plan described will be within the resources of the Tacoma smelter including its $1.9 million historical annual profits and $3 million additional revenues as a result of this standard and that overall the compliance plan described is feasible. Obviously to the extent conditions change or better analyses become available, suitable adjustments can be made at the compliance level.

The question of future operations at Tacoma in uniquely the decision of ASARCO's management. Evidence on this record indicates that the continuing viability of the smelter depends on many factors beyond the control of OSHA or anyone, such as copper prices, availability of British Columbia concentrates, Japanese subsidy policies, and a number of other considerations. Nor as a matter of policy or of law does OSHA believe it appropriate to ignore health considerations because difficult feasibility questions may exist. ASARCO figures indicate a substantial excess of lung cancer

deaths at Tacoma. Certainly, major efforts are required to reduce this risk.

Consideration of additional capital investment for engineering controls in the early 1980's, is best analyzed in compliance proceedings at that time, in the light of the circumstance and available resources then existing. In addition as engineering controls succeed in reducing exposure levels, respirator use will be reduced. The resulting savings in respirator costs will make available additional sums for further engineering controls.

## VIII. Summary and Explanation of the Standard

The following sections discuss the individual requirements of the standard. The sections include an analysis of the record evidence, the recommendations of NIOSH, and the policy considerations underpinning the decisions on the particular provisions of the standard. As discussed in the PEL section above, the final standard sets a permissible exposure limit to inorganic arsenic of 10 $\mu g/m^3$. Engineering controls and work practices are required where necessary and written compliance plans must be developed. Other portions of the standard including those on respirators, protective clothing, hygiene facilities, and exposure monitoring have been revised and clarified as described in detail below.

It should be noted that the language of many of the standard's provisions and the order of the paragraphs have been changed to be consistent with the drafting in recent OSHA health standards such as the acrylonitrile proposal (43 FR 2608), benzene final standard (43 FR 5913), and the final coke oven standard (41 FR 46784). OSHA believes, to as great extent possible, a similar style should be followed in order to lead to uniformity of interpretation of similar provisions. Section 6(b)(5) of the Act states that health standards shall also be based on "experience gained under this and other health and safety laws."

### A. Scope and Application: Paragraphs (a) and (b)

This standard applies generally to all occupational exposures to inorganic arsenic. Some of the industries where substantial exposures to inorganic arsenic may occur are non-ferrous metal smelting, glass making, and manufacture of arsenical chemicals and pesticides. There may also be exposures covered by this standard in other areas and industries. Pesticide application, application of arsenical preservatives to wood, use of arsenically treated wood and agricultural uses are exempted. Pursuant to section 4(b)(1) of the OSHA Act, this standard does not apply where other Federal agencies exercise statutory authority to prescribe standards regulating occupational safety or health.

It should be noted that the standard does not cover every place where inorganic arsenic is present. As explained in the background section and FEIS, arsenic is a naturally occurring material and is present in small amounts in many substances. It is therefore inappropriate to cover situations where very low levels of arsenic may be present in substances or products in the workplace, but where they are handled in such a way that the possibility of airborne exposure is minimal. But where the substances containing arsenic are handled or processed in such a way as to create exposure, a possible hazard exists, and the operations come within the scope of this standard.

Several examples may be helpful. If arsenic trioxide is added to glass during manufacture, airborne arsenic is likely to be present and the operation comes within the scope of this standard. However, when that glass is cut or used, airborne exposure is unlikely because the arsenic is bound in the glass, and those operations are outside the scope of this standard. Similarly when gallium arsenide is produced there may be airborne exposures and the operation is covered by this standard. However, when light emitting diodes are assembled into calculators or watches, airborne exposure is unlikely and those operations are outside the scope of this standard.

If the operation comes within the scope of this standard, but exposures are shown to be below 5 $\mu g/m^3$ after initial monitoring, then there may be no other obligations under this standard except labelling in some circumstances and remonitoring if processes change.

Inorganic arsenic is defined as copper aceto-arsenite and all inorganic compounds containing arsenic except arsine. Copper aceto-arsenite has been specifically noted because of possible confusion on whether it is considered organic or inorganic. As Allied Chemical (Ex. 109) stated copper aceto-arsenite is inorganic. Furthermore, as previously noted it has been implicated as a potential lymphatic cancer agent, which compels its inclusion in this standard.

Arsine has been excluded for several reasons. The proposal did not include arsine and the rulemaking did not consider specifically the special provisions necessary for proper control of exposure and regulation of arsine. Most notably, no suitable sampling technique has been submitted for levels significantly lower than the present standard of 0.05 ppm.

NIOSH and the AFL-CIO suggested that the final standard include arsine. OSHA agrees that arsine has a very high acute toxicity. It has no practical value and exposures occur solely as a result of accidental evolution. It would unnecessarily delay the inorganic arsenic standard to wait for the development of a suitable sampling technique as well as other procedures and there is a current permissible exposure limit for arsine of 0.05 ppm included in Table Z-1 of 29 CFR 1910.1000 to give protection now.

Some parties requested that the scope of the final standard be narrowed and clarified. Spokespersons from several industries expressed their belief that industries handling materials containing less than 0.1 percent arsenic (Exhibits 79, 106, 108, 112) be exempted from the standard. It was their belief that this would provide a reasonable cut-off where exposures would be minimal and provisions such as monitoring need not apply.

OSHA does not feel it is appropriate to exclude those industries handling materials with less than 0.1 percent arsenic from the standard. OSHA feels this standard must be based on the degree of employee exposure to airborne concentrations of inorganic arsenic since the degree of exposure most represents the risk to the employee. It should be noted, for example, that employee exposure in some copper smelters with arsenic levels of less than 0.1 percent in their feed had a number of employees exposed above 10 $\mu g/m^3$. The inclusion of an action level limits the requirements of the standard (except for initial monitoring and labelling), to employees exposed above 5 $\mu g/m^3$.

Diamond Shamrock (Ex. 3E) has expressed the view that regulatory activity would be difficult where naturally occurring organic arsenicals may be mixed with inorganic arsenic. They further stated that since they believed there was no analytical method for distinguishing individual arsenic compounds, only total arsenic can be measured. Diamond Shamrock, therefore, recommended that only operations involved in smelting ores, conversion of arsenic trioxide and primary application of arsenical products be included. Dr. Braman (Ex. 145) has demonstrated that there is a sensitive method capable of distinguishing between organic and inorganic arsenic. Natural background levels of arsenic are in the range of approximately 0.01 to 0.04 $\mu g/m^3$. The higher levels reported in smelter communities cannot be considered natural, and are typically not high enough to interfere with sampling at a 5 $\mu g/m^3$ action level. In most facilities it can be determined whether workers are exposed to inorganic or organic arsenicals based upon the chemicals present and processes used. In those cases where both are present, a determination at the enforcement level can be made as to the percentage of exposure to organic arsenic, using Dr. Braman's or other methods.

The standard excludes pesticide application from its scope. The EPA reg-

ulates most pesticide applications and has a program to extend its regulations as necessary including suitable protection for employees.

The manufacture of pesticides is not considered pesticide application and is covered by this regulation. Most agricultural uses are pesticide application.

As discussed in the background section of this preamble one of the major uses of arsenic is to impregnate wood so as to preserve it from rot and insects. The manufacture of the preservative solution is covered by this regulation as is the manufacture and formulation of other pesticides. However, EPA regulates the impregnation of the wood by the preservative as a pesticide application. EPA is now reviewing the registration of arsenical preservatives and has indicated that it is considering new requirements for application and use including suitable protection for employees. OSHA believes it advisable to avoid duplicative regulation when employees will be suitably protected, and therefore the impregnation of wood with arsenical preservative is not covered by this regulation.

EPA currently does not regulate the use of preserved wood. Based on the evidence in this record the arsenic in the preserved wood is bound tightly to the wood sugars, exhibits substantial chemical differences from other pentavalent arsenicals after reaction, and appears not to leach out in substantial amounts (Exhibits 31 C-2, 5, 6, 7, 21, 36). Therefore OSHA does not believe it appropriate to regulate the use of preserved wood on the basis of the current record.

If further information indicates the need for regulation, and other agencies have not exercised jurisdiction, OSHA will institute proceedings to suitably regulate employee exposure to arsenically preserved wood.

PARTICULATE SIZE

The proposed standard was based on the regulation of worker exposure to all particle sizes of inorganic arsenic. Some parties requested that this requirement be changed so that only arsenical particulates of "respirable size" (less than 10 micrometers mass median diameter) be regulated (Exhibits 3F, 3T, 23A, 106, 108, 109). This position has been summarized by Engelhard Minerals & Chemicals Corp. (Exhibit 3F) as follows:

> Since the Rule clearly refers only to arsenic exposure in terms of mg As/m³ of air in the workplace, it is implicit that the Rule is intended to cover only airborne arsenical particulates or aerosols and should, therefore, indeed be restricted to those only in the *respirable* particulate size range, i.e., less than approximately 10 microns e.s.d., since particles larger than this are non-respirable and physiologically rejected.

There are two major routes of entry of airborne concentrations of inorganic arsenic. The primary route is inhalation. The secondary route, ingestion. Little is known about the absorption and translocation of arsenic in the various regions of the upper respiratory tract, lung and the gastrointestinal tract after inhalation and ingestion. Although the size of particle admitted by the inhalation route is limited by the aerodynamic principle of particle deposition, a similar limitation does not apply to arsenic that may possibly be ingested. Furthermore, too little is known about the absorption and translocation of *differently sized particles* in the lung, upper respiratory tract, lung and gastrointestinal tract to predict with confidence the final body dose. Accordingly, OSHA believes it appropriate to take the most protective stand and provide adequate protection from all particle sizes of airborne arsenic.

B. CEILING LIMIT: DELETION

In contrast to the proposal, the final standard does not provide for a ceiling limit to supplement the permissible exposure limit. In the principally affected industry, copper smelting, there will be brief unpredictable exposure to higher levels of arsenic as a result of the smelting process. OSHA believes that engineering controls now available would not prevent occasional excursions above a ceiling limit though there are practices and controls available which will reduce their frequency and extent.

For the permissible exposure limit of 10 $\mu g/m^3$ to be met, employers will have to implement feasible engineering and work practice controls which will tend to reduce the number and extent of excursions over the permissible exposure limit. In this manner, the standard assures that protection will be provided to employees.

C. ACTION LEVEL: PARAGRAPH (B)

The proposal contained an action level of 2 $\mu g/m^3$ which triggered the monitoring, medical, regulated area, hygiene facilities and protective clothing requirements of the proposed standard. This requirement has been retained in the final standard, but the numerical value has been changed to 5 $\mu g/m^3$ in light of the change of the permissible exposure limit.

Many industry spokepersons believed that the action level was overly burdensome, stating their opinion that if the permissible exposure level were a level that adequately protects workers, no action level should be required (Exhibits 3A, 3W, and 112). Others believed that it was probably impossible to reduce employee exposures to 2 $\mu g/m^3$ in many locations, and therefore felt it should be deleted (Exhibits 3-L, 30, 3v). It was also pointed out that it would be difficult to measure a 2 $\mu g/m^3$ level.

In the absence of a demonstrated safe level for a carcinogen, OSHA has limited employee exposure to the maximum extent feasible by the use of engineering and workpractice controls. OSHA believes it is appropriate to begin some protective actions prior to exceeding the permissible exposure limit. The action level serves such a purpose. Another purpose of the action level is to help to relieve the burden on employers by providing a cut-off point for many of the required compliance activities under the standard. The standard necessarily encompasses some employers whose employees are exposed to levels below the permissible exposure limits. Such employers are required to perform initial monitoring to determine the extent of their employees' exposures to inorganic arsenic. If, on the basis of the results of the initial measurement, exposure is below the action level, the employer may discontinue monitoring and most other compliance activities for that employee. The action level concept thus provides an objective means for an employer to determine what further actions are required for compliance with the standard.

The statistical basis for determining the action level has been discussed in connection with several proposed OSHA health standards (See, for example, "Proposed Standard for Trichloroethylene" (Oct. 20, 1975, 40 FR 49032)). In brief, although all measurements on a given day may fall below the permissible exposure limit, some possibility exists that on unmeasured days the employee's actual exposure may exceed the permissible limit. Where exposure measurements are above one-half of the permissible exposure limit, i.e., the action level, the employer cannot reasonably be confident that his employees may not be overexposed. (Leidel, N. A., et al., "Exposure Measurement Action Level and Occupational Environmental Variability." DHEW, PHS, DCD, NIOSH, DLCK (August 1975)). Therefore, requiring periodic employee exposure measurements to begin at the action level provides the employer with a reasonable degree of confidence in the results of his measurement program.

However, OSHA has reduced the number or requirements and burden of requirements triggered by the action level, while maintaining its major benefits. The action level has been raised from 2 $\mu g/m^3$ to 5 $\mu g/m^3$, thereby reducing the number of workers and number of establishments required to do more than initial monitoring by this standard.

D. REGULATED AREAS AND NOTIFICATION OF USE: PARAGRAPHS (D) AND (F)

The final standard requires that regulated areas (RA) be established and access limited to authorized persons.

This section is to aid in limiting exposure to inorganic arsenic. By limiting access to the RA to authorized persons, the standard requires the employer to prevent those persons who are not authorized to enter the RA from doing so and thereby being exposed to inorganic arsenic. Other purposes of this section are to designate those areas in which precautionary signs are posted, and to designate those employees subject to quarterly exposure monitoring. Additionally, employees working in regulated areas are covered by the washing and showering provisions and certain activities such as smoking and eating are prohibited within regulated areas.

The proposed standard required that the regulated area be established at the action level. Commentors (Ex. 3B, 108, 112) suggested that the regulated area be established in areas in which exposure exceeds the permissible exposure limit (sometimes refered to as the PEL or TWA limit). This suggestion has been adopted for the Final Standard and is consistent with the approach taken in other OSHA standards for carcinogens.

The proposed standard required that a daily roster of all persons who enter the RA be made and maintained for at least forty years or the duration of employment plus 20 years whichever is longer (Ex. 2a, 40 FR 3397, 3400). The final standard does not requiare that a roster be kept.

Commentors have criticized this provision as excessively interfering with day to day operations (Ex. 3B). OSHA has concluded that rosters would be of little use in limiting worker exposure to inorganic arsenic. Other records such as medical records and results of exposure to monitoring required by the standard would provide more useful information and obviate the need for a roster.

The proposed standard prohibited eating, drinking and applying cosmetics in areas where employees were exposed above the action level. The specific prohibition was located in the Hygiene paragraph of the proposal.

The limitation on eating, smoking and applying cosmetics in regulated areas is necessary to prevent the ingestion of inorganic arsenic. As discussed elsewhere in the preamble, the ingestion of inorganic arsenic has been implicated as a cause of cancer. There is the possibility of the translocation of arsenic within the body after ingestion. Further it is OSHA's policy to limit all routes of exposure to carcinogens. Moreover, inorganic arsenic is a skin irritant. Applying cosmetics in its presence would retain arsenic against the skin.

Drinking water is permitted within regulated areas. The possibility of heat stress exists in smelters. Therefore it is necessary to have water readily available.

Paragraph (r) of the proposal required employers with regulated areas to notify OSHA area offices. This requirement has been retained in paragraph (d) of the final standard so that OSHA will be aware of facilities where substantial exposure to arsenic exists.

### E. EXPOSURE MONITORING AND MEASUREMENT: PARAGRAPH (E)

The standard requires each employer who has a place of employment where there is exposure to inorganic arsenic as the result of the employers' activities to monitor their employees' exposure to inorganic arsenic over an eight hour period without regard to the use of respiratory protection. Section 6(b)(7) of the Act (29 U.S.C. 655) mandates that any standard promulgated under subsection 6(b) shall, where appropriate, provide for monitoring or measuring employee exposure at such locations and intervals, and in such manner as may be necessary for the protection of employees.

There are various reasons which make it appropriate for employers to measure employee exposure to inorganic arsenic. First, exposure monitoring informs the employer whether he is meeting his legal obligation to keep employee exposures below the permissible exposure limit. Second, exposure monitoring evaluates the effectiveness of the installation of engineering and work practice controls and informs the employer whether additional controls need be instituted. Third, exposure monitoring is necessary in order to determine whether respiratory protection is required at all, and if so, which respirator is to be selected.

Fourth, section 8(c)(3) of the Act (29 U.S.C. 657) requires employers to promptly notify any employee who has been or is being exposed to toxic materials or harmful physical agents at levels which exceed those prescribed by an applicable occupational safety and health standard and to inform such employee of the corrective action being taken. Exposure monitoring is necessary in order to determine whether employees are being exposed to inorganic arsenic at levels exceeding that prescribed by this standard and therefore should be notified as required by the Act. Finally, the results of exposure monitoring are part of the information which it is necessary to supply to the physician.

The need to conduct exposure monitoring was generally accepted by participants in the rulemaking process. A requirement that monitoring be done was included in the proposed standard. In view of this support and for the reasons stated above, the standard establishes a requirement for employers to monitor employee exposure to inorganic arsenic. The monitoring of airborne exposure is consistent with the proposal and other health standards.

Some industry spokespersons expressed their preference for biological monitoring (urinary arsenic measurements) (Ex. 29G, Ex. 118) stating that biological monitoring best defines the risk to the employee, that it is equally effective and much less expensive (Ex. 3T). Some feel that this form of biological monitoring can be used as an indication of the total effectiveness of control programs, including the effectiveness of respirator usage and the personal hygiene habits of the employee (Ex. 118). ASARCO (Ex. 29G, App. 7) presented a regression analysis of urinary arsenic levels versus airborne arsenic exposure levels. In this analysis, the average individual employee's urinary arsenic level taken on ten consecutive days were regressed on the corresponding average individual employee airborne arsenic exposure. The data on which this correlation is based is contained in Exhibit 125. Based on the 23 employees so measured, a weak to moderate linear correlation (regression coefficient of 0.528) was observed.

During the April 1975 hearing, NIOSH representatives were asked to evaluate the urinary arsenic determinations as an indicator of worker exposure (ATR 372-6). Dr. Blejer responded:

> From my background as a physician and knowledge of various plants, not smelters, which handle inorganic arsenicals, the urinary excretion of arsenic is an extremely variable and inconstant thing for any individual.
>
> Occupationally, I have learned and I was taught, as well, to treat results—all the results—to group them and take means or average but not on individual bases, because of dietary and many, many other factors.
>
> Therefore, the results of an individual would not be indicative of an exposure and if they were to be enormously high, which would be about the only way that you could tell that they were occupationally related, I would say, then you would be corroborating what would have to be a fairly gross exposure or overexposure. [ATR 373]

OSHA has concluded that it is not appropriate to use urinary arsenic measurements as the primary means for determining employee exposure. Airborne monitoring is effective and is capable of detecting levels over the permissible exposure limit before over exposures to employees occur. Urinary monitoring is variable and the correlation between airborne and urinary levels is only weak to moderate. OSHA has further concluded that it will not require urinary arsenic determinations as a supplement to airborne monitoring. However, employers may use it as an additional monitoring technique if they believe it useful in their particular circumstances.

The requirement for airborne monitoring is limited to employers who have a place of employment where inorganic arsenic is released as a result

of their operations. There are trace amounts of naturally occurring arsenic in the atmosphere (.01–.04 $\mu g/m^3$) and without this limitation, all employers would be required to monitor. (For a discussion of this limitation see the Scope and Application section.)

The standard requires that the measurements be made by monitoring which is representative of each employee's exposure to inorganic arsenic over an eight hour period without regard to the use of respiratory protection. Exposure measurements for each individual employee would, of course, be an indication of that employee's exposure. However, this may be unnecessarily burdensome in some instances, as some industry participants have suggested. Monitoring which is truly representative of an employee's exposure would provide the necessary information and in many instances would involve fewer samples.

The employee exposure measurements are to be made without regard to the use of respiratory protection. In order to use the results of exposure monitoring to evaluate the effectiveness of the required engineering and work practice controls, to determine whether additional controls must be instituted, and to ascertain which, if any, respirator must be used, it is necessary to know employee exposure levels without the use of respiratory protection.

Exposure conditions vary throughout the day (Exhibit 29G). At least one sample is to be taken during each shift in order to ensure that exposure measurements represent exposures of employees on all shifts. Employees working in the same area doing different jobs may have different exposures. Therefore the standard requires sampling for each job classification as well. The samples are to be full-shift samples to give a more accurate indication of an employee's average exposure during a work shift than would sampling for less than a full shift. Short-term samples would tend to be affected by the variability or inorganic arsenic emissions associated with operations such as copper smelting. Full-shift samples tend to average out these variations. As time is needed to issue and retrieve samplers, full shift sampling is defined as sampling for at least seven working hours. The proposed standard did not expressly set forth these requirements for accurate monitoring. The standard has been clarified by requiring these procedures for the reasons stated above. All of those requirements are intended to ensure that the monitoring is truly representative of an employee's exposures.

Paragraphs (d)(1) and (d)(2) of the proposed standard allowed the employer to visually inspect each work place and work operation to accurately determine if any worker was exposed above the action level (Exhibit 2A, p. 3400). OSHA has reconsidered this provision. It is not possible by visual inspection to accurately determine worker exposure. Accurate initial determinations are crucial, particularly when dealing with a carcinogen. Accordingly, this provision has not been included in the standard and the employer must monitor and measure the employee's actual exposures.

The final standard requires remeasurement every 3 months for employees exposed above the TWA limit and every 6 months for those exposed between 5 and 10 $\mu g/m^3$. In addition a remeasurement is required where the initial measurement is below 5 $\mu g/m^3$ if there is a significant change in process or materials which could result in additional exposures.

The proposal required monthly measurements for employees exposed above the permissible exposure (TWA) limit and bimonthly for employees exposed between the action level and the TWA limit. Employers criticized these frequencies as being too burdensome in relation to the possible health benefits (Ex. 3A, Ex. 3B, Ex. 118).

There are substantial fluctuations in exposure conditions, hour to hour and day to day at smelters, the largest industry affected by this standard (Ex. 29A, Ex. 29G). The higher the measurement frequency, the higher the accuracy of the employee exposure profile. On the other hand, monthly or bimonthly monitoring of significant numbers of employees at some smelters would require major resources including trained personnel. Monitoring could not be generally concluded during a few days, but would necessarily be carried out over a longer period of time.

Therefore OSHA has lowered the monitoring frequency.

Any choice of a lower measurement frequency is judgmental. OSHA now believes that requiring measurements at 3 and 6 month intervals in the circumstances of the particular industries affected by this standard will reflect employee exposure with sufficient accuracy to assure that suitable precautions will be taken as needed.

The standard requires that in those instances in which measured exposure ranges between 5 and 10 $\mu g/m^3$, these measurements shall be repeated at least every 6 months. OSHA recognizes that the accuracy of monitoring and measurement will decrease as exposure decreases below 10 $\mu g/m^3$. Therefore, the standard requires an accuracy of plus or minus 35 percent rather than 25 percent for exposures between 5 and 10 $\mu g/m^3$. However, periodic measurement is appropriate when exposures are in the 5–10 $\mu g/m^3$ range because of the possibility that minor changes in process, materials, or weather may raise exposure to above the TWA limit and to compensate for the possibility that such measurements are falsely low.

Periodic monitoring and measurement are not required when initial measurements are below 5 $\mu g/m^3$. It is unlikely when exposures are at this level that minor fluctuations in process, materials, or weather or measurement accuracy would result in false negative readings below the TWA limit. It would not be appropriate to require periodic measurements in those operations where exposures would be well below the permissible exposure limit. If there is a significant change in materials or process in an area where exposure was under 5 $\mu g/m^3$, remeasurement would be required.

The standard requires that whenever there has been production, process, or control change which may result in new or additional exposures to inorganic arsenic, or whenever the employer has any other reason to suspect an increase in employee exposure, the employer shall repeat the required monitoring and measurements for those employees affected by such change or increase. A redetermination which was also included in the proposed standard, is required in order to ensure that the most recent monitoring accurately represents the existing exposure conditions. This is necessary so that the employer may take the appropriate actions such as instituting additional engineering controls and providing the appropriate respiratory protection.

Section 8(c)(3) of the Act (29 U.S.C. 657) requires employers to promptly notify an employee who is exposed in excess of the permissible exposure limit. The proposal required that the employee be notified in writing within 10 days of the sampling. OSHA agrees with the statements by some industry participants that 10 days would not allow sufficient time for sample analysis (Ex. 3D). This would be particularly true in such cases where many samples need be analyzed or where samples would be sent to other locations for analysis. Accordingly, the standard requires an employer to notify each employee in writing of that employee's measurement within five working days after the receipt of the results of any required measurements.

ASARCO (Ex. 111, Attach. 10; Ex. 1608) twice sent inorganic arsenic samples for analysis by outside laboratories. In contrast to the second trial, samples were not replicated and were not distributed on a double blind basis in the first trial. Therefore, the results of the first trial are not as significant as those of the second trial.

In the second trial, five laboratories randomly chosen from the 7 laboratories used in the study, were sent one blank, filter three filters containing

2.5 μg arsenic and three filters containing 6.0 μg of arsenic. The two remaining laboratories were sent one blank filter as well as one filter each containing the other two concentrations. The results of the second trial are found in Table III of "Results of Trace Arsenic Analyses Performed by Various Laboratories" (Attached to Ex. 160B).

The results indicated that 5 of the laboratories did not achieve an accuracy of plus or minus 25 percent for the arsenic samples analyzed. However, 2 of the laboratories (including the ASARCO laboratory, Laboratory B in the table) did achieve accuracies of plus or minus 10 percent.

The final standard requires that the method and measurement have an accuracy of plus or minus 25 percent (with a confidence level of 95 percent) for concentrations of inorganic arsenic greater than or equal to 10 $\mu g/m^3$. It requires a method of sampling with an accuracy of plus or minus 35 percent for concentrations of inorganic arsenic between 5 and 10 $\mu g/m^3$.

As noted previously, the standard requires full shift personal monitoring (minimum 7 hours) for the determination of employee exposure. Using personal monitoring pumps at a flow rate of 2 liters per minute, with a 7 hour sampling time, 8.4 μg of inorganic arsenic will be collected if the airborne concentration is 10 $\mu g/m^3$. The equivalent sample at airborne concentrations of 5 $\mu g/m^3$ will be 4.2 μg of inorganic arsenic.

The ASARCO tests indicate that accuracies of plus or minus 10 percent can be achieved by experienced laboratories with samples of between 2.5 and 6 μg of inorganic arsenic. Therefore the minimum amounts of arsenic which would be collected under the final standards requirement fall within the range which can be accurately analyzed by experienced and qualified personnel such as those at ASARCO's own laboratories. It is also sufficiently large so that sample contamination will not excessively affect the results.

It should be noted that the laboratory methods used by the two laboratories with best results were atomic absorption and colorimetric methods. These methods are relatively simple methods commonly in use by industrial hygiene laboratories. More sensitive methods are available, such as X-ray fluorescence and d.c. discharge emission methods (Ex. 145). These more sensitive methods can be used to analyze with improved accuracy much lower arsenic concentrations. However, these methods are somewhat more difficult and expensive for many laboratories to use and in the typical industrial setting the problem of sample contamination would exist at such lower levels.

ASARCO noted that possible contamination might significantly elevate results at the small sample size range of the proposed action level of 2 $\mu g/m^3$. The potential effects of contamination have been reduced in the final standard due to the increased TWA limit and action level. The sample size collected at the 10 $\mu g/m^3$ TWA limit will be 5 times greater than at the proposed 2 $\mu g/m^3$ action level. Thus a similar level of contamination will only have one-fifth the effect. Similarly, an equivalent level of contamination at the 5 $\mu g/m^3$ action level will have only 40 percent of the effect which would occur at a 2 $\mu g/m^3$ level. Therefore a level of contamination of 0.5 μg suggested by ASARCO as a possibility will not be a major factor relative to the sample sizes resulting from monitoring at the permissible exposure limit and action levels in the final standard.

One question raised was whether particulate sampling methods could efficently collect arsenic released in the smelting environment. It has been suggested that arsenic trioxide has a significant vapor pressure and that it would not be efficiently collected at the elevated temperatures of copper smelting. An ASARCO study (Ex. 160B) indicates the efficient collection is possible at the temperatures of copper smelting. Using millipore personal monitor cassettes (0.8 micron pore size), backed up by midget impinger containing potassium permanganate or sodium hydroxide, ASARCO observed that the millipore filter had better than 95 percent collection efficiency of arsenic in the smelter (Ex. 160 B, Refs. 8, 9). As can be calculated from Table 1, Ex. 160B; capture efficiencies ranged from 98.5 percent to 99.6 percent for total arsenic particulate ranging from 45.6 to 224.8 $\mu g/m^3$. The vapor and/or submicron particulate evading capture ranged from 0.26 to 0.62 $\mu g/m^3$. Thus, assuming that the highest value (0.62 $\mu g/m^3$) was eluding collection with an airborne concentration of 10 $\mu g/m^3$, 93.8 percent collection efficiency would result.

### F. METHODS OF COMPLIANCE: PARAGRAPH (g)

The final standard requires that engineering controls and work practices be used to control employee exposure to inorganic arsenic, except to the extent that the employer can show they are not feasible. If all feasible engineering and work practice controls do not succeed in reducing exposure below the permissible exposure limit, they must be supplemented by respiratory protection. This is changed from the proposal which required that all feasible engineering controls be instituted before reliance could be placed on work practices. However, OSHA's experience has been that engineering controls must be coupled with suitable work practices to maximize their effectiveness. Consequently, the final standard allows joint use of engineering and work practice controls. Respiratory protection may be used only during the time period necessary to install engineering controls, where engineering controls may be inappropriate such as during some maintenance operations or in those cases when both engineering controls and work practices do not succeed in reducing exposures below the permissible exposure limit.

This compliance strategy has been consistently OSHA's policy and has been followed in prior standards and proposed standards. This policy is based upon the view that the most effective means of controlling employee exposure is to contain emissions of toxic substances at their source through the use of mechanical means combined with work practices. This is far more effective than reliance on the highly variable human behavior so critical to the successful use of respirators. As discussed below, respirators have many disadvantages which preclude primary reliance or co-reliance of respiratory protection on an equal basis with engineering and work practice controls. Furthermore, the burden of reducing employee exposure should more properly rest on the employer in whose establishment toxic substances are released rather than placing the burden of respirator use on the exposed employee.

ASARCO appeared to propose an alternative compliance strategy (Ex. 29 p. —; Ex. 111-7, p. 19; Ex. 118). Biological monitoring would be used, using an assumed safe urinary arsenic level of 250 μg/liter as a trigger. In those instances in which the urinary arsenic levels were above 250 μg/liter, workers would be removed, and/or engineering controls or respiratory protection would be instituted. ADL (Ex. 111-7) suggested this would be a much less costly approach. However, ADL did not include the costs of engineering controls to reduce exposures in areas in which the urinary levels were consistently above the specified limit. Therefore the ADL cost estimate is only a fraction of the actual costs unless it was proposed that employees be constantly rotated from areas of lower exposure to those of higher exposure and conversely, to reduce high exposures.

OSHA does not believe this is an appropriate compliance strategy. As discussed in the monitoring section, there is a weak correlation between urinary arsenic levels and environmental arsenic levels and there are other difficulties with biological monitoring. The ASARCO proposed urinary arsenic level cannot be shown to be a safe level. Thus, employees exposed for more than 25 years in the lowest uri-

nary arsenic exposure category (exposures under 200 μg/liter) did have excess respiratory cancer mortality (though it is true earlier exposures may have been higher). Further, as discussed in the occupational health implications section, there is a significant body of scientific opinion that it is not possible given present methodology to demonstrate a safe level for a carcinogen. The limited amount of evidence ASARCO has submitted is not sufficiently convincing to adopt their approach.

OSHA also does not believe in many circumstances it is an appropriate compliance strategy to rotate employees into and out of high exposure areas to reduce worker exposures to carcinogens. This approach would present the possibility of increasing the number of workers exposed to higher levels of a carcinogen. If ASARCO proposes to use engineering controls to reduce exposures, then the ADL cost figures are misleading as they just indicate monitoring costs. The actual cost of the ASARCO strategy will be much nearer the cost of the standard compliance strategy since a substantial amount of engineering controls would have to be installed.

The Council on Wage and Price Stability (Ex. 169) and some industry representatives (see Ex. 12 for example) suggested a control strategy involving principal reliance on respiratory protection, to reduce the cost of compliance. However, as will be discussed in a subsequent section, there are many difficulties with respiratory protection as testified by respirator expert Bruce Held (ATR 227-229) as well as some industry representatives (Ex. 29H). Because of the difficulties in face fit, it is difficult to know whether the respirators actually provide adequate protection. Respirators, by interfering with vision, hearing, and mobility, can cause safety problems. Some employees cannot wear respirators because of breathing difficulties. Finally, it is not appropriate to place the burden of compliance principally on the employee, as would be the case if respiratory protection were the principal means of reducing employee exposure. Therefore, OSHA retains in the standard the policy of principal reliance on engineering controls and work practices, except in circumstances where there appears to be no feasible alternative to more substantial reliance on respiratory protection.

Even in situations in which engineering controls will not succeed in reducing exposure levels below the TWA limit, it is still appropriate to require all feasible engineering controls to be installed, even though they would have to be supplemented by the use of respiratory protection. The engineering controls, by minimizing the exposure, without regard to the use of respirators, will have minimized the potential for over exposure resulting from poorly fitting respirators and will usually reduce the number of employees who need to wear respirators.

The final standard clarifies the language in the proposal by clearly placing the burden on the employer, for proving or disproving feasibility. The employer is in the best position to gather evidence on feasibility in a particular workplace. He is most familiar with his own production processes and engineering modifications which can be made. Further it is the policy of the OSHA Act that employers be required to take steps to investigate the feasibility of controls and install them as necessary.

### (G) RESPIRATORY PROTECTION: PARAGRAPH (h)

The standard requires that respirators be used only during the time period necessary to install or implement feasible engineering and work practice controls, in operations where engineering controls are not appropriate such as some maintenance operations, in work operations in which such controls are not feasible or are not yet sufficient to reduce exposure to the permissible limit, or in emergencies. These restrictions on the use of respirators are consistent with the requirements of 29 CFR 1910.1000(e) and with good industrial hygiene practice.

Many comments (Exhibit 11, 19, 29G, 29H, 117, 118, 119) cited problems associated with respirators. Respirators are to be considered secondary to the objective of limiting emissions at the source (ATR 229). Proper facial fit is essential, but due to variations in individual facial dimensions, as well as facial hair, scars or growths, is difficult to maintain. Fatigue and reduced efficiency may occur more rapidly among workers wearing respirators due to increased breathing resistance, heat stress and reduced vision (ATR 228). Safety problems presented by respirators must be considered. Respirators can limit vision (ATR 228). This can be significant, in smelters, for example where physical hazards exist and the employee's ability to see is important (ATR 246, Ex. 29G). Speech is also limited. Voice transmission through a respirator can be difficult, annoying and fatiguing. Communication may make the difference between a safe efficient operation and a hazardous operation, especially in dangerous jobs. (ATR 245, Ex. 29G, p. 13). Entanglement of hoses of air respirators as well as limited mobility due to hose lengths (ATR 242) are problems in heavy industrial environments. Self-contained breathing apparatus have the problem of carrying around a heavy weight (ATR 242.)

It is clear that respirators cannot generally be considered as the primary means of employee health protection. OSHA has carefully considered all these problems and has nonetheless concluded that if the permissible exposure limit is exceeded then employees must use the respirators provided. Where engineering controls and work practices do not succeed in reducing exposure below the permissible exposure limit, it becomes necessary to utilize respirators to give sufficient health protection to employees.

In situations where a significant number of employees will be wearing respirators for more than a short period of time, the employer is required to institute a more elaborate respiratory protection program to maximize the effectiveness and minimize the discomfort of extended respirator use. Items to be considered for inclusion in such a program are making available a greater variety of respirators for employee use, having a technician fully trained in respirator use and selection, and organizing the work so that part of the day can be spent in clean rooms or areas where the TWA limit is not exceeded. The employer should also plan to provide respirators with microphones or other communication equipment where needed.

Respiratory protection also has a role during maintenance operations as well as during emergency situations. However the goal of the standard is the control of emissions at the source to minimize the need for respirators.

Since it is apparent that respirators may be necessary, an evaluation of respirators for inorganic arsenic use is necessary. The standard contains two respirator selection tables (Tables I and II) so the employer will provide the respirators which afford the proper degree of protection based on the airborne concentration of inorganic arsenic. These tables are principally based on the NIOSH recommendation made during the September 1976 hearings (Ex. 146B) and OSHA's experience in this and other rulemakings. However, a significant change has been made from the NIOSH recommendations. This principally involves permitting the use of air purifying respirators with half mask and high efficiency filter for protection against nonvolatile arsenicals including arsenic trioxide.

During the September 1976 hearings, NIOSH (Ex. 146A, 146B, STR 67) recommended that only chemical cartridge and gas mask respirators be used where workers are exposed to inorganic arsenic compounds based on theoretical considerations that some arsenic compounds may have high vapor pressures. Questions have been raised whether arsenic trioxide has significant vapor pressure at ambient

temperatures (Ex. 129) and at elevated temperatures (Ex. 146, 157).

To see whether arsenic vapor might be eluding capture by high efficiency filters ASARCO conducted a respirator experiment (Ex. 160B No. 2). Respirator testing was performed by suspending the respirators from a metal bar supported by two ring stands. None of the test equipment was worn by a worker. To simulate a good fit against a worker's face, each respirator backing was covered with at least four thicknesses of plastic wrap. Two sampling trains were used. One employed a probe located inside the sealed respirator followed by a preweighed millipore filter. The millipore filter was backed up by impingers containing potassium permanganate or sodium hydroxide. A personal monitor (10 to 20 liters per minute flow rate) was used as the suction source. The second sampling train consisted of a probe, millipore filter, giant Greenburg-Smith impinger, dry gas meter and pump (10-20 liters per minute flow rate). Efficiencies of the high efficiency filters averaged better than 99 percent for protection against arsenic (Ex. 160B, No., 8, 9). Table 1 (Ex. 160B) contains the summary of ASARCO's results. It is noteworthy that the highest vapor and or sub/micron concentration was 0.66 $\mu g/m^3$ both inside and outside the respirator indicating that any vapor problem is minimal in comparison to the permissible exposure limit. Thus, air purifying respirators with high efficiency filters will be allowed in the final standard except for inorganic arsenic compounds with demonstrated significant vapor pressure.

Arsenic trioxide as well as some other arsenicals, are skin irritants and can cause skin irritation where the facepiece of the respirators comes in contact with the worker's face. Because they found no documented study indicating a threshold for eye irritation and because they judged there was an increased potential for skin irritation using half-masks, NIOSH recommended that full facepiece respirators be the minimal protection against particulate arsenic (STR 77-8). The record does not support these points. ASARCO has noted that complaints of eye irritation have been relatively few, mostly having arisen from gross accidental exposure to dust or to impaction of large particles on the eye (Ex. 164). Safety glasses which are now worn by smelter workers, have been noted to protect such smelter workers, except in rare occasions (Ex. 164). Finally, the use of a full facepiece would result in more skin contact with the rubber or plastic of the facepiece resulting in more discomfort and sweating. The increased contact and increased sweating has resulted in more skin irritation from arsenic trioxide dust. (Ex. 164). For the above reasons, OSHA will continue to allow the use of half-facepieces for protection against inorganic arsenic particulate.

In those situations where arsenic compounds do have high vapor pressures, the NIOSH recommendations for such a situation are followed. Table II of the standard specifies the respirators which must be worn to prevent excess exposure to arsenicals with high vapor pressures. Two chemicals which do have significant vapor pressure are arsenic trichloride and arsenic phosphide.

During the April 1975 hearing, Bruce Held (ATR 231-236) recommended changes to the proposed respirator selection table in paragraph (g)(2) of the proposal (Ex. 2A). Mr. Held stated that "constant flow" should be deleted from (g)(2)(i)(B), "pressure demand" changed to "demand" (g)(2)(iv)(A) and (g)(2)(v)(B) to "demand". We have adopted these recommendations using more recent terminology. The protection factors used in the table reflect the factors found in the August 2, 1976 joint OSHA/NIOSH Standard Completion Program Respirator Decision Logic (Ex. 146C).

There are numerous factors which affect the performance of air purifying respirators. These include the filter material and the fit of the facepiece on the wearer. Also important is wearer acceptance and training.

Proper fit of the respirator is critical. As a negative pressure is created within the facepiece when the wearer breathes, unfiltered air may enter the facepiece if gaps exist. Obtaining a proper fit on each employee may require the employer to provide two or three different mask styles.

The employee must be properly trained to wear the respirator, to know why the respirator is needed and to understand the limitations of the respirator. An understanding of the hazard involved is necessary to enable the employee to take steps for his or her own protection. The respiratory protection program implemented by the employer must conform to the program set forth in 29 CFR 1910.134. This contains basic requirements for proper selection, use, cleaning, and maintenance of respirators.

The employer must check to see that the employees' respirators fit properly and that leakage is at a minimum. A rapid simple fit test can be performed at the start of each shift by each employee wearing a negative pressure respirator. This test can be either a positive pressure test, in which the exhalation valve is closed and in which the wearer exhales into the facepiece to produce a positive pressure, or a negative pressure test, in which the inlet is closed and the wearer inhales so that the facepiece collapses slightly. Employees should be trained to perform this test.

The standard requires a qualitative fit test at the time of initial fitting and semiannually thereafter. If the particulate filters can be replaced with chemical cartridges, isoamyl acetate can be used to qualitatively test facepiece fit. If the employee can smell the isoamyl acetate while wearing the respirator it can be concluded that the particular respirator will not provide suitable protection.

The standard requires that employers with more than 20 employees wearing respirators provide a quantitative fit test at the time of initial fitting and semiannually thereafter. In a quantitative fit test the level of leakage and degree of protection is specifically measured by instrumentation. These tests are more accurate and provide greater assurance that the respirator is providing proper protection. One type of quantitative fit test involves using a simple hood, sodium chloride vapor, and automated instrumentation. At least one such device is commercially available at less than $10,000. These tests can be performed rapidly (10 to 20 minutes) and are relatively easy to perform. This requirement is limited to employers with more than 20 workers wearing respirators. At present, organizations are not available to provide these testing services. Therefore the requirement is limited to employers with greatest need for testing and for whom it is reasonable to acquire the equipment. However, OSHA recommends that all employers who have access to quantitative fit testing make use of such facilities for employees who regularly wear respirators. There was no specific requirement for quantitative fit tests in the proposal. But subsequent developments of equipment to make them relatively easy to carry out and the greater assurance of proper protection they provide, make it appropriate that they be required for employers with significant numbers of employees on respirators.

The standard makes the wearing of respirators voluntary, at the option of the employee until December 31, 1979 except when employees are exposed in excess of 50 $\mu g/m^3$. While exposures in excess of the permissible exposure limit do constitute a hazard, OSHA believes that it is necessary to mitigate some of the problems associated with respirator use and to permit time for educating and training employees in the need for and use of respirators. During the voluntary period, control measures, such as installation of engineering controls and improved work practices can be implemented. These controls will result in an improved work environment which will substantially reduce the number of employees required to wear respirators. The vol-

untary nature of respirator use prior to December 31, 1979 does not reduce the employer's obligation to train employees in the proper use of the respirators and to make the appropriate respirators available. Indeed, since the employee is being granted a greater responsibility for his or her own protection, special attention must be given to the training program so the employee can make an informed choice.

The proposal required immediate use of respirators whenever employees were exposed in excess of the TWA limit. This would have essentially required the wearing of respirators by a large number of workers in some facilities on the effective date of the standard. The transition period provided by the final standard will alleviate this burden and permit more time for training and implementation of a respirator program. The employer is required to provide respirators for employees exposed between 10 and 50 $\mu g/m^3$ as soon as possible but with an outside limit of December 1, 1978 to allow time which may be needed to purchase and receive a sufficient number of respirators. There are fewer employees exposed between 50 $\mu g/m^3$ and 500 $\mu g/m^3$ and those employees face more severe risks. Therefore respirators must be supplied as soon as possible and no later than October 1, 1978 for those employees. Respiratory use is now required for employees exposed over 500 $\mu g/m^3$ and therefore respirators continue to be required from the effective date of this standard.

The standard requires that employees wearing air-purifying respirators be permitted to replace the respirator's filter whenever they detect a significant increase in breathing resistance. When the filter becomes loaded, the movement of air through the filter becomes restricted forcing the employee to breathe harder to overcome this resistance. The wearing of the respirator becomes increasingly more uncomfortable and it may not be used as a result. To aid in the minimizing of the discomfort of wearing a respirator and to keep the respirator working efficiently the employee must be allowed to change filters when the need arises.

The wearing of a respirator in an arsenical atmosphere can result in skin irritation as the dust may accumulate around the facepiece seal. To prevent this irritation and to minimize the discomfort of respirator use, employees must be allowed to periodically wash their faces and respirator facepieces in order to remove the accumulation of inorganic arsenic.

It will be necessary for some production employees in some smelters to wear respirators for a substantial percentage of the day for a number of years. Subsequent to the arsenic proposal and hearings, NIOSH has certified a lightweight Powered Air Purifying Respirator (PAPR). In addition, other types are under development. It is OSHA's experience that in many circumstances, PAPR's are more comfortable to wear and provide better protection. They are light, under positive pressure and do not require a tight facial fit thereby minimizing irritation and breathing resistance. Except in cold weather, the air stream provided makes them more comfortable. They have a higher protection factor than negative pressure respirators since face fit is not a crucial factor. While they are more expensive, they interfere with work far less than negative pressure respirators. Therefore, OSHA believes it appropriate that employees have the option of wearing PAPR's. Consequently, the standard gives the employee the option of wearing PAPR's in appropriate circumstances after December 1, 1978. The employer must also supply a combination dust filter with a gas sorbent where there will be exposure to gases (such as sulfur dioxide) over the relevant limit for that gas some of the time. This will be the case some of the time in smelters. If over-exposures to gases are relatively continuous, PAPR's would not provide suitable protection.

### H. PROTECTIVE CLOTHING AND EQUIPMENT PARAGRAPH (j)

The standard requires the employer to provide and assure that employees use protective clothing and equipment where the employee is exposed above the permissible exposure limits to prevent contamination of street clothing, to prevent skin and eye irritation and to prevent skin absorption of arsenic trichloride. The employer is responsible for cleaning and replacing the clothing as necessary. Specifically, the employer is to provide coveralls or other full body clothing, gloves, and shoes. The employer must also provide eye protection and other equipment, when necessary to prevent skin or eye irritation.

The final standard makes a number of changes from the proposal to respond to the comments, to clarify the language and to utilize the experience developed in the Coke Oven Emissions proceeding. The clothing is to be supplied to employees exposed above the 10 $\mu g/m^3$ level. It is necessary that protective clothing and shoes be required to prevent contamination of the employees' street clothing and shoes, so that exposure is not extended beyond the work day. At exposures lower than the PEL, it is less likely that clothing will become significantly contaminated with inorganic arsenic.

Impervious protective clothing is required for those workers working with arsenic trichloride, because it can be *rapidly* absorbed through the skin.

The proposal required the employer provide and clean daily protective clothing. The final standard reduces the frequency to weekly, except where there is a significant probability of skin irritation because of exposures above 100 $\mu g/m^3$ such as in some locations in the ASARCO, Tacoma arsenic plant. The original requirement was designed to reduce skin irritation. However, at levels approaching 10 $\mu g/m^3$, skin irritation is unlikely. Accordingly, the cleaning requirement is changed to weekly to reduce the burden on the employer. At levels where skin irritation is likely, or at lower levels where skin irritation is occurring, the daily cleaning requirement is retained.

The final standard clarifies that the obligation is on the employer to provide protective equipment at no cost to the employee. In this way the employer is in the best position to provide the correct type of equipment and keep it in repair. Also, as the employer has permitted exposures to exceed the permissible exposure limits the obligation properly rests on the employer. The cost of necessary equipment has been included in the various economic analyses performed.

The standard provides that the employer ensure that all protective clothing is removed at the end of each work shift only in change rooms, and that the clothing that is to be laundered, cleaned, or disposed of be placed in a closable container in the change room. The purpose in requiring such a container is to prevent the contaminants on the clothing from coming into contact with an individual handling the container or being released in the change room. Since the container is to be located in the change room, it is appropriate to limit the removal of contaminated clothing to that area.

Finally, the standard requires the employer to inform those who handle the contaminated articles of the potentially harmful effects of exposure to inorganic arsenic. This provision is designed to make clear the need to use proper care in handling of the contaminated articles.

### I. HYGIENE FACILITIES AND PRACTICES: PARAGRAPH (m)

The standard requires that the employer provide clean and suitable change room facilities, lavatories, showers, and lunchrooms for those employees working in regulated areas. One purpose of these requirements is to prevent exposure beyond the work day to the employee. Another purpose is to reduce the likelihood of skin irritation resulting from skin contact with inorganic arsenic. Both of these reasons have been discussed in more detail in the previous section on Protective Clothing and Equipment. A third purpose is to prevent the ingestion of inorganic arsenic.

Certain trivalent arsenicals (arsenic trioxide, sodium arsenite, potassium arsenite, copper acetoarsenite) have been implicated as systemic carcinogens. Some case reports based on long-term administration of medicinals containing potassium and sodium arsenite (Exhibits 180 and 101) and occupational exposure to sodium arsenite and copper acetoarsenite (Paris Green) (see sec. IV C of this preamble) have implicated ingestion of these chemicals as carcinogens. A high incidence of skin cancer has been reported in several populations exposed to high concentrations of arsenic in drinking water (Exhibit 180 pp. 299-301, Exhibit 58). In addition, OSHA believes as a general matter that efforts must be taken to minimize exposure to carcinogens by all exposure routes including ingestion.

The proposal did not include a requirement for lunchrooms with filtered air though it did prohibit eating in regulated areas. Union representatives recommended that such lunchrooms be provided (Exhibits 22, 30, 121). The suggestion has been adopted because such facilities are needed to provide a suitable place, relatively free from contamination to inorganic arsenic, for workers working in regulated areas to eat. In addition, suitable lunchroom facilities will provide an inducement for employees not to eat in regulated areas. As the risk of ingestion is highest in lunchrooms, somewhat more elaborate regulations for their design are included. Since the risk of ingestion is less below 10 $\mu g/m^3$, the standard requires those facilities only for employees exposed above that level rather than at the 2 $\mu g/m^3$ level of the proposal. This change will also reduce the burden on the employer.

Eye wash requirements contained in the proposal have been deleted. There appear to be few locations or arsenicals for which such facilities might be needed to prevent serious eye injury.

The standard requires employers to prevent employee skin or eye contact with liquid or particulate inorganic arsenic which is likely to cause skin or eye irritation. As discussed in the health effects section, some arsenicals cause skin irritation, and keratosis was a condition observed among workers exposed to substantial amounts of arsenic. These keratoses also seem to be related to various forms of cancer which subsequently developed.

Reducing the airborne exposure below the permissible exposure limit should eliminate skin irritation from exposure to arsenic. In areas where exposures are somewhat over the permissible exposure limit, supplying and using appropriate clean protective clothing and gloves as required by the standard should prevent skin irritation. In areas of higher exposure, such as arsenic kitchens, in addition to respirator use, suitable precautions need to be taken to avoid significant skin contact.

Arsenic trichloride is rapidly absorbed through the skin and creates a serious acute toxicity hazard. In consequence all skin and eye contact is prohibited. Where feasible arsenic trichloride should only be utilized in closed systems with suitable backup controls in case of system breakdowns. Where such a system is not feasible, the employer is required to provide impervious protective clothing and suitable respirators.

J. MEDICAL SURVEILLANCE: PARAGRAPH (N)

The standard requires each employer to institute a medical surveillance program for all employees who are exposed above the action level for at least 30 days per year and for employees who have been exposed to levels above the action level for more than 10 years who are no longer exposed above the action level. The record, including recommendations from NIOSH in its updated Criteria Document (Exhibit 99), clearly indicates that a medical surveillance program is appropriate in dealing with the problem of employee exposure to inorganic arsenic. Section 6(b)(7) of the Act provides that:

> * * * where appropriate, any such standard promulgated under subsection 6(b) shall prescribe the type and frequency of medical examinations or other tests which shall be made available, by the employer or at his cost, to employees exposed to such employment related hazards in order to most effectively determine whether the health of such employees is adversely affected by such exposure.

The proposed standard (Exhibit 2a, p. 3400), provided that medical examinations should be given to all employees exposed above the action level. The final standard also requires medical surveillance for all employees exposed above the action level (5 $\mu g/m^3$). Although the level of exposure which triggers medical surveillance has changed, the rationale remains the same.

Some employees may be assigned to work areas where they may be exposed to inorganic arsenic above the action level on a temporary or short term basis, e.g. during vaction periods or certain types of repair work. Therefore a cut-off point for the required medical surveillance program is needed since it would not be appropriate to provide medical surveillance for every employee regardless of duration of exposure. It is important that the time period selected be sufficiently inclusive without being administratively impracticable. The arsenic record did not specifically address this point. Consistent with OSHA's experience gained in the coke oven emissions proceedings where the matter was considered at length, OSHA has determined that 30 days is an appropriate cut-off point for inclusion in medical examinations.

The final standard includes a requirement that all employees who may have been exposed above the action level for 10 or more years must be provided with medical examinations although they are no longer exposed above the action level. The language in the proposal was unclear on this point. Medical examinations are mandated for this group because they represent a potentially higher risk group. Arsenic exposures have been reduced since the 1950's in most smelters and chemical manufacturers.

Long-term employees who have exposures now or in the near future below the action level, but have had exposure above the action level now or in the recent past, are quite likely to have had substantially greater exposures in the more distant past. Dr. Brooks testified on this point (STR 45-52) and the epidemiological studies indicate that risk increases with both *degree* and *duration* of exposure.

The medical examination required is principally based on the known utility of x-ray and sputum cytology as screening tests for respiratory cancer.

Two portions of the proposed medical surveillance protocol have been deleted. These are palpation of superficial lymph nodes and, a complete blood count. As noted previously, lymphatic and hematopoietic cancer excesses have only been observed in worker populations in the Ott and Baetjer studies (in which workers were exposed to sodium arsenite, potassium arsenite, and copper acetoarsenite). As OSHA is not aware of groups of workers in this category at the present time, it is not appropriate to require these tests generally. These tests may be given at the discretion of the examining physician and would be adviseable if an employee has been exposed to those chemicals.

Neither the proposal nor the final standard requires that urinary arsenic determinations be a mandatory part of the medical surveillance protocal. The correlation of urinary arsenic levels and airborne arsenic exposure is fairly weak (r=0.528). Urinary arsenic levels vary considerably from individual to individual and time to time. Accordingly, we feel that the use of urinary arsenic determination to supplement monitoring of airborne levels of arsenic should be left to the discretion of the individual company or physician.

All examinations and procedures are required to be performed by or under the supervision of a licensed physician and provided without cost to the employee. Clearly, a licensed physician is the appropriate person to be supervising and evaluating a medical examina-

tion. However, certain parts of the required exam do not necessarily require the physician's expertise and may be conducted by another person under the supervision of the physician.

The proposed standard included a requirement that all medical examinations be given during the employees' normal working hours. The final standard does not include the requirement because it may be impractical for shift workers or less convenient for employee or employer. However the employer is obligated to pay for the time spent taking the medical examination if it is taken outside normal working hours and the exam must be given at a reasonable time and place. It is necessary that exams be convenient and without loss to the employee to assure that they are taken.

The standard provides that a work history, medical history and medical examination be performed at the time of initial assignment to areas where exposure exceeds the action level or by December 1, 1978, for employees exposed above the action level at the effective date of the standard. The purposes of this requirement are to make an initial assessment of the health of each employee and to establish a baseline health condition against which changes in an employee's health may be compared. The proposed standard (Exhibit 2a, 40 FR 3401), and Criteria Document (Exhibit 99, p. I-2) all contained requirements for an initial or preplacement exam. The history has been expanded slightly from the proposal to include information on smoking because of its relevance to increased respiratory cancer risk.

The various tests that comprise the medical exam are designed to be used in an initial assessment of an employee's health and to detect changes in health which may occur. The value of each of the specified examinations is described below.

A 14 in. by 17 in. X-ray is a screening test of proven value in the detection of lung cancer. The International Labour Office UICC/Cincinnati (ILO U/C) rating is useful in obtaining uniform quality in the reading of X-rays.

Sputum cytology is required in certain circumstances by the final standard though it was only recommended in the proposal. (See Appendix C to the proposal). The proposal did not mandate sputum cytology on the basis that it should be optional depending on the opinion of the examining physician. Subsequent information received during the coke ovens proceeding indicated that sputum cytology would be of value. The issue was raised more fully in the FEDERAL REGISTER notice of July 16, 1976 (41 FR 29425) which specifically requested comments on this issue and included it as one issue to be considered in the September 1976 hearing.

Comments received from Dr. Dahlgren (Exhibit 137-12) and Health Research Group (Exhibit 137-8), and testimony by Dr. Brooks, a noted expert in the field (STR 45-52), as well as by NIOSH (Exhibit 146) were in favor of requiring sputum cytology. Comments from the Motor Vehicle Manufacturers' Association (Exhibit 137-9) and Dr. Clark Cooper (Exhibit 137-7) were opposed. Anaconda submitted preliminary results of a study of sputum cytology among its workers (Exhibit 165B Appendix E, STR 600-601) which cast doubt on its usefulness. ASARCO recommended that sputum cytology be included on a trial basis (Exhibit 111-3).

Based on the information received, OSHA believes it appropriate to include sputum cytology in the medical surveillance protocol. With the development of the fiberoptic bronchoscope, sputum cytology has become an effective tool for early detection of respiratory cancer among a higher risk population such as workers exposed to inorganic arsenic. (Exhibit 140, 141A). Used in conjunction with X-rays, OSHA is hopeful that such early detection will result in prolonged life for those discovered to have respiratory cancer. X-rays and sputum cytology appear to be complementary, one being more a powerful tool for detection in the peripheral airways while the other is for the central airways. (Exhibit 140, 141A, STR 45-52).

A nasal examination is required because employees with significant exposures to inorganic arsenic are subject to perforation of the nasal septum. A skin examination is also required. Such an examination will detect gross overexposures to arsenic. Such exposure is rare now. However, the examination can be quickly and simply performed and therefore has been included.

The standard provides for semiannual examinations for employees exposed over the action level who are 45 years of age or older, and for employees who have been exposed for 10 or more years above 5 $\mu g/m^3$. All other employees working in regulated areas are to be provided with medical examinations on an annual basis and their examination need not include sputum cytology except for the initial examination. ASARCO recommended a less frequent examination. The frequency in the final standard is consistent with the proposal, Dr. Brook's testimony (ATR 45-52) and OSHA's experience during the coke oven emissions proceeding. The more frequent and more extensive examinations are specified for the higher risk population as discussed above.

Employers are required to make a medical examination available to an employee who has not had one within six months of termination of employment. This was not included in the proposal. It is believed necessary to inform the employee to the extent possible if the condition of his health has been affected during the period of employment.

The employer is required to provide the physician with certain information. The employer is also required to obtain a written opinion from the examining physician containing: the physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of health from exposure to inorganic arsenic; the results of the medical examination; any recommended limitations upon the employee's exposure to inorganic arsenic and upon the use of protective clothing and equipment such as respirators; and a statement that the employee has been informed by the physician of any medical conditions which require further examination or treatment. This written opinion must not reveal specific findings or diagnoses unrelated to occupational exposure, and a copy of the opinion must be provided to the affected employee.

The purpose in requiring the examining physician to supply the employer with a written opinion containing the above mentioned analyses is to provide the employer with a medical basis to aid in the determination of initial placement and ability to use protective clothing and equipment of employees. Requiring that opinion be in written form will serve as an objective check that employers have actually had the benefit of this information in making these determinations. Likewise, the requirement that the employee be provided with a copy of the physician's written opinion will insure that the employee is informed of the results of the medical exam and may take any appropriate action. The purpose in requiring that specific findings or diagnoses unrelated to occupational exposure not be included in the written opinion is to encourage employees to submit to medical examination by removing the fear that employers may find out information about their physical condition that has no relation to occupational exposures.

The proposal included a provision that the physician state whether exposure to inorganic arsenic would directly or indirectly aggravate any medical condition. This provision has been deleted from the standard for two reasons: It is vague, in that it is unclear what "aggravate" means. Secondly, it adds nothing to the requirement to determine whether an employee has any detected medical conditions which place the employee at increased risk of material impairment of health from exposure to inorganic arsenic.

The proposed standard included a provision prohibiting the exposure of

an employee to inorganic arsenic if the employee would be placed at increased risk of material impairment to his or her health from such exposure (Exhibit 2A, 40 FR 3402). The proposal did not include any provision requiring the transfer of that employee to another job, or requiring that the employee be guaranteed his earlier rate of pay.

In this proceeding, representatives of unions indicated their great concern regarding any requirement for the mandatory removal of employees because of increased risk, in the absence of a medical removal protection or rate retention, right for employees so removed (Exhibit 22, 103). The major argument presented was that in the absence of a medical removal protection provision, such a requirement would constitute a major disincentive to employees to submit to physical examinations because they would fear that an adverse medical opinion could result in loss of employment. As a result, the purpose of the medical surveillance requirements would be undetermined and early detection of illness would, too often, not occur. It was also suggested that the absence of a medical removal protection provision creates a dilemma antithetical to the purposes of the Act—namely, the employee's need to choose between continuing to work but risking his life by continuing to do so, and protecting his health, but losing his job.

The Agency agrees that the approach taken in the proposed standard confronts the employee with a difficult choice and we are sympathetic to the concerns reflected in the unions' position on this issue. However, we believe that the present record does not contain sufficient evidence on the propriety, scope and implications of mandatory transfer and rate retention requirement so as to constitute an adequate basis for the incorporation of such a provision in the standard.

While we are not providing for medical removal protection in the standard, we are convinced that further exploration of this issue is necessary in order to deal in considerably more depth with the numerous issues raised by such a provision. OSHA has held a hearing specifically in regard to medical removal protection for employees exposed to lead. OSHA is now considering the record developed in that hearing. Based on the experience gained in that proceeding OSHA will consider whether medical removal protection should be proposed for employees exposed to other substances.

In the meantime, OSHA has decided to delete the mandatory removal provision. In our view, the issue of mandatory removal is closely related to the issue of rate retention and neither should be addressed in the present standard. The Agency's further study of rate retention will also involve consideration of the mandatory removal question.

### (K) EMPLOYEE INFORMATION AND TRAINING: PARAGRAPH (O)

The final standard requires the employer to provide a training program for employees exposed above the action level or for whom there is a possibility of skin or eye irritation from contact with inorganic arsenic.

The need to train employees was agreed upon by virtually all of the participants in the rulemaking proceeding, and a training requirement was included in the Criteria Document (Ex. 99, p. 7) and the proposed standard.

The proposal required training in all locations where any inorganic arsenic was released or handled. However, inorganic arsenic is naturally present at very low levels in some substances where there is little possibility of its release. The benefit in requiring training in these circumstances did not seem significant and the scope of the training provision has been narrowed accordingly.

The training program is required to be completed by October 1, 1978, for employees initially covered by the standard and at the time of initial assignment to areas where there is possibility of exposure over the action level or skin irritation otherwise. OSHA believes that it is important to train employees as soon as possible, consistent with developing suitable materials, in order to maximize the benefits of the training program, and has acted accordingly.

The standard requires that the training program be provided at least annually except that it must be provided quarterly for those employees who have optional use of respirators until December 31, 1979. OSHA believes that an annual training program is both necessary and sufficient to remind the employee of the hazard. Quarterly training is required for employees who have optional use of respirators so that those employees will be in a position to make informed choices regarding the use of respiratory protection.

The content of the training program is intended to apprise the employees of (1) the hazards to which they are exposed; (2) the necessary steps to protect themselves, including minimizing exposure, respiratory protection and medical surveillance; (3) their role in reducing emissions; and (4) their rights under this standard.

The employer is required to make a copy of the standard and its appendixes available to affected employees. This requirement, in combination with the review provided for as part of the training program, is intended to ensure that employees understand their rights and duties under this standard.

The employer is also required to provide, upon request, all materials relating to the training program to the Assistant Secretary and the Director. This is intended to provide an objective check of compliance with the content requirements of the standard. It should be noted that the recordkeeping requirement regarding the training program which had been included in the proposal has not been retained in the standard to reduce the recordkeeping burden. This places greater reliance on access to training materials as a check to ensure that employees are being properly trained.

### L. SIGNS AND LABELS: PARAGRAPH (P)

The final standard requires that regulated areas be sign posted stating: "Danger, Inorganic Arsenic Present, Cancer Hazard, Authorized Personnel Only, No Smoking or Eating, Respirator Required". It also requires labeling of containers of inorganic arsenicals, except when the arsenic is bound in such a manner as to make unlikely the possibility of exposure to inorganic arsenic. The labels must state, "Caution, Contains Inorganic Arsenic, Cancer Hazard, Harmful if Inhaled or Swallowed, Use only with Adequate Ventilation or Respiratory Protection".

It is important, and section 6(b)(7) of the Act requires, that appropriate forms of warning, as necessary, be used to apprise employees of the hazards to which they are exposed in the course of their employment. OSHA believes, as a matter of policy, that employees should be given the opportunity to make informed decisions on whether to work at a job under particular working conditions. Furthermore, when the control of potential safety and health problems involves the cooperation of employees, the success of such a program is highly dependent upon the worker's understanding of the hazards attendant to that job.

In light of the serious nature of the hazard of exposure to inorganic arsenic, OSHA believes that sign posting is needed as well as periodic training to adequately inform employees of the cancer hazard. The appearance of the phrase "Cancer Hazard" on the warning sign will serve as an objective check on whether employees are actually being informed of this hazard. It is a reasonable precaution to discourage unnecessary entry of occasional visitors to regulated areas. Also, the warning signs will inform all employees entering regulated areas of the need to utilize respirators and other protective equipment which the employer is to provide.

A number of comments were made that such signs would cause unnecessary alarm (Exs. 3E, 3T, 27). Given the evidence of the carcinogenicity of inorganic arsenic, a strong warning is necessary and the word "Hazard" has in

consequence been substituted for the ambiguous term, "Suspect Agent." Additionally, the phrases "Authorized Personnel Only" and "No Smoking or Eating" and "Respirator Required" relate directly to requirements in the standard which limit access and activities within regulated areas. (See discussions of Regulated Area and of Hygiene Facilities and Practices.)

All shipping and storage containers of inorganic arsenic compounds and products containing it are required to be labeled with a warning of the cancer hazard and the precautions to be taken. This is so employees handling the materials will treat them with care and take suitable precautions to avoid inhalation. It is necessary to warn employees to take precautions in case of spills or broken containers.

The proposal did not include any exception to this provision. Comments were received stating that the inorganic arsenic present in certain products was bound in such a manner as to make unlikely the possibility of exposure to inorganic arsenic. An example of this is the light emitting diode (Exhibit 137-4). In such circumstances, a warning label is inappropriate because the hazard does not exist. Therefore, the final standard excludes from the labeling requirements, those containers or products in which arsenic is bound in such a manner to make unlikely airborne exposure.

Exposures are not unlikely if dropping, breaking or ordinarily negligent handling will likely result in overexposure.

### M. RECORDKEEPING: PARAGRAPH (q)

Section 8(c)(3) of the Act (29 U.S.C. 657) mandates the inclusion of provisions requiring employers to maintain accurate monitoring records of employee exposures to potentially toxic materials. It also provides that employees or their representatives have access to such records.

The final standard requires records of exposures measurements. The records required include name and job classification of employees measured, details of the sampling and analytic techniques, results, and type of respiratory protection worn. The standard also requires records of medical surveillance. These include names of employees, the physician's written opinion, and copy of the results of the examination. In addition, the initial x-ray and cytology slide, the most recent 5 years of x-rays and 10 years of sputum cytology slides, and all x-ray and cytology slides indicating atypia, or subsequent to atypia must be retained. These records must be kept for 40 years or for at least 20 years after termination of employment, whichever is longer.

The participants at the hearing generally agreed with the necessity for keeping such records, but objected to the length of the record retention period. It is necessary to keep these records for such extended periods of time because of the long latency periods commonly observed for carcinogens. Cancer is often not detected until 20 or more years after onset of exposure. The extended retention period is therefore needed for two purposes. Diagnosis of disease in employees is assisted by having exposure data as well as the results of the medical exams even many years in the past. The original x-ray and cytology slide and those in the recent past are required to provide a baseline as well as a guide to the progression of symptoms. It is necessary to retain monitoring and medical surveillance data for the same period because the data has to be considered together. The second purpose for retaining records for 40 years is so that it will be possible at some future date to review the adequacy of the standard.

The final standard makes a number of changes from the proposal. Some of these reduce the recordkeeping burden. The respirator recordkeeping has been simplified and the retention period made the same length as for exposure measurements so that exposure levels can be assessed. Provisions in the proposal requiring records of employee training and regulated area rosters have not been retained in the final standard. These two records were deleted because there appeared to be little benefit in their retention. Training materials can be inspected when necessary to determine compliance. The roster duplicated data required to be retained for the medical surveillance and exposure records. Records of ventilation testing have been reduced to a notation of the last test and is included as part of the housekeeping paragraph. The initial inspection provisions have been replaced by specific measurement requirements and the recordkeeping requirements have been changed accordingly. The recordkeeping requirements have been substantially reduced as a result of the changes discussed above. The reduction in the monitoring frequency and change in the definitions of persons subject to medical surveillance will also reduce the volume of the records which must be retained.

The final standard, in uniformity with the proposal and other OSHA standards, requires that such records be made available to the Director and Assistant Secretary, that exposure records be available to employees and their representatives, and medical records to an employee or physician designated by an employee or former employee. These provisions carry out statutory requirements. In addition it is necessary for the Assistant Secretary and Director to have access for enforcement and research purposes. The employees or their representatives need access to exposure records because they help the employees determine the effectiveness of the employers' exposure abatement program. The physician needs access to medical records for diagnostic purposes. The transfer provisions are unchanged except that NIOSH is to be notified at the expiration of the retention period so it can determine if the records are still needed for research purposes.

### N. EMERGENCIES

The final standard, unlike the proposal, includes no specific paragraph covering emergency situations. OSHA generally includes specific provisions on emergencies for chemicals produced in high pressure processes, where there is the possibility of explosions or other massive release of the substance, or where there are acute toxicity dangers.

In non-ferrous metal smelters these dangers appear unlikely. Arsenic is not generally subject to explosion. Further the arsenic is usually present as only a small percentage in the material stream, making unlikely acute toxicity episodes as a result of equipment breakdown.

Therefore, OSHA has decided to include no specific regulatory paragraph on emergencies. However, it should be noted that the employer is required by the respirator section to have available and provide respirators when a breakdown of equipment or accident leads to high exposures. Further, as a matter of proper industrial practice, OSHA expects employers handling or producing arsenical chemicals where the possibility of acute toxicity exists, to have procedures for safely handling spills, breakage of drums, and equipment breakdowns.

### O. OBSERVATION OF MONITORING: PARAGRAPH (r)

Section 8(c)(3) of the Act requires that employers provide employees or their representatives with the opportunity to observe monitoring of employee exposures to toxic materials or harmful physical agents. In accordance with this section and consistent with the proposal and other OSHA standards, the standard contains provisions for such observation. To ensure that this right is meaningful, observers are entitled to an explanation of the measurement procedure, to observe all steps related to the measurement procedure, and to record the results obtained. Since results will not normally be available at the time of monitoring, the standard has been clarified to indicate that the observers are entitled to receive the results of the monitoring when returned by the laboratory. The observer, whether an employee or designated representative,

must be provided with, and is required to use, any personal protective devices required to be worn by employees working in the area that is being monitored, and must comply with all other applicable safety and health procedures.

P. EFFECTIVE DATE: PARAGRAPH (s)

The effective date is August 1, 1978.

Q. STARTUP DATES: PARAGRAPH (u)

Startup dates included have been extended from the proposal. This is based on OSHA's experience as to the time required to set up employee training programs and medical surveillance, to order and receive protective equipment and respirators, and to plan, order, receive, and install engineering controls. The approximately 3-month period between the publication of this standard and its effective date provides time to arrange to make available protective clothing and to commence monitoring on the effective date of the standard (or earlier if the employer wishes). It gives additional time to arrange for the implementation of this standard and to order necessary equipment. All startup dates are listed at the beginning of the preamble. It should be noted that some starting dates are set forth in the paragraphs to which they directly pertain. If there is no specific startup date set forth in the standard, then the startup date is the effective date of the standard. The immediate installation of change houses, etc., is not required if installation of engineering controls would only make their use necessary for a few months. If the time period for meeting any of these startup dates cannot be met because of technical difficulties, any employer is entitled to petition for a temporary variance under section 6(b)(6)(A) of the Act.

R. APPENDIXES: PARAGRAPH (t)

The three appendixes included with the regulation are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligation.

S. ORGANIC ARSENIC AND SPECIFIC ARSENIC COMPOUNDS

The existing entry in Table Z-1 of 1910.1000 reads "Arsenic and its compounds (as As), 0.5 mg/m³," and accordingly covers both inorganic and organic arsenic. The new section 1910.1018 covers just inorganic arsenic. Accordingly the Table Z-1 entry is amended to indicate that just organic arsenic is covered by the 0.5 mg/m³ limit.

Calcium arsenate and lead arsenate are inorganic arsenicals. Accordingly the existing entries in Table Z-1 of § 1910.1000 setting exposure limits for them are deleted. Calcium arsenate and lead arsenate will now be regulated under the new standard on inorganic arsenic in § 1910.1018.

IX. AUTHORITY

This document was prepared under the direction of Eula Bingham, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Ave. NW., Washington, D.C. 20210.

Accordingly, pursuant to sections 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1599; 29 U.S.C. 655, 657), Secretary of Labor's Order No. 8-76 (41 FR 25059) and 29 CFR Part 1911, Part 1910 of Title 29, Code of Federal Regulations is hereby amended by adding a new permanent standard for occupational exposure to inorganic arsenic at § 1910.1018 and by making consequential amendments to Table Z-1 of 29 CFR 1910.1000.

In addition, pursuant to the above authority, section 4(b)(2) of the Act (84 Stat. 1592; 29 U.S.C. 653) and the specific statutes referred to in section 4(b)(2), OSHA has determined that this new standard is more effective than the corresponding standards now in Subpart B of Part 1910, and in Parts 1915, 1916, 1917, 1918, and 1926 of Title 29, Code of Federal Regulations. Therefore, these corresponding standards are superseded by § 1910.1018. This determination, and the application of the new standard to the maritime and construction industries are implemented by adding a new paragraph (e) to § 1910.19.

Signed at Washington, D.C., this 26th day of April, 1978. These amendments are effective on August 1, 1978.

EULA BINGHAM,
*Assistant Secretary of Labor.*

Part 1910 of Title 29 of the Code of Federal Regulations is hereby amended as follows:

1. A new paragraph (e) is added to § 1910.19 to read as follows:

**§ 1910.19 Special provisions for air contaminants.**

* * * * *

(e) Section 1910.1018 shall apply to the exposure of every employee to inorganic arsenic in every employment covered by §§ 1910.12, 1910.13, 1910.14, 1910.15, or 1910.16, in lieu of any different standard on exposure to inorganic arsenic which would otherwise be applicable by virtue of any of those sections.

**§ 1910.1000 [Amended]**

2. Table Z-1 of § 1910.1000 is amended by deleting the following entries:

"Calcium Arsenate..... 1"
"Lead Arsenate..... 0.15"

and by amending the entry which now reads:

"Arsenic and its compounds (as As)... 0.5 mg/m³."

to read:

"Organic Arsenic compounds (as As)... 0.5 mg/m³."

3. A new § 1910.1018 and appendices A, B and C are added to read as follows:

**§ 1910.1018 Inorganic arsenic.**

(a) *Scope and application.* This section applies to all occupational exposures to inorganic arsenic except that this section does not apply to employee exposures in agriculture or resulting from pesticide application, the treatment of wood with preservatives or the utilization of arsenically preserved wood.

(b) *Definitions.* "Action level" means a concentration of inorganic arsenic of 5 micrograms per cubic meter of air (5 μg/m³) averaged over any eight (8) hour period.

"Assistant Secretary" means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

"Authorized person" means any person specifically authorized by the employer whose duties require the person to enter a regulated area, or any person entering such an area as a designated representative of employees for the purpose of exercising the right to observe monitoring and measuring procedures under paragraph (e) of this section.

"Director" means the Director, National Institute for Occupational Safety and Health, U.S. Department of Health, Education and Welfare, or designee.

"Inorganic arsenic" means copper aceto- arsenite and all inorganic compounds containing arsenic except arsine, measured as arsenic (As).

(c) *Permissible exposure limit.* The employer shall assure that no employee is exposed to inorganic arsenic at concentrations greater than 10 micrograms per cubic meter of air (10 μg/m³), averaged over any 8-hour period.

(d) *Notification of use.* (1) By October 1, 1978 or within 60 days after the introduction of inorganic arsenic into the workplace, every employer who is required to establish a regulated area in his workplaces shall report in writing to the OSHA area office for each such workplace:

(i) The address of each such workplace;

(ii) The approximate number of employees who will be working in regulated areas; and

(iii) A brief summary of the operations creating the exposure and the actions which the employer intends to take to reduce exposures.

(2) Whenever there has been a significant change in the information re-

quired by paragraph (d)(1) of this section the employer shall report the changes in writing within 60 days to the OSHA area office.

(e) *Exposure monitoring.*—(1) *General.* (i) Determinations of airborne exposure levels shall be made from air samples that are representative of each employee's exposure to inorganic arsenic over an eight (8) hour period.

(ii) For the purposes of this section, employee exposure is that exposure which would occur if the employee were not using a respirator.

(iii) The employer shall collect full shift (for at least 7 continuous hours) personal samples including at least one sample for each shift for each job classification in each work area.

(2) *Initial monitoring.* Each employer who has a workplace or work operation covered by this standard shall monitor each such workplace and work operation to accurately determine the airborne concentration of inorganic arsenic to which employees may be exposed.

(3) *Frequency.* (i) If the initial monitoring reveals employee exposure to be below the action level the measurements need not be repeated except as otherwise provided in paragraph (e)(4) of this section.

(ii) If the initial monitoring, required by this section, or subsequent monitoring reveals employer exposure to be above the permissible exposure limit, the employer shall repeat monitoring at least quarterly.

(iii) If the initial monitoring, required by this section, or subsequent monitoring reveals employee exposure to be above the action level and below the permissible exposure limit the employee shall repeat monitoring at least every six months.

(iv) The employer shall continue monitoring at the required frequency until at least two consecutive measurements, taken at least seven (7) days apart, are below the action level at which time the employer may discontinue monitoring for that employee until such time as any of the events in paragraph (e)(4) of this section occur.

(4) *Additional monitoring.* Whenever there has been a production, process, control or personal change which may result in new or additional exposure to inorganic arsenic, or whenever the employer has any other reason to suspect a change which may result in new or additional exposures to inorganic arsenic, additional monitoring which complies with paragraph (e) of this section shall be conducted.

(5) *Employee notification.* (i) Within five (5) working days after the receipt of monitoring results, the employer shall notify each employee in writing of the results which represent that employee's exposures.

(ii) Whenever the results indicate that the representative employee exposure exceeds the permissible exposure limit, the employer shall include in the written notice a statement that the permissible exposure limit was exceeded and a description of the corrective action taken to reduce exposure to or below the permissible exposure limit.

(6) *Accuracy of measurement.* (i) The employer shall use a method of monitoring and measurement which has an accuracy (with a confidence level of 95 percent) of not less than plus or minus 25 percent for concentrations of inorganic arsenic greater than or equal to 10 $\mu g/m^3$.

(ii) The employer shall use a method of monitoring and measurement which has an accuracy (with confidence level of 95 percent) of not less than plus or minus 35 percent for concentrations of inorganic arsenic greater than 5 $\mu g/m^3$ but less than 10 $\mu g/m^3$.

(f) *Regulated area.*—(1) *Establishment.* The employer shall establish regulated areas where worker exposures to inorganic arsenic, without regard to the use of respirators, are in excess of the permissible limit.

(2) *Demarcation.* Regulated areas shall be demarcated and segregated from the rest of the workplace in any manner that minimizes the number of persons who will be exposed to inorganic arsenic.

(3) *Access.* Access to regulated areas shall be limited to authorized persons or to persons otherwise authorized by the Act or regulations issued pursuant thereto to enter such areas.

(4) *Provision of respirators.* All persons entering a regulated area shall be supplied with a respirator, selected in accordance with paragraph (h)(2) of this section.

(5) *Prohibited activities.* The employer shall assure that in regulated areas, food or beverages are not consumed, smoking products, chewing tobacco and gum are not used and cosmetics are not applied, except that these activities may be conducted in the lunchrooms, change rooms and showers required under paragraph (m) of this section. Drinking water may be consumed in the regulated area.

(g) *Methods of compliance.*—(1) *Controls.* (i) The employer shall institute at the earliest possible time but not later than December 31, 1979, engineering and work practice controls to reduce exposures to or below the permissible exposure limit, except to the extent that the employer can establish that such controls are not feasible.

(ii) Where engineering and work practice controls are not sufficient to reduce exposures to or below the permissible exposure limit, they shall nonetheless be used to reduce exposures to the lowest levels achievable by these controls and shall be supplemented by the use of respirators in accordance with paragraph (h) of this section and other necessary personal protective equipment. Employee rotation is not required as a control strategy before respiratory protection is instituted.

(2) *Compliance Program.* (i) The employer shall establish and implement a written program to reduce exposures to or below the permissible exposure limit by means of engineering and work practice controls.

(ii) Written plans for these compliance programs shall include at least the following:

(A) A description of each operation in which inorganic arsenic is emitted; e.g. machinery used, material processed, controls in place, crew size, operating procedures and maintenance practices;

(B) Engineering plans and studies used to determine methods selected for controlling exposure to inorganic arsenic;

(C) A report of the technology considered in meeting the permissible exposure limit;

(D) Monitoring data;

(E) A detailed schedule for implementation of the engineering controls and work practices that cannot be implemented immediately and for the adaption and implementation of any additional engineering and work practices necessary to meet the permissible exposure limit;

(F) Whenever the employer will not achieve the permissible exposure limit with engineering controls and work practices by December 31, 1979, the employer shall include in the compliance plan an analysis of the effectiveness of the various controls, shall install engineering controls and institute work practices on the quickest schedule feasible, and shall include in the compliance plan and implement a program to minimize the discomfort and maximize the effectiveness of respirator use; and

(G) Other relevant information.

(iii) Written plans for such a program shall be submitted upon request to the Assistant Secretary and the Director, and shall be available at the worksite for examination and copying by the Assistant Secretary, Director, any affected employee or authorized employee representatives.

(iv) The plans required by this paragraph shall be revised and updated at least every 6 months to reflect the current status of the program.

(h) *Respiratory protection*—(1) *General.* The employer shall assure that respirators are used where required under this section to reduce employee exposures to below the permissible exposure limit and in emergencies. Respirators shall be used in the following circumstances:

(i) During the time period necessary to install or implement feasible engineering or work practice controls;

(ii) In work operations such as maintenance and repair activities in which the employer establishes that engineering and work practice controls are not feasible;

(iii) In work situations in which engineering controls and supplemental work practice controls are not yet sufficient to reduce exposures to or below the permissible exposure limit; or

(iv) In emergencies.

(2) *Respirator selection.* (i) Where respirators are required under this section the employer shall select, provide at no cost to the employee and assure the use of the appropriate respirator or combination of respirators from Table I below for inorganic arsenic compounds without significant vapor pressure, or Table II below for inorganic arsenic compounds which have significant vapor pressure.

(ii) Where employee exposures exceed the permissible exposure limit for inorganic arsenic and also exceed the relevant limit for particular gasses such as sulfur dioxide, any air purifying respirator supplied to the employee as permitted by this standard must have a combination high efficiency filter with an appropriate gas sorbent. (See footnote in Table 1)

TABLE I.—*Respiratory protection for inorganic arsenic particulate except for those with significant vapor pressure*

| Concentration of inorganic arsenic (as As) or condition of use | Required respirator |
|---|---|
| (i) Unknown or greater or lesser than 20,000 μg/m³ (20 mg/m³) or firefighting. | (A) Any full facepiece self-contained breathing apparatus operated in positive pressure mode. |
| (ii) Not greater than 20,000 μg/m³ (20 mg/m³) | (A) Supplied air respirator with full facepiece, hood, or helmet or suit and operated in positive pressure mode. |
| (iii) Not greater than 10,000 μg/m³ (10 mg/m³) | (A) Powered air-purifying respirators in all inlet face coverings with high efficiency filters.[1] (B) Half-mask supplied air respirators operated in positive pressure mode. |
| (iv) Not greater than 500 μg/m³ | (A) Full facepiece air-purifying respirator equipped with high-efficiency filter.[1] (B) Any full facepiece supplied air respirator. (C) Any full facepiece self-contained breathing apparatus. |
| (v) Not greater than 100 μg/m³ | (A) Half-mask air-purifying respirator equipped with high-efficiency filter.[1] (B) Any half-mask supplied air respirator. |

[1]High-efficiency filter—99.97 pct efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.

TABLE II.—*Respiratory protection for inorganic arsenicals (such as arsenic trichloride[2] arsenic phosphide) with significant vapor pressure*

| Concentration of inorganic arsenic (as As) or condition of use | Required respirator |
|---|---|
| (i) Unknown or greater or lesser than 20,000 μg/m³ (20mg/m³) or firefighting. | (A) Any full facepiece self-contained breathing apparatus operated in positive pressure mode. |
| (ii) Not greater than 20,000 μg/m³ (20 mg/m³) | (A) Supplied air respirator with full facepiece hood, or helmet or suit and operated in positive pressure mode. |
| (iii) Not greater than 10,000 μg/m³ (10mg/m³) | (A) Half-mask[2] supplied air respirator operated in positive pressure mode. |
| (iv) Not greater than 500 μg/m³ | (A) Front or back mounted gas mask equipped with high-efficiency filter [1] and acid gas canister. (B) Any full facepiece supplied air respirator. (C) Any full facepiece self-contained breathing apparatus. |
| (v) Not greater than 100 μg/m³ | (A) Half-mask [2] air-purifying respirator equipped with high- efficiency filter [1] and acid gas cartridge. (B) Any half-mask supplied air respirator. |

[1]High efficiency filter—99.97 pct efficiency against 0.3 micrometer monodisperse diethyl-hexyl phthalate (DOP) particles.

[2]Half-mask respirators shall not be used for protection against arsenic trichloride, as it is rapidly absorbed through the skin.

(iii) The employer shall select respirators from among those approved for protection against dust, fume, and mist by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR Part 11.

(3) *Respirator usage.* (i) The employer shall assure that the respirator issued to the employee exhibits minimum facepiece leakage and that the respirator is fitted properly.

(ii) The employer shall perform qualitative fit tests at the time of initial fitting and at least semi-annually thereafter for each employee wearing respirators, where quantitative fit tests are not required.

(iii) Employers with more than 20 employees wearing respirators shall perform quantitative face fit test at the time of initial fitting and least semi-annually thereafter for each employee wearing negative pressure respirators. The test shall be used to select facepieces that provide the required protection as prescribed in Table I or II.

(iv) If an employee has demonstrated difficulty in breathing during the fitting test or during use, he or she shall be examined by a physician trained in pulmonary medicine to determine whether the employee can wear a respirator while performing the required duty.

(4) *Respirator program.* (i) The employer shall institute a repiratory protection program in accordance with 29 CFR 1910.134 (b), (d), (e) and (f).

(ii) The employer shall permit each employee who uses a filter respirator to change the filter elements whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) Employees who wear respirators shall be permitted to leave work areas to wash their face and respirator facepiece to prevent skin irritation associated with respirator use.

(5) *Commencement of respirator use.* (i) The employer's obligation to provide respirators commences on August 1, 1978 for employees exposed over 500 μg/m³ of inorganic arsenic, as soon as possible but not later than October 1, 1978 for employees exposed to over 50 μg/m³ of inorganic arsenic, and as soon as possible but no later than December 1, 1978 for employees exposed between 10 and 50 μg/m³ of inorganic arsenic.

(ii) Employees with exposures below 50 μg/m³ of inorganic arsenic may choose not to wear respirators until December 31, 1979.

(iii) After December 1, 1978 any employee required to wear respirators may choose, and if so chosen the employer must provide, if it will give proper protection, a powered air purifying respirator and in addition if necessary a combination dust and acid gas respirator for times where exposures to gases are over the relevant exposure limits.

(j) *Protective work clothing and equipment*—(1) *Provision and use.* Where the possibility of skin or eye irritation form inorganic arsenic exists, and for all workers working in regulated areas, the employer shall provide at no cost to the employee and assure that employees use appropriate and clean protective work clothing and equipment such as, but not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, and shoes or coverlets;

(iii) Face shields or vented goggles when necessary to prevent eye irrita-

tion, which comply with the requirements of § 1910.133(a)(2)(a)(6); and

(iv) Impervious clothing for employees subject to exposure to arsenic trichloride.

(2) *Cleaning and replacement.* (i) The employer shall provide the protective clothing required in paragraph (j) (1) of this section in a freshly laundered and dry condition at least weekly, and daily if the employee works in areas where exposure are over 100 $\mu g/m^3$ of inorganic arsenic or in areas where more frequent washing is needed to prevent skin irritation.

(ii) The employer shall clean, launder, or dispose of protective clothing required by paragraph (j) (1) of this section.

(iii) The employer shall repair or replace the protective clothing and equipment as needed to maintain their effectiveness.

(iv) The employer shall assure that all protective clothing is removed at the completion of a work shift only in change rooms prescribed in paragraph (m) (1) of this section.

(v) The employer shall assure that contaminated protective clothing which is to be cleaned, laundered, or disposed of, is placed in a closed container in the change-room which prevents dispersion of inorganic arsenic outside the container.

(vi) The employer shall inform in writing any person who cleans or launders clothing required by this section, of the potentially harmful affects including the carcinogenic effects of exposure to inorganic arsenic.

(vii) The employer shall assure that the containers of contaminated protective clothing and equipment in the workplace or which are to be removed from the workplace are labelled as follows:

CAUTION: Clothing contaminated with inorganic arsenic; do not remove dust by blowing or shaking: Dispose of inorganic arsenic contaminated wash water in accordance with applicable local, State, or Federal regulations.

(viii) The employer shall prohibit the removal of inorganic arsenic from protective clothing or equipment by blowing or shaking.

(k) *Housekeeping*—(1) *Surfaces.* All surfaces shall be maintained as free as practicable of accumulations of inorganic arsenic.

(2) *Cleaning floors.* Floors and other accessible surfaces contaminated with inorganic arsenic may not be cleaned by the use of compressed air, and shoveling and brushing may be used only where vacuuming or other relevant methods have been tried and found not to be effective.

(3) *Vacuuming.* Where vacuuming methods are selected, the vacuums shall be used and emptied in a manner to minimize the reentry of inorganic arsenic into the workplace.

(4) *Housekeeping plan.* A written housekeeping and maintenance plan shall be kept which shall list appropriate frequencies for carrying out housekeeping operations, and for cleaning and maintaining dust collection equipment. The plan shall be available for inspection by the Assistant Secretary.

(5) *Maintenance of equipment.* Periodic cleaning of dust collection and ventilation equipment and checks of their effectiveness shall be carried out to maintain the effectiveness of the system and a notation kept of the last check of effectiveness and cleaning or maintenance.

(l) [Reserved.]

(m) *Hygiene facilities and practices*—(1) *Change rooms.* The employer shall provide for employees working in regulated areas or subject to the possibility of skin or eye irritation from inorganic arsenic, clean change rooms equipped with storage facilities for street clothes and separate storage facilities for protective clothing and equipment in accordance with 29 CFR 1910.141(e).

(2) *Showers.* (i) The employer shall assure that employees working in regulated areas or subject to the possibility of skin or eye irritation from inorganic arsenic shower at the end of the work shift.

(ii) The employer shall provide shower facilities in accordance with § 1910.141(d)(3).

(3) *Lunchrooms.* (i) The employer shall provide for employees working in regulated areas, lunchroom facilities which have a temperature controlled, positive pressure, filtered air supply, and which are readily accessible to employees working in regulated areas.

(ii) The employer shall assure that employees working in the regulated area or subject to the possibility of skin or eye irritation from exposure to inorganic arsenic wash their hands and face prior to eating.

(4) *Lavatories.* The employer shall provide lavatory facilities which comply with § 1910.141(d) (1) and (2).

(5) *Vacuuming clothes.* The employer shall provide facilities for employees working in areas where exposure, without regard to the use of respirators, exceeds 100 $\mu g/m^3$ to vacuum their protective clothing and clean or change shoes worn in such areas before entering change rooms, lunchrooms or shower rooms required by paragraph (j) of this section and shall assure that such employees use such facilities.

(6) *Avoidance of skin irritation.* The employer shall assure that no employee is exposed to skin or eye contact with arsenic trichloride, or to skin or eye contact with liquid or particulate inorganic arsenic which is likely to cause skin or eye irritation.

(n) *Medical surveillance*—(1) *General*—(i) *Employees covered.* The employer shall institute a medical surveillance program for the following employees:

(A) All employees who are or will be exposed above the action level, without regard to the use of respirators, at least 30 days per year; and

(B) All employees who have been exposed above the action level, without regard to respirator use, for 30 days or more per year for a total of 10 years or more of combined employment with the employer or predecessor employers prior to or after the effective date of this standard. The determination of exposures prior to the effective date of this standard shall be based upon prior exposure records, comparison with the first measurements taken after the effective date of this standard, or comparison with records of exposures in areas with similar processes, extent of engineering controls utilized and materials used by that employer.

(ii) *Examination by physician.* The employer shall assure that all medical examinations and procedures are performed by or under the supervision of a licensed physician, and shall be provided without cost to the employee, without loss of pay and at a reasonable time and place.

(2) *Initial examinations.* By December 1, 1978, for employees initially covered by the medical provisions of this section, or thereafter at the time of initial assignment to an area where the employee is likely to be exposed over the action level at least 30 days per year, the employer shall provide each affected employee an opportunity for a medical examination, including at least the following elements:

(i) A work history and a medical history which shall include a smoking history and the presence and degree of respiratory symptoms such as breathlessness, cough, sputum production and wheezing.

(ii) A medical examination which shall include at least the following:

(A) A 14" by 17" posterior-anterior chest X-ray and International Labor Office UICC/Cincinnati (ILO U/C) rating;

(B) A nasal and skin examination;

(C) A sputum cytology examination; and

(D) Other examinations which the physician believes appropriate because of the employees exposure to inorganic arsenic or because of required respirator use.

(3) *Periodic examinations.* (i) The employer shall provide the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii) (A), (B), and (D) at least annually for covered employees who are under 45 years of age with fewer than 10 years of exposure over the

action level without regard to respirator use.

(ii) The employer shall provide the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii) of this section at least semi-annually for other covered employees.

(iii) Whenever a covered employee has not taken the examinations specified in paragraphs (n)(2)(i) and (n)(2)(ii) of this section within six (6) months preceding the termination of employment, the employer shall provide such examinations to the employee upon termination of employment.

(4) *Additional examinations.* If the employee for any reason develops signs or symptoms commonly associated with exposure to inorganic arsenic the employer shall provide an appropriate examination and emergency medical treatment.

(5) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and its Appendices;

(ii) A description of the affected employee's duties as they relate to the employee's exposure;

(iii) The employee's representative exposure level or anticipated exposure level;

(iv) A description of any personal protective equipment used or to be used; and

(v) Information from previous medical examinations of the affected employee which is not readily available to the examining physician.

(6) *Physician's written opinion.* (i) The employer shall obtain a written opinion from the examining physician which shall include:

(A) The results of the medical examination and tests performed;

(B) The physician's opinion as to whether the employee has any detected medical conditions which would place the employee at increased risk of material impairment of the employee's health from exposure to inorganic arsenic;

(C) Any recommended limitations upon the employee's exposure to inorganic arsenic or upon the use of protective clothing or equipment such as respirators; and

(D) A statement that the employee has been informed by the physician of the results of the medical examination and any medical conditions which require further explanation or treatment.

(ii) The employer shall instruct the physician not to reveal in the written opinion specific findings or diagnoses unrelated to occupational exposure.

(iii) The employer shall provide a copy of the written opinion to the affected employee.

(o) *Employee information and training.*—(1) *Training program.* (i) The employer shall institute a training program for all employees who are subject to exposure to inorganic arsenic above the action level without regard to respirator use, or for whom there is the possibility of skin or eye irritation from inorganic arsenic. The employer shall assure that those employees participate in the training program.

(ii) The training program shall be provided by October 1, 1978, for employees covered by this provision, at the time of initial assignment for those subsequently covered by this provision, and shall be repeated at least quarterly for employees who have optional use of respirators and at least annually for other covered employees thereafter; and the employer shall assure that each employee is informed of the following:

(A) The information contained in appendix A;

(B) The quantity, location, manner of use, storage, sources of exposure, and the specific nature of operations which could result in exposure to inorganic arsenic as well as any necessary protective steps;

(C) The purpose, proper use, and limitation of respirators;

(D) The purpose and a description of the medical surveillance program as required by paragraph (n) of this section;

(E) The engineering controls and work practices associated with the employee's job assignment; and

(F) A review of this standard.

(2) *Access to training materials.* (i) The employer shall make readily available to all affected employees a copy of this standard and its appendixes.

(ii) The employer shall provide; upon request, all materials relating to the employee information and training program to the Assistant Secretary and the Director.

(p) *Signs and labels.*—(1) *General.* (i) The employer may use labels or signs required by other statutes, regulations, or ordinances in addition to, or in combination with, signs and labels required by this paragraph.

(ii) The employer shall assure that no statement appears on or near any sign or label required by this paragraph which contradicts or detracts from the meaning of the required sign or label.

(2) *Signs.* (i) The employer shall post signs demarcating regulated areas bearing the legend;

DANGER

INORGANIC ARSENIC

CANCER HAZARD

AUTHORIZED PERSONNEL ONLY

NO SMOKING OR EATING

RESPIRATOR REQUIRED

(ii) The employer shall assure that signs required by this paragraph are illuminated and cleaned as necessary so that the legend is readily visible.

(3) *Labels.* The employer shall apply precautionary labels to all shipping and storage containers of inorganic arsenic, and to all products containing inorganic arsenic except when the inorganic arsenic in the product is bound in such a manner so as to make unlikely the possibility of airborne esposure to inorganic arsenic. (Possible examples of products not requiring labels are semiconductors, light emitting diodes and glass). The label shall bear the following legend:

DANGER

CONTAINS INORGANIC ARSENIC

CANCER HAZARD

HARMFUL IF INHALED OR SWALLOWED

USE ONLY WITH ADEQUATE VENITLATION

OR RESPIRATORY PROTECTION

(q) *Recordkeeping.*—(1) *Exposure monitoring.* (i) The employer shall establish and maintain an accurate record of all monitoring require in paragraph (e) of this section.

(ii) This record shall include:

(A) The date(s), number, duration location, and results of each of the samples taken, including a description of the sampling procedure used to determine representative employee exposure where applicable;

(B) A description of the sampling and analytical methods used and evidence of their accuracy;

(C) The type of respiratory protective devices worn, if any;

(D) Name, social security number, and job classification of the employees monitored and of all other employees whose exposure the measurement is intended to represent; and

(E) The environmental variables that could affect the measurement of the employees exposure.

(ii) The employer shall maintain these monitoring records for at least 40 years or for the duration of employment plus 20 years, whichever, is longer.

(2) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee subject to medical surveillance as required by paragraph (n) of this section.

(ii) This record shall include:

(A) The name, social security number, and description of duties of the employee;

(B) A copy of the physician's written opinions;

(C) Results of any exposure monitoring done for that employee and the representative exposure levels supplied to the physician; and

(D) Any employee medical com-

plaints related to exposure to inorganic arsenic.

(iii) The employer shall in addition keep, or assure that the examining physician keeps, the following medical records;

(A) A copy of the medical examination results including medical and work history required under paragraph (n) of this section;

(B) A description of the laboratory procedures and a copy of any standards or guidelines used to interpret the test results or references to that information;

(C) The initial X-ray;

(D) The X-rays for the most recent 5 years;

(E) Any X-rays with a demonstrated abnormality and all subsequent X-rays;

(F) The initial cytologic examination slide and written description;

(G) The cytologic examination slide and written description for the most recent 5 years; and

(H) Any cytologic examination slides with demonstrated atypia, if such atypia persists for 3 years, and all subsequent slides and written descriptions.

(iv) The employer shall maintain or assure that the physician maintains those medical records for at least 40 years, or for the duration of employment plus 20 years whichever is longer.

(3) *Availability.* (i) The employer shall make available upon request all records required to be maintained by paragraph (m) of this section to the Assistant Secretary and the Director for examination and copying.

(ii) The employer shall make available upon request records of employee exposure monitoring required by paragraph (q)(1) of this section for inspection and copying to affected employees, former employees and their designated representatives.

(iii) The employer shall make available upon request an employee's medical records and exposure records representative of that employee's exposure required to be maintained by paragraph (q) of this section to the affected employee or former employee or to a physician designated by the affected employee or former employee.

(4) *Transfer of records.* (i) Whenever the employer ceases to do business, the successor employer shall receive and retain all records required to be maintained by this section.

(ii) Whenever the employer ceases to do business and there is no successor employer to receive and retain the records required to be maintained by this section for the prescribed period, these records shall be transmitted to the Director.

(iii) At the expiration of the retention period for the records required to be maintained by this section, the employer shall notify the Director at least 3 months prior to the disposal of such records and shall transmit those records to the Director if he requests them within that period.

(r) *Observation of monitoring.*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to inorganic arsenic conducted pursuant to paragraph (e) of this section.

(2) *Observation procedures.* (i) Whenever observation of the monitoring of employee exposure to inorganic arsenic requires entry into an area where the use of respirators, protective clothing, or equipment is required, the employer shall provide the observer with and assure the use of such respirators, clothing, and such equipment, and shall require the observer to comply with all other applicable safety and health procedures.

(ii) Without interfering with the monitoring, observers shall be entitled to;

(A) Receive an explanation of the measurement procedures;

(B) Observe all steps related to the monitoring of inorganic arsenic performed at the place of exposure; and

(C) Record the results obtained or receive copies of the results when returned by the laboratory.

(s) *Effective date.* This standard shall become effective August 1, 1978.

(t) *Appendixes.* The information contained in the appendixes to this section is not intended by itself, to create any additional obligations not otherwise imposed by this standard nor detract from any existing obligation.

(u) *Startup dates.*—(1) *General.* The startup dates of requirements of this standard shall be the effective date of this standard unless another startup date is provided for either in other paragraphs of this section or in this paragraph.

(2) *Monitoring.* Initial monitoring shall be commenced on August 1, 1978, and shall be completed by September 15, 1978.

(3) *Regulated areas.* Regulated areas required to be established as a result of initial monitoring shall be set up as soon as possible after the results of that monitoring is known and no later than October 1, 1978.

(4) *Compliance program.* The written program required by paragraph (g)(4) as a result of initial monitoring shall be made available for inspection and copying as soon as possible and no later than December 1, 1978.

(5) *Hygiene and lunchroom facilities.* Construction plans for changerooms, showers, lavatories, and lunchroom facilities shall be completed no later than December 1, 1978, and these facilities shall be constructed and in use no later than July 1, 1979. However, if as part of the compliance plan it is predicted by an independent engineering firm that engineering controls and work practices will reduce exposures below the permissible exposure limit by December 31, 1979, for affected employees, then such facilities need not be completed until 1 year after the engineering controls are completed or December 31, 1980, whichever is earlier, if such controls have not in fact succeeded in reducing exposure to below the permissible exposure limit.

(6) *Summary of startup dates set forth elsewhere in this standard.*

STARTUP DATES

August 1, 1978—Respirator use over 500 $\mu g/m^3$.

AS SOON AS POSSIBLE BUT NO LATER THAN

September 15, 1978—Completion of initial monitoring.

October 1, 1978—Complete establishment of regulated areas. Respirator use for employees exposed above 50 $\mu g/m^3$. Completion of initial training. Notification of use.

December 1, 1978—Respirator use over 10 $\mu g/m^3$. Completion of initial medical. Completion of compliance plan.

July 1, 1979—Completion of lunch rooms and hygiene facilities.

December 31, 1979—Completion of engineering controls.

All other requirements of the standard have as their startup date August 1, 1978.

## APPENDIX A—INORGANIC ARSENIC SUBSTANCE INFORMATION SHEET

### I. SUBSTANCE IDENTIFICATION

A. *Substance.* Inorganic Arsenic.

B. *Definition.* Copper acetoarsenite, arsenic and all inorganic compounds containing arsenic except arsine, measured as arsenic (As).

C. *Permissible Exposure Limit.* 10 micrograms per cubic meter of air as determined as an average over an 8-hour period. No employee may be exposed to any skin or eye contact with arsenic trichloride or to skin or eye contact likely to cause skin or eye irritation.

D. *Regulated Areas.* Only employees authorized by your employer should enter a regulated area.

### II. HEALTH HAZARD DATA

A. *Comments.* The health hazard of inorganic arsenic is high.

B. *Ways in which the chemical affects your body.* Exposure to airborne concentrations of inorganic arsenic may cause lung cancer, and can be a skin irritant. Inorganic arsenic may also affect your body if swallowed. One compound in particular, arsenic trichloride, is especially dangerous because it can be absorbed readily through the skin. Because inorganic arsenic is a poison, you should wash your hands thoroughly prior to eating or smoking.

### III. PROTECTIVE CLOTHING AND EQUIPMENT

A. *Respirators.* Respirators will be provided by your employer at no cost to you for routine use if your employer is in the process of implementing engineering and work practice controls or where engineering and work practice controls are not feasible or insufficient. You must wear respirators for non-routine activities or in emergency situa-

tions where you are likely to be exposed to levels of inorganic arsenic in excess of the permissible exposure limit. Since how well your respirator fits your face is very important, your employer is required to conduct fit tests to make sure the respirator seals properly when you wear it. These tests are simple and rapid and will be explained to you during training sessions.

B. *Protective clothing.* If you work in a regulated area, your employer is required to provide at no cost to you, and you must wear, appropriate, clean, protective clothing and equipment. The purpose of this equipment is to prevent you from bringing to your home arsenic-contaminated dust and to protect your body from repeated skin contact with inorganic arsenic likely to cause skin irritation. This clothing should include such items as coveralls or similar full-body clothing, gloves, shoes or coverlets, and aprons. Protective equipment should include face shields or vented goggles, where eye irritation may occur.

IV. HYGIENE FACILITIES AND PRACTICES

You must not eat, drink, smoke, chew gum or tobacco, or apply cosmetics in the regulated area, except that drinking water is permitted. If you work in a regulated area your employer is required to provide lunchrooms and other areas for these purposes.

If you work in a regulated area, your employer is required to provide showers, washing facilities, and change rooms. You must wash your face, and hands before eating and must shower at the end of the work shift. Do not take used protective clothing out of change rooms without your employer's permission. Your employer is required to provide for laundering or cleaning of your protective clothing.

V. SIGNS AND LABELS

Your employer is required to post warning signs and labels for your protection. Signs must be posted in regulated areas. The signs must warn that a cancer hazard is present, that only authorized employees may enter the area, and that no smoking or eating is allowed, and that respirators must be worn.

VI. MEDICAL EXAMINATIONS

If your exposure to arsenic is over the Action Level (5 $\mu g/m^3$)—(including all persons working in regulated areas) at least 30 days per year, or you have been exposed to arsenic for more than 10 years over the Action Level, your employer is required to provide you with a medical examination. The examination shall be every 6 months for employees over 45 years old or with more than 10 years exposure over the Action Level and annually for other covered employees. The medical examination must include a medical history; a chest x-ray; skin examination; nasal examination and sputum cytology exam for the early detection of lung cancer. The cytology exams are only included in the initial exam and examinations given after you are either 45 years or older or have 10 or more years employment over the Action Level. The examining physician will provide a written opinion to your employer containing the results of the medical exams. You should also receive a copy of this opinion. The physician must not tell your employer any conditions he detects unrelated to occupational exposure to arsenic but must tell you those conditions.

VII. OBSERVATION OF MONITORING

Your employer is required to monitor your exposure to arsenic and you or your representatives are entitled to observe the monitoring procedure. You are entitled to receive an explanation of the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you must also be provided with and must wear the protective clothing and equipment.

VIII. ACCESS TO RECORDS

You or your representative are entitled to records of your exposure to inorganic arsenic upon request to your employer. Your medical examination records can be furnished to your physician if you request your employer to provide them.

IX. TRAINING AND NOTIFICATION

Additional information on all of these items plus training as to hazards of exposure to inorganic arsenic and the engineering and work practice controls associated with your job will also be provided by your employer. If you are exposed over the permissible exposure limit, your employer must inform you of that fact and the actions he is taking to reduce your exposures.

## APPENDIX B—SUBSTANCE TECHNICAL GUIDELINES

### ARSENIC, ARSENIC TRIOXIDE, ARSENIC TRICHLORIDE (THREE EXAMPLES)

*I. Physical and chemical properties*

A. Arsenic (metal).

1. Formula: As.

2. Appearance: Gray metal.

3. Melting point: Sublimes without melting at 613C.

4. Specific Gravity: (H20=1):5.73.

5. Solubility in water: Insoluble.

B. Arsenic Trioxide.

1. Formula: As203, (As406).

2. Appearance: White powder.

3. Melting point: 315C.

4. Specific Gravity (H20=1):3.74.

5. Solubility in water: 3.7 grams in 100cc of water at 20c.

C. Arsenic Trichloride (liquid).

1. Formula: AsC13.

2. Appearance: Colorless or pale yellow liquid.

3. Melting point: −8.5C.

4. Boiling point: 130.2C.

5. Specific Gravity (H20=1):2.16 at 20C.

6. Vapor Pressure: 10mm Hg at 23.5C.

7. Solubility in Water: Decomposes in water.

*II. Fire, explosion and reactivity data.*

A. Fire: Arsenic, arsenic Trioxide and Arsenic Trichloride are nonflammable.

B. Reactivity:

1. Conditions Contributing to instability: Heat.

2. Incompatibility: Hydrogen gas can react with inorganic arsenic to form the highly toxic gas arsine.

*III. Monitoring and Measurement Procedures*

Samples collected should be full shift (at least 7-hour) samples. Sampling should be done using a personal sampling pump at a flow rate of 2 liters per minute. Samples should be collected on 0.8 micrometer pore size membrane filter (37mm diameter). Volatile arsenicals such as arsenic trichloride can be most easily collected in a midget bubbler filled with 15 ml. of 0.1 N NaOH.

The method of sampling and analysis should have an accuracy of not less than ±25 percent (with a confidence limit of 95 percent) for 10 micrograms per cubic meter of air (10 $\mu g/m^3$) and ±35 percent (with a confidence limit of 95 percent) for concentrations of inorganic arsenic between 5 and 10 $\mu g/m^3$.

## APPENDIX C—MEDICAL SURVEILLANCE GUIDELINES

I. GENERAL

Medical examinations are to be provided for all employees exposed to levels of inorganic arsenic above the action level (5 $\mu g/m^3$) for at least 30 days per year (which would include among others, all employees, who work in regulated areas). Examinations are also to be provided to all employees who have had 10 years or more exposure above the action level for more than 30 days per year while working for the present or predecessor employer though they may no longer be exposed above the level.

An initial medical examination is to be provided to all such employees by December 1, 1978. In addition, an initial medical examination is to be provided to all employees who are first assigned to areas in which worker exposure will probably exceed 5 $\mu g/m^3$ (after the effective date of this standard) at the time of initial assignment. In addition to its immediate diagnostic usefulness, the initial examination will provide a baseline for comparing future test results. The initial examination must include as a minimum the following elements:

(1) A work and medical history, including a smoking history, and presence and degree of respiratory symptoms such as breathlessness, cough, sputum production, and wheezing;

(2) A 14" by 17" posterior-anterior chest X-ray and an International Labor Office UICC/Cincinnati (ILO U/C) rating;

(3) A nasal and skin examination;

(4) A Sputum Cytology examination; and

(5) Other examinations which the physician believes appropriate because of the employee's exposure to inorganic arsenic or because of required respirator use.

Periodic examinations are also to be provided to the employees listed above. The periodic examinations shall be given annually for those covered employees 45 years of age or less with fewer than 10 years employment in areas where employee exposure exceeds the action level (5 $\mu g/m^3$). Periodic examinations need not include sputum cytology and only an updated medical history is required.

Periodic examinations for other covered employees, shall be provided every six (6) months. These examinations shall include all tests required in the initial examination, except that the medical history need only be updated.

The examination contents are minimum requirements. Additional tests such as lateral and oblique X-rays or pulmonary function tests may be useful. For workers exposed to three arsenicals which are associated with lymphatic cancer, copper acetoar-

senite, potassium arsenite, or sodium arsenite the examination should also include palpation of superficial lymph nodes and complete blood count.

II. NONCARCINOGENIC EFFECTS

The OSHA standard is based on minimizing risk of exposed workers dying of lung cancer from exposure to inorganic arsenic. It will also minimize skin cancer from such exposures.

The following three sections quoted from "Occupational Diseases: A Guide to Their Recognition", Revised Edition, June 1977, National Institute for Occupational Safety and Health is included to provide information on the nonneoplastic effects of exposure to inorganic arsenic. Such effects should not occur if the OSHA standards are followed.

A. *Local*—Trivalent arsenic compounds are corrosive to the skin. Brief contact has no effect but prolonged contact results in a local hyperemia and later vesicular or pustular eruption. The moist mucous membranes are most sensitive to the irritant action. Conjunctiva, moist and macerated areas of skin, the eyelids, the angles of the ears, nose, mouth, and respiratory mucosa are also vulnerable to the irritant effects. The wrists are common sites of dermatitis, as are the genitalia if personal hygiene is poor. Perforations of the nasal septum may occur. Arsenic trioxide and pentoxide are capable of producing skin sensitization and contact dermatitis. Arsenic is also capable of producing keratoses, especially of the palms and soles.

B. *Systemic*—The acute toxic effects of arsenic are generally seen following ingestion of inorganic arsenical compounds. This rarely occurs in an industrial setting. Symptoms develop within ½ to 4 hours following ingestion and are usually characterized by construction of the throat followed by dysphagia, epigastric pain, vomiting, and watery diarrhea. Blood may appear in vomitus and stools. If the amount ingested is sufficiently high, shock may develop due to severe fluid loss, and death may ensue in 24 hours. If the acute effects are survived, exfoliative dermatitis and peripheral neuritis may develop.

Cases of acute arsenical poisoning due to inhalation are exceedingly rare in industry. When it does occur, respiratory tract symptoms—cough, chest pain, dyspnea—giddiness, headache, and extreme general weakness precede gastrointestinal symptoms. The acute toxic symptoms of trivalent arsenical poisoning are due to severe inflammation of the mucous membranes and greatly increased permeability of the blood capillaries.

Chronic arsenical poisoning due to ingestion is rare and generally confined to patients taking prescribed medications. However, it can be a concomitant of inhaled inorganic arsenic from swallowed sputum and improper eating habits. Symptoms are weight loss, nausea and diarrhea alternating with constipation, pigmentation and eruption of the skin, loss of hair, and peripheral neuritis. Chronic hepatitis and cirrhosis have been described. Polyneuritis may be the salient feature, but more frequently there are numbness and parasthenias of "glove and stocking" distribution. The skin lesions are usually melanotic and keratotic and may occasionally take the form of an intradermal cancer of the squamous cell type, but without infiltrative properties. Horizontal white lines (striations) on the fingernails and toenails are commonly seen in chronic arsenical poisoning and are considered to be a diagnostic accompaniment of arsenical polyneuritis.

Inhalation of inorganic arsenic compounds is the most common cause of chronic poisoning in the industrial situation. This condition is divided into three phases based on signs and symptoms.

First Phase: The worker complains of weakness, loss of appetite, some nausea, occasional vomiting, a sense of heaviness in the stomach, and some diarrhea.

Second Phase: The worker complains of conjunctivitis, a catarrhal state of the mucous membranes of the nose, larynx, and respiratory passage. Coryza, hoarseness, and mild tracheobronchitis may occur. Perforation of the nasal septum is common, and is probably the most typical lesion of the upper respiratory tract in occupational exposure to arsenical dust. Skin lesions, eczematoid and allergic in type, are common.

Third Phase: The worker complains of symptoms of peripheral neuritis, initially of hands and feet, which is essentially sensory. In more severe cases, motor paralyses occur; the first muscles affected are usually the toe extensors and the peronei. In only the most severe cases will paralysis of flexor muscles of the feet or of the extensor muscles of hands occur.

Liver damage from chronic arsenical poisoning is still debated, and as yet the question is unanswered. In cases of chronic and acute arsenical poisoning, toxic effects to the myocardium have been reported based on EKG changes. These findings, however, are now largely discounted and the EKG changes are ascribed to electrolyte disturbances concomitant with arsenicalism. Inhalation of arsenic trioxide and other inorganic arsenical dusts does not give rise to radiological evidence or pneumoconiosis. Arsenic does have a depressant effect upon the bone marrow, with disturbances of both erythropoiesis and myelopoiesis.

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III. SPUTUM CYTOLOGY

Sputum can be collected by aerosol inhalation during the medical exam or by spontaneous early morning cough at home. Sputum is induced by transoral inhalation of an aerosolized solution of eight per cent (8 percent) sodium chloride in water. After inhaling as few as three to five breaths the subject usually yields an adequate sputum. All sputum should be collected directly into sixty percent (60 percent) alcohol.

Scientific evidence suggests that chest X-rays and sputum cytology should be used together as screening tests for lung tests for lung cancer in high risk populations such as workers exposed to inorganic arsenic. The tests are to be performed every six months on workers who are 45 years of age or older or have worked in the regulated area for 10 or more years. Since the tests seem to be complementary, it may be advantageous to alternate the test procedures. For instance, chest X-rays could be obtained in June and December and sputum cytologies could be obtained in March and September. Facilities for providing necessary diagnostic investigation should be readily available as well as chest physicians, surgeons, radiologists, pathologists and immunotherapists to provide any necessary treatment services.

(Pub. L. 91-596; Secs. 4, 6, 8, 84 Stat. 1592, 1593, 1599 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order 8-76 (41 FR 25059); 29 CFR Part 1911).

[FR Doc. 78-12170 Filed 5-3-78; 11:00 am]

federal register

FRIDAY, MAY 5, 1978
PART V

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

■

# PRIVACY ACT OF 1974

## Systems of Records

[6570-06]

# EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

## PRIVACY ACT OF 1974

### Republication of Privacy Act Systems of Records

Action: Publication of Second Annual Compilation of Privacy Act Systems of Records maintained by the Equal Employment Opportunity Commission.

Summary: The Privacy Act of 1974, 5 U.S.C. Sec. 552a(e)(4) (Pub. L. 93-597), requires that each agency publish in the FEDERAL REGISTER at least annually a notice of the existence and character of systems of records it maintains.

A compilation of the Commission's Privacy Act systems of records was most recently published at 41 FR 42170 (September 24, 1976). Since that publication, the following amendments to those systems of records have been made:

1. The "routine use" provision of system EEOC-3, Charge of Discrimination Case Files, was amended to provide for a limited disclosure to Congressional offices (41 FR 46061, October 19, 1976);

2. Additional "routine uses" were adopted for systems EEOC-1, 2 and 4-13 (42 FR 69, January 3, 1977). The additional "uses" generally provide for disclosures from these systems of records to Federal, State and local law enforcement agencies and to the General Services Administration in connection with services provided to the Commission;

3. Notice of proposed amendments to Privacy Act systems EEOC-8 (re-titled "Employee Travel and Reimbursement Records") and EEOC-13 (re-titled "Employee Performance, Effectiveness and Evaluation System") was published at 42 FR 8359 February 9, 1977). These amendments are adopted in final form upon this publication;

4. Additional "routine uses" were adopted for system EEOC-7, Employee Pay and Leave Records (42 FR 69, January 3, 1977). The additional "uses" generally provided for disclosure in providing a copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation;

5. System EEOC-1, Affirmative Action Plan Employee Data, was cancelled at 42 FR 21644 (April 28, 1977) because such records were no longer being maintained. The designation, EEOC-1, is reserved;

6. Notice of the establishment of a new Privacy Act system of records, EEOC-14, Day-Care Center Study Records, was published at 42 FR 56643 (October 27, 1977);

7. Systems of records for the Equal Employment Opportunity Commission are current as of April 1, 1978.

Dates: Notice of this compilation is effective May 5, 1978.

For further information contact: Constance L. Dupre, Associate General Counsel, Legal Counsel Division, EEOC, 2401 "E" Street NW., Washington, D.C. 20506, 202-634-6460.

Supplementary Information: None.

Signed at Washington, D.C., this 24th day of April, 1978.

ELEANOR HOLMES NORTON,
*Chair.*

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(A) List of Field Offices and Headquarters Offices for the Equal Employment Opportunity Commission.
(B) Additional Routine Uses for Systems EEOC—2 and 4-13.

**EEOC-1 [Reserved]**

**EEOC—2**

**System name:** Attorney Referral List—EEOC

**System location:** All district offices (see appendix).

**Categories of individuals covered by the system:** Attorneys.

**Categories of records in the system:** Contains attorneys' names, business addresses, telephone numbers, and years of experience. Some offices may maintain the following additional information: (1) the kinds of cases the attorneys are interested in; (2) whether the attorney will handle cases investigated by EEOC; and (3) description of cases handled for plaintiffs and defendants.

**Authority for maintenance of the system:** 42 U.S.C. 2000e-4(g); 44 U.S.C. 396(a).

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used by EEOC personnel as a source of attorneys to whom charging parties can be referred to handle the litigation of their Title VII complaints.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Stored on prepared forms and 3 inch by 5 inch cards.

**Retrievability:** Indexed alphabetically by names of the attorneys.

**Safeguards:** Access to this system of records is restricted to EEOC district office personnel who have a legitimate use for the information contained therein. This system is stored in a filing cabinet.

**Retention and disposal:** Maintained until the Commission is notified that an attorney no longer wishes to be included on the referral list. Upon such notification, records are destroyed by manual shredding.

**System manager(s) and address:** The District Counsel at each EEOC district office (see appendix).

**Notification procedure:** Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested: (1) full name of the individual; (2) mailing address to which reply should be sent.

**Record access procedures:** Same as the above.

**Contesting record procedures:** Same as the above.

**Record source categories:** Attorneys.

**EEOC—3**

**System name:** Charge of Discrimination Case Files—EEOC

**System location:** District office where the charge of discrimination was filed (see appendix).

**Categories of individuals covered by the system:** Any aggrieved individuals who charge that an unlawful employment practice within the meaning of Title VII of the Civil Rights Act of 1964, as amended, has been committed by an employer, employment agency, labor organization or joint labor-management apprenticeship committee.

**Categories of records in the system:** Grievance filed by charging party alleging discrimination, original communication, perfected charge, amended charge; copy of deferral letter to state; communication requesting assumption of jurisdiction; receipt for copy of charge; receipt for notification of charge; analysis of deferral agency action or nonaction; charging party's statements and affidavits; report of initial and exit interviews; follow-up letter from charging party; statements and affidavits of charging party's witnesses; statement of respondent and respondent's witnesses; respondent's statement of position; correspondence and documentation related thereto; documentary evidence gathered from respondent such as charging party's records of jobs and earnings, records of jobs and

earnings of co-workers, seniority list, job titles and an analysis of such documents; affidavits or statements of any additional witnesses interviewed and copies of any documents submitted by them; observations made on a tour of respondent's facilities, organizational charts, diagrams, summaries of comments made by employees regarding work facilities, EEO data, EEO Report forms; community background data such as racial and ethnic composition, education level by minority group status and sex, average income by minority status and sex, and history of employment relationships; collective bargaining agreements when relevant to the issue and related supplements or modifications to the contracts; copies of any subpoenas issued, and any petitions to modify or revoke; copies of any temporary restraining orders issued to seek preliminary relief in the case; investigator's notices and analysis of data; Decisions and Letters of Determination; conciliation agreements; statements or affidavits of additional witnesses contacted in connection with the investigation made; and any additional evidence gathered during the course of the investigation.

**Authority for maintenance of the system:** 5 U.S.C. 301; 42 U.S.C. 2000e-5, -8, and -9; 44 U.S.C. 396(a).

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** The purpose of this system of records is to provide for the federal prohibition agianst employment discrimination in the private and public sector based on race, color, religion, sex or national origin. The records are the official file to be utilized by authorized EEOC personnel, including investigators, conciliators, attorneys, research assistants and analysts, Commissioners, Compliance personnel and Regional and District Directors, in making an official determination regarding the validity of the charge of discrimination and as supportive material for any cases which are subsequently conciliated, or litigated by the EEOC or the Department of Justice. Other uses include the following: (1) to conduct compliance reviews with local, state and federal agencies, such as the Office of Federal Contract Compliance, Department of Justice, Department of Labor, Office of Revenue Sharing of the Treasury Department, Law Enforcement Assistance Administration, and other federal agencies as may be appropriate or necessary to carrying out the Commission's functions under the Title (See 42 U.S.C. 2000e-4(g)(1), 8(b) and (d); (2) sharing information contained in these records with state and local agenices administering state or local fair employment practices laws (See 42 U.S.C. 2000e-4(g)(1), 8(b) and (d); (3) sharing information in case files with the following person(s) in contemplation of or in connection with Title VII litigation:

(a) Charging Parties and their attorneys;

(b) Aggrieved persons in case files involving Commissioner Charges and their attorneys provided that such persons have been notified of their status as aggrieved persons pursuant to section 1601.25(c) of the Commission's Procedural Regulations;

(c) Persons or organizations filing on behalf of an aggrieved person, provided that the aggrieved person has given written authorization to the person who filed on his or her behalf to act as the aggrieved person's agent for this purpose and their attorneys;

(d) Employees of Commission-funded groups such as the Mexican-American Legal Defense and Education Fund and Lawyer's Committee for Civil Rights Under Law for the purpose of reviewing information in case files to determine the appropriateness of referral to private attorneys as a service to charging parties, provided that the Commission-funded group is reviewing the information at the request of the charging party;

(e) Respondents and their attorneys, provided that the charging party or aggrieved person has filed suit under Title VII; and (4) cooperating with private Title VII litigants and prospective Title VII litigants by allowing, when requested, access to information in other case files involving the same respondent, provided that the information in the other case files is relevant or material to the private litigant's case.

Disclosure of the status of the processing of a charge of employment discrimination may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Maintained in file folders, tape and computer print-outs.

**Retrievability:** Cross-indexed by charging party name, respondent name, and charge number; may be retrieved by any of the above three indexes.

**Safeguards:** Records are handled by authorized personnel of the Equal Employment Opportunity Commission and others; see routine uses. Premises are locked when authorized personnel are not on duty. Periodic security checks and emergency planning.

**Retention and disposal:** Case files which are received in the Office of Compliance and the Office of General Counsel are returned to their respective field offices. Files are retired to Federal Records Center one year after the year of the last action, including action in the federal courts or the last compliance review (the final report submitted by the respondent after conciliation to indicate compliance); destroyed after three additional years, except landmark cases, which are retained.

**System manager(s) and address:** District Director of the field office where charge was filed

**Systems exempted from certain provisions of the act:** System is exempt under 5 U.S.C. 552a(k)(2).

EEOC—4

**System name:** Commissioners' Biographical File—EEOC

**System location:** Office of Congressional Affairs, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506.

**Categories of individuals covered by the system:** Current and former Commissioners of EEOC.

**Categories of records in the system:** Includes name, date and place of birth, education and employment histories, Congressional confirmation hearing transcript, speeches, and publications.

**Authority for maintenance of the system:** 44 U.S.C. 396(a).

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used by the staff of the Office of Congressional Affairs to answer public and Congressional inquiries regarding EEOC Commissioners.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Stored on paper.

**Retrievability:** Indexed alphabetically by last name of the Commissioner.

**Safeguards:** Stored in standard file cabinets. Available to office employees and Commissioners.

**Retention and disposal:** Maintained indefinitely.

**System manager(s) and address:** Director, Office of Congressional Affairs, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506.

**Notification procedure:** Inquiries concerning this system of records should be addressed to the system namager. All inquiries should furnish the full name of the individual, and the mailing address to which the reply should be mailed.

**Record access procedures:** Same as the above.

**Contesting record procedures:** Same as the Above.

**Record source categories:** The Commissioner to whom the record pertains, publications, and original data generated by the Commission.

EEOC—5

**System name:** Correspondence and Congressional Inquiries—EEOC

**System location:** Office of Congressional Affairs, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506.

**Categories of individuals covered by the system:** Current and former EEOC employees, charging parties, members of the general public.

**Categories of records in the system:** Includes name of inquiring individuals and information submitted by them; date inquiry received; date response due; to whom inquiry assigned; date response sent out; issue raised in the inquiry.

**Authority for maintenance of the system:** 44 U.S.C. 396(a).

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used (a) as a control of incoming correspondence, a record file as to the nature and status of the correspondence, a reference of assignment for outgoing response, a reference to previous correspondence on the same subject; and (b) to avoid duplication of responses and to assure a reply to Congressional inquiries.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Stored in loose-leaf notebooks and on control slips.

**Retrievability:** Indexed numerically by date of incoming letter and alphabetically by name of the inquiring member of Congress and inquiring party.

**Safeguards:** Stored in standard file cabinets. Access to the records of daily incoming and outgoing correspondence is limited to office employees. Records of these files are stored in locked desk drawers.

**Retention and disposal:** Retained for six months after completion of necessary action, then destroyed manually. Material relating to specific subjects becomes part of the subject's official file.

**System manager(s) and address:** Director, Office of Congressional Affairs, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506.

**Notification procedure:** Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager.

**Record access procedures:** Same as the above.

**Contesting record procedures:** Same as the above.

**Record source categories:** Correspondence from members of Congress and their staffs, charging parties, members of the general public, and data generated within the Commission.

EEOC—6

**System name:** Employee Alcoholism and Drug Abuse Records—EEOC

**System location:** Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506, regional and district offices and regional litigation centers (see appendix).

**Categories of individuals covered by the system:** Current and former employees of EEOC.

**Categories of records in the system:** Contains information relating to individuals who are referred to the Public Health Service, other agency operating health facilities, alcoholic and drug abuse treatment and/or rehabilitation centers, and private physicians.

**Authority for maintenance of the system:** 5 U.S.C. 301; 5 U.S.C. 7901; 42 U.S.C. 218; 44 U.S.C. 396(a); 29 CFR 1510; 45 CFR 57.1 et seq.; 38 Federal Register, Part 1401; CSC FPM Letters No. 792-6 and -7; Bureau of the Budget Circular A-68, August 28, 1964; Bureau of the Budget Circular A-72, June 18, 1965.

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used by authorized personnel of the EEOC Headquarters, regional and district offices, personnel division upon the individual's request; by governmental personnel for purposes of attaining benefits; for disclosure in connection with judicial or administrative proceedings; for disclosure to medical personnel to meet a medical emergency; for disclosure to qualified personnel for purposes of research, audits, or program evaluation; for disclosure of a minor patient to his/her parents under the guidelines set forth in 21 CFR, Part 140.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Maintained in file folders.

**Retrievability:** Indexed by the names of the persons on whom they are maintained.

**Safeguards:** Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. HM Individual health record card: six years after last entry. Log of visit to facility: if summarized, three months after last entry; if not summarized, two years after last entry. Health record case files, related forms, correspondence and papers which document employee medical history except pre-employment health qualification placement records, disability retirement exams, and fitness for duty examinations which become a part of the OPF (Standard Form 66) upon separation, are maintained for a period of six years after date of last entry.

**System manager(s) and address:** Director of Personnel, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506, District and Regional Directors, and Regional Attorneys, EEOC district and regional locations (see appendix).

**Notification procedure:** Individuals who have been referred to PHS, or other agency operating health facilities are aware of that fact and any inquiries concerning this system should be addressed to the Director of Personnel, headquarters, or the District or Regional Directors and Regional Attorneys at the district and regional locations where individual is currently employed. Individuals should provide their full name, date of birth and social security number.

**Record access procedures:** Same as the above.

**Contesting record procedures:** Same as the above.

**Record source categories:** The individual to whom the record pertains; private physicians; medical institutions; Veterans Administration benefits program; office of workers' compensation programs; pay and leave allowance cards; health benefits records system; CSC personnel management evaluation and audit record system.

EEOC—7

**System name:** Employee Pay and Leave Records—EEOC

**System location:** All locations listed in appendix.

**Categories of individuals covered by the system:** Current and former employees of EEOC.

**Categories of records in the system:** Time and attendance cards and forms; leave records (employee name, branch or office, pay period ending, leave and overtime used during the pay period); requests for leave (earned or advance) or leave of absence; requests for and authorization of overtime; annual attendance record (indicates name, social security number, service computation date, hours and dates worked and taken as leave, pay plan, salary and occupation code, grade, leave earned and used); bond issuance and bond balance.

**Authority for maintenance of the system:** 5 U.S.C. 301; 44 U.S.C. 396(a).

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** May be used by authorized EEOC personnel to keep a daily record of leave and overtime acquired and used; as a basis for maintaining an employee's official time card; and as a counseling aid for employees and to assist in evaluating an employee's performance.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual

Routine uses of records maintained in this system include providing a copy of an employee's Department of the Treasury Form W-2, Wage and Tax Statement, to the State, city, or other local jurisdiction which is authorized to tax the employee's compensation. The record will be provided in accordance with a withholding agreement between the State, city, or other local jurisdiction and the Department of Treasury pursuant to 5 U.S.C. 5516, 5517, or 5520, or in the absence thereof, in response to a written request from an appropriate official of the taxing jurisdiction to the Chairman. The request must include a copy of the applicable statute or ordinance authorizing the taxation of compensation and should indicate whether the authority of the jurisdiction to tax the employee is based on place of residence, place of employment, or both.

Pursuant to a withholding agreement between a city and the Department of the Treasury (5 U.S.C. 5520), copies of executed city tax withholding certificates shall be furnished the city in response to a written request from an appropriate city official to the Chairman.

In the absence of a withholding agreement, the social security number will be furnished only to a taxing jurisdiction which has furnished this agency with evidence of its independent authority to compel disclosure of the social security number, in accordance with Section 7 of the Privacy Act, 5 U.S.C. 552a, Pub. L. 93-579.

Records maintained in this system may be disclosed, as necessary, to employees of the Educational Systems Corporation for research purposes only to study the effects of providing day-care services on the job productivity and worker satisfaction of Commission employees.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Stored on prepared forms and on punched and unpunched cards.

**Retrievability:** Indexed alphabetically by name, social security number, and/or chronologically by event and name.

**Safeguards:** Access to and use of these records are limited to those persons whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are stored in standard cabinets, safes and secured rooms.

**Retention and disposal:** Maintained from three months to one year. They are then manually destroyed.

**System manager(s) and address:** Director of each Commission Office or Division at headquarters; Regional and District Directors (see appendix).

**Notification procedure:** Employees of the Commission wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of the Office or Division where employed or to the District or Regional Director if employed at a field installation (see appendix). Former employees separated from the Commission and no longer in the federal service should address all inquiries to the National Personnel Records Center, General Services Administration, 111 Winnebago Street, St. Louis, Missouri 63118. The individual should provide his or her full name, date of birth, social security number and mailing address.

**Record access procedures:** Same as the above.

**Contesting record procedures:** Same as the above.

**Record source categories:** Official personnel folders, data submitted by employees, and data submitted by the offices where the individuals are or were employed.

EEOC—8

**System name:** Employee Travel and Reimbursement Records

**System location:** EEOC Headquarters, 2401 E St., N.W., Washington, D.C. 20506

**Categories of individuals covered by the system:** Current and former EEOC employees

**Categories of records in the system:** Includes travel orders, records of travel advances, amounts owed the agency by employees for travel and other purposes, amounts payable to the employee for travel and other purposes, payments made to the employees for travel and other reimbursable transactions and a record of the difference between the cost of official travel as estimated in the travel order and the amount actually expended by the employee.

**Authority for maintenance of the system:** 31 U.S.C. 66a, 44 U.S.C. 3101

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used by authorized personnel in the Financial Services Division at headquarters as a record of planned and completed travel expenses; as a justification of government travel disbursements; and to record accounts receivable from and payable to the government for accounts advanced to the employee or owed to the employee for official travel and other purposes.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Stored on magnetic tape.

**Retrievability:** Indexed by an assigned employee code.

**Safeguards:** Access to any information maintained therein is limited to employees whose official duties require such access.

**Retention and disposal:** The records are maintained for the current fiscal year and two preceding fiscal years. They are then retired to the Federal Records Center.

**System manager(s) and address:** Chief, Financial Services Division, EEOC, 2401 E Street, N.W., Washington, D.C. 20506.

**Notification procedure:** Inquiries concerning this system of records should be addressed to the System manager. It is necessary to furnish the following information (1) name (2) social security number (3) mailing address to which the response is to be sent.

**Record access procedures:** Same as above.

**Contesting record procedures:** Same as above.

**Record source categories:** Bills, receipts, and claims presented by employees and original data generated by the Commission.

EEOC—9

**System name:** Labor-Management Negotiated Agreements—EEOC

**System location:** Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506. Regional and district offices.

**Categories of individuals covered by the system:** Current and former employees of EEOC.

**Categories of records in the system:** Contains information or documents relating to the Commission's labor-management relations program, including information and decisions by the Department of Labor, - Impasses Panel, and Federal Labor Relations Council.

**Authority for maintenance of the system:** 5 U.S.C. 301; 5 U.S.C. 7001; 44 U.S.C. 396(a); Lloyd-LaFollette Act of 1912; Executive Order 11491, as amended; 5 CFR 711.101-711.102.

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used by authorized EEOC personnel to respond to inquiries or requests from parties to the negotiated agreement; inquiries from other federal agencies; a court subpoena or to refer to a District Court; requests by parties having standing under Executive Order 11491, as amended; and in a proceeding authorized by Executive Order 11491, as amended.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Maintained in file folders, binders, and on index cards.

**Retrievability:** Indexed by subject matter and the names of parties involved.

**Safeguards:** Limited to individuals whose official duties require access and the parties having a standing in a particular labor-management proceeding.

**Retention and disposal:** Maintained up to five years and sent to the National Archives.

**System manager(s) and address:** Director of Personnel, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506. District and Regional Directors at regional and district offices (see appendix).

**Notification procedure:** Employees and former employees of EEOC wishing to know whether information about them is maintained in this system of records should address inquiries to the Director of Personnel, at the above address, if they are or were employed at headquarters, Washington, D. C. or to the District and Regional Directors at the installation where the individual is or was employed (see appendix). The individuals should provide their full name, date of birth and social security number.

**Record access procedures:** Same as the above.

**Contesting record procedures:** Same as the above.

**Record source categories:** The individual to whom the record pertains; members of the bargaining unit; EEOC officials whose official duties require access to the records; authorized officials from the Department of Labor, Civil Service Commission, Federal Mediation and Conciliation Service, Federal Labor Relations Council, Federal Service Impasses Panel, and other third parties to disputes resolution, including arbitrators; other federal agencies having a standing in the Commission's dispute or requesting information; research groups; courts and information; research groups; courts and litigation; the Congress upon request.

EEOC—10

**System name:** Voluntary Programs Skills Bank—EEOC

**System location:** Office of Voluntary Porgrams, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506.

**Categories of individuals covered by the system:** Members of the general public and employees of the federal government who have

voluntarily submitted resumes or statements of personal qualifications for inclusion within the skills bank.

**Categories of records in the system:** Includes name, address, date of birth, education, employment history, military and criminal histories, special qualifications, voting residence, social security number, letters of recommendation, etc.

**Authority for maintenance of the system:** 42 U.S.C. 2000e-4(g); 44 U.S.C. 396(a).

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used by authorized EEOC personnel in the Office of Voluntary Programs for technical aid to employers requesting Commission assistance in an effort to engage in a remedial action program; assistance to individuals seeking employment; referrals for employment.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Submitted data stored on paper and punch cards.

**Retrievability:** Indexed by names of individuals, skills and qualifications.

**Safeguards:** Maintained by authorized personnel only and when not in use kept in locked file cabinet.

**Retention and disposal:** System kept indefinitely and updated annually. When data is disposed of it is manually shredded.

**System manager(s) and address:** Director, Office of Voluntary Programs, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D. C. 20506.

**Notification procedure:** Individuals who have submitted resumes or statements of personal qualifications are aware of the record on themselves maintained by the Commission. They may, however, contact the system manager regarding the existence of such records pertaining to them. The request should include the full name, date and place of birth of the individual and social security number.

**Record access procedures:** Same as the above.

**Contesting record procedures:** Same as the above.

**Record source categories:** The individual to whom the record pertains.

EEOC—11

**System name:** Correspondence File—EEOC

**System location:** Seattle District Office and Chicago District Office (See Appendix).

**Categories of individuals covered by the system:** Charging parties, applicants for employment and members of the general public.

**Categories of records in the system:** Includes name of inquiring individuals and information submitted by them; date inquiry received; date response sent out; issue raised in the inquiry; to whom inquiry assigned.

**Authority for maintenance of the system:** 44 U.S.C. 396(a).

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used (a) as a control of incoming correspondence, a record file as to the nature and status of the correspondence, a reference of assignment for outgoing response, a reference to previous correspondence on the same subject; and (b) to avoid duplication of responses and to assure a reply to all those who have sent inquiries to this office.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** These records are stored on paper in file folders.

**Retrievability:** This system is indexed numerically by date of inquiry and alphabetically by name of inquirer for each yearly quarter.

**Safeguards:** The files are stored in locked file cabinets. Access to the files is limited to office employees.

**Retention and disposal:** Retained for one (1) year after completion of necessary action, then destroyed manually.

**System manager(s) and address:** Director, Seattle District Office, Equal Employment Opportunity Commission, Times Square Building, 4th Floor, 414 Olive Way, Seattle, Washington 98101.

**Notification procedure:** Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested: (1) full name of the individual , (2) mailing address to which reply should be mailed, (3) date(s) of correspondence.

**Record access procedures:** Same as above.

**Contesting record procedures:** Same as above.

**Record source categories:** Correspondence from charging parties, applicants for employment and the general public.

EEOC—12

**System name:** Officials' Biographical File — EEOC

**System location:** Office of Public Affairs, Equal Employment Opportunity Commission, Columbia Plaza, 2401 E Street, N. W., Washington, D.C.

**Categories of individuals covered by the system:** Current and past EEOC officials.

**Categories of records in the system:** Includes name, date and place of birth, education and employment histories, job duties, past experiences.

**Authority for maintenance of the system:** 44 U.S.C. 396(a).

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used by the staff of the Office of Public Affairs to answer public inquiries regarding EEOC officials.

Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** These records are stored on paper in file folders.

**Retrievability:** This system is indexed alphabetically by last name of official.

**Safeguards:** The files are stored in a standard file cabinet which is available to office employees.

**Retention and disposal:** Maintained indefinitely.

**System manager(s) and address:** Director, Office of Public Affairs, Equal Employment Opportunity Commission, 2401 E Street, N. W., Washington, D.C. 20506.

**Notification procedure:** Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information in order to identify the individual whose records are requested: (1) full name of the individual, (2) mailing address to which reply should be mailed.

**Record access procedures:** Same as above.

**Contesting record procedures:** Same as above.

**Record source categories:** The official to whom the information pertains.

EEOC—13

**System name:** Employee Performance, Effectiveness and Evaluation System.

**System location:** Dallas Regional Office and District Offices within the Dallas Region [See office addresses at 40 F.R. 39222, August 27, 1975.]

**Categories of individuals covered by the system:** Equal Employment Specialists employed within the Dallas Region.

**Categories of records in the system:** Names of employees, dates of evaluations, file numbers of compliance files evaluated, and categorization and description of any errors or deficiencies in the investigation or conciliation, job title and/or grade, and tabulation of units of work completed, and quality control data.

**Authority for maintenance of the system:** 44 U.S.C. 3101

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** Used by Dallas Regional Director, District Directors and Deputy Directors of District Offices within the region for assignment making, for employee evaluation of error patterns, for definition of training needs, and for identification of problems which may be corrected by changing procedures.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** These records are stored on paper and prepared forms in file folders.

**Retrievability:** This system is indexed alphabetically by the last name of employee or numerically by employee code.

**Safeguards:** The files are locked in file cabinets or stored in desk drawers. Access is limited to Commission employees whose official duties require access.

**Retention and disposal:** Records are retained for two years after preparation or until completion of any grievance, complaint, award, or other action, adverse or otherwise, which may require their retention for longer than two years. They are then destroyed.

**System manager(s) and address:** Director, Dallas Regional Office and Directors of the District Offices within the Dallas Region [See addresses of offices published at 40 F.R. 39222, August 27, 1975.]

**Notification procedures:** Inquiries concerning this system of records should be addressed to the system manager. It is necessary to furnish the following information, in order to identify the individual whose records are requested: (1) the full name of the individual (2) the district office where the individual is or was employed; (3) social security number; (4) the address to which the response should be sent.

**Record access procedures:** Same as above.

**Contesting record procedures:** Same as above.

**Record source categories:** Work units are submitted by employees. Analyses are made of employees' and supervisors' performance by supervisors and District Director, respectively.

EEOC—14

**System name:** Day Care Center Study Records

**System location:** Educational Systems Corporation, 1710 N Street, N.W., Washington, D.C. 20036

**Categories of individuals covered by the system:** In this system will be maintained information on those persons and their children who participate in the EEOC's day-care center study program. An opportunity to participate in this program will be offered to current EEOC employees stationed at the EEOC's Headquarters Office and the Washington District Office. In addition, employees of other federal agencies who are stationed within the EEOC's Headquarters Office building, 2401 E Street, N.W., Washington, D.C., will also be offered an opportunity to enroll their children in the day-care program.

**Categories of records in the system:** Records will be maintained on three categories of individuals as described below: (1) Only EEOC Headquarters employees are participating in the study aspect of the day-care program. As to them, the following information will be maintained: Employee name, age, sex, ethnic category, education, business and residential address and telephone number, grade level, years in grade, records of interviews with them regarding their impressions of job satisfaction and productivity, records on interviews with them regarding their impressions of the day-care program, and their time and attendance records. (2) EEOC employees at the Washington District Office and employees of other federal agencies stationed within the EEOC Headquarters Office building, 2401 E Street, N.W., Washington, D.C., will be allowed to enroll their children in the day-care program, however, they will not participate in the job productivity and satisfaction study aspect of the program. As to these persons, the following information will be maintained: Employee name, age, sex, ethnic category, and business and residential address and telephone number. (3) With regard to the children enrolled in the day-care center study program, the following information will be maintained: Name, age, sex, ethnic category, health certificate, and records of the educational development of participating children.

**Authority for maintenance of the system:** 42 U.S.C. 2000e-4(g)(5) and 12(a); 44 U.S.C. 3101

**Routine uses of records maintained in the system, including categories of users and the purposes of such uses:** The information collected for and maintained in this system will be used for two purposes: (1) the identifying information on all children enrolled in the program, and their parents, will be used for general record keeping purposes; (2) the information obtained from EEOC Headquarters personnel who are participating in the study aspect of the program will be used for research purposes only to study the effects of providing day-care services on the job productivity and worker satisfaction of the participants. The information will be disclosed, as necessary, to employees of Educational Systems Corporation, which is conducting the study. Commission employees will have access to the information obtained only in aggregate form.

**Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:**

**Storage:** Stored on computer tape, computer print-outs and letter sized paper.

**Retrievability:** Indexed numerically by assigned employee code and alphabetically by employee name.

**Safeguards:** Stored in standard file cabinets and on computer tapes and print-outs. Access is limited per routine use described above.

**Retention and disposal:** Retained for one year and then manually destroyed. Individual identifiers will be obliterated by the Educational Systems Corporation prior to the transfer of the study records to the EEOC.

**System manager(s) and address:** Director, Office of Planning, Research and Systems, Equal Employment Opportunity Commission, 2401 E Street, N.W., Washington, D.C. 20506.

**Notification procedure:** Individuals wishing to know whether information about them is maintained in this system of records should address inquiries to the system manager. All inquiries should furnish the full name of the individual and mailing address to which the reply should be sent. (See EEOC Privacy Act Regulations, 29 CFR Part 1611.)

**Record access procedures:** Same as above.

**Contesting record procedures:** Same as above.

**Record source categories:** Information maintained in this system will be obtained from the individual's time and attendance records and from the individuals themselves.

APPENDIX A

ATLANTA REGION
Atlanta Regional Office
Citizens Trust Bldg., Suite 1150
75 Piedmont Avenue, N. E.
Atlanta, Georgia 30303
Atlanta Regional Litigation Center
1389 Peachtree Street, N. E.
Atlanta, Georgia 30309
Atlanta District Office
Citizens Trust Bldg. 10th Floor
75 Piedmont Avenue, N. E.
Atlanta, Georgia 30303
Birmingham District Office
2121 - 8th Avenue, North, Room 824
Birmingham, Alabama 35203
Charlotte District Office
411 North Tryon Street, 2nd Floor
Charlotte, North Carolina 28302
Jackson District Office
200 E. Pascagoula St.
Petroleum Bldg, 5th Floor
Jackson, Mississippi 39201
Memphis District Office
The Dermon 1 Bldg., Suite 1004
46 North Third Street
Memphis, Tennessee 38103
Miami District Office
Dupont Plaza Center
Suite 414
300 Biscayne Boulevard
Miami, Florida 33132

CHICAGO REGION
Chicago Regional Office
230 S. Dearborn St.
Room 2641
Chicago, Illinois 60605
Chicago Regional Litigation Center
55 E-Jackson Blvd.
Room 1401
Chicago, Illinois 60605
Chicago District Office
Federal Building, Room 234
536 South Clark Street
Chicago, Illinois 60605
Cincinnati District Office
Federal Building, Room 7019
550 Main Street
Cincinnati, Ohio 45202
Cleveland District Office
Engineers' Building, Room 402
1365 Ontario Street
Cleveland, Ohio 44114
Detroit District Office
Federal Bldg. & Old Courthouse
231 W. Lafayette St., Room 461
Detroit, Michigan 48226
Indianapolis District Office
Federal Building
U.S. Courthouse
46 East Ohio Street, Room 456
Indianapolis, Indiana 46204
Milwaukee District Office
Veterans Administration Bldg.
342 North Water Street, 6th Floor
Milwaukee, Wisconsin 53202
DALLAS REGION
Dallas Regional Office
1100 Commerce Street, Room 5A4
Dallas, Texas 75202
Dallas District Office
Corrigan Tower
212 N. St. Paul
Dallas, Texas 75216
Albuquerque District Office
Western Bank Building
Suite 1515
505 Marquette Avenue, N. W.
Albuquerque, New Mexico 87101
Houston District Office
Federal Building, Room 1101
2320 LaBranch
Houston, Texas 77004
New Orleans District Office
Hale Boggs Fed. Bldg.
500 Camp Street, Room 1007
New Orleans, Louisiana 70130
San Antonio District Office
727 E. Durango, Suite B-601
San Antonio, Texas 78205
KANSAS CITY REGION
Kansas City Regional Office
601 East 12th Street, Room 113
Kansas City, Missouri 64106
Kansas City District Office
911 Walnut Street, Room 500
Kansas City, Missouri 64106
St. Louis District Office
1150 Grand
1st Floor
St. Louis, Missouri 63101
NEW YORK REGION
New York Regional Office
26 Federal Plaza, Room 1615
New York, New York 10007
New York District OFfice
90 Church Street, Room 1301
New York, New York 10007
Boston District Office
150 Causeway Street, Suite 1000
Boston, Massachusetts 02114
Buffalo District Office
One West Genesee Street, Room 1020
Buffalo, New York 14202
Newark District Office
744 Broad St.
Room 502
Newark, New Jersey 07102
PHILADELPHIA REGION
Philadelphia Regional Office
127 North 4th Street, 3rd Floor
Philadelphia, Pennsylvania 19106
Philadelphia Regional Litigation Center
127 North 4th Street, Suite 200
Philadelphia, Pennsylvania 19106
Philadelphia District Office
219 North Broad Street, 2nd Floor
Philadelphia, Pennsylvania 19107
Baltimore District Office
Rotunda Building, Room 210
711 West 40th Street
Baltimore, Maryland 21211
Pittsburgh District Office
Federal Building, Room 2038A
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Washington District Office
1717 H Street, N. W., Suite 400
Washington, D. C. 20006
SAN FRANCISCO REGION
San Francisco Regional Office
300 Montgomery Street, Suite 740
San Francisco, California 94104
San Francisco Regional Litigation Center
Grosvenor Plaza, Suite 1010
1390 Market Street
San Francisco, California 94102
San Francisco District Office
Grosvenor Plaza, 3rd Floor
1390 Market Street
San Francisco, California 94102
Denver Regional Litigation Center
1531 Stout Street, 6th Floor
Denver, Colorado 80202
Denver District Office
Columbia Building, 2nd Floor
1845 Sherman Street
Denver, Colorado 80202
Los Angeles District Office
3255 Wilshire Blvd.,
9th Floor
Los Angeles, California 90015
Phoenix District Office
201 N. Central Ave.,
Suite 1450
Phoenix, Arizona 85004
Seattle District Office
Times Square Building, 4th Floor
415 Olive Way
Seattle, Washington 98101

## HEADQUARTERS OFFICES
## EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
### 2401 E Street, N. W.
### Washington, D. C. 20506

OFFICE OF THE CHAIR
OFFICE OF THE VICE CHAIRMAN
OFFICE OF THE COMMISSIONERS
OFFICE OF THE EXECUTIVE DIRECTOR
OFFICE OF THE EQUAL EMPLOYMENT OPPORTUNITY
OFFICE OF RESEARCH
OFFICE OF CONGRESSIONAL AFFAIRS
OFFICE OF PUBLIC AFFAIRS
OFFICE OF GENERAL COUNSEL
OFFICE OF POLICY IMPLEMENTATION
OFFICE OF SYSTEMIC PROGRAMS

OFFICE OF GOVERNMENT EMPLOYMENT
OFFICE OF FIELD SERVICES
OFFICE OF SPECIAL PROJECTS AND PROGRAMS
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF ADMINISTRATION

APPENDIX B

ADDITIONAL ROUTINE USES FOR SYSTEMS EEOC—2 AND 4–13

The following "routine uses" were adopted by the Equal Employment Opportunity Commission for systems EEOC—2, and 4–13 at 42 F.R. 69 (January 3, 1977):

1. In the event that a system of records maintained by this agency to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred, as a "routine use," to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation or order issued pursuant thereto.

2. A record from this system of records may be disclosed as a "routine use" to a Federal, State or local agency maintaining civil, criminal or other relevant enforcement information or other pertinent information such as current licenses, if necessary, to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the letting of a contract or the issuance of a license, grant or other benefit.

3. A record from this system of records may be disclosed to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision in the matter.

4. A record from this system of records may be disclosed to an authorized appeal grievance examiner, formal complaints examiner, equal employment opportunity investigator, arbitrator or other duly authorized official engaged in investigation or settlement of a grievance, complaint, or appeal filed by an employee. A record from this system of records may be disclosed to the United States Civil Service Commission in accordance with the agency's responsibility for evaluation and oversight of Federal personnel management.

5. A record from this system of records may be disclosed to officers and employees of the General Services Administration in connection with administrative services provided to this agency under agreement with GSA.

[FR Doc. 78–11996 Filed 4–28–78; 11:31 am]

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| 1930 | $16.00 | 1932-33 | $17.25 |

## HARRY S. TRUMAN

| | | | |
|---|---|---|---|
| 1945 | $11.75 | 1949 | $11.80 |
| 1946 | $10.80 | 1950 | $13.85 |
| 1947 | $11.15 | 1951 | $12.65 |
| 1948 | $15.95 | 1952-53 | $18.45 |

## DWIGHT D. EISENHOWER

| | | | |
|---|---|---|---|
| 1953 | $14.60 | 1957 | $14.50 |
| 1954 | $17.20 | 1958 | $14.70 |
| 1955 | $14.50 | 1959 | $14.95 |
| 1956 | $17.30 | 1960-61 | $16.85 |

## JOHN F. KENNEDY

| | | | |
|---|---|---|---|
| 1961 | $14.35 | 1962 | $15.55 |
| | | 1963 | $15.35 |

## LYNDON B. JOHNSON

| | | | |
|---|---|---|---|
| 1963-64 (Book I) | $15.00 | 1966 (Book II) | $14.35 |
| 1963-64 (Book II) | $15.25 | 1967 (Book I) | $12.85 |
| 1965 (Book I) | $12.25 | 1967 (Book II) | $11.60 |
| 1965 (Book II) | $12.35 | 1968-69 (Book I) | $14.05 |
| 1966 (Book I) | $13.30 | 1968-69 (Book II) | $12.80 |

## RICHARD NIXON

| | | | |
|---|---|---|---|
| 1969 | $17.15 | 1972 | $18.55 |
| 1970 | $18.30 | 1973 | $16.50 |
| 1971 | $18.85 | 1974 | $12.30 |

## GERALD R. FORD

| | | | |
|---|---|---|---|
| 1974 | $16.00 | 1975 (Book I) | $13.50 |
| | | 1975 (Book II) | $13.75 |

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